

Mr. Just. *Jones*. Because you told him at *London* first that they were such Persons.

Colledge. I never saw *Lewes* in my Days till I saw him that Morning I came down from *Oxon*; and *Brown* I was not acquainted with a Fortnight before. This is a Truth; but however, they have sworn a Plot upon me at *Oxon*; and then come and prove I declared these were the Men, and spoke such and such Words at *London*; I desire your Lordship's Judgment in this Matter of Law, whether what be done at *London* can be sufficient Matter of Proof in Law to maintain an Indictment against me at *Oxon*? And if not, they do not prove legally that I have spoken such Words. Besides, I conceive, 'tis not a good Proof, because there is but one Witness.

L. C. J. Yes, look you, there are two Witnesses, *Dugdale* and *Turbervile*, as to what you said at *Oxon*, and two Witnesses as to what you said at *London*, *Haynes* and *Smith*, who testify what you said you would do at *Oxon*. Now in case you came to *Oxon* with any such Intention, that coming to *Oxford* is an Overt-Act, and the Witnesses that speak what you said in *London*, is Evidence to maintain the Indictment here, and to prove what your Intention was.

Colledge. Does that become an Overt-Act if I go to *Oxon* upon an honest Occasion, any other Occasion, though I had said those Words before.

L. C. J. If you came with that intent to join with others, and with a real Purpose to seize the King, that is the Overt-Act, and the Words before prove the Intention.

Mr. Just. *Jones*. He declared it himself by his Words.

Colledge. *Smith* says, that about a Week after *Wilcox's* Dinner, I discoursed with him at the *Ditch-Side*, that comes not within the compass of the Statutes. Then there is twice of the three Times he speaks of; the last Day, I do not remember when it was.

L. C. J. All was in *London* that *Smith* speaks of you.

Colledge. How comes that to be Proof here? Then nothing he says is to go for any Thing.

Mr. Just. *Jones*. Nothing will serve your Turn, we have declared our Opinions once already, that if the Witnesses swear true, here are two Witnesses; nay, if one were of what was done at *London*, and the other of what was done at *Oxon*, if they be to the same Treason, they are two Witnesses in Law.

Colledge. My Lord, I observe one Thing upon *Turbervile's* Evidence; he swears there was a Discourse in the Room when *Brown* was upon the Bed; but afterwards, if your Lordship minds it, he says, I discoursed with him as he and I lay upon the Bed. Before he said when *Brown* lay upon the Bed, and in the Room, and afterwards when we lay upon the Bed.

Mr. Just. *Jones*. Both the one and the other.

Colledge. But he first said one way, and then the other.

Mr. Justice *Jones*. Whilst *Brown* lay upon the Bed, and when he was gone, whilst you both lay upon the Bed.

L. C. J. We will do you no wrong; therefore if you will, *Turbervile* shall stand up and clear it.

Colledge. My Lord, I believe those that have taken the Passages can prove he contradicted himself in that.

L. C. J. He said both. But the Jury have

taken Notes of the Evidence, and will take Notice of it.

Colledge. As to Mr. *Masters*, the Evidence he gives was; he says, that he and I should discourse of the Parliament in 40.

Mr. Just. *Jones*. And the Justifiableness of the late King's Death, that they had done nothing but what they had just Cause to do.

Colledge. He swears that I did say to him, that the late Parliament did not cut off the King's Head.

Mr. Justice *Jones*. And you said the last Parliament that sat at *Westminster*, was of the same Opinion with that in 40.

Colledge. I dare appeal to Esquire *Charlton*, in whose Shop the Discourse was. I did not know that Mr. *Masters* was to be an Evidence against me; and truly they have taken that Course with me, by which any Man may be destroyed with half this Evidence, were they of good Credit, let his Innocence be what it will. I have been used so barbarously in the *Tower*, kept from all Conversation, and so in an utter Ignorance of what was sworn against me; for else I could easily have disproved Mr. *Masters*, if I had been in *London*, and had Liberty to provide for my Defence; but they have taken a Course to prevent that, and brought me hither, because 'tis impossible I should here defend myself.

L. C. J. You have not offered at any Witness to impeach Mr. *Masters's* Credit.

Colledge. Mr. *Masters's* Discourse he speaks of was in Mr. *Charlton's* Shop, I durst have appealed to him about it; for I knew if he were here he would do me right. Mr. *Masters* did say, the Parliament cut off the late King's Head. We held a Dispute upon that, which I was not willing to enter into; I said they did not, and we did then dispute whether they began the War against his Majesty: I said, they did not that I knew of, neither were they the Persons, but the Papists that began that War, and that broke the Treaty at *Uxbridge*, and that the Papists carried it on to that sad Issue, and put it upon the Protestants, that they had the *Odium* of it; but it was another Sort of Men that carried it on. I said, that I did always understand that Parliament to be an honest Parliament, that minded the true Interest of the Nation, and much of the same Opinion with the Parliament that sat last at *Westminster*. But before I said this, I said they were Persons altogether innocent of the King's Murder, and raising the War against the King; I did always understand that so the Parliament in 40 were.

L. C. J. But they were guilty of a Rebellion, and are declared so by Act of Parliament since his Majesty came in.

Colledge. My Lord, I am unacquainted with the Law, I speak only my Sense of it. And, my Lord, I did excuse them as to the Murder of the King, and the beginning of the War, that according to my Understanding they were not guilty of it; and from thence I did maintain they were an honest good Parliament, and much of Opinion with the Parliament that sat last at *Westminster*, which was for the true Interest of the Nation.

L. C. J. And was that the true Interest of the Nation, to cut off the King's Head?

Colledge. I did argue that with him some Time, and I did tell him that it was the Papists that did all the Mischief.

Mr. J. Jones. But he says no, upon his Oath, that when he had said the Parliament begun the Rebellion, and the Parliament did cut off the King's Head, you said, the Parliament did nothing but what they had just Cause for, and the Parliament that sat at *Westminster* was of the same Mind.

L. C. J. Those were his Words

Colledge. Pray let him be called again.

L. C. J. Let Mr. Masters stand up again.

Colledge. Pray, Sir, relate the whole Discourse that passed between you and I, whether I did not argue with you it was not the Parliament cut off the King's Head, nor begun the War, but the Papists.

Mr. Masters. No, you did not say any such Thing. We had a great deal of Discourse in the Shop, and under the Arch, and the Thing that was said, Mr. Colledge, was this: You did say to me, that you did justify the late long Parliament of 40, and their Proceedings, and you said, they were a Parliament that did nothing but what they had just Cause for. Said I, *How can you be so impudent to say so, when they raised the Rebellion against the King, and cut off his Head?* Said he again, *They did nothing but what they had just Cause for, and the Parliament that sat last at Westminster were of the same Opinion.*

Mr. Just. Jones. I did you no wrong in repeating the Evidence, you see, Mr. Colledge.

Colledge. Did I not first dispute with you that they did not begin the War, nor cut off the King, but the Papists did it.

Mr. Masters. Look you, Mr. Colledge, you would have had it the King began the War.

Colledge. Don't you say so; for I said, the Papists began the War. Sir, say no more to me than what you will answer to God Almighty; for I always said the Papists did all the Mischief in the late Times; and I wonder, Sir, you would not be so just to his Majesty, as to detect me for what I said then, if you apprehended it to be as you now say; but I am sure you do not, nor could not.

Mr. Masters. Mr. Colledge, it was so far from that, that I was afraid it was of dangerous Consequence, and I gave some Persons of Honour an Account of it; and I was sent to but on *Friday* last, to know what it was was said, and I was desired and commanded to come down hither.

Colledge. Pray, Mr. Masters, you are upon your Oath, do me but Justice, and speak upon your own Conscience; look you to it that you speak the Truth.

Mr. Masters. I will do you all the Right I can in the World.

Colledge. Then before the Court do you declare, whether we did not discourse at that Time as I said, for this Discourse was at Mr. Charlton's Shop at the further end.

Mr. Masters. No, it was at the entrance into the Shop, Mr. Colledge; and did not we go into the Arch, and talk there?

Mr. Serj. Jefferies. Mr. Masters, don't trouble yourself, your Reputation is not upon the Level with that Gentleman's.

Colledge. I desire he may speak the very Truth, and nothing but the Truth.

Mr. Masters. I do, as near as I can, and do you no Wrong; you did in your Discourse say the Parliament did not begin the War, nor cut off the King's Head.

Colledge. You did say to me, they did cut off the King's Head; and I told you no, the Papists did.

Mr. Masters. I think you did say that the Papists had an Hand in it; but, Sir, you have left out the most material Part of our Discourse, which was, that you said they did nothing but what they had just Cause for.

Colledge. I do say, and it was my Sense always, that the Parliament did not cut off the King's Head; for they were long out of Doors before that came to pass, and a new unhappy War was begun.

L. C. J. The War was a Rebellion on the Parliament's Part, let us not mince the Matter, and so it was declared by Act of Parliament; and if you argued after that Rate, it shews your Temper, and that you are a very ill Man; for they that justify such Things, as to the Time past, would lead us to the same Things again if they could. Therefore don't go about to palliate it, *ad faciendum Populum*; here, 'tis nothing to the Matter, but only to shew your Principles, and the Jury have heard what Mr. Masters says.

Colledge. I was then a Child, and do not know all the Passages, but I speak my Sense.

L. C. J. You should not have justified such Things.

Mr. Just. Jones. Who appointed the High Court of Justice that tried the King and condemned him, but the Parliament?

Mr. Just. Levinz. It was the Garbage of that Parliament, I am sure, that is the *Rump*; but they called themselves the Parliament of *England*, and the Parliament it was that begun the War.

Colledge. My Lord, I did not know, nor don't know that it is proved yet, that the Parliament were those that did cut off the King's Head. I don't know, Mr. Masters is pleased to say this of me; but I thought no Evil, nor did he understand it so, I believe, at that Time, for he did not seem to take Advantage of my Discourse. I know he talked violently and passionately with me, as he used to do; and for Mr. Masters to say this of me now, is a great Unkindness; for I thought he was so much a Gentleman, that if I had spoken any Thing that had not become me, he would have taken Notice of it then.

Mr. Serj. Jeff. He did then, he tells you.

Colledge. Had I known of it, I am sure Mr. Charlton would have done me Justice, and set Things right; but this I say, I did first excuse the Parliament from being concerned in the Murder of the King, or that they did begin the War, but the Papists did it: If it were otherwise, it was more than I understood: And after that I said, I thought that the Parliament that sat last at *Westminster*, did stand up for the People's Rights, after the same Manner that the Parliament in 40. did.

Mr. Just. Jones. What, just after the same Manner, in raising War and Rebellion against the King?

Colledge. After I had discoursed it thus, my Lord, as I told you, it could not be understood that I thought that Parliament would cut off the King's Head: And therefore you that are my Jury, pray consider, and take it all together, there could be no such Meaning made of my Words; for I did not conceive that that Parliament were concerned in those Things, but were a Parliament that stood up for the Rights of the People:

People: Now, if it were so, then the Parliament at *Westminster* were of the same Opinion.

L. C. J. I tell you, the Long-Parliament's levying War is declared Rebellion by Act of Parliament.

Colledge. My Lord, if there hath been an Act since, that says they were guilty of Rebellion, I declare 'tis more than ever I knew before: This is the first Time that ever I heard of it.

Mr. Serj. Jeff. You are a mighty learned Gentleman, to talk of those Points indeed.

Colledge. My Lord, I desire to know whether any Words that were spoken six Months before they gave their Depositions, can be a sufficient Evidence in Law against me now?

L. C. J. 'Tis upon the Act of the 13th of this King you speak.

Colledge. Yes, my Lord, I take it upon that Statute.

L. C. J. I tell you, as to that Part of the Statute which concerns Misdemeanors, there is a particular Clause for Prosecution by Order of King and Council; but as to that Part of the Statute that concerns Treason, it must be prosecuted within six Months, and the Indictment within three Months after.

Colledge. What Statute is this Indictment grounded upon?

Mr. Justice Jones. All Statutes that concern Treason.

L. C. J. Upon the Statute of the 25 of *Edw. III.* which declares the Common Law, and the Statute of the 13th of this King, which when you have done, I will have read to the Jury.

Colledge. Then, pray, my Lord, let me ask you one Question, Whether the Statute of 25 *Edw. III.* does not say, that there shall be two positive Witnesses to Treason?

Mr. Just. Jones. No, but there is another that does.

Colledge. I am ignorant of the Law, and therefore I ask the Question.

L. C. J. Well, I will tell you, there must be two Witnesses in the Case, but one Witness to one Fact at one Time, and another Witness to another Fact at another Time, will be sufficient Evidence to maintain an Indictment of Treason; this was told you in the Morning.

Mr. Justice Jones. And it was told you withal, That it was the Resolution of all the Judges, in the Case of my Lord *Stafford*, when he was tried in Parliament.

Colledge. They proved Fact in that Case, writing of Letters, and offering Money to kill the King; But nothing of Fact is proved against me, but riding in the Country with Arms that I had three Years before.

L. C. J. We will read the Statute of the 13th, wherein Words are declared to be Treason.

Colledge. I pray it may be read, if you please. (*Which was done.*)

L. C. J. Look you here, To compass or imagine the Imprisonment of the King, and to express it by malicious and advised Speaking, when proved by two lawful Witnesses, is Treason by this Act.

Colledge. Now whether you will distinguish, that there must be two Witnesses to distinct Places or Times, or whether the Statute intends two Witnesses to every particular Fact and Words.

L. C. J. We told you our Opinion before, That one Witness to one Fact, and another to another of

the same Treason, was sufficient. We are upon our Oaths in it, and speak not our own Opinions, but what hath received publick Resolution in Cases of the like Consequence.

Colledge. What lies before these Gentlemen of the Jury, as done at *Oxon*, 'tis but upon a single Testimony.

Mr. Just. Levinz. Nay, *Mr. Dugdale* and *Mr. Turbervile* both swear the same Thing, your Design to seize the King at *Oxon*. And it would be the difficultest thing in the World to prove Treason against any Man, if the Law were not so, and a Man might commit all sorts of Treason securely; for to be sure he would never say the same Things before two Witnesses in one Time, and the King would be in no sort safe; for there would never be two Witnesses to one and the same Thing: But that hath been resolved often and often, over and over again, particularly in my Lord *Stafford's* Case, as you have been told.

Colledge. My Lord, you say, the King is not safe upon those Terms, and no private Man is safe in the other Way.

Mr. Just. Levinz. We say, that the Law is so, and there is good reason for it.

Mr. Just. Jones. We must not alter nor depart from the allowed received Law.

L. C. J. I say, the Thing hath been considered in other Cases, and the Law hath been adjudged and settled. It was so resolved in my Lord *Stafford's* Case, when the Judges, by the Command of the Parliament, did deliver their Opinion upon that Point moved by him.

Colledge. There is nothing of Fact proved against me, but a Pair of Pistols, a Sword, and an Horse.

L. C. J. We have told you the Law, and answered your Question.

Colledge. But as the Case stands, if that be the Law, all Society and Conversation must be ruined by it.

Mr. Just. Jones. Pray go on, when do you think we shall have done else?

Colledge. However, I do not insist upon that so much, as that the Testimonies and Oaths of these Men are altogether invalidated, by substantial Persons that have here testified against them. I do declare upon my Salvation (I have nothing else to say) I am wholly innocent, and the Jury are my Judges, and I beseech them, as they will answer it at the great Day of Judgment, where they must appear as sure as I stand at this Bar now, that they do me right, and go according to their own Consciences; for if a Man shall be sworn against by such Fellows as these are, no Man is safe.

Mr. Serj. Jefferies. The worse, the better to be trusted by you.

Colledge. I am sure it cannot be thought by Men of common Reason, that I should speak Treason at that Rate that they have sworn, and to such Men, Men of their Profession, *Irishmen*, and *Papists*, Traitors that have declared they have been in all manner of Rogueries, Murders, Plots and Treasons. Therefore, my Lord, I cannot do any more for my self, because I have no Notes, and cannot recite what hath been said for me or against me; but I do depend upon your Lordship, and I hope you will inform the Jury rightly, and do me Justice; and I do pray the Jury that they will let their Conscience be satisfied, as they are *Englishmen*, and as they are Christians, to consider how the Case lies

with me, whether there has not been more Occasion of talking of late, and whether a Slip of the Tongue may be called a premeditated, malicious, advised speaking. I mean, my Discourse with Mr. *Masters*. He talked with me as hot as Fire, he was so violent, and I did discourse him at that Rate I have told you, and that is Truth, as I have a Soul to be saved: I did excuse the Parliament, that as I understood it, they had no Hand in the beginning of the War, or the Murder of the King. My Lord, as for the rest that have sworn against me so desperately, I must say, that if the Jury did not as well consider my Evidence as theirs, yet they might well consider, whether it consists with common Sense and Reason, that I should speak to these Men after this Rate, when I could lay no Obligation upon them, nor have any Confidence in them; necessitous Persons, that could not assist me one Mite, Men that were beholding to me to borrow Money of me, and that eat of my Cost, that I had always been obliging to, and not they to me. But I hope I need insist upon this no further; the whole Nation is sensible what is doing, and what this does signify: They have begun with me in order to the making of a Presbyterian Plot, which they would carry on to stifle the Noise of the Popish Plot; and this is not the 1st, the 2d, nor the 10th Time that they have been at this Game; how many Shams have they endeavoured to raise—

Mr. Att. Gen. Who do you mean by they?

Colledge. The Papists.

Mr. Att. Gen. There is nothing of Popery in the Case; they are all Protestants.

Mr. Justice Jones. They are all Persons that have lately received the Sacrament.

Colledge. They were all Papists, and I believe are so still; for Mr. *Dugdale* did justify to me the Church of *Rome* in several Things: And when I told him that they were all Knaves and Fools that were of that Religion, he told me, that many of their Priests were holy good Men.

Mr. Just. Jones. Have you proved that?

Colledge. I can't prove it, it was betwixt him and me, my Lord.

Mr. Just. Jones. Then I hope you have done.

Colledge. If I had sworn against him, he had stood in my Place.

L. C. J. Have you done, Mr. *Colledge*?

Colledge. My Lord, I only desire the Jury to take all into their serious Consideration; I expect a Storm of Thunder from the learned Council to fall upon me, who have Liberty to speak, and being learned in the Law, understand these Things better than I, who must defend myself without Council. I know not whether it be the Practice in any Nation; but certainly 'tis hard Measure, that I being illiterate and ignorant in the Law, must stand here all Day, they being many, and taking all Advantages against me, and I a single Person, and not able to use one Means or another either of writing or speaking. But, Gentlemen, I do declare and protest, as I shall answer it at the Day of Judgment, that as to what these People have sworn against me either as to Words, or as to any Manner of Treason against the King, the Government, the Laws established, I take God to witness I am as innocent as any Person upon Earth. And therefore I must beseech you, be not frightened nor flattered; do according to your Judgments and your Con-

sciences; you are to be my Judges both in Law and Fact; you are to acquit me or condemn me, and my Blood will be required at your Hands. And whatever is said to you by others, you are my true Judges, you must give an Account of the Verdict you give; and therefore you must see that you do Justice, as you will answer it at another Bar, where you must all certainly appear, and the Lord Almighty direct you that you do me true Justice, and I ask no more.

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury. Here hath been a great deal of Time spent, and truly I think for no other Reason but to divert you from the Matter that is before you, and that you might forget the Evidence that hath been given. And therefore I will briefly repeat it to you, that I may refresh your Memories about what hath been sworn. Gentlemen, the Crime charged upon Mr. *Colledge* is High Treason in imagining and compassing the Death of the King; the Proof of that hath been by a Conspiracy to seize the King here at *Oxon*, which Conspiracy he declared he was in, by shewing Arms prepared for that Purpose, and by coming down to *Oxon* with that intent, that is the Proof of his Design to kill the King.

Colledge. Is the Conspiracy proved of that, Mr. Solicitor?

L. C. J. Mr. *Colledge*, We have had a great deal of Patience with you, you have spent a great deal of Time, you must contain yourself now, and let them go on.

Colledge. Do not let him do me wrong, my Lord.

Mr. Sol. Gen. I will do you no wrong, Mr. *Colledge*.

Colledge. Sir, there is no Conspiracy proved.

L. C. J. Look you, Mr. *Colledge*, you have taken up a great deal of Time, and we have had much Patience, because we consider your Condition, and had rather hear too much, than be hard upon you, and because the Evidence was long and difficult to repeat; now we have heard you, you must have Patience to hear what the King's Council repeat and observe upon it.

Mr. Soll. Gen. As I was saying, the Fact that is charged upon him, is a Design to kill the King, the Manifestation of that Design is by preparing Arms to that Purpose, and by coming down to *Oxon* to seize the King here; and that this was his manifest Intent to seize the King, the Proof of it hath been by Witnesses, that I think by and by you will have no Objections against. These Witnesses were *Dugdale*, *Turberville*, *Smith*, and *Haynes*, these are the most material Witnesses to the Treason, there are two other Witnesses indeed, but they are to other circumstantial Matters that I will take Notice of to you by and by, and make my Observations upon them in their proper Place.

Mr. *Dugdale* was the first that was produced, and his Evidence is very full, he proves that Mr. *Colledge* declared to him at the Coffee-House here, that he was come down with an Intent to seize the King, that he had an Expectation something would be done, that he was armed, and that he did advise Mr. *Dugdale* to be armed too, for he was provided for the rooting out of Popery, which he explained himself what he meant by it, that was the Church of *England*, and the King and all his Adherents. He came hither armed for that Purpose, Gentlemen, and did advise Mr.

Dugdale

Dugdale to Arm himself too, that he did declare to him the King was a Papist, and all his Family were Papists, he was as deep in the Plot, and as guilty of the Murder of Sir *Edmundbury Godfrey*, as any Body else. This was what he declared to *Dugdale* here, and this he swore to you when he gave his Evidence.

The next Witness is *Mr. Turberville*, and he is positive to the Matter that is laid in the Indictment, and swears to you expressly, that he did declare it to him at the *Chequer-Inn*, that they came down here in Expectation of some Sport, that something would be done, that they did expect the King would begin with them; but if he did not, they would begin with him, and they would secure him till they had brought him to Compliance. He shewed him his Arms, that he was ready to engage in that Design, and advised *Turberville* to be ready too. And rather than *Turberville* should not be ready, he offered to procure him an Horse.

Colledge. Every Man had the same Arms that I had, and I had had them long before that Time.

Mr. Sol. Gen. But every one had them not with the same intent. But, Gentlemen, because *Mr. Colledge* interrupts me with an Objection, I will take notice of it now by the Way. He says, those Arms he had before, and therefore they were not provided for this Purpose. Gentlemen, we do not pretend to prove when this traitorous Intent first began, and how long this Design hath been hatching; but such a Design there was, and such a Design he manifested to be in himself when he made the Declaration to *Turberville*, and advised him to arm himself; whether he prepared them against that Time or no, is not material, if he had them before; and if he had them first innocently, yet if he afterwards designed them for such a Purpose, and shewed them in a readiness for it, that is a sufficient Evidence to prove this Treason.

So here are two Witnesses, you observe, against the Prisoner of this Matter that is laid against him in the Indictment, an intent to kill the King, they both prove it positively upon him at *Oxon*. *Mr. Dugdale* speaks to Matters precedent to; for he tells you, his Discourse before they came down, that they would come down for that Purpose, that they had an Expectation something would be done, and therefore he came down in an Equipage not suitable to his Profession; for you see he was by Trade a Carpenter or a Joiner, but armed on Horseback with a Case of Pistols, Things that don't become such Men to travel with, and he did declare to *Mr. Dugdale* for what Purpose he came down. The next Witness is *Mr. Smith*, and *Mr. Smith* is as positive and full to this Matter of Treason as any of the rest.

Colledge. There is scarce a Carpenter or a Joiner in *London* but hath Pistols when he rides.

L.C.J. *Mr. Colledge*, we must not suffer this, we had so much Patience with you that we expect you should be quiet now, and not interrupt the Council.

Colledge. My Lord, let me not be overborn upon, there is scarce a Poulterer in *London*, but what hath Pistols.

Mr. Sol. Gen. We had great Patience with you, *Mr. Colledge*, and did not interrupt you, I am sure, but let you say what you would. I think I do you no wrong, if I do, I am under the Correc-

tion of the Court, they will reprove me if I do that which does not become me.

Mr. Just. Jones. Did not you ramble I don't know how, and yet you were suffered to go on?

Mr. Sol. Gen. He tells you of a Discourse as he came from the Coffee-House to go to a Dinner whither he was invited by Alderman *Wilcox*; and the Discourse was, that the King was as great a Papist as the Duke, and much more to that Purpose, vilifying the King. That Alderman *Wilcox* was a Man that gave Money to buy Arms to bring the King to Submission. He objects against this, and says 'tis impossible such a Discourse should be, and that all this should be talked in so little a Time, as in passing from the Coffee-House to the *Crown Tavern* without *Temple-Bar*.

Coll. Pray remember whose Company it was proved I went in, *Mr. Solicitor*.

Mr. Sol. Gen. But, Gentlemen, when you consider, how busy a Man he was, and how ready at talking of Treason, you will not think, but that this Man might talk much more than this; but this I mention to do him right, it being one of the Arguments he used; and, to give an Answer to it, though when you consider it, I believe you will think it not to need an Answer. But I would do him all the right I can, and now you have heard it, you will consider the Weight of it.

Gentlemen, he tells you of another Discourse afterwards, that does relate to his being here at *Oxon*, he tells you he had Arms in his House, and was ready upon all Occasions, and shewed *Mr. Smith* his Arms, and told him, these were the Things that were to destroy *Rowley's* Guards, as he said, which by the Evidence is made to appear he meant the King by that Name, his Arms he said were for that Purpose. That he would go down to *Oxon*, and there he expected some Sport. I know not what Sport he thinks there is in Rebellion; you see what Principles he is of, that does maintain and justify the greatest and horridest Rebellion that ever was in *England*, and says they did nothing but what they had good Cause for. He tells *Smith*, that he thought the King would seize upon some Members, and with that Expectation he came down, but yet was as ready as the King, and would be one in the securing of him, if he meddled with any of the Members. This Proof *Mr. Smith* made; and that after the Parliament was dissolved, he said, that the King ran away, and was very much afraid. This is proved by *Smith* likewise, and this *Colledge* did declare after he came to Town. *Smith* proves further, that he did wonder the King did not consider how easily his Father's Head was brought to the Block; and for *Mr. Colledge's* Part he did declare, that he did believe this King would be served so shortly. And this does confirm what his other Witnesses have spoken of his Words at *Oxon*. Thus then there are three Witnesses, though two are enough to convict a Man, if they be positive to the Treason.

Mr. Haynes is the fourth Witness, and he is as full as any of them. I do but repeat it in short; you have had it so often canvassed by *Colledge*, that I believe you will easily remember it. He did advise *Haynes* that he should not value the King at all, for the King should be called to account for all his Actions; he said he would seize the King, and bring him to the Block, as they did his Father, with an indecent Expression of that
blest

bleſſed King, not fit to be repeated. And he ſaid, they did intend, when they had cut off him, never any more of his Race ſhould reign. This it was *Haynes* ſays, though there are other Matters. I would take Notice of one thing more, and I need not but mention it, you will remember it, and that is about the Libel of *Fitz-Harris*. *Haynes* tells you upon Diſcourſe of that Libel, he ſaid, That every Word of it was true, as ſure as God was in Heaven. Now that was a Libel made by a Papiſt, an *Iriſh* Papiſt, who had been tried, convicted, and executed for it, and the horriſt Libel it was that ever was writ. And this is the Libel which this Gentleman, who is ſo very converſant in Libels, and Books of that ſort, avers to be as true as God is in Heaven. This is the Subſtance, Gentlemen, of that Proof which hath been made to you, we have other Circumſtances to prove, That as he came down with that Intent to ſeize the King, and as he expected, what he calls, ſome Sport, ſo he did endeavour to begin the Sport, he did quarrel in the Lobby of the Houſe of Lords with *Fitz-gerald*, ſome Blows paſſed, and Sir *William Jennings* telling him his Noſe bled, he did declare, I have loſt the firſt Blood in the Cauſe, but it will not be long before there be more loſt. Thus, after he had come down, he endeavoured to begin a Commotion; for from little Matters great Things do ſometimes ariſe; and when all Men were poſſeſt with an Expectation, ſuch as he himſelf did declare, he and others came down with an Expectation that the Parliament ſhould be attacked; a little Matter might have begun ſuch a Commotion which no Man knows what End it would have had.

Gentlemen, this hath been our Proof. Now the Objection made to this Proof by Mr. *Colledge*, is, That this is a *Popiſh* Deſign to raiſe a new Plot, and caſt it upon the *Proteſtants*, and that theſe Witneſſes are now to deny all the Evidence they have given of the *Popiſh* Plot, and throw all upon the *Proteſtants*. This is that he would perſuade you to believe, but which I think when you do conſider a little of it, it will be impoſſible for you in the leaſt to have ſuch a Thought. For what are the Evidence that have proved this? Who are they? Men of Credit, that have been Evidences againſt the *Popiſh* Plotters, and againſt Men that have ſuffered for that Plot, Men that ſtill ſtand to the Evidence they have given, and affirm it every Word to be true, and one of the very Men that he brought, ſays, that they ſtill ſtand to it; for *Turberville*, who was one of the Witneſſes againſt my Lord *Stafford*, was tempted by ſome Perſons to deny the Evidence he had given againſt the Papiſts; but his Answer was, No, I can never depart from it, I have a Soul to ſave, that was true which I ſaid, I cannot deny it. If then the Witneſſes which he would have you to believe to be guilty of denying the *Popiſh* Plot, do confirm what they have ſaid as to that Diſcovery, that Objection is taken off, and they do ſtand ſtill to it, that every Part of it was true, and aver the ſame Thing; and yet forſooth theſe Men are going about to ſtiſle this Plot.

Gentlemen, theſe are the Men the whole Nation have given Credit to, the Parliament having impeached my Lord *Stafford* upon the Credit of them (for it was upon the Credit of *Dugdale* and *Turberville* that they impeached him, for there was not two Witneſſes till *Turberville* came in and made a ſecond, and upon their Credit) after ſo

ſolemn a Trial, where all the Objections that could poſſibly be made was made, the Houſe of Lords thought fit to find my Lord *Stafford* Guilty, and my Lord *Stafford* ſuffered for it, and died upon the Credit of theſe Men. Theſe are the Witneſſes, Gentlemen, that this Man thinks ought to be blown off with that frivolous Objection, that they are Perſons he would have you believe, who are guilty of a Deſign to throw the Plot upon the *Proteſtants*. But becauſe he hath deſired to ſave himſelf in an Herd, by numbering himſelf among the *Proteſtants*, I muſt a little obſerve to you what a ſort of *Proteſtant* he is, a Man, he would have you to believe, ſo popular for his Religion, that he has obtained the Name of the *Proteſtant Joiner*. But when you have conſidered what his Actions are, I believe you will a little ſuſpect his Religion. If the *Proteſtant* Religion allow any Man to vilify the King, to arraign the Government, and to throw off all manner of Allegiance, then this Man is a *Proteſtant*. But if this be to act the Part of a Papiſt, and if the Papiſts could wiſh that ſuch an Infamy might be put upon the *Proteſtant* Religion, that it ſhould juſtify ſuch a Rebellion as the late horrid one was, and own ſuch a Principle that it is lawful for any Subject to aſperſe and vilify the King, and this Man by thoſe many ſcurrilous Libels ſeems to do: If they could wiſh this Nation overturned, and the Government in Confuſion, and the Church of *England* deſtroyed, the beſt Bulwark now in the World againſt *Popery*, and the beſt only Refuge at this Day left for the poor afflicted *Proteſtants* abroad; then whiſt Mr. *Colledge* does thus act the Part of a Papiſt, he does very ill to call himſelf a *Proteſtant*. Gentlemen, I cannot but obſerve one Thing to you, and it was the Evidence of Dr. *Oates*, when he did firſt diſcover the Plot, and without his Evidence you would eaſily believe the Thing. He told you, there were two Ways they had to accompliſh their Deſign, by direct murdering of the King, or if that failed, by putting all Things into Confuſion here, and raiſing Rebellion and Diſturbance amongſt us; and the Way to effect that Rebellion, it was by having Emiſſaries ſent among us, to work us into a Diſlike of the Church, and by that Means into a Rebellion againſt the State. That ſome Men were ſent abroad for that Purpoſe to preach at Conventicles, ſome whereof were caught, and ſome did ſuffer. Now without this Evidence it would not be hard to believe, that ſuch there are, and have been; for all that know the Hiſtory of our Reformation, do know that it was an early Practice among them, to raiſe Sects amongſt us, to bring Confuſion firſt into the Church, and then in the State. And we have already found the ſad Effects of it.

Now, Gentlemen, if *Colledge* has all this while under the Name of a *Proteſtant* acted the Part of a Papiſt, though I cannot ſay he is a Papiſt, nor that he is one of thoſe Emiſſaries, yet I may ſay, he is not that good *Proteſtant* he pretends to be. Gentlemen, I muſt now, to do him Right, come to repeat the Evidence that he hath given againſt our Witneſſes; for Mr. *Haynes* he hath produced ſeveral Witneſſes, one is Mr. *Hickman*, who ſays, he over-heard *Haynes* ſay to one that was his Tenant, that it was his Trade to ſwear, and he muſt get Money by it. This he over-heard him ſtanding and liſtning at a Door. You have another Man, *Lun*, that is the next Witneſs,

and he says, that at the *Fleet-ditch* where he saw him, there he declared the same thing to him, that he would swear any thing for Money, and damn his Soul rather than the Catholick Cause should sink; and now he comes to prove a Plot upon him that is a Protestant, and in his Person upon all the Protestants of *England*; and this Man would fain throw off the Credit of the Popish Plot, and turn it upon the Protestants. But, Gentlemen, it is strange, that Mr. *Haynes* should have this Discourse with *Lun*, the first Time that ever he saw him; for I am sure his own Witness *Lun* says it was the first time, and that he should immediately talk to him at this Rate is somewhat strange: But for an Answer to it, this *Lun* we have confronted with the Evidence of *White* the Messenger, who swears, that afterwards meeting him at *Uxbridge*, *Lun* asked him what Gentleman that was, and did not know Mr. *Haynes*, and yet he takes upon him to prove, that he had spoke such Words to him before. I think there is never another material Witness against *Haynes*, except *Whaley*, who was an under-Officer in the *King's-Bench*; and he says, that *Haynes*, while he was a Prisoner there, ran away with a Silver-Tankard, but he never was indicted or prosecuted for it, though he remained afterwards in the House, and this was five or six Years ago.

Now, Gentlemen, I think the Nature of this Evidence hath not that Weight, as to take off the Credit of what this Man hath said upon his Oath, especially when this Man's Evidence is so backed with the Evidence of other Men, that I think there is no Objection at all against it. For the other Witnesses, *Dugdale*, *Smith* and *Turberville*, are Men whose Credit has not been impeached, and they have confirmed in Substance what the Evidence of *Haynes* is; so that he does not stand alone in what he here swears, but 'tis confirmed with concurrent Evidence with it.

Then, Gentlemen, for the Objection against *Dugdale*, *Turberville* and *Smith*, they have produced Dr. *Oates* to you, and he must vilify the credit of those Men, whose Testimony as to what he gave at first in discovering the Popish Plot, received Credit by being seconded by these Men. And I cannot but observe it as a strange Thing, that this Man comes now to vilify the Testimony of those, who have given Evidence, and been credited by the whole Kingdom; that he should come here upon the Word of a Priest to declare, that Mr. *Dugdale* was a Man of very lewd Conversation, and was a Person that had a foul Disease on him, when he pretended he was poisoned. I remember, this was an Objection that hath been made by the Papists to him, and I believe you have heard it often out of their Mouths; but it is the first time that ever I heard it from any one that is a Witness of the Popish Plot, and pretends to stand up for the Protestant Religion. Gentlemen, if any such thing as this could have been made out against him, it had been made out e're now, the Papists would have taken Advantage of it, and when the Wit of all that Party was bent against him, he could not have escaped the having it proved. If it had been true, yet Dr. *Oates* takes upon him now to vilify his Credit, and takes up those Arguments the Papists have maliciously suggested, but yet were never able to make out. This looks as if the Doctor were again returning to St. *Omers*, that he is thus going about to disparage the Evidence of Mr. *Dug-*

dale, which in great measure verified the Truth of that Discovery, himself first made of the Popish Plot.

Against *Turberville*, Gentlemen, I think there hath been very little at all objected that can have Weight with you. Mr. *Broadgate*, as I suppose you observe, has said enough to confirm *Turberville's* Credit; for he hath proved to you, that when he was tempted to renounce his Evidence against the Papists, he refused to do it, he had more Conscience than to do it, he knew well enough what he had said was true, and as he had a Soul to save, he could not go from it. This is the Evidence that he gives, and which certainly serves much to confirm the Truth of *Turberville*, besides the strict Examination he hath been under, and beyond any thing that Dr. *Oates*, I think, has been able to contradict him in.

Dr. *Oates* contradicts *Smith* about his coming from the Coffee-house to *Wilcox's* Dinner. He says, he did not come along with Mr. *Colledge*, but *Colledge* came along with Dr. *Oates*, and *Smith* followed them. But, Gentlemen, you hear what *Smith* hath declared upon his Oath, That they came both together out of the Coffee-house; and you hear what his Witness Mr. *Smith* the Counsellor says: He does not positively remember that Circumstance, yet one would think he should; for *Oates* says, Mr. *Smith* the Lawyer walked just before them, and *Colledge* followed. Mr. *Smith* that is the Witness for the King, he swears he came along with *Colledge*, but Mr. *Smith* the Lawyer being asked that Question, he does not remember that. Then another thing is, Dr. *Oates* says, when they were there, *Colledge* was so far from discoursing of any treasonable Matters, that he was very merry in the Company, and talking innocently; but Mr. *Smith* says, he was so far from being merry, or talking Treason, that he fell asleep, and slept behind the Table. Gentlemen, these Objections you see what the Weight of them is, and how little the Evidence agree one with another; but there is nothing that does contradict Mr. *Smith* in his main Evidence. 'Tis possible they may not remember particular Circumstances, whether Mr. *Colledge* and Mr. *Smith* came together; so they might come together for ought they know, and they may not remember any Circumstance about their retiring, but they can't take upon them to swear it is not so, and their not remembering it does not prove it was not so, and the Circumstance itself is so trivial, that there was no Necessity they should remember it. So then no Evidence that comes from Dr. *Oates* can take off that that is given by *Smith*; though if Mr. *Smith* were out of the Case, and Mr. *Haynes* too, yet there is Evidence sufficient from Mr. *Dugdale* and Mr. *Turberville*, who are not impeached, and are both of them positive both to the Fact and to the Place.

There are two Witnesses more that I must mention, and they are *Bolton* and *Mowbray*; they swear that *Smith* travelling upon the Road with them, would have suborned them to swear against *John Brooks*, about a Discourse at some Place; but it happened, Gentlemen, they differ in point of Time in their Testimony; the one said it was the 25th of *July*, the other was positive it was the 3d of *August*. But I think I need say no more to these Men, but only to desire you to weigh their Credit. *Bolton* and *Mowbray*, I con-

confess, have been Evidence against several Men that have been accused of the Popish Plot, but they have been so unfortunate as never to gain Credit with any Jury. Mr. *Smith* hath been believed by the whole Court of Parliament: But if there were no more in the Case, these are two Men that never were yet believed, Men that have been sworn and their own Jury have rejected the Credit of their Testimony: But besides that, comparing the Testimonies and the Difference that was between them, is a sufficient Evidence to confront all that they have said.

I think, Gentlemen, this is the Substance of what hath been offered by his Witnesses, against the Witnesses produced for the King, except that of Mr. *Everard*, who says something against *Haynes*, that *Haynes* should say, he swore for Self-Preservation. And against Mr. *Smith* he says, that he heard him say, he did not know of any Presbyterian Plot. I believe that may be true, and yet it does not contradict *Smith's* Evidence against *Colledge*; for Mr. *Smith* does not tell you, that he was privy to any such Design of the Presbyterians, that he knows of any Consultations that they held, or the Ways and Means by which they would arrive at the Treason charged upon the Prisoner at the Bar; but his Evidence is, That this Man declared there was such a Design, That there was a Party would do it, and That he would be sure to be one, and armed himself for that Purpose: But his not being privy to any Plot, or knowing the Particulars, is no Contradiction to what he said.

This is that he hath produced for his Defence, and by these Things he hath endeavoured to take off the Credit of our Witnesses, and he would have you believe that he is a very good Protestant, though he does that which no Protestant would do, and which is the Papists Work; he hath produced you Witnesses, that he has gone to Church, but I do not see he hath produced any Witnesses at all that are now conversant with him, his own Parishioners in *London*; but if he had brought never so many Witnesses of his going to Church, and of his Conformableness to the Church, yet if he were guilty of these Practices, he must give me Leave to suspect the Truth of his Profession; and I think it a great Piece of Arrogance for him to take upon him the Title of a Protestant, when he hath abused that Title by such unsuitable Practices: And, Gentlemen, if such Practices as these are, which we have fully proved, are such as all good Men must abhor, I cannot but reflect upon the Condition of this Man, whose only Hope is, that you should now forget yourselves, and become as ill as he is. But as that cannot be presumed, so I shall not need to say any more to you; you are Men of that Consideration, that can judge between Things, and the Appearances of them, and you know very well how to give the due Weight to the Evidence we have given to you, as well as the Objections made by the Prisoner; and so, Gentlemen, I shall leave it to you.

Mr. Serj. *Jefferies*. May it please your Lordship, and you Gentlemen of the Jury, it hath been a long Time that hath been spent in the Course of this Evidence; whether there has been any Art or Design in protracting the Time, on Purpose to obtrude upon the Patience of the Court, or that you, Gentlemen, should forget the Force of the Evidence that hath been given

against the Prisoner at the Bar, when there hath been so much Time taken up unnecessarily, when there was no Occasion, as I must needs say, there was not for such a tedious Defence, I leave it to you to determine: But which was truly intimated by the Court at the Beginning of the Trial, must in the End of this Cause be repeated, and indeed go through it all, that what we of the King's Council, and what the Prisoner has affirmed, that has not been given in Proof, signifying nothing, and is not to be any Guide at all to you. You are upon your Oaths, and by the Oath you have taken, you are bound in Conscience to give a Verdict according to the Evidence that has been given to you, and that is your Guide; so that what we opened and have not proved, is no more to be believed, than what the Prisoner has said for himself in his own Defence; and whatsoever he says, if he make not good Proof of it, is no more to be regarded, than what we who are for the King have alledged, and not made out.

So then this being in the first Place premised, I shall take Care as near as I can to save the Time of the Court, and not to trespass on your Patience, Gentlemen, unnecessarily, in a Case whereupon as great a Concern does depend, as perhaps ever came to Trial at any Bar: For, I say, 'tis a Case wherein the Life and the Liberty of the King is concerned, and that is the great Concern of the Nation; then the Religion of the Nation is concerned; I would be understood aright, I mean the Protestant Religion established by Law; for I know of no other Religion Men ought to Sacrifice their Lives and Fortunes for, but the Protestant Religion established by Law; and when these Things are concerned, 'tis a Case of great Consequence: God forbid any Person, Protestant, or other, should attempt the Life of the King, and the Subversion of our Religion, and by stiling themselves by the Name of Protestants, should excuse themselves from any such Crimes.

For the Evidence that has been given, I shall not enumerate the Particulars against the Prisoner at the Bar, other than such as have been omitted, (if I mistake not) by Mr. Solicitor.

In the first Place, there are the Things that happened at *Oxon*, for you have had it already sufficiently told you by my Lords the Judges who are upon the Bench, and who (under Mr. *Colledge's* Favour) are the Prisoner's Judges in Point of Law, as you are his Judges in Point of Fact. They have (I say) already told you what the Law is in Relation to Treasons; that in Case the Treason be in two Counties, if the Witnesses speak to the self same Treason, though to different Facts, that will be two Witnesses to prove High-Treason; and that there hath been such a Case, the Prisoner at the Bar, who says he is a Protestant (for his own Soul's sake I wish he were a good one) must take Notice, that *Gavan*, the great Priest who was tried at *Newgate*, and convicted, by what Evidence? By one of them that is a Witness now against the Prisoner at the Bar, that is, *Dugdale*; his Treason was committed part in *London*, part in the Country, of which part *Dugdale* gave Evidence; but being both to the self same Purpose, by the greater Part of the Judges, who were in the Commission, and present at the Trial, they were reckoned a sufficient Testimony to prove him Guilty of High-Treason: And I hope we do not live to that Age, that any Protestant whatsoever should come to trip up the Heels of the

Popish Plot ; by saying, that any of them who suffered for it, did die contrary to Law, or without sufficient Proof: For if Mr. *Dugdale* was not a Person fit to be believed ; or if the rest of the Judges who tried *Gavan* were out in the Law, then that Man died wrongfully ; for he had as much right to have been tried according to the Law, as any other Person whatsoever. Therefore, Gentlemen, as to that Matter, we must submit it to my Lords the Judges, who are to give you an Account what the Law is in all Particulars before you ; but as to the Fact whereof you are Judges, that is the great Matter we shall apply ourselves to, and for that it stands thus.

Here is *Dugdale* that does give you an Account what his Design was in coming to *Oxford* ; how he came to be armed as an Index (Gentleman) of his Mind. And pray give me Leave to put you in Mind of one Thing. You have first a Libel produced and read to you ; a pretended Letter, wherein there are Queries that have been taken Notice of, and which seem to back the Evidence given by Mr. *Masters* : For there is a Vindication in those Queries of the Proceeding of the Parliament of 41, which he has Confidence enough now at the Bar to justify too. But, Gentlemen, you were told by the Court, and you know it, that that Parliament was guilty of high Rebellion ; and even in those Queries he asperses not only the Government, but every Man that has any Concern in it ; for it takes notice not only of the King, but of all his Council. Never a Judge nor an Officer in the Nation but is traduced by it ; and which is the most material, it was the Foundation of that Libel which has been mentioned to you, and which *Fitz-Harris* was so justly condemned and executed for ; that most traitorous and infamous Libel in part of it has these Queries, and a great Paragraph of this Libel makes up part of that Libel of *Fitz-Harris*, which our Witnesses say, Mr. *Colledge* was pleased to affirm was as true as God is in Heaven. Another Thing is this, this Gentleman, whose proper Business it had been to manage his Employment at *London* for a Joiner, is best seen in his proper Place, using his proper Tools of his Trade. I think it had been much more proper for him, and I believe you will think so too, than to come with Pistols and those Accoutrements about him, to be regulating of the Government ; what have such People to do to interfere with the Business of the Government? God be thanked, we have a wise Prince, and God be thanked he hath wise Counsellors about him, and he and they know well enough how to do their own Business, and not to need the Advice of a Joiner, though he calls himself *the Protestant Joiner*. What had he to do to engage himself, before his Advice was required? How comes he to concern himself so much that after he had writ this Libel, wherein he is pleased to take notice of Tyrants, afterwards should go to make a Print, I mean the *Rary Shew*? And when *Dugdale* comes to enquire of him, what do you mean by such a Thing, *The Tyrant shall go down*? Says he, I mean by that, *the King*. And what do you mean by having them to go to *Breda*? Why, there he explains it, that he puts all the Government, the Lords and the Bishops upon the King's Back, and being asked what he meant to have done with them; Why, the Bishops, and the King, and all were to go to *Breda*. These are the Things that him-

self did acknowledge he was the Author of, and these Prints he did cause to be made, and he is the Person that gives you an Account, that it was but the Conception and Imagination of *Dugdale*, that *Rowley* meant the King ; but *Dugdale* being called again, he tells you after some Time, that he was under some Difficulty to know the meaning of it ; and then *Colledge* tells him it was meant the King, and some expounded it to him. And so *Smith* tells you of the same Name of *Old Rowley* again. Gentlemen, thus I tell you what hath been omitted. The Evidence hath been long, and therefore we must be pardoned, if we can't exactly repeat it. This is the Evidence that was done at *Oxon*, the next is Mr. *Smith*, who speaks of what was done in *London*, and he is an Evidence both as to the Word *Rowley*, as to the coming with Arms, and as to the declaring to what end he came, and what he had done. Mr. *Haynes*, he tells you, both before and after the same, and that I must take Notice of to you, Mr. *Smith* does particularly say, he used those Words, which I hope every honest Man, and every good Man, that desires to preserve the Government according to Law, will hear with the greatest Detestation and Abhorrence ; he talked of the taking away the Life of the late King of blessed Memory at such an impudent Rate, that every true Protestant's Blood would curdle at the hearing of it. And this he said not only to Mr. *Masters*, but he justified it to Mr. *Smith* too.

In the next Place you have *Turberville*, who gives you all the Reasons, how he did not only tell of these Things himself, but encouraged him to prepare himself accordingly, and he gave him a Mark, a Ribbon with *No Popery, no Slavery*. These were Marks whereby they were to be known, and they were to be one and all, as they call it, that when such a Blow was struck, they would be ready to fall in. There is one Thing more that I take Notice of, that is, what was said by a Gentleman, Sir *William Jennings*, which is a Confirmation of all the other Evidence, that Gentleman who hath appeared to you to be a Man of Honour, even by the Confession of Mr. *Colledge* himself, and by his own Words ; for he said like an honest Man, and like a loyal Man too, that he would rather engage himself in three Dangers for the Service of the King at Sea, than come in cold Blood to give Evidence against a Man for his Life at the Bar. And yet this Man who tells you of this himself, and that very Person whom *Colledge* himself calls a worthy Person, hath given you this Account, that when he told him his Nose bled, he answered him, *It was the first Blood lost in the Cause, but it would not be long ere there was more lost* : An excellent Cause for a Man to venture his Blood in. When he was told of this, he began to put it off, and to use his own Words, had a great Mind to sham off the Business, but in Truth there was no Answer given to it. Gentlemen, the Objection that hath been made against the Evidence that have not been taken Notice of, I desire to take Notice of. I think against three of them there has been only Mr. *Oates*, and Mr. *Oates*, I confess, has said, *in verbo Sacerdotis*, strange Things against *Dugdale*, *Smith*, and *Turberville* : I have only the Affirmation of Mr. *Oates*, and as ill Men may become good Men, so many good Men become ill Men ; or otherwise I know not what would become of some Part of Mr. *Oates's* Testimony. And in the next

Place, if these Men have not sworn true, I am sure Mr. *Oates* must stand alone in the greatest Point, in which all the Evidence agree, that is, the Popish Plot.

But, Gentlemen, I must take Notice to you, that it is strange to me, that ever you, upon your Consciences, should perjure three Men, who positively upon their Oaths deny any such Discourses as Mr. *Oates* speaks of against them, I do put that upon your Consciences, whether you, upon the bare Affirmation of Mr. *Oates*, in this Place, will convict three Men, upon whose Testimony the Lives of so many as have suffered, have been taken away, and, as we Protestants do believe, justly. I say, whether you will do it upon the bare Affirmation of Mr. *Oates*, against their Oaths.

In the next Place, Gentlemen, I must tell you, besides the positive Evidence of these Gentlemen, there is Circumstance of Improbability in the very Words he speaks of. Will any Man tell me, that after such Time as Men have given their Oaths, as *Smith* had given his that he was concerned, and so had *Dugdale* and *Turberville* too, that these Men should come and voluntarily tell Mr. *Oates* they were all forsworn, are these Men such great Coxcombs as he would have us to believe? Is it so probable a Thing, that any Men of common Knowledge would do it? Do you think a Man of that Knowledge and Consideration, as *Smith* is, an allowed Scholar, and a Man of known Learning; and Mr. *Dugdale*, who has been reckoned by all Men to be a good Evidence? Do you take these Men to be such absolute Novices, that they must seek an Occasion to tell him they were bribed off, and were forsworn? If you can think this, and if a bare Affirmation against these positive Oaths can prevail; Gentlemen, upon your Consciences be it.

In the next Place, 'tis a strange Sort of Thing to believe, Mr. *Smith* should come out of a Coffee-House, where a Quarrel is pretended to have been between him and *Colledge*; but Mr. *Smith* does, upon his Oath, say, he never had any such Quarrel with him, and that he should fall a damning and sinking against *Colledge*, and against the Gospel, that there should be such Impudence in the World in any Man as to desire or wish such a Thing? Gentlemen, these are strange Sorts of Apprehensions, and Men must have very strange Thoughts, that can strain themselves up to the belief of them.

In the next Place, here it is said by the Prisoner, *Good Lord! What a Condition we shall be in! Here is a Plot upon the Protestants!* I hope in God there is no Protestant Plot, but I also hope the whole Interest of the Protestant Religion is not involved in the Prisoner at the Bar, and all will be destroyed, if Mr. *Colledge* dies for Treasons. Gentlemen, the Question is not, whether there be a Presbyterian or a Protestant Plot, we declare we know of none; but whether the Prisoner at the Bar have spoken such Words, and done such Things as are sworn against him. And I would fain know what all the Discourses we have had about *Irish* Witnesses and Papists signify, when in all the course of our Evidence, there has been but one *Irish*, and never a Papist: But here have been great Discourses about *Macnamarra*, and *Dennis*, and what it hath been for, but to make a Noise and raise a Dust, I can't tell, for in this Case there has not been one *Irish* Man besides *Haynes*,

and never a Papist throughout the whole Evidence: So that it is easy, if Men think it will take with the Auditory, for a Person to cry out, *O Lord! We are all like to be undone, here are Irish Witnesses brought against us.* And yet, after all this Stir, there is but one *Irish* Witness, and never a Papist. And as for him, truly, Gentlemen, I must take Notice, that even *Colledge* himself, till such Time as he was taken, reckoned him an honest Man.

Colledge. Never in my Life.

Mr. Serj. *Jefferies.* It was so said. But I do say, Gentlemen, suppose (which I do not admit) that the *Irish* Man he speaks of be out of the Case; not that the Country is an Objection against any Man's Testimony, God forbid it should be so affirmed; for Truth is not confined to Places, nor to Persons neither, but applied to all honest Men, be they *Irish* Men or others; but I say, set Mr. *Haynes* out of the Case: Suppose there was no such Man as *Haynes* in this Case; yet I must tell you, Gentlemen, you have as great a Proof as possibly can be.

In the next Place, I must take Notice to you of some Account that hath been given of him by himself: It is wonderful strange, when there was that Kindness of Intimation given by the Court, that he should do well to prove his Loyalty, as well as his Religion, but he did not produce some of his later Acquaintance. If this Man that makes himself a Protestant, would have it believed he is such, I wish he would have brought some of these Men that knew him at *London*, to give you some Account of him, and not to stretch backward sixteen Years to prove his Birth and Education; that is not the best Account sure a Man can give of himself, to say, after he hath been talking at this disloyal Rate, that he is a good Protestant, because he was thought so eighteen Years ago.

Again, in the next Place, here is an Account of the Libel given by the old Woman that is his Sister; truly she would have it, and that is another Libel at the Bar, as though the Man in the red Coat, with *R. C.* upon it, had dropped this Kind of Libel in his House, and so he, or some Body else, put a Trick upon him; and because she would inveigle you to such an Interpretation, she says, that they staid behind till the Man in the red Coat had fetched away the Shavings, and so here is a new sham Plot to be put upon the Prisoner, by dropping Papers in his House; a pretty Kind of Insinuation. But, Gentlemen, against the Evidence of this Woman, you have the very Person that was there, the Officer, who swears, that he and his Fellows came before the Waterman into the House: But I suppose, you observe how that notable talking Maid and she do agree; for the Maid tells you, there came a strange Fellow seven Weeks before, delivered these Things into her Hands, her Master was abroad, and she was not to enquire whence they came, or what they were, but paid him six Pence for bringing those Things. Now 'tis very strange that the Maid should pay for the bringing of those Things, and yet after all should imagine that Somebody else should put them there.

But now, Gentlemen, in the next Place, I must tell you another Thing, which I would beg you to take Notice of: Here are two Gentlemen, Mr. *Bolton* and Mr. *Mowbray*, and they have given you an Account, that they have been Evi-

dence

dence against the Papists; they did well in it; but it hath been their Misfortune, hitherto they have not been believed; but whether they have been believed or not before, is no Guidance to you at this Time: But that which is to guide you is, whether or not they have given you now a Testimony that you in your Consciences can believe. Now, can you believe what they have said? Nay, can you believe it without any Circumstance to confirm it, against those express Objections that arise from themselves, and against the Oath of the Person, when the one tells you so exactly of the 25th, 26th, 27th, and 28th of *July*; and the other tells you, that *Smith* took Post, and yet overtook them not till the *Sunday* after, which was the third of *August*; and when the Almanack is produced, it was so far from making out what they spake of to be the same Time, that whereas one said he came to *London* the 28th, the other's Almanack says it was the 27th? Then pray how do these Persons agree, when the one says, that Mr. *Smith* talked with him upon the Road the 28th, and the other says, that they came to *London* the 27th. These are Circumstances, Gentlemen, that you must weigh; and you may bring the North and South together, as soon as their two Testimonies, they are so far asunder. Besides, Gentlemen, I hope you take Notice of a Person that was sworn, a Person of some Quality, a Scholar in the University here, that says *Bolton* (though he denied it) did shew him one of these Pictures, and did discover they were Mr. *Colledge's*, and *Bolton* himself, his own Witness, tells you, that he did acknowledge one of those Pictures was his. It appears then how busy he was, and concerned himself in what belonged not to his Profession.

So that, upon the whole Matter, after this long Evidence that hath been given, I must wholly appeal to your Lordships and the Jury; as to the Law, to your Lordship and the Court; and as to the Fact, to the Jury: For I do not desire any sort of Evidence should be strained against a Prisoner at the Bar, who there is to be tried for his Life. God forbid, if he be innocent, but he should be acquitted; but, on the other Side, consider the Murder of that great King of ever blessed Memory is before you, and remember that base Reflection which the Witnesses tell you of upon that horrid Action; and as a great Evidence, remember that seeming Vindication of it at the Bar, which certainly no *Englishman*, no Protestant, according to the Church of *England*, can hear without having his Blood stirred in him. And these Things are not only testified by *Dugdale* and *Smith*, but by Gentlemen of known Reputation and Quality; and he hath a little discovered himself by that Defence he hath made against their Testimony. But know, Gentlemen, that the King is concerned, your Religion is concerned, that Plot that is so much agreed to by all Protestants is concerned; for if *Dugdale*, *Smith* and *Turberville* be not to be believed, you trip up the Heels of all the Evidence and Discovery of that Plot. Then I will conclude to you, Gentlemen, and appeal to your Consciences; for according to the Oath that has been given to you, you are bound in your Consciences to go according to your Evidence, and are neither to be inveigled by us beyond our Proof, nor to be guided by your Commiseration to the Prisoner at the Bar against the Proof; for

as God will call you to an Account, if you do an Injury to him, so will the same God call you to Account, if you do it to your King, to your Religion, and to your own Souls.

L. C. J. Gentlemen, I shall detain you but a little, and shall be as short as I can, for your Patience has been much exercised already: It is a Burden, and a necessary one, that lies upon us all, for there is nothing more necessary, than that such Trials as these should be intire and publick, intire for the Dispatch of them, and publick for the Satisfaction of the World, that it may appear no Man receives his Condemnation without Evidence, and that no Man is acquitted against Evidence.

Gentlemen, there are these two Considerations in all Cases of this Nature; the one is, the Force of the Evidence; the other is, the Truth of the Evidence. As to the Force of the Evidence, that is a Point of Law that belongs to the Court, and wherein the Court is to direct you; as to the Truth of the Evidence, that is a Question in Fact arising from the Witnesses, and must be left upon them, whereof you are the proper Judges.

As to the Force of the Evidence in this Case, it must be considered what the Charge is; it is the compassing the Death of the King, and conspiring to seize the Person of the King, which is the same thing in Effect; for even by the Common Law, or upon the Interpretation of the Statute of the 25th of *Edw. III.* that mentions compassing the Death of the King to be Treason, it hath always been resolved, That whosoever shall imagine to depose the King, or imprison the King, are guilty of imagining the Death of the King; for they are Things that depend one upon another: And never was any King deposed or imprisoned, but with an Intention to be put to Death; they are in Consequences the same Thing.

Now, Gentlemen, in Cases of Treason the Law is so tender of the Life of the King, that the very Imagination of the Heart is Treason, if there be any Thought concerning any such Thing; but then it must be manifested by some Overt-Act, upon the Statute of the 25th *Edw. III.* but upon the Statute of the 13th of this King, made for the Preservation of the King's Person, if it be manifested, be malicious and advised speaking, 'tis sufficient. This is as to the Charge, and as to the Law concerning that Charge, I must tell you, there must be two Witnesses in the Case.

Now then, for the Force of the Evidence, the Question will arise here, whether this Evidence, admitting it to be true, is sufficient to maintain the Indictment; so that if there be two Witnesses, you must find him guilty. Now as to this, Gentlemen, the Prisoner has before-hand called upon the Court, and had their Resolution; and I hope you will remember what hath been said, and I shall have Occasion to trouble you the less. There have been six Witnesses produced for the King; there are two of them, Sir *William Jennings* and Mr. *Masters*, that are some way applicable to the Case, though they do not go to the Treason, they are only to infer the Probability of the Treason. This of Sir *William Jennings*, was upon the Occasion of the bleeding of the Prisoner's Nose, after his Quarrel with *Fitz-gerald*, when he said, *He had lost the first Blood, and it would not be long e're there would be more lost*; which shews there were some extraordinary Thoughts in his Heart, concerning some Divisions, Quarrels, and Fighting that

that he expected should be. That which Mr. *Masters* has said (besides what he offered concerning his Principles in justifying the long Parliament) was this, That when he called him Colonel, *Marry mock not*, said he, *I may be Colonel in Time*; that shews some extraordinary Thoughts were in his Heart.

Colledge. *Will not that bear a more favourable Interpretation, my Lord? Must that necessarily follow upon my saying, I might be a Colonel in Time; and that more Blood would be lost? if I had expressed it so.*

L. C. J. I say, you had some extraordinary Thoughts in your Heart.

Colledge. *I am, sure, fittest to explain my own Thoughts.*

L. C. J. You would have done well to have explained it which Way you expected to be a Colonel.

Colledge. *It was not an Expectation, for a may be may not be; my Word was, Mocking is catching: I thought he had called me Cousin.*

L. C. J. Well, Gentlemen, these are Witnesses, I say, that go not to the Treason, but only relate and reflect somewhat, to shew there were Thoughts in his Heart; but no body could tell what they were, or know what he meant by them.

Colledge. *Then they are always to be taken in the best Sense.*

L. C. J. For the other Witnesses, *Stephen Dugdale, John Smith, Bryan Haynes, and Edward Turberville*, they are all of them, taking what they say to be true, very full Witnesses. The Prisoner hath objected as to two of them, because they speak to nothing that was done in *Oxfordshire*; but *Turberville* and *Dugdale* they speak to what was said in *Oxfordshire*. Now for that I must tell you, if you believe any of these Witnesses, as to what was said in *Oxford*, and any of them as to what was said in *London*, relating to the same Fact of Treason, they will be two good Witnesses to maintain the Indictment, though the one is in the one County, and the other in another; for if a Treason be committed in two counties, it is the King's Election where he will exhibit the Indictment, and the Evidence from both Counties is good Evidence; that I take for Law; and these four Witnesses, with that Consideration that they are true, as I think, are full Witnesses to maintain this Indictment.

Why then, the next Head is concerning the Truth of this Evidence of which you are to be Judges, and you are the proper Judges whether the Witnesses speak true or no; therefore you must have your own Consciences to direct you in that Case, and what I shall say about them, shall be only for your Assistance.

Gentlemen, I shall not take upon me to repeat the Evidence to you, it has been long; and for me to speak out of Memory, I had rather you should recur to your own Memories, and your own Notes; only I shall say something in general to contract your Consideration of it.

And, as I told you at first, you must mind nothing of what the King's Council said, for nothing must have Impression upon you, but what they proved; so you are not to consider anything of the Facts the Prisoner speaks of, that are not proved neither; for common Justice is concerned in it, and no Justice can be done at

that rate, if the Prisoner's own Affirmations or Purgations should be taken. No Man ever can be accused, but he will be ready to say he is innocent, and say as flourishing and popular things as ever he can for himself. And therefore these things must not weigh with you further than as was said, argues upon the Proofs you have had. And you are to consider upon the Proofs what the Prisoner has produced, not what he says; on the other Side, for the Proofs you have heard a great many Witnesses in general produced by him, that say he was bred a Protestant, and has been an honest Man, that they knew no ill by him; that will be of little Weight in a Case of this Consideration; for unless he was a Man that had committed Treason to the Knowledge of all the World, there is no Man but can produce Witnesses that know no ill of him, nor any Treason nor Harm in him; wherefore the Question will lie upon the Credit of the Witnesses produced for the King barely, and that will be the Consideration you are only to have, and you are to weigh them in the Balance against the Witnesses produced against them.

Now, Gentlemen, for these Witnesses, I shall not repeat them to you; but only this I shall observe in general, that *Dugdale* and *Turberville*, that are the two most material Witnesses relating to what was spoken in *Oxfordshire*, have the least said against them. I do not remember, I profess to you, I do not (but your own Notes must guide you) that there was any very material thing said against them, except what is said against them by *Dr. Oates*, and *Dr. Oates* does say against *Smith*, that he came out of the Coffee-House, and swore damn him he would have *Colledge's* Blood; and when he reprov'd him, he said it was not fit for a Minister of the Gospel to use such Expressions, he said, God damn the Gospel; if that be true, 'tis a great Reflection upon the Credit of *Smith*. He says as to *Dugdale*, that when he was expostulating with him about his Evidence he excused himself, that he was in want of Money, and was pressed to it, and being asked, he did say, he was pressed to swear against his Conscience, he said yes; and much of the same Kind he says as to *Turberville*, that he said he was deserted, and would not starve. Now all these three Witnesses being called upon their Oaths, deny that which *Dr. Oates* testifies. Now if it were in an indifferent and probable Matter to have three Men condemned, and set aside by the Testimony of one, is not equal, unless the Man were of mighty extraordinary Credit, and his Testimony of more than ordinary Weight. But then I must tell you, this Matter is very improbable, that after Witnesses had sworn a thing, they should voluntarily acknowledge themselves to be forsworn, and that without any Provocation, they should at several times come to this one Man, and declare themselves Rogues and Villains; but if it were probable, here are three Men's Oaths against one Man's Affirmation; this I say, as to what concerns *Dugdale* and *Turberville*, I do not see any thing material against them; besides, now if you believe them, they are two Witnesses to the full Matter of the Indictment, and two Witnesses to what was done in *Oxfordshire*, and that satisfies all the Considerations of the Law.

As to the rest of the Witnesses, *Bryan Haynes* and *John Smith*, you have had many Witnesses produced

duced against them, I shall not undertake to repeat the Evidence, 'tis your Place and Duty to weigh their Testimony, and I shall leave it to your Consideration.

Mr. Just. Jones. I shall add nothing to what my Lord hath said, nor indeed can.

Colledge. My Lord, I wish you would look upon your Notes, you would then find there was much more Evidence, that you have not repeated, against *Turberville* and *Dugdale*, besides what your Lordship urged.

L. C. J. If there be, I refer it to the Memory of the Jury, I can remember no more.

Colledge. I desire nothing but Justice, and true Justice.

L. C. J. I am sure I design nothing else, you are a Stranger to me; I believe I have seen your Face, but I never knew you by Name till now. Look you, if the Jury be like to stay, they may take something to refresh themselves at the Bar before they go.

Colledge. My Lord, I did see when the Bill was brought against my Lord *Howard*, Mr. Attorney General and Mr. Solicitor were an Hour and half with the Grand Jury.

Mr. Serj Jeff. You must say nothing now.

Colledge. Let me have Justice done me, my Lord, that's all I crave, that no body may be with the Jury.

L. C. J. Look you, Mr. Colledge, they might be with the Grand Jury, but as to the Petty Jury, there shall be a Bailiff sworn, and neither Mr. Attorney, nor Mr. Solicitor, nor no body else shall come to them till they be agreed of their Verdict.

Mr. Just. Jones. If that be the thing you ask, you shall have it according to the Law.

Colledge. And any Friend of mine may be by.

L. C. J. There shall be an Officer sworn to keep them.

Then the Court called for two Bottles of Sack, which the Jury divided among themselves at the Bar, for their Refreshment in the Presence of the Prisoner.

After which a Bailiff was sworn, and the Jury withdrawing to consider of their Verdict, the Court adjourned for half an Hour, and when they returned, Proclamation being made for Attendance, the Court sent to see whether the Jury were agreed, who immediately came into Court.

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

Om. Yes.

Cl. of Cr. Who shall say for you?

Om. Foreman.

Cl. of Cr. *Stephen Colledge*, hold up thy Hand. Look upon him, you of the Jury: How say you, is he Guilty of the High Treason, whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. Look to him, Goaler, he is found Guilty of High Treason; what Goods, &c.

At which there was a great Shout given; at which the Court being offended, one Person who was observed by the Cryer to be particularly concerned in the Shout, was committed to Goal for that Night, but the next Morning having received a publick Reproof, was discharged without Fees.

Then, it being about three o'Clock in the Morning, the Court adjourned to ten. At which Hour, the Court being sat, and first Mr. *Aaron Smith* having entred into a Recognizance of 500*l.* to appear the first Day of the next Term, at the Court of *King's Bench*.

L. C. J. Where is the Prisoner, *Stephen Colledge*?
Cl. of Cr. Set up *Stephen Colledge*.

Then the Prisoner was brought to the Bar.

Cl. of Cr. Hearken to the Court, and hold up thy Hand: Thou hast been indicted and arraigned of High Treason, and for thy Trial hast put thy self upon thy Country, and they have found thee Guilty; what canst thou say for thy self, why the Court should not give Judgment on thee to die according to the Law?

Colledge. My Lord, I have nothing more to offer, but only that I am innocent of what is laid to my Charge; I think it was severe against me, now contrary to what was sworn at *London*: They swear now, I was to seize the King at *Oxon*, in *London* they swore I would pluck the King out of *Whitchhall*, but 'tis altered since, and now 'tis to seize the King at *Oxon*; but be it either one or t'other (for the one is as true as the other) I am wholly innocent of either, I never had such a Thought in my Life, God forgive them that have sworn against me; I have no more to say, my Lord.

L. C. J. Look you, Mr. Colledge, it is too late to profess your Innocence, you have been tried, and found Guilty; but because you say so now, 'tis necessary for me to say something in Vindication of the Verdict, which I think the Court were all very well satisfied with: There were sufficient Proofs to warrant it, and the Jury did according to Justice and Right. I thought it was a Case, that as you made your own Defence, small Proof would serve the Turn to make any one believe you Guilty. For as you would defend yourself by pretending to be a Protestant, I did wonder, I must confess, when you called so many Witnesses to your Religion and Reputation, that none of them gave an Account that they saw you receive the Sacrament within these many Years, or any of them particularly had seen you at Church in many Years, or what kind of Protestant you were. If we look to your Words and Actions, it is true, they did prove this, that you were mighty violent and zealous in crying out against Popery and the Papists; but if we look to your Actions, they favoured rather to promote the Papists Ends. For I must tell you, the Papists are best extirpated, and suppressed by a steady Prosecution of the Laws against them, not by violent Cryings-out, and putting the People into fervent Heats and Confusions, for that is the Thing the Papists aim at; they have no Hopes any other Way to creep into the Kingdom, but by Confusion, and after the Church is destroyed, that is under God the best Bulwark against them. But you that cried so loud

loud against the Papists it was proved here, who you called Papists. You had the Boldness to say that the King was a Papist, the Bishops were Papists, and the Church of *England* were Papists. If these be the Papists you cry out against, what a kind of Protestant you are, I know not, I am sure you can be no good one. But of that thing, when you called so many Witnesses to that Purpose, and if we look to your Politicks, what Opinion you had of the King, it was proved by your Discourse, and by Witnesses, that you could have no Exception to their Testimony, that you did justify the late horrid Rebellion, and the Consequents of that was the Murder of the best King in the World, that you should go to justify the Proceedings of that Parliament, and affirm that they did nothing but what they had just Cause to do. I say, he that will justify such a thing, if there were the same Circumstances, would do the same thing again.

Then if we look upon another Part of your Defence, as to your Arms, it was objected, you went armed to *Oxon*, and that was made the Evidence of the Overt-Act when you said by Words your Intentions what you would do, that you would make one to seize the King; that you did go armed, you did confess; I expected you should have said, you only wore those things for your own Defence upon the Road as a Gentleman travelling, or went with your Friends to accompany them out of Town, and defend them from Robbery; but you said, you went to guard the Parliament. I did not understand what you meant by it. I do not believe the Parliament sent for any Guard, or intended to have any Guard. I do not believe that any of them in their Hearts thought they needed a Guard; for I believe there was not a Man that had any thing that looked like that, or any thing of that Nature. For we saw, that when the King by the Necessity of his Affairs, when the two Houses differed so much, was pleased to dismiss them; they all departed quietly, not a Man was seen to be disturbed; there was no Appearance of any such thing; and how it should come into your Head, that were but a private Man, to go to guard the Parliament, I much wonder. Suppose all Men of your Condition should have gone to have guarded the Parliament, what an Assembly had there been? what a Bustle might they have made, and what Confusion might have been on a sudden? And though you say you are no Man of Quality, nor likely to be able to do any thing upon the King's Guards, or the King's Perton, yet if all of your Quality had gone upon the same Design that you did, what ill Consequences might have been of it? We see what has been done by *Massianello*, a mean Man in another Country, what by *Wat Tyler* and *Jack Straw* in this Kingdom. I confess, I know not what you meant by it, but very ill things might have happened upon it.

So that these Things, when I look upon them, and consider the Complexion of your Defence, it makes an easy Proof have Credit. But I think there was a full Proof in your Case; yet I say if there had been a great deal less Proof, the Jury might with Justice have found you Guilty. And because you now declare your self innocent of all you are charged with, I think my self bound to declare here in Vindication of the Country,

and in Vindication of the Justice of the Court, that it was a Verdict well given, and to the Satisfaction of the Court, and I did not find my Brothers did dislike it. This I say to you out of Charity, that you may incline your Mind to a Submission to the Justice that has overtaken you, and that you may enter into Charity with all Men, and prepare your self for another Life.

There is nothing now remaining, but to pronounce the Sentence which the Law provides for such an Offence, which is this, and the Court does award,

That you Stephen Colledge shall be carried from hence to the Place from whence you came, and from thence you shall be drawn on an Hurdle to the Place of Execution, where you shall be hanged up by the Neck, and be cut down alive, your Privy Members shall be cut off, and your Bowels taken out and burnt before your Face, your Head shall be cut off from your Body, your Body be divided into four Quarters, which are to be at the King's Dispose, and the Lord have Mercy upon your Soul.

Colledge. Amen. My Lord, I would know what Time your Lordship is pleased to appoint for my Execution.

L. C. J. That will depend upon the King's Pleasure, we do not use in these Cases of High-Treason to precipitate the Execution; but we will leave such Order with the Sheriff to receive the King's Pleasure and obey it. He will not do it so sudden, but that you shall have Notice to prepare your self; but that depends upon the King's Pleasure, for your Body is to be at his Disposal.

Then the Court adjourned.

On Wednesday 31 of Aug. 1681. being the Day appointed by His Majesty for his Execution, he was according to Sentence Executed over-against the Gate of the Castle at Oxford.

When he was come to the Place of Execution, the High-Sheriff spoke to him as follows:

Mr. High-Sheriff. **M**R. Colledge, it is desired, for the Satisfaction of the World, because you have professed yourself a Protestant, that you would tell what Judgment you are of.

Colledge. Dear People, dear Protestants, and dear Countrymen, I have been accused and convicted for Treason; the Laws adjudge me to this Death, and I come hither willingly to submit to it: I pray God forgive all those Persons that had any Hand in it. I do declare to you, whatever hath been said of me, I was never a Papist, or ever that Way inclined; they have done me Wrong; I was ever a Protestant, I was born a Protestant, I have lived so, and so by the Grace of God I will die, of the Church of *England*, according to the best Reformation of the Church from all Idolatry, from all Superstition, or any thing that is contrary to the Gospel of our blessed Lord and Saviour.

I do declare I was never in any Popish Service, Prayers, or Devotions, in my Life, save one Time; about some seventeen or eighteen Years ago, as near as I remember, I was, out of a Curiosity, one Afternoon at St. James's Chapel, the Queen's Chapel at St. James's; except that one Time, I never did hear any Popish Service, any thing of the Church of Rome, Mass or Prayers, or any thing else, private or publick. I know you expect that I should say something as to what I die for: It hath been charged upon me, when I was apprehended and brought before the Council, some of the Council, the Secretary, and my Lord *Killingworth*, and Mr. *Seymour*, they told me there was Treason sworn against me; truly, they surprized me when they said so: For of all things in the World, I thought myself as free from that as any Man. I asked them if any Man living had the Confidence to swear Treason against me? They said several, three or four, as I remember: Then they told me, it was sworn against me, That I had a Design to pull the King out of *White-Hall*, and to serve him as his Father was served, or to that Purpose, the Logger-Head his Father, or that kind of Language: I did deny it then, and do now deny it upon my Death. I never was in any Manner of Plot in my Days, neither one way nor another; I never knew any such Persons, nor ever had such Communication with any Man hitherto: I know of no Plot in the World but the Popish Plot, and that every Man may know as much as I: If I had such a Design as these Men have sworn against me, to have seized his Majesty, either at *London*, or this Place at *Oxford*, I take God to Witness, as I am a dying Man, and upon the Terms of my Salvation, I know not any one Man upon the Face of the Earth that would have stood by me; and how likely it was that I should do such a thing my self, let the whole World judge.

Dugdale swears, that I spoke Treason to him, treasonable Words in the Coffee-house, and in the Barber's Shop by the *Angel*; he could not pretend to see me any where else; but it is false, and a very unlikely thing that I should speak Treason to him. I must confess I was in his Company at the Coffee-house and that Barber's Shop, before I went out of Town: But there could be no Communication between us; for he was writing at one End of the Room, and eating a Piece of Bread, and I lighted a Pipe of Tobacco at the other End, and took it, till Sir *Thomas Player*, and Sir *Robert Clayton* came to me, and we went to my Lord *Lovelace's* out of Town that Night; So when they came, we took Horse, and went out of Town with the rest: For my Part, I can't sum up my Witnesses; I was under most strange Circumstances as ever any Man was; I was kept Prisoner so close in the *Tower*, that I could have no Conversation with any, though I was certain the Popish Lords had it every Day there, but I could have none: I could not tell the Witnesses that were to swear against me; I could not tell what it was they swore against me, for I could have no Copy of the Indictment, nor no way possible to make any Preparation to make my Defence as I ought to have done, and might have done by Law.

I had no Liberty to do any thing, as I am a dying Man. And as to what *Dugdale*, *Smith*,

Turberville, and *Haynes*, swore against me, they did swear such Treason that nothing but a Mad-man would ever have trusted any body with, and least of all to Papists, every one of them that had been concerned with Plots and Treasons among their own Party, and under the greatest Ties and Obligations of Damnation; and to be fainted if they kept it secret, and to be damned if they reveal it. If these Men will not keep Things private for their own Party, how could I trust them? I take God to Witness, and do freely acknowledge, I have sought my God with Tears several Times to inform me, if so be I had with any Word transgressed at any Time. I knew not of any Part of what they swore against me, till such Time as I heard it sworn against me at the Bar.

This is very hard, Gentlemen, but this is the Truth; and there be a great many other strange Reports that I have heard since I have been a Prisoner; that I should be a Means to convert the Countess of *Rocheſter*, by bringing one *Thomson*, a Priest, to her. Truly, all that I was concerned in, was some fifteen or sixteen Years ago. I lodg'd at Colonel *Vernon's*, that married the Lady *Brooks*, the Family were Papists; the *Brooks's* were Papists, and there was this *Thomson*, and I did suppose him a Priest, in the House, though I never saw him at Popish Service, or Worship, though I was there half a Year; but coming afterwards to my Lord *Rocheſter's* about some Business I had to do for him, and several other Persons of Quality; he sent for me one Afternoon from the Parsonage in *Adderbury* to his House, and his Lady and he stood together: He sent to me, and asked me, if my Horse were at Home; said he, I would have you carry this Letter to Mr. *Thomson*, if you are at Leisure this Afternoon: My Lord, I am at Leisure to serve you; so I took a Letter from his Hand, and his Lady's too; as I remember (he made an Offer that way) sealed with his own Seal, and I carried it to *Thomson*, and delivered it to him: And he told me, that he would wait upon my Lord, for it was for some Lands my Lord did offer, to raise Money for some Occasion: This is the Truth of that Scandal.

It is said, that I had a Priest several Years in my House, *viz.* *Sergeant*, that came over from *Holland* to discover. About some ten Years ago, that very same Man came to me, but was a Stranger to me, and he came to me by the Name of Doctor *Smith*, a Physician; and there was an Apothecary in the *Old Bailey*, and a Linen-Draper within *Ludgate*, that came with him, they brought him thither, and took a Chamber, and he lay about half a Year, or three Quarters, at times, by the Name of Doctor *Smith*, and as a Physician; this is the Truth of that, and no otherwise. This is the Entertainment of *Sergeant*.

So the Occasion of my coming to *Oxford* I do say was voluntary; the Parliament-men last Parliament at *Westminster*, and several Lords, dined together the Day before they sat; the last Sessions of Parliament at *Westminster*, they sent for me to the *Sun-Tavern* behind the *Exchange*, and when I came, the Duke of *Monmouth*, and several Lords were together, and I believe above a hundred Parliament-men of the Commons: The Duke of *Monmouth* called me to him, and told me, he had
heard

heard a good Report of me, that I was an honest Man, and one that may be trusted; and they did not know but their Enemies, the Papists, might have some Design to serve them as they did in King *James's* Time by Gun-Powder, or any other Way: And the Duke, with several Lords and Commons, did desire me to use my utmost Skill in searching all Places suspected by them; which I did perform: And from thence I had, as I think, the popular Name of *The Protestant Joiner*, because they had intrusted me, before any Man in *England* to do that Office.

This same *Haynes*, one of them that swore against me, had discovered to me, and several others, as to *Macnamarra* and his Brother, and this *Ivy*, who are now all of another Stamp, that the Parliament was to be destroyed at *Oxford*, and that there was a Design to murder my Lord *Sbaftebury*, by *Fitz-gerald* and his Party; and that they did endeavour to bring *Macnamarra* over to him, and said, then it would be well with him; and they would not be long before they had *Sbaftebury's* Life: And he made Depositions of this to Sir *George Treby*, as I heard afterwards, for I was not with him when it was sworn. I wish the Commons of *England* as well as I wish my own Heart; and I did not understand, but when I served the Parliament I served his Majesty too; and let them be miserable that make the Difference between them, for my Part, I never did. I came to *Oxford* with my Lord *Howard*, whom I look upon to be a very worthy honest Gentleman, my Lord *Clare*, my Lord *Paget*, and my Lord *Huntington*, and this Captain *Brown*, and Don *Lewes*, were in my Company, and came along with us, as they were my Lord *Howard's* Friends: *Brown* I have known, I believe, two or three Months; but *Lewes* I never saw before that Day; they said they came with my Lord *Howard*. I take God to witness, I never had one Six-pence, or any thing else to carry on any Design; and if it were to save my Life now, I cannot charge any Man in the World with any Design against the Government, as God is my Witness, or against his Majesty, or any other Person.

As for what Arms I had, and what Arms others had, they were for our own Defence, in case the Papists should make any Attempt upon us by way of Massacre, or any Invasion or Rebellion, that we should be ready to defend ourselves; God is my Witness, this is all I know. If this be a Plot, this was I in, but in no other; but never knew of any Numbers, or Times appointed for meeting; but we have said, one to another, that the Papists had a Design against the Protestants, when we did meet, as I was a Man of a general Conversation; and in case they should rise, we were ready; but then they should begin the Attempt upon us: This was my Business, and this is the Business of every good Subject that loves the Laws of his Country and his King. For *England* can never hope to be happy under those Blood-thirsty Men, whose Religion is Blood and Murder; which I do with all my Soul, and did, ever since I knew what Religion was, abhor and detest, *viz.* the Church of *Rome*, as pernicious and destructive to human Societies, and all Government.

I beseech God that every Man of you may unite together as Protestants against this common

Foe. Gentlemen, it is my Sense, and I do in that believe, I am as certainly murdered by the Hands of the Papists, as Sir *Edmundbury Godfrey* himself was, though the Thing is not seen. These Witnesses certainly are mercenary Men, and I beseech God Almighty to have Mercy upon their Souls, and forgive them; and either by his Judgments or Mercies reclaim them, that they shed no more innocent Blood: There is not a Man of them that I know of, that ever heard me say, or do, any bit of Treason in my Life. This is (the first, I may not say it is) but almost twentieth Sham-Plot that they have endeavoured to put upon the Nation, to delude the People, and put off their own damnable Plot. This is not the first, but I think, the sixteenth or seventeenth; I pray God that my Blood may be the last. I pray God defend every Man's Blood, and all Protestants in *England*, from the Hands of these bloody Papists, by whose Means I die this Death; and if they should go on in this Nature, I hope the good God will open every Man's Eyes to see it before he feels it. And, I beseech you, if you have any Love for your King, your Country, and the Protestants, unite together, if you are Protestants. I pray God those that deserve the Name, let them be called how they will, either Dissenters, or Church of *England* Men, that they may unite together like Men, like Christians, against the common Foe, who will spare neither the one Side, nor the other, but beat you one against another like two Pitchers; the last that stands, they will certainly destroy if they can. This is my Sense, and God is my Witness, I speak my Conscience. I do not know, Mr. *Sheriff*, whether there be any thing else I have to say, or no; we have a good God, and I beseech every Man that hears me this Day (for we live in a sinful Age, good People, and it behoves every one of you, it cannot be long before all that look upon me in this Condition must lie down in the Dust, and, God knows, must come into an eternal State, either for Mercy or for Judgment.) I beseech you in the Name of God, he is a God of Mercy, and a God of Patience and Long-Suffering, that you would break off your Sins by Repentance, and serve a good God, who must be your Friend at last, or else you are lost to Eternity.

O Lord, how ungrateful Wretches are we, that have a God of such infinite Mercy and Goodness, that affords us our Life, our Health, and a thousand Mercies every Day; and we, like ungrateful People, not deserving the Name of Men or Christians, live riotous Lives, in Debauchery and Swearing, in Malice, and the Lord knows how many Evils? I beseech God that I may be this Day a Means in the Hand of God, to bring some of their Souls over to him: I beseech you, remember what I say; indeed I do not know, I have been so strangely used since I have been a Prisoner, what to say, being brought from one Affliction to another, that my Body is worn out, and my Memory and Intellects have failed me much to what they were. I cannot remember what I have to say more, but that the Lord Jesus Christ would bless my Country, and preserve it from Popery, and in Mercy bless his Majesty: Good God be merciful to him, make him an Instrument in thy Hand to defend his Protestant Subjects; Lord in Mercy defend him from his Enemies. Good God bless his People; Good Lord

continue the Gospel of Jesus Christ, thy Gospel, in it's Purity to us and our Posterity, as long as the Sun and Moon endure. O Lord, save all that call upon thee; be merciful to all thy Servants, all thy People that put their Trust in thee; good Lord deliver them from the Hands of their Enemies; good God, let their Lives, and Bodies and Souls, be all precious in thy Sight. O merciful God, put a Stop to these most wicked Conspiracies of thy Enemies, and the Nation's Enemies, the Papists. Let no more Protestant Blood be shed but this of mine, I beseech thee, O my God. O Lord look upon me, O Lord bless me, O good God receive me into thy blessed Presence, by Jesus Christ my alone Saviour and Redeemer, in whom I put my Trust alone for Salvation: It is thee, O God, that I trust in, thou righteous Judge of Heaven and Earth: all Popery, all Pardons, all Popes and Priests, all Dispensations I disown, and will not go out of the World with a Lie in my Mouth. From the Sincerity of my Heart I declare again, that what I have said to you is the very Sentiments of my Soul, as God shall have Mercy upon me, and to the best of my Knowledge.

I desire the Prayers of you, good People, while I am here; and once more I beseech you to think upon Eternity, every one of you that hear me this Day. The Lord turn your Hearts and Souls, if you have been wicked Livers; if you do live wicked Lives, the Lord in Mercy convert you, and shew you your Danger; for I as little thought to come to this as any Man that hears me this Day; and, I bless God, I have no more deserved it from the Hands of Men, than the Child that sucks at his Mother's Breast: I bless my God for it, and do say I have been a Sinner against my God, and he hath learnt me Grace ever since I have been a Prisoner. I bless my God for a Prison, I bless my God for Afflictions, I bless my God that ever I was restrained, for I never knew my self till he had taken me out of the World. Therefore you that have your Liberties, and Time, and precious Opportunities, be up and doing, for God and for your Souls, every one of you.

To his Son. Where is my dear Child?

Mr. Sheriff. I made one Request to you, and you gave me an imperfect Answer: You said you were of the best reformed Church in the World, the Church of *England* according to the best Reformation in the World: I desire you, for the Satisfaction of the World, to declare what Church that is, whether Presbyterian, or Independent, or the Church of *England*, or what?

Colledge. Good Mr. Sheriff, for your Satisfaction, for twenty Years and above I was under the Presbyterian Ministry, till his Majesty's Restoration; then I was conformable to the Church of *England* when that was restored, and so continued till such Time as I saw Persecution upon the dissenting People, and very undue Things done to

their Meeting-places; then I went among them to know what kind of People those were: And I do take God to witness, since that Time I have used their Meetings, *viz.* the Presbyterians, others very seldom, and the Church of *England*. I did hear Dr. *Tillotson* not above three Weeks before I was taken. I heard the Church of *England* as frequently as I heard the Dissenters, and never had any Prejudice, God is my Witness, against either, but always desired heartily that they might unite, and be Lovers and Friends, and had no Prejudice against any Man; and truly I am afraid that it is not for the Nation's Good that there should be such Heart-burning between them: That some of the Church of *England* will preach that the Presbyterians are worse than the Papists. God doth know that what I say, I speak freely from my Heart, I have found many among them truly serving God, and so I have of all the rest that have come into my Company; Men without any manner of Design but to serve God, serve his Majesty, and keep their Liberties and Properties; Men that I am certain are not of vicious Lives; I found no Damners, or those kind of People among them, or at least few of them.

To his Son, kissing him several times with great Passion. Dear Child, farewell, the Lord have Mercy upon thee. Good People, let me have your Prayers to Almighty God to receive my Soul.

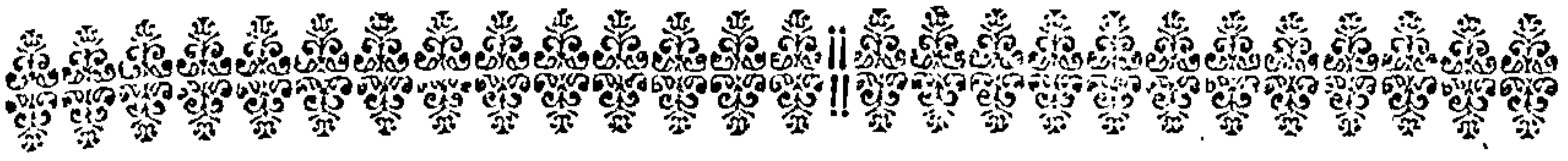
And then he prayed. And as soon as he had done, spake as followeth.

The Lord have Mercy upon my Enemies, and I beseech you, good People, whoever you are, and the whole World that I have offended, to forgive me; whomever I have offended in Word or Deed, I ask every Man's Pardon; and forgive the World with all my Soul, all the Injuries I have received, and I beseech God Almighty, forgive those poor Wretches who have cast away their Souls, or at least endangered them, to ruin this Body of mine: I beseech God that they may have a Sight of their Sins, and that they may find Mercy at his Hands: Let my Blood speak the Justice of my Cause.

I have done: And God have Mercy upon you all.

To Mr. Cosswait. Pray, Sir, remember me to Dr. *Hall*, and Dr. *Reynall*, and thank them for all their Kindnesses to me; I thank you, Sir, for your Kindnesses: The Lord bless you all. Mr. Sheriff, God be with you: God be with you all, good People.

The Executioner desired his Pardon, and he said, I do forgive you. The Lord have Mercy on my Soul. *And so he was turned off, and the Sentence executed, but his Quarters were permitted to be buried.*



CVII. *The Trial of Slingsby Bethel, Esq; at the Bridge-House in Southwark, for an Assault and Battery on Robert Mason, at the Election of Members of Parliament for the Borough of Southwark, October 5, 1681. 33 Car. II.*

The Court being sat, the Jury were called, as follows :

J U R Y M E N,

| | |
|--------------------------------|-------------------------------|
| <i>Edward Collingwood,</i> | <i>Humphrey Roberts,</i> |
| <i>Brazier,</i> | <i>John Allyn, Baker,</i> |
| <i>Francis Waker, Comb-</i> | <i>John Morgan, Grocer,</i> |
| <i>maker,</i> | <i>William Morice,</i> |
| <i>Zebulon Newington,</i> | <i>Francis Ferrey,</i> |
| <i>Chandler, alias Salter,</i> | <i>Richard Frankling,</i> |
| <i>William Head, Woollen-</i> | <i>Thomas Wade, Butcher,</i> |
| <i>Draper,</i> | <i>Edw. Kemp, Ale-Draper.</i> |

Being Sworn, the Indictment was read.

THE Jurors for our Sovereign Lord the King, upon their Oath do present, That *Slingsby Bethel*, late of the Parish of *St. Olave's, Southwark*, within the Town and Borough aforesaid, in the County of *Surrey*, Esquire, on the twelfth Day of *March*, in the three and thirtieth Year of the King, with Force and Arms at the Parish aforesaid, and within the Town and Borough aforesaid, in the County aforesaid, in and upon one *Robert Mason*, at that Time one of the King's Watermen, in the Peace of God, and of our Lord the King, then and there standing, did Assault and make a Battery, and the said *Robert Mason*, then and there most grievously and dangerously did beat, wound, and evil entreat, so that his Life was greatly despaired of, and other Enormities that then and there he offered to, and brought on the said *Robert Mason*; and that the same *Slingsby Bethel*, then and there, (*to wit*) the same twelfth Day of *March*, in the thirty third Year aforesaid, in the Parish aforesaid, in the Town and Borough aforesaid, in the County aforesaid, in the Presence and Hearing of very many of the Subjects of our Sovereign Lord the King, then and there to the said *Robert Mason*, he spake, uttered, and with a loud Voice declared and published these provoking, threatening, and opprobrious Words, (*to wit*) *Sirrah*, pointing at the said *Robert Mason*, *I* (meaning himself, *Slingsby Bethel*) *will have your Coat* (a certain Cloth Coat of a red Colour, with which the said *Robert Mason* was covered, and adorned with a certain Badge of our said Lord the King upon the said Coat) *plucked off your Back*, to the great Terror, Disurbance, and Trouble of divers of our Sovereign Lord's liege People and Subjects, being then and there present, to the evil Example of all others offending in the like Case, as also against the Peace, Crown, and Dignity, of our Sovereign Lord the King, &c.

Mr. *Peafely*. **M**Y Lord, and you Gentlemen of the Jury, *Slingsby Bethel*, Esq; stands indicted, for that he, the said *Slingsby Bethel*, made an Assault and Battery on *Robert Mason*: As also for menacing and threatenng Words; saying to him the said *Robert Mason*, *Sirrah*, *I will have your Coat plucked off your Back*, to the great Terror and Damage of the said *Robert Mason*, &c. to which Indictment he has pleaded, Not Guilty.

Mulloy. My Lord, and you Gentlemen of the Jury, I am Council for the King, against *Slingsby Bethel*, Esq; who, upon the twelfth Day of *March* last, in the thirty third Year of the King, did assault *Robert Mason*, one of the King's Watermen, and did injuriously beat and strike the said *Robert Mason*, did give several opprobrious Words, saying, he would have his Coat plucked off his Back, &c. To which he pleadeth, Not Guilty.

Mr. *Holt*. My Lord, and you Gentlemen of the Jury, I am Council for the King, against *Slingsby Bethel*, Esq; You understand the Issue you are to try, it hath been opened; the Question is, Whether Mr. *Slingsby Bethel* be guilty of this Battery, and the Matter contained in the Indictment, and the aggravating Words therein, or no? The Occasion was, that in *March* last, there was an Election for two Burgesses to be chosen to serve in Parliament for this Borough; this *Robert Mason* was desired to come from *Lambeth*, to see whether any of that Parish came to poll, which had no right so to do. The Competitors were, Sir *Richard How*, Captain *Rich*, *Slingsby Bethel*, and *Edward Smith*, Esqrs. Mr. *Slingsby Bethel* shewed, at his Entrance into the Borough, what Inclination and Temper he came with; for his Followers, and such as came with him, came with their God-damme's, and several execrable Oaths against those that voted against him; after the Election began, and the Poll demanded, truly, then Mr. *Bethel* acted his Part, and took Occasion to go off from the Place where he was, and strike several Persons that were acting against him, particularly this *Robert Mason*, finding him to be against him, took his Cane, and knocked him over the Pate, and afterwards knowing him to be the King's Waterman, said he deserved to have his Coat plucked over his Ears: Were the Affront against him as a single Person, it were not of so bad Consequence; but we are to take Notice of the Solemnity of the Occasion of the Meeting: Now, consider the Occasion, it was for the choosing of Parliament-Men; and had it not been for the Prudence of the Waterman, in forbearing to strike again, God knows the Effects, and what an Uproar it might have occasioned: But he prudently

dently refrained, and took his Course in a legal Way, and according to Law hath preferred this Indictment against Mr. *Slingsby Bethel*. Now though the said Mr. *Bethel* be so great a Man, and a Person of Value, lately Sheriff of the City of London; and he, *Robert Mason*, appearing to be but a poor Waterman, yet I don't question, he will find an *English Jury* to do him Right.

King's Council. Call Mr. *Robert Mason*, *Arthur Adams*, *Thomas Walbrooke*, *Griffin Meade*, *Tho. Smith*, *Alexander Dory*, *Lawrence*.

Mr. Holt. *Mason*, What can you say on the King's and your own Behalf, concerning this Matter?

Robert Mason. I was standing upon the Steps, by the Door in the Artillery-Ground, and Mr. *Bethel* came and gave me divers Blows on the Stairs, knocked me with his Cane, and followed me down beating of me, and said, *Sirrah, I will have your Coat plucked over your Ears*; and I answered, *So you would my Master's too, if you could*.

Mr. Thompson. By whose Solicitation came you there?

Mason. I was desired to be there.

Thompson. What, did he strike you also with his Fist?

Mason. Yes.

Thompson. Where did he hurt you with all his Blows?

Mason. On the Breast.

Thompson. How many Blows?

Mason. He gave me twenty Blows at least, I can swear safely; but how many more, I know not.

Thompson. Did not you, before Mr. *Bethel* came there, interrupt the People's coming to poll, and what did Mr. *Bethel* say?

Mason. He asked what I did there, and bid me go down.

Justice Pys. Did Mr. *Bethel* single you out from the rest of the Company?

Mason. Yes, he did.

King's Council. Call *Adams*. *Adams*, what can you say? Did you see Mr. *Bethel* strike *Mason*, and what Words did he say?

Adams, first Witness. There was a Tumult at the Stairs, and they called to me, being Constable, and when I came, Mr. *Bethel* and *Mason* were together, and a great Company followed them; I said, *Sirs, pray keep the Peace*; and I saw Mr. *Bethel* give him two or three Shugs, and said, *Sirrah, I will have your Coat off your Back*; and *Mason* answered, *Ay, and so you would my Master's too, if you could*.

Holt. *Adams*, Tell the Court what you think would have been the Consequence if *Mason* had struck again.

Adams. It would have been of a sad Consequence.

Holt. What was Mr. *Bethel's* Behaviour, when he entered into the Borough? Did you see him come into the Borough?

Adams. They came in and cry'd, *No Abhorers, No Abhorers*.

Thompson. Did you hear Mr. *Bethel* say so?

Adams. No.

Thompson. Did you hear him Swear?

Adams. No.

Thompson. Who was it that swore?

Holt. He that rid first.

Thompson. *Mason* said, Mr. *Bethel* gave him twenty Blows; Did you see it?

Adams. I was not there all the while, I did not see it.

Third Witness. *Thomas Walbrooke*, What can you say to the Case in Hand?

Walbrooke. I stood by the Stairs when Mr. *Bethel* passed by; I saw Mr. *Bethel* thrust him down the Stairs, and I said, *Robert, take Care what you do*: Mr. *Bethel* said, *Sirrah, come down*; *Mason* said, *I will come when I see my own Time, I do Nobody any Hurt*: Mr. *Bethel* answered, *I command you to come down*; and his Answer was, *I will, when I see my own Time*.

Thompson. Did you see any Blow given by Mr. *Bethel*?

Walbrooke. No, I saw none; I won't swear to any Blows, but I saw two or three Pushes in the Breast; he pushed him back.

Thompson. And how many Blows were given, ten, twenty, or how many?

Walbrooke. I will not answer any Thing concerning that.

Thompson. Upon the Oath you have taken (being, I think, you are an honest Man) had the Waterman this Coat on at that Time? Or had he not a Campaign Coat over it?

Walbrooke. He had that Coat, but I don't remember any other.

King's Council. Call *Griffith Meade*. Give an Account of what you can of this Matter.

Griffith Meade. I saw a great Number of People come to the Place, and saw Mr. *Bethel* give him a Push, and that was all.

Thompson. What Words did you hear?

Meade. No Words.

Thompson. How was this Man clothed? Was he clothed with this Coat, or had he a Campaign Coat over it?

Meade. I cannot tell.

Thompson. Upon the Oath you have taken, how many Blows did you see given, because they say twenty?

Meade. No Blows at all, but a little Push.

Call *Thomas Smith*. (He appeared.) What do you know?

Smith. As *Robert Mason* and myself stood together, Mr. *Bethel* came round the Burying-Place, and he brought a great Multitude of Persons with him, and bid *Mason* come down the Steps: *Mason* answered, *I will come down when I see my Time*. Mr. *Bethel* said, *If you will not come down, I will have your Coat plucked off your Back*. Afterwards many Words passed, which I cannot remember, and Mr. *Bethel* pushed him on the Breast.

Second Council. Mr. *Smith*, Pray give the Court an Account of the Behaviour of the Men that followed Mr. *Bethel*: Did you not see Mr. *Bethel* give *Robert Mason* a Push, when he was in the Artillery-Ground?

Smith. I saw none.

Holt. What do you think the Consequence had been, if *Mason* had struck again?

Smith. Had he given any Blows again, I do believe a hundred and a hundred had been slain.

Thompson. *Smith*, pray give an Account of the Behaviour of the Men that came with Mr. *Bethel*, and what Coat *Mason* wore, and whether he had not a Campaign Coat on it?

Smith. Sir, I know not that, but he had the same Coat then on his Back, which he has on now.

Thompson. Why, what made you think, if *Mason* had struck Mr. *Bethel*, that it would have made such a great Disturbance?

Smith.

Smith. Because he was the King's Servant.

Call *Alexander Dory.* *Dory,* Give the Court an Account of the Matter in Question. Did you see Mr. *Bethel* give *Mason* any Blows?

Dory. Sir, Mr. *Bethel* gave him some Pushes in the Breast, and said, *He would have his Coat off his Back.*

Thompson. Had he the same Coat on as now he hath?

Dory. I saw the same, and no other.

Mulloy. Call *Lawrence.* He appeared. *Lawrence,* give the Court and Jury an Account of what you know of the Quarrel between Mr. *Bethel* and *Robert Mason.* Did you see Mr. *Bethel* give him any Blows? And give an Account of the Behaviour of Mr. *Bethel* and his Company, when they came into the Borough.

Thompson. This Indictment is for an Assault and Battery; if you can give an Account of that, do; but not of the Behaviour of those that came with Mr. *Bethel*; that is not the Matter at this Time.

Holt. I answer, Sir, it is not; but we ask the Question, to make out the Behaviour of Mr. *Bethel* and his Company, and shall leave it to the Jury, what Judgment to make of it.

Lawrence. I saw the Persons that came with Mr. *Bethel*, hectoring and swearing at a strange Rate, and the Persons which rid before, cry'd, Hollow, Hollow.

Thompson. I appeal to Mr. *Holt*; What if *John a Nokes*, or *Tom a Styles*, swear and hector, &c. shall Mr. *Bethel* answer for that, in a Matter that falls out long afterwards, as this did?

Lawrence. I saw their Behaviour, as I have said; and when Mr. *Bethel* came to *Robert Mason*, he stood with his Hands behind him, Mr. *Bethel* bid him come down; he said, No, he would not: Then said Mr. *Bethel*, *I will pluck your Coat off your Back*; and *Mason* answered, *Ay, and so you would my Master's too, if you could.*

Lord Mayor. Did Mr. *Bethel* swear, when he came into the Borough?

Lawrence. No.

Lord Mayor. Who did swear?

Lawrence. He that rid first.

Mr. Thompson. May it please your Lordship, I am of Counsel for Mr. *Bethel* the Defendant, who has been, and stands indicted for making an Assault and Battery upon *Robert Mason*; and for speaking many menacing and threatening Words, as, *That he would pull his Coat over his Ears, &c.* and for giving several Blows; unto which we have pleaded, Not Guilty. They have produced several Witnesses, and *Robert Mason* himself, who is so thorough-stitch in the Case, that he swears so as no one can believe him; for his own Witnesses do not; for they do not swear, nor pretend to swear like him, being not able to stretch at that Rate; he is desperately mistaken, to speak the best of him.

For this *Mason* swears Mr. *Bethel* gave him twenty Blows at least, but how many more he cannot say: See how this will look, when we shall prove, by substantial and credible Men, that not one Blow was given, or push either. But suppose he were pushed, yet his Evidence agree not one with another; for some swear to one Push, some to more: But Mr. *Mason* swears to the full Number of twenty Blows at least, and that positively, but how many more, he doth not remember. But suppose it were so, yet the Matter is not so much,

but what may be justified by the Occasion given; and what would be a good Plea in Law, in an Action, will be the same upon pleading Not Guilty in this Case.

May it please your Lordship, The Occasion of Mr. *Bethel's* coming here was this; being about the chusing of Parliament-Men for this Borough, the Competitors were, Sir *Richard How*, Mr. *Rich*, Mr. *Bethel*, and Mr. *Smith*; there was a House wherein they appointed to poll, call'd the Artillery-House: When they came to take the Poll at this Place, where there is a Pair of Stairs which leads to the Door, the Manner of taking the Poll was thus; first to fill the House, by that Door to the Stairs, and after they had voted, to put them out at the other Door; this being the Occasion of the Battery, (however aggravated) will, to all that know it, or shall take the Matter into Consideration, seem a very shameful Thing to ground an Indictment upon. But this *Mason*, a very officious Man, who had no right to poll, (as himself confesses) and who might have spared the Trouble (for any Authority he had) of coming there; and it might have been better he had stayed at Home, by what he has sworn. This Man and one *Sam. Sams*, a hectoring Carman, were set upon the Stairs; and their Business was not (as they now pretend) to take Notice who were fit to poll, but to understand who were for Mr. *Bethel* and Mr. *Smith*, and those they did abuse, and push them down the Steps; which Mr. *Bethel* being informed of, came out of the House, and spoke civilly to them, and said, *Friends, What have you to do here? If you have not a right to poll, come down from the Place:* Which *Mason* refusing, the Defendant took him gently by the Hand, and led him down the Steps, giving neither Blow nor Push; we shall call Witnesses to prove this.—Now, for a Gentleman that stood as one of the Competitors for a Parliament-Man, at that Time, in that Place, he might do this to a Person that had nothing to do there: Nay, they themselves say, there ought not to be any Interruption at an Election; and that the Interruption was from themselves, and that occasioned the mighty Battery they make so much of. We shall call our Witnesses, and make this Matter appear to be our Case; and then, though *Mason* hath spoken of twenty Blows, if believed, as there is but little Reason for it, it will be sufficiently justified by the Witness we shall produce, and the Evidence we shall give in this Matter.

Call Mr. *Nath. Travers* Constable, Mr. *Benjamin Tarrant*, Mr. *Geo. Hampton*, Mr. *Mark Clark*, Mr. *Thomas Weekes*, Mr. *Benjamin Gerrard*.

Thompson. Let us begin with Mr. *Travers*. Mr. *Travers*, What Account can you give of the Matter?

Travers. May it please your Lordship, I remember it as if it were but just now; I was called out of the House, to come to this Door, hearing the People were in a very great Disturbance; I came to this *Robert Mason*, and said, *What do you there, to make this Disturbance, have you a right to poll?* He answered, *It may be I may.* I told him, *If he would not be civil, I should take a Course to indict him.*

Thompson. And what was he doing?

Travers. He was throwing People from both Sides with his Elbows. In this Time, a Report being carried to Sheriff *Bethel*, of a Person's Leg broken, and a Man like to be killed, Sheriff *Bethel* came to the Steps, and took him just by the

the Arm, thus—[*Shewing the Manner*]—and said, *Pray, Friend, what hast thou to do here, hast thou a right to Poll?* At first he said, *He had*; afterwards he said, *No*. Then said Sheriff *Bethel*, *Pray go about your Business*. Mr. *Bethel* gave no Blow, nor did so much as shew any Passion, or angry Countenance; and said no more: But others said, *Mason* was a rude Person, and that he deserved to have his Coat plucked over his Ears.

Thompson. Did you not hear Mr. *Bethel* say so?

Travers. No, but it was said by some of the Company.

Thompson. I ask one Question more—*Mason* said he had twenty Blows, what say you to that?

Travers. He had not one, upon the Oath that I have taken.

Thompson. Had he this Coat on, or no?

Travers. Truly I know not, I cannot tell; but he had a Badge, whereby he discovered himself to be some Gentleman's Servant.

Thompson. Was *Sams* there?

Holt. Mr. *Thompson*, is that a fair Question?

Thompson. I did it purposely to try your Observation; you would call to what others did long before the Battery, I must not ask if one was there at the Time of the Battery.

Holt. Did you not see Mr. *Bethel* on the Artillery-Ground, was not *Mason* pushed there?

Travers. I tell you, Sir, there was not one Blow given.

Holt. Then you did not see the Quarrel on the Ground?

Travers. I tell you, there was no Quarrel on the Ground: I stood on the Steps when Sheriff *Bethel* came; and the Sheriff, when he was half Way on the Steps, seeing the Waterman's Posture he was in, said, *Friend, have you any Thing to do to Poll; if you have not, why do you make a Disturbance?* He answered, *It may be I have, and it may be not*. Pray, *Friend*, said Sheriff *Bethel*, *if you have not, come down*. I went from thence about the Ground, and did not see the least Blow given, or any Appearance of Passion.

Thompson. Before Mr. *Bethel* came, how did this Man behave himself, did he not shout, and behave himself rudely?

Holt. Let him speak of himself, let not Words be put into his Mouth.

Thompson. Had he a red Coat on?

Travers. I cannot say it.

Thompson. Mr. *Tarrant*, what can you say?

Tarrant. I was on the Ground when the Sheriff came, I was at some Distance; but upon the Oath I have taken, I saw Mr. *Bethel* and the Waterman coming together, but I saw no Blow, and I am sure there was not one Blow given.

Mr. *Weekes*, give an Account of what you know.

Weekes. My Lord, I saw Sheriff *Bethel* when he came into the Ground, and went up the Steps; I made halte after him, and was there all the while, and there was nothing like a Blow; but all he did was to this Purpose—*Pray, Friend*, (said he) *if you have no right to Poll, go your Way, What have you to do here?* And I followed after him into the Artillery-Ground, and there was nothing of a Blow, or any Thing like it.

Thompson. You were there all the while?

Weekes. Yes, I was.

Thompson. Yet *Mason* saith, there were twenty Blows given.

Weekes. Upon the Oath I have taken, there was none, nor any Thing like it.

Holt. Mr. *Weekes*, do you live in *London*, or do you live in the Borough?

Weekes. Sir, I live in *London*.

Holt. What is this Witness to the Purpose then?

Thompson. May not a Man live in *London*, and be a good Evidence here? Notwithstanding, call Mr. *Gerrard*.

Mr. *Gerrard*, what can you say?

Gerrard. I was in the Ground before Mr. *Bethel* came out of the Polling-House; and I saw this Waterman, and *Sam. Sams*, thrusting of People down, that seemed to be for Mr. *Bethel* and *Smith*, crying, *How and Rich*.

Weekes. My Lord, my Memory failed in this Point; but, upon the Oath I have taken, what that Gentleman swears, it is true.

Thompson. Pray, Sir, (as you seem to be a sober Man) were any Blows struck by Mr. *Bethel*?

Gerrard. I went with Sheriff *Bethel* there at that Time, and asked the Waterman what he had to do there? I cannot well tell what Answer he made; but Mr. Sheriff said, *If you have no right to Poll, pray go about your Business*. Upon the Oath I have taken, he did not strike one Blow, no more than he doth now, standing in this Court before your Lordship.

Lord Mayor. Was there any pushing or thrusting by Mr. *Bethel*?

Gerrard. Upon my Oath, my Lord, not any.

Thompson. And you say you were there all the while, and saw no Disturbance given by Mr. *Bethel*?

Gerrard. I am sure there was not.

Thompson. Had he this Coat on, or no; or had he not a Campaign Coat on?

Gerrard. To the best of my Remembrance he had a Campaign Coat on, and I believe he had.

Thompson. Mr. *Hatfield*, pray give an Account of what you know of the Matter.

Hatfield. There were two Men which I saw in red Coats, which pushed down the People that came to poll for Mr. *Bethel*, before Mr. *Bethel* came; and had not Mr. *Bethel* come to appease the Tumult, I do believe there had been much Mischief done by them and *Sams*.

Thompson. Upon the Oath you have taken, were any Blows given?

Hatfield. No, Sir, there were none.

Thompson. Were there any Blows given by Mr. *Bethel*?

Hatfield. No, Sir, not one; for Mr. *Bethel* being informed of the Incivility of *Mason* and *Sams*, Mr. *Bethel* came civilly to them, and intreated them to come down, and bid them be gone, and not make a Disturbance.

Mulloy. Call *Lawrence* again, to shew that *Mason* did not make the Disturbance.

Lawrence. I saw *Robert Mason*, and the Party with him, behave themselves very civil; and the Disturbance that was proceeded from the other Party.

Thompson. This is the same Man we had but now, he is called to witness again; a pretty Way of multiplying Witnesses: I appeal to Mr. *Mason* himself, whether this be not the same Man you called once before?

Thompson. My Lord, and you Gentlemen of the Jury, I think the Case is plain, and needs no

Arguments : I shall only take Notice how careful these Men are (as they pretend) to keep the King's Peace. The Matter you see, in short, is, Mr. *Bethel* (who stood for a Parliament-Man of this Place, and at the same Time bore an eminent Character, as Sheriff of the City of *London*) upon Information given of the Disturbance made by this *Mason*, and of the Unfairness of their Proceedings, only came civilly, and took him by the Arm, persuading him to come away, and make no Disturbance. And this is the Truth of the Case, and the mighty Battery they pretend to. Now, suppose that when People are in such a Croud, and upon such an Occasion, there were some Pushes (as is the utmost here pretended) could this be a sufficient Matter to ground an Indictment upon? No, Gentlemen, no: This Indictment, and the Design of it, is to raise a Dust, and (if possible) to cast Reflections on Mr. *Bethel*; but 'tis more than they can do in Point of Law, by any Matter here proved, if *Mason's* Witnesses do swear true: Yet you see how *Mason* behaves himself, crying *How* and *Rich*, striking down all that came between *Sam. Sams* and him; so they broke the Peace, and raised the Disturbance themselves. And in that Case, any Man (and why not Mr. *Bethel*?) might have taken him, and carried him before a Magistrate, and have justified it. But now, for the Credit of the Thing: You see that none swears it but *Mason* himself; but even he swears to that Impossibility, so over-reaches the Matter, through the Excess of his Passion in Swearing, that no one can believe him; if he had sworn modestly, as the rest did, to two or three Pushes, it might have been credited; but to twenty Blows, no one can believe it; neither doth any one of his own Witnesses swear like him, or of so much as one Blow given: So there is not one Word *Mason* saith can be credited.

Then, my Lord, admit it to be so, yet you saw Mr. *Bethel* was not the Person that first began this Disturbance: Now, if the other Party had been indicted and tried (as indeed it had been much more fit they should) we could have proved much against them.

And as to the Fact, and Manner of what Mr. *Bethel* did, it was no more than coming in a civil Manner, asking whether he had a Right to poll; when he said no, he took him civilly by the Arm and led him down; and this is a justifiable Assault, being the Nature of the Thing required a Necessity of somewhat of Action in it. I appeal to you of the Jury, whether here be any Cause for this Indictment, or Colour of Reason for you to find it?

Holt. Gentlemen of the Jury, you have heard the Evidence on both Sides, and the Question is, Whether in your Consciences, you can disbelieve eight Witnesses, that swear positively to the Battery, and believe those Witnesses that did not see it? if you acquit Mr. *Bethel*, you must necessarily convict eight Persons of Perjury: But if you do not find for Mr. *Bethel*, the other Witnesses cannot be convicted of Perjury; for how can Men swear (though they were there all the Time) that they did not see? Possibly they might be very honest Men, and present at the Time, and yet not see Mr. *Bethel* strike, and so not swear to it: But our Witnesses swear very true; I hope you will be guided by Sense and Conscience, and not by Spectators Humours, and Apprehensions, that come here and hiss in a Court of Justice. Now,

eight Witnesses swearing it, I do appeal to the Court, whether in Matters of this Nature, one Witness for the Affirmative, be not more valid than many of the Negative?

They take Notice of the Impossibility, and why, because they swear (as they say) at an extravagant Rate, that Mr. *Bethel* gave him twenty Blows.

Gentlemen, if Mr. *Bethel* will beat a Man extravagantly, it is not Extravagancy to swear it. Now, *Mason's* Evidence is confirmed by all the rest produced, and no Contradiction: If one swear to ten, and another to two, and another to three, is this inconsistent? No, Gentlemen, it is evident those Men swear cautiously and fearfully; for if otherwise, they could swear to as many as Twenty, as *Mason* hath done. Who is the best Judge, he that felt the Blows, or they that swear there was not one given? He that felt them, I am sure.

Gentlemen, it was in a Croud, 'tis possible they may not see all; yet their Evidence is a concurring Circumstance.

Next I come to the Point of Law, how a Man that is a Candidate at an Election, can beat any Man that stands in his Way; I do not understand that to be Law. If any Man had beaten Mr. *Bethel*, he might have beaten him again in his own Defence; but there was no such Thing, Mr. *Bethel* saw no Disturbance himself, but was informed of it, and so became too officious; though he was Sheriff of *London*, yet he was not an Officer there; for he was not a Constable there; and it was a Constable's Office, and he only could have seized him; and not a Constable neither, unless he had seen the King's Peace broken.

And as to what Mr. *Thompson* saith, that it is impossible that such an Election should be carried on without some Bustle. It's true, in a Croud, Men jostling one another, and by Accident strike another down, it's no Battery: But is it necessary for Mr. *Bethel* to thump a Man on the Breast? Is it necessary for Mr. *Bethel* to beat a Man with his Cane? Is it necessary for Mr. *Bethel* to give a Man twenty Blows? Is it necessary for Mr. *Bethel* to pluck a Man's Coat off his Back? Is it necessary to an Election? It is not necessary; and so being not necessary, is not by Law justifiable. Gentlemen, as Mr. *Thompson* saith, it is a Case of Example; I say so too; and it is fit Persons that will do such Things, should be made an Example.

Justice *Pys* afterwards summ'd up the Evidence, and told the Jury (as Mr. *Holt* the Counsellor for the King had before well observed) that they were to have Regard to the positive affirmative Evidence, *Mason* having sworn positively to several Blows that were struck by Mr. *Bethel*, and that eight Witnesses had sworn in the Affirmative; and that though there were seven Witnesses produced by Mr. *Bethel*, which were on the negative Part; yet they were to observe, that the Law did not allow of those Negative Evidences. But for that so many had sworn in the Affirmative, that they saw a Thing done, and as many swear that they saw it not; he could not tell what to say, but to leave it to the Jury, saying, that one Affirmative was better than forty Negative Oaths.

So the Jury went out, and in a very short Time were pleased to find the Indictment, and brought Mr. *Bethel* in Guilty.

Then Mr. Bethel's Council moved in Arrest of Judgment, for that no Indictment lay for the Words, and the Court for that Reason staid the Judgment, as to that Part of the Indictment, and gave Judgment only as to the Assault and

Battery, and fined Mr. Bethel five Marks. Upon which, the Council for the King moved to have him taken into Custody, until he paid the Fine; which he presently paid, and so was discharged.



CVIII. *Proceedings at the Old-Baily, upon the Bill of Indictment for High-Treason against Anthony Earl of Shaftesbury* *, November 24, 1681. 33 Car. II.

The GRAND JURY.

| | |
|--------------------------|--------------------|
| Sir Samuel Barnardiston, | Thomas Parker, |
| John Morden, | Leonard Robinson, |
| Thomas Papillon, | Thomas Shepherd, |
| John Dubois, | John Flavell, |
| Charles Hearle, | Michael Godfrey, |
| Edward Rudge, | Joseph Richardson, |
| Humphrey Edwin, | William Empson, |
| John Morrice, | Andrew Kendrick, |
| Edmund Harrison, | John Lane, |
| Joseph Wright, | John Hall. |
| John Cox, | |

The OATH.

YOU shall diligently enquire, and true Presentments make of all such Matters, Articles, and Things, as shall be given you in Charge, as of all other Matters and Things as shall come to your own Knowledge, touching this present Service; the King's Council, your Fellows, and your own, you shall keep secret; you shall present no Person for Hatred or Malice; neither shall you leave any one unpresented, for Fear, Favour, or Affection, for Lucre or Gain, or any Hopes thereof; but in all Things you shall present the Truth, the whole Truth, and nothing but the Truth, to the best of your Knowledge.

So help you GOD.

L. C. J. **G**entlemen of the Jury, we are Pemberton. all met here, in one of the most solemn Assemblies of this Nation; it is upon the Execution of Justice upon such as shall be found Offenders, and guilty of the Breach of the King's Laws.

This Commission by which we sit, and you are summoned, doth in it's Nature extend to all Offences whatsoever, against the Laws of the Land, Treasons, Misprisions of Treasons, Felonies, and all other Crimes and Offences against the King and his Government, such as are vulgarly called *Pleas of the Crown*; they all fall under our Cognizance and your Enquiry in a general Manner. But I must tell you, there is a particular Occasion for this Commission at this Time. His Majesty having Information of some evil traiterous Designs against his Person and Government, has thought fit to direct a due Examination of them, and that

the Persons may be brought to condign Punishment who shall be found guilty thereof. You must not therefore expect any general and formal Charge from me: Truly, I came hither this Morning, with an Apprehension that you had had your Directions given you before, by the Recorder; for it is our usual Way, not to come until the Juries are sworn in this Place, and their Directions given them; but since I find it otherwise, I take it to be my Duty to say something to you, but shall not go about now to make any such formal Charge, as in Commissions of this Nature is wont to be done; nor to give an Account of all Offences that fall under your Enquiry of a Grand Inquest, impannell'd by Virtue of such a Commission at large; nor must you expect I should acquaint you with all the Crimes that you may enquire of as such an Inquest.

I shall content myself so far, as on the sudden I can recollect my Thoughts, to acquaint you with the Nature of those Bills; with the Enquiry whereof, you shall at present, upon this Occasion, be troubled, and your Duty concerning this Enquiry. I hinted to you at first, that they are Matters of High-Treason, which is a Crime of the greatest and highest Nature of any Crime that can be committed against Man: Other Crimes, as Felonies, Riots, Trespasses, and Things of that Nature, they may occasion Disorders and Troubles in a State or a Kingdom; but I must tell you, Treason strikes at the Root and Life of all: It tends to destroy the very Government, both King and Subjects, and the Lives, Interest, and Liberties of all, and therefore has always been looked upon as a Crime of the most notorious Nature that can be whatsoever, and accordingly Punishments have been appointed for it of the highest and severest Extremity. There was at Common Law great Variety of Opinions concerning Treason, and there were many Disputes about it, what should be Treason, and what not; and therefore it was thought fit, by the Wisdom of our Ancestors, to have a Law to declare Treason; and by the Statute of the 25th of *Edward III.* there was a plain Declaration made of what was Treason, and what not: By that Law, *For any one to compass, imagine, or intend the Death of the King,* (for I will give you no more of that Statute, nor concerning the Sense thereof, than may be for your Purpose now) I say, by that Law, *to compass, imagine, or intend the Death of the King, and to declare it by Overt-Act, or to levy War against the King,* were declared (amongst other Things in

* *Burnet's History of his own Times, Vol. I. p. 508.*

that Statute mentioned) *to be High-Treason*: And this hath obtained for Law among us ever since; and by that standing Law, nothing is to be accounted Treason, but what is therein particularly declared so; but upon many emergent Occasions, there hath been several other Laws, as the Case hath required now and then, for to declare and bring other particular Crimes within the Compass of Treasons: So there was a Law made in Queen Elizabeth's Reign, for enacting several Crimes to be Treasons, during her Life; which was made upon the Occasion of the inveterate Malice of the *Roman Catholics* against her and her Government; and so there hath been in other Kings Reigns, upon other Occasions.

Amongst the rest, it was thought fit, by the Parliament assembled here, in the 13th Year of this present King, to make a particular Law for the enacting and declaring several Crimes to be Treasons, during this King's Life; they had great Grounds, and too much Occasion for it, and so they express it in the Preamble of that Law. The Wounds which the then late Treasons had made, that had so far obtained in this Kingdom, were then still bleeding, ripe, and scarcely closed; many traitorous Positions, and many seditious Principles were spread, and had obtained and gained footing among the People of this Kingdom; and the Parliament had Reason to believe that where they had been so maliciously bent against the King and his Family, and had taken off his Father, and maintained so long and dangerous a War against him, almost to the utter Destruction and Extirpation of him, and all his good Subjects, and of his, and all our Interests, Properties and Liberties, and had almost destroyed a flourishing Kingdom: Here they had Reason, I say, to be careful, to prevent the like Mischiefs for the future; therefore, Gentlemen, they did think fit to make a new Law for this Purpose; and whereas the Law before was, that it should be Treason to compass, imagine, or intend the Death of the King, so as it were declared by Overt-Act; now they thought it would be dangerous to stay till an Overt-Act should declare the Intention: For when they had seen such malicious and evil Designs against the King and supreme Authority; and that they had prevailed so far, as to murder one King, and banish another; and had gone a great way in the Destruction of the Government of this Kingdom, absolutely to root it quite out; they had Reason then, as much as they could, to prevent the Designs before they should grow full ripe, and vent themselves in Overt Acts; therefore it was enacted by that Statute, made in the 13th Year of this King's Reign, "That if any one
" should compass, imagine, or intend the Death
" of the King, or his Destruction, or any bodily
" Harm that might tend to his Death, or De-
" struction, or any maiming or wounding his
" Person, any Restraint of his Liberty, or any
" Imprisonment of him; or if any should design
" or intend to levy any War against him, either
" within the Kingdom, or without; or should
" design, intend, endeavour, or procure any fo-
" reign Prince to invade these his Dominions, or
" any other of the King's Dominions, and should
" signify or declare this by any Writing, or by
" any Preaching or Printing, or by any advised,
" malicious Speaking, or Words, this shall be
" High-Treason."

Now this hath altered the former Law greatly,

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especially in two Cases: First, as to levying of War; the Intention was not Treason before, unless it had taken Effect, and War had been actually levy'd: and then, as to the designing and compassing the King's Death, that was not Treason, unless it was declared by an Overt-Act: and as to the imprisoning, or restraining of the Liberty of the King, they of themselves alone were not High-Treason: But now by this Law these are made Treason, — by this Law, during his Majesty's Life; and the very designing of them, whether they take Effect, or not take Effect, though it be prevented (before any Overt-Act) by the timely Prudence of the King and his Officers— though it should be timely prevented, that there is no Hurt done, yet the very Design, if it be but uttered and spoken, and any ways signified by any Discourse; this (Gentlemen) is made Treason by this Act; and this hath wrought very great Alteration in the Case of Treason now; formerly it was said, and said truly enough, that Words alone would not make Treason; but since this Act, Gentlemen, Words, if they import any malicious Design against the King's Life and Government, and traitorous Intention in the Party, such Words are Treason now within this Act: And this Act was made with great Prudence, and with great Care, to take off that undue Liberty that Men had taken to themselves; in those Times of Licentiousness, People had taken to themselves an undecent and undue Liberty to vent all their seditious and malicious Minds one to another, without any Restraint at all: Therefore now, Gentlemen, you must consider, that Words, if they signify or purport any traitorous Intention or Design in the Party, either against the King or his Government; either to restrain his Liberty, or imprison him, or to do him any bodily Hurt, or any Crime of that Nature; this is Treason within this Act of Parliament.

Look ye, Gentlemen, now, as to the Indictments that shall be brought before you, you are to consider these Things: 1. Whether the Matter contained in them, and which you shall have in Evidence, be Matter of Treason within the former, or this Act of Parliament? And here, if you doubt of it, then you must advise with us that are commissioned by his Majesty, to hear and determine these Crimes; and in Matters of Law we shall direct you: And you are to enquire if there be two Witnesses that shall testify the Matters in Evidence to you; for without two Witnesses no Man is to be impeached within these Laws; but if there be two Witnesses that shall testify to you Matters to make good the Indictments, then you have Ground to find the Indictments. But I must tell you, as to this Case of two Witnesses, it is not necessary that they should be two Witnesses to the same Words, or to Words spoken at one Time, or in the same Place; that is not necessary: if one be a Witness to Words that import any traitorous Design and Intention, spoken at one Time, and in one Place; and another testify other seditious and traitorous Words spoken at another Time, and in another Place; these two are two good Witnesses within this Statute, and so it hath been solemnly resolved by all the Judges of *England*, upon a solemn Occasion.

Look ye, Gentlemen, I must tell you, That that which is referred to you, is to consider, whether, upon what Evidence you shall have given unto you, there be any Reason or Ground for the

King to call these Persons to an Account; if there be probable Ground, it is as much as you are to enquire into: You are not to judge the Persons, but for the Honour of the King, and the Decency of the Matter, it is not thought fit by the Law, that Persons should be accused and indicted, where there is no Colour nor Ground for it; where there is no Kind of Suspicion of a Crime, nor Reason to believe that the Thing can be proved, it is not for the King's Honour to call Men to an Account in such Cases: Therefore, you are to enquire, whether that that you hear be any Cause or Reason for the King to put the Party to answer it. You do not condemn, nor is there such a strict Enquiry to be made by you, as by others, that are sworn to try the Fact, or Issue: A probable Cause, or some Ground, that the King hath to call these Persons to answer for it, is enough, Gentlemen, for you to find a Bill, 'tis as much as is by Law required. Gentlemen, you must consider this, That as it is a Crime for to condemn innocent Persons, so it is a Crime as great to acquit the Guilty; and that God that requires one of them, requires both; so that you must be as strict in the one, as you would be in the other. And let me tell you, if any of you shall be refractory, and will not find any Bill, where there is a probable Ground for an Accusation, you do therein undertake to intercept Justice; and you thereby make yourselves Criminals, and Guilty, and the Fault will lie at your Door. You must consider, Gentlemen, you are under a double Obligation here to do Right; you are under the Obligation of *Englishmen*, as we are all Members of one great Body, of which the King is Head; and you are engaged, as *Englishmen*, to consider, That Crimes of this Nature ought not to go unpunished: Then you have an Oath of God upon you, you are here sworn to do according to what the Evidence is. Now therefore, if you have two Witnesses of Words that may import a treasonable Design or Intention in any of those Parties, against whom you shall have Indictments offered to you, you are bound both by the Law of Nature, as you are Members of this Body; and by the Law of God, as you have taken an Oath upon you, for to find those Bills.

Gentlemen, Compassion or Pity is not your Province, nor ours in this Case; there is no Room for that, in Enquiries of this Nature; that is reserved to an higher and superior Power, from which ours is derived: Therefore, Gentlemen, I must require you to consider such Evidence as shall be given you, and to be impartial, according to what you shall hear from the Witnesses, if you have Ground, upon what Evidence you shall have given to you, to believe, that there is any Reason or Cause for the King to call the Persons named in such Indictments, as shall be tendered to you, to answer for what is objected against them therein, you are to find those Bills; that is all that I shall say to you; only pray God to direct you in your Enquiry, that Justice may take Place.

[Then a Bill of High Treason was offered against the Earl of Shaftesbury; and Sir Francis Withins moved, That the Evidence might be heard in Court.]

L. C. J. Gentlemen of the Jury, you hear it is desired by the King's Council (and that we cannot deny) that the Evidence may be publickly

given, that it may not be hereafter in the Mouths of any ill-minded Persons abroad, to scatter any Mistakes or Untruths up and down; or to slander the King's Evidence, or to say any thing concerning them that is not true: Therefore, we cannot deny this Motion of the King's Council, but desire that you will take your Places, and hear the Evidence that shall be given you.

[The Jury then desired a Copy of their Oath, which the Court granted, and then they withdrew. After some little Time they returned, and then the Clerk called them by their Names.]

Foreman. My Lord Chief Justice, it is the Opinion of the Jury, that they ought to examine the Witnesses in private, and it hath been the constant Practice of our Ancestors and Predecessors to do it; and they insist upon it as their Right to examine in private, because they are bound to keep the King's Secrets, which they cannot do, if it be done in Court.

L. C. J. Look ye, Gentlemen of the Jury, it may very probably be, that some late Usage has brought you into this Error, that it is your Right, but it is not your Right in Truth: For I will tell you, I take the Reason of that Use for Grand Juries to examine the Witnesses privately and out of Court, to comply with the Conveniences of the Court; for generally upon such Commissions as these are, the Business is much; and at Goal-Deliveries there are a great many Persons to be indicted and tried, and much other Work besides, of other Natures, to be done: And if at such Times, we should examine all Businesses publickly in the Court, it would make the Business of these Commissions of a wonderful great Length and Cumbrance. Therefore the Judges, for the Conveniency of the Matter, have allowed, that Witnesses should go to the Jury, and they to examine them; not that there is any Matter of Right in it, for without Question, originally all Evidences were given in Court: The Jury are Officers and Ministers of the Court, by which they enquire, and Evidence sure was all given in Court formerly; and the Witnesses still are always sworn in Court, and never otherwise. And, Gentlemen, I must tell you, 'tis for your Advantage, as well as for the King's, that it may be sure, that you comply with your Evidence, that you do nothing clandestinely; therefore 'tis for your Advantage that this is done, and the King likewise desires it. Now I must tell you, that if the King require it of us, and it is a Thing that is in it's Nature indifferent, we ought to comply with the King's Desire, to have it examined in Court; you shall have all the Liberty that you can have in private; what Question soever you will have asked, yourselves shall ask it, if you please, and we will not cramp you in Time, nor any thing of that Nature. Therefore, Gentlemen, there can be no kind of Reason why this Evidence should not be given in Court. What you say concerning keeping your Counsels, that is quite of another Nature, that is, your Debates, and those Things, there you shall be in private, for to consider of what you hear publickly. But certainly it is the best Way, both for the King, and for you, that there should, in a Case of this Nature, be an open and plain Examination of the Witnesses, that all the World may see what they say.

Foreman. My Lord, if your Lordship pleases, I must beg your Lordship's Pardon, if I mistake in any Thing, it is contrary to the Sense of what the

the Jury apprehend. First, They apprehend that the very Words of the Oath doth bind them, it says, *That they shall keep the Counsels, and their own Secrets*: Now, my Lord, there can be no Secret in publick; the very Intimation of that doth imply, that the Examination should be secret; besides, my Lord, I beg your Lordship's Pardon if we mistake, we do not understand any Thing of Law.

Mr. *Papillon*. Your Lordship is pleased to say, that it hath been the common Usage and Practice; sometimes, my Lord, we have heard, that that hath been the Law of *England*, that hath been the Custom of *England*: If it be the ancient Usage and Custom of *England*, that hath never been altered from Time to Time, and hath continued so, we desire your Lordship's Opinion upon that; as we would not do any Thing that may be prejudicial to the King, so we would not do the least that should be prejudicial to the Liberties of the People; if it be the ancient Custom of the Kingdom to examine in private, then there is something may be very prejudicial to the King in this publick Examination; for sometimes in examining Witnesses in private, there come to be discovered some Persons guilty of Treason, and Misprision of Treason, that were not known, nor thought on before. Then the Jury sends down to the Court, and gives them Intimation, and these Men are presently secured; whereas, my Lord, in case they be examined in open Court publickly, then presently there is Intimation given, and these Men are gone away. Another Thing that may be prejudicial to the King, is, that all the Evidences here, will be foreknown before they come to the main Trial upon Issue by the Petty-Jury; then if there be not a very great deal of Care, these Witnesses may be confronted by raising up Witnesses to prejudice them, as in some Cases it has been: Then besides, the Jury do apprehend, that in private they are more free to examine Things in particular, for the satisfying their own Consciences, and that without Favour or Affection; and we hope we shall do our Duty.

L. C. J. Look ye, Mr. *Papillon*, it is reasonable that we should give you our Advice in this Case: I must tell you, if you had considered of what I had said before, I thought I had obviated these Objections: First, as to what you do say that you are bound to conceal your Counsels, and the King's Secrets, that is very true; as to your Counsels, that is, your Debates, you are bound to conceal them: As to the King's Secrets, so long as he will have them kept secret, you are bound to keep them so too; but it doth not deprive the King of the Benefit of having it publick, if he have a Desire for it; you don't break your Oath, if the King will make it publick; you don't make it publick; 'tis the King does it. Then as to that that you do say, that you apprehend the common Usage of the Kingdom to be a Law; that is true, Mr. *Papillon*, in some Sense; a constant and uninterrupted Usage goes for a Law among us; but I thought I had told you before, that both of ancient and later Times there have been Examinations of the Witnesses in Court, in Cases of this Nature; and we are not without Precedents of it every Year, every Term, continually from Time to Time, Evidence is heard in Court by the Grand-Jury; it is as usual a Thing with us, as any Thing, if it be desired,

nothing more frequent, or more common: I never heard it denied, or stood upon by any Grand-Jury, in my Life, till of late here; you may be instructed with a thousand Precedents, for I am sure it is a common and ordinary Case, upon such Occasions, if desired, to hear the Evidence in Court.

Look ye, Gentlemen, as to that Care that you have of the King's Affairs, the King has Reason to take it well that you are so careful for them; and that you are so mindful of his Concerns, he hath a great deal of Reason to think well of you for it: And, Gentlemen, consider this, that his Majesty's Council have certainly considered of this Evidence, before they brought this to a publick Enquiry; or else it would be a hard Thing if they should come raw, and not know what the Witnesses can say; for though you are the Jury to hear the Witnesses, yet you must consider, that the King's Council have examined whether he hath Cause to accuse these Persons, or not; and, Gentlemen, they understand very well, that it will be no Prejudice to the King to have the Evidence heard openly in Court; or else the King would ne'er desire it.

Foreman. My Lord, the Gentlemen of the Jury desire that it may be recorded, that we insisted upon it as our Right; but if the Court over-rule, we must submit to it.

L. C. J. Here are enough Persons to take Notice of it; to make Records of such Things, is not usual; it is not our Business here to record every Thing, that every Man will desire to be recorded: We can record nothing but what is in order to the Proceedings, but Notice enough is taken of it; you need not fear but that there will be Witnesses enough.

L. C. J. *North*. Gentlemen, I must say something to fortify what my Lord Chief Justice has said: If any of us had been of a different Opinion, we would have spoken it; the same Thing was stood upon, and discoursed on the last Sessions, and then all the Judges were of this Opinion, and in what all the Judges agree too, you should acquiesce. I must tell you from my own Experience; where the King will, he ought to have it kept secret: I have not known it done publickly in the orderly Course of Business; but I have often known where it hath been desired by those which prosecute for the King, that Evidence hath been given openly; and I never knew it denied: If any of my Brothers think otherwise, I desire they would speak; but, I tell you, as to my Experience, this is the Case.

Mr. Sheriff *P*. I desire the Witnesses may be kept out of the Court, and called one by one.

L. C. J. It is a Thing certainly, that the King's Council will not be afraid of doing; but Sheriffs do not use to move any Thing of this Nature in Court, and therefore 'tis not your Duty, Mr. Sheriff, to meddle with it.

Sheriff *P*. It was my Duty last Time, my Lord, and appointed.

* *Mr. Att. Gen.* You were acquainted 'twas not your Duty last Time, and you appear against the King. * *Sir Rob. Sawyer.*

Then the Indictment was read.

London ff. **T**HE Jurors for our Sovereign Lord the King, upon their Oaths presented,

sent, that Anthony Earl of Shaftesbury, late of the Parish of St. Martin's in the Fields, in the County of Middlesex, as a false Traitor against the most illustrious, and most excellent Prince, our Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France, and Ireland, King, his natural Lord, the Fear of God in his Heart not having, nor weighing the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him our said Sovereign Lord the King, should, and of Right ought to bear, wholly withdrawing, and with all his Strength intending the Peace and common Tranquillity in this Kingdom of England, to disturb, and War and Rebellion against our said Sovereign Lord the King, to stir up and move, and the Government of our said Sovereign Lord the King, within this Kingdom of England, to subvert, and him our said Sovereign Lord the King, from the Title, Honour, and regal Name of the Imperial Crown of his Kingdom of England to depose and deprive, and him our said Sovereign Lord the King to Death and final Destruction to bring and put, the 18th Day of March, in the three and thirtieth Year of our Sovereign Lord Charles II. now King of England, and divers other Days and Times, as well before as afterwards, in the Parish of St. Mary le Bow, in the Ward of Cheap, London, traiterously compassed, imagined and intended the Death and final Destruction of our said Sovereign Lord the King, and the ancient Government of his Kingdom of England, to change, alter, and wholly to subvert, and him our said Sovereign Lord the King, from the Title, Honour, and kingly Name of his Imperial Crown of this Kingdom of England to depose and deprive, and War and Rebellion against our Sovereign Lord the King, to move and levy within this Kingdom of England; and his said most wicked Treasons, and traiterous Compasses, Imaginations and Purposes aforesaid, to fulfil and perfect, he the said Anthony Earl of Shaftesbury, as a false Traitor, with divers armed Men, Subjects of our said Sovereign Lord the King, then being, maliciously, traiterously and advisedly, did provide and prepare to be aiding to him the said Earl of Shaftesbury, to fulfil and perfect his Treasons aforesaid. And his said wicked Treasons, traiterous Compasses, Imaginations and Purposes, the sooner to fulfil and perfect, he the said Anthony Earl of Shaftesbury as a false Traitor, with one John Booth, and other Subjects of our said Lord the King, then and there traiterously assembled, met and consulted; and the same wicked Treasons, and traiterous Compasses, Imaginations and Purposes aforesaid, then and there to the said John Booth, and other Persons, to the Jury unknown, in the hearing of divers Liege Subjects of our Sovereign Lord the King, then and there present, openly, publicly, maliciously, traiterously and advisedly did say and declare, and to persuade and induce the said John Booth to be aiding and assisting in his said Treasons, Compasses, Imaginations, and Purposes, he the said Anthony Earl of Shaftesbury, as a false Traitor, maliciously, advisedly, and traiterously, the said 18th Day of March, in the three and thirtieth Year of the Reign of our said Sovereign Lord the King, at the Parish and Ward aforesaid, within the City of London aforesaid, falsely, advisedly, subtilly, maliciously and traiterously said, asserted and declared, that in a short Time the Parliament was to sit at Oxford, and that he the said Anthony Earl of Shaftesbury had inspected the Elec-

tions, and considered the Inclinations and Dispositions of the Generality of the Members of Parliament elected; and that he the said Anthony Earl of Shaftesbury was satisfied that the Parliament would insist upon three Matters, (to wit) The Bill of Exclusion against the Duke of York; the abolishing the Act of Parliament of the 35th of Queen Elizabeth, and the passing of a new Bill for uniting Protestant Dissenters; with divers other good and wholesome Bills. To which he the said Anthony Earl of Shaftesbury was certain that the King's Majesty would refuse to give his Royal Assent; and therefore he the said Anthony Earl of Shaftesbury did expect that there would be a Division between the King's Majesty and the Parliament; and that many noble Lords and worthy Members of the lower House did concur in the same Opinion; and they were resolved to insist upon the passing of these Bills: And if the King's Majesty refused, that they (meaning him the said Anthony Earl of Shaftesbury, and the said noble Lords and worthy Members) and provided Strength to compel the King's Majesty to grant thereunto: And that for his Part, he the said Anthony Earl of Shaftesbury had provided stout Men to be commanded by Captain Wilkinson, (meaning on Henry Wilkinson, one of the Subjects of our said now Sovereign Lord the King;) of which he the said Anthony Earl of Shaftesbury had agreed that the said John Booth should be one.

And further, the Jurors aforesaid upon their Oaths do say, that the aforesaid Anthony Earl of Shaftesbury, his said wicked Treasons, and traiterous Imaginations, to fulfil, perfect, and bring to effect afterwards; to wit, the said eighteenth Day of March, in the thirty third Year of his said now Majesty's Reign, in the Parish and Ward aforesaid, within the City of London aforesaid, as a false Traitor in the presence and hearing of divers liege People of our said Sovereign Lord the King, then and there present, openly and publicly, falsely, maliciously, advisedly and traiterously said, asserted, published, and with a loud Voice declared, that our said now Lord the King was a Man of no Faith, and that there was no trust in him; and that our said Lord the King deserved to be deposed, as well as Richard the Second, late King of England, deserved.

And further, the Jurors aforesaid upon their Oaths do say, that the said Anthony Earl of Shaftesbury, his said wicked Treasons, and traiterous Imaginations aforesaid, to be fulfilled and perfected, and brought to effect the said 18th Day of March, in the three and thirtieth Year of his said now Majesty's Reign, in the Parish and Ward aforesaid, in the City of London aforesaid, as a false Traitor, in the presence and hearing of divers liege Subjects of our said Lord the King then and there present, openly and publicly, falsely, maliciously, advisedly, and traiterously said, asserted, published, and with a loud Voice declared, that he the said Anthony Earl of Shaftesbury could never desist, until he had brought this Kingdom of England into a Commonwealth without a King, and that the said Anthony Earl of Shaftesbury, and all those that him the said Anthony Earl of Shaftesbury would assist, (and he knew many that would assist him the said Anthony Earl of Shaftesbury) would make England a Commonwealth as Holland was: and that he the said Anthony Earl of Shaftesbury, and other Traitors unknown, would live as in Holland, and that he our said Lord the King, and all his Family, should be rooted out.

And further, the Jurors aforesaid do say, that the said Anthony Earl of Shaftesbury, his said wicked Treasons, and traitorous Imaginations aforesaid, to be fulfilled, perfected, and brought to Effect afterwards, the said 18th Day of March, in the three and thirtieth Year of his said now Majesty's Reign, in the Parish and Ward aforesaid, in the City of London aforesaid, as a false Traitor, in the presence and hearing of divers liege Subjects of our said Sovereign Lord the King then and there present, openly, publickly, falsely, maliciously, advisedly, and traiterously said, asserted, published, and with a loud Voice declared, that our now Sovereign Lord the King was a Man of an unfaithful Heart, and not worthy to be trusted, and not fit to rule and govern, being false, unjust, and cruel to his People; and if he would not be governed by his People, that they (meaning him the said Anthony Earl of Shaftesbury, and other Traitors to the Jurors unknown) our said Sovereign Lord the King would depose, against his Allegiance and Duty, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c. and against the Form of the Statute in such Case made and provided, &c.

Sir Fr. Withens. Gentlemen of the Jury, This is an Indictment against the Earl of Shaftesbury; I shall not trouble you to open the Indictment, because the Evidence will be somewhat long, I shall only tell you which Way we shall go.—

L. C. J. North. I do not know whether you desire the Witnesses should be examined a-part, do you desire that, Gentlemen?

L. C. J. If you do desire it, Gentlemen, they shall, for Mr. Sheriff hath nothing to do with it; but if you do desire it, you shall have the Witnesses called one at a Time, and all the rest shall be put out of the Court.

Jury. My Lord, it is our desire.

L. C. J. We did deny it to Mr. Sheriff, because we are to keep Men within their Duty. Here it is not his Duty to meddle with any Thing of this Nature.

Foreman. My Lord, we desire we may have a List of their Names, and that they may be put a-part, that they may not hear what one another say.

Sir Fr. Withens. My Lord, there is one Part I would open.

L. C. J. There is no need for it at all — You shall have their Names told you as they are called.

Mr. Harrison. My Lord, we pray we may have a List of their Names.

L. C. J. If you desire it, you may have it; but it will be no Advantage, for you will hear them named, and you may write them down as they come in.

Mr. Godfrey. We desire a List; for you told us, the King's Council had examined them, and knew who they were.

L. C. J. I'll tell you, the Court is to have their Names indorsed, for they don't bring Witnesses in *bugger-mugger*, and I suppose they are indorsed here.

L. C. J. North. It is want of Experience that makes you ask this; you are told, they are indorsed here.

L. C. J. Look you, Sir Samuel Barnardiston, you must have the Indictment itself out with you, and all their Names written upon the back of that Indictment; but that you should desire to have the Names of them in a Roll beforehand,

I do not know, if there be any Reason that you can assign for it.

Foreman. One Thing more I have to say, That we may see the Warrant by which the Earl of Shaftesbury was committed, for there are some other Questions depend upon it.

L. C. J. That we cannot do, for the Lieutenant of the Tower hath that Warrant, which he keeps for his Indemnity; we cannot demand it from him upon any Terms: Any Thing that you do desire of us, let us know; what is reasonable, and within our Power, we will grant; and for other desires of yours, we tell the Reason why we cannot grant them.

Mr. Papillon. My Lord, if your Lordship pleases, I will only acquaint your Lordship, that the Gentlemen of the Jury do seem to be of Opinion, that your Lordship gives them leave to examine the Witnesses; and the Jury, because they would not put the Court to too much trouble, do desire, that the Witnesses should come one after another, and make their Information, and then the Jury would withdraw, to consider what proper Questions to ask them, and come down again.

L. C. J. You shall do so, Gentlemen. Look you, we did, at the Request of the last Jury, use the same Method; after they had heard the Witnesses what they gave in Evidence, they came and desired leave to ask them some Questions, which we granted, and they were all called one by one, and they did examine them; you shall do so, Gentlemen.

Mr. Att. Gen. I was informed this Morning there were several Questions to be asked of several Witnesses to direct the Grand-Jury how to demean themselves.

L. C. J. Mr. Attorney, the Request is reasonable enough.

Mr. Harrison. We desire they may be examined one by one.

L. C. J. North. I suppose you don't stand upon it for these Witnesses, they are Clerks of the Council, that only prove a Paper which it seems was found in the Earl of Shaftesbury's House: If you will, they may go out and be called in again.

Harrison. We humbly beg it.

Mr. Godfrey. I was Foreman of the Jury at Fitz-Harris's Trial, and it was complained he had hard Measure from some Irish Witnesses, and that it was severe that they should be examined in Troops: It hath troubled me since that I did not put them out and examine them a-part.

L. C. J. Look ye, Gentlemen, you that are Witnesses for the King, you must go all out, and come in as you are called, one by one.

[Which done, William Blathwait, Esq; was produced, and a Paper delivered in.]

Mr. Saunders to Mr. Blathwait. I pray, Sir, give an Account how you came by that Paper.

W. Blathwait. This Paper, Gentlemen, was put into my Custody by Mr. Gwyn, Clerk of the Council, who seized it among others in my Lord Shaftesbury's House: He gave me the Key of the Room where they were kept, and it hath been altogether in my Custody, except for a short Time that it was delivered to Mr. Secretary Jenkins, by whom it was re-delivered to me. Mr. Gwyn having seized Papers at my Lord Shaftesbury's House brought them to the Council-Office, and

put them into one of the Rooms, and locked the Door, and delivered the Key to me. When I was ordered by the Committee of Examinations, I fetched up the Trunks and Papers, and brought them into the Council-Chamber, and the Trunks were opened in the Presence of some of the Lords of the Council, and in the Presence of Mr. *Wilson*, who was appointed to attend there on the behalf of my Lord *Shaftesbury*, and he was always present when the Papers were taken out of the Trunks and Bags: This was one Paper, and was taken out upon the 6th of *July* in the Presence of Mr. *Wilson*, who took particular Notice of this Paper, as may appear by his own Hand. The Trunk was sealed, it was a great Trunk, and it was opened in the Presence of Mr. *Samuel Wilson* and Mr. *Starkey*, who were both appointed by my Lord of *Shaftesbury*.

L. C. J. Was this Paper found in one of those Trunks or Boxes that was delivered to you by Mr. *Gwyn*?

Mr. *Blatbwait*. This Paper was taken out of a Velvet Bag which Mr. *Gwyn* had put into the great Trunk, which Trunk was sealed and opened in the Presence of Mr. *Wilson* and Mr. *Starkey*.

Sir *Fr. Witbens*. Did you find that Paper in the Trunk?

Mr. *Blatbwait*. I took this and others out of the Velvet Bag which was in the great Trunk.

L. C. J. Call Mr. *Gwyn* to give an Account where he found these Papers. Look you, Gentlemen of the Jury, you hear what his Evidence is, would you ask him any Thing while he is here?

[*Then Mr. Gwyn coming in.*]

L. C. J. Where had you the Trunk you delivered to Mr. *Blatbwait*?

Gwyn. My Lord, on the second of *July*, by a Warrant from the Secretary, I was commanded to go to my Lord *Shaftesbury*'s House to search his Papers, I did there meet with a great many Papers, and I took a Note how I had parted them, and into what Parcels I had put the Papers; there were several Sorts of them in a great Hair Trunk, and there was a Velvet Bag in which I put some Papers that were loose in my Lord's Closet above Stairs. My Lord *Shaftesbury* as soon as I came, gave me the Keys, and told me where his Closets were, and said he would seal them up with his own Seal: I staid for it, but he sent me word by a Gentleman that I might put my own Seal if I pleased: I did put my Seal upon the Trunk, but afterwards being sent another Way, I delivered it to this Gentleman Mr. *Blatbwait*: Whether any of the Papers were taken out afterwards I cannot tell.

L. C. J. Mr. *Gwyn*, that your Evidence may be the better understood, tell me; were all the Papers that were in that Velvet Bag in my Lord *Shaftesbury*'s Closet?

Mr. *Gwyn*. In my Lord *Shaftesbury*'s Closet above Stairs.

L. C. J. This you swear; when you delivered it to Mr. *Blatbwait*, all the Papers were in that Bag; was there nothing in that Bag, but what you took in my Lord *Shaftesbury*'s Closet?

Mr. *Gwyn*. Nothing, my Lord.

L. C. J. Look you, Gentlemen, you do observe that this Paper was put into the Bag by Mr. *Gwyn*, and Mr. *Blatbwait* swears he found it in the Bag,

and delivered it to Mr. Secretary *Jenkins*; therefore if you please Mr. Secretary *Jenkins*, you shall be sworn whether that Paper was delivered to you by Mr. *Blatbwait*, because we would clear it as we go, whether that be the Paper was delivered to Mr. Secretary *Jenkins* by Mr. *Blatbwait*: I pray, Sir, was that the Paper that Mr. *Blatbwait* did deliver into your Hands?

Mr. Sec. *Jenkins*. My Lord, this is the Paper, this Paper was delivered into my Hands by Mr. *Blatbwait* in the Council-Chamber. I cannot say that this numerical Paper was taken out of the Velvet Bag; but there were a great many Papers taken out of it, and I having the Honour to be at the Examination of the Papers; this was ordered to be put (and was put) into my Hands, with nine Papers more.

L. C. J. Was it out of your Hands?

Mr. Sec. *Jenkins*. It was out of my Hands; for upon *Monday* last I took out the nine Papers intrusted with me, and this tenth out of my Desk, and caused my Servant to mark them by Numbers. Then I sealed up these Papers and sent them to Mr. *Graham*. Mr. *Graham* brought them back again to me without any Alteration whatsoever; then I put this tenth Paper into the Hands of Mr. *Blatbwait* again. All the while it was in my Hands, it was under Lock and Key, and none of my Servants saw it, but the Time it was numbered; and no manner of Alteration was made in this, or any other of the nine Papers.

L. C. J. Now it appears this was the Paper taken in my Lord *Shaftesbury*'s Closet.

Then this Paper was read as followeth.

WE the Knights, &c. finding to the Grief of our Hearts, the Popish Priests and Jesuits, with the Papists and their Adherents and Abettors have for several Years last past pursued a most pernicious and bellish Plot, to root out the true Protestant Religion as a pestilent Heresy, to take away the Life of our gracious King, to subvert our Laws and Liberties, and to set up arbitrary Power and Popery.

And it being notorious that they have been highly encouraged by the Countenance and Protection given and procured for them by J. D. of Y. and by their Expectations of his succeeding to the Crown, and that through crafty Popish Councils his Designs have so far prevailed, that he hath created many and great Dependents upon him by his bestowing Offices and Preferments both in Church and State.

It appearing also to us, that by his Influence mercenary Forces have been levied and kept on foot for his secret Designs contrary to our Laws; the Officers thereof having been named and appointed by him, to the apparent Hazard of his Majesty's Person, our Religion and Government, if the Danger had not been timely foreseen by several Parliaments, and part of those Forces with great Difficulty, caused by them to be disbanded at the Kingdom's great Expence: And it being evident, that notwithstanding all the continual Endeavours of the Parliament to deliver his Majesty from the Counsels, and out of the Power of the said D. yet his Interest in the Ministry of State and others have been so prevalent, that Parliaments have been unreasonably prorogued and dissolved when they have been in hot pursuit of the popish Conspiracies, and ill Ministers of State their Assistants.

And that the said D. in order to reduce all into his own Power hath procured the Garrisons, the Army and Ammunition, and all the Power of the Seas

and Soldiery, and Lands belonging to these three Kingdoms to be put into the Hands of his Party and their Adherents, even in Opposition to the Advice and Order of the last Parliament.

And as we considering with heavy Hearts how greatly the Strength, Reputation and Treasure of the Kingdom both at Sea and Land is wasted and consumed, and lost by the intricate expensive management of these wicked destructive Designs; and finding the same Councils after exemplary Justice upon some of the Conspirators, to be still pursued with the utmost devilish Malice, and Desire of Revenge; whereby his Majesty is in continual Hazard of being murdered to make way for the said D.'s Advancement to the Crown, and the whole Kingdom in such Case is destitute of all Security of their Religion, Laws, Estates and Liberty, sad Experience in the Case, Queen Mary having proved the wisest Laws to be of little Force to keep out Popery and Tyranny under a Popish Prince.

We have therefore endeavoured, in a parliamentary Way, by a Bill for the Purpose, to bar and exclude the said Duke from the Succession to the Crown, and to banish him for ever out of these Kingdoms of England and Ireland. But the first Means of the King and Kingdom's Safety being utterly rejected, and we left almost in Despair of obtaining any real and effectual Security, and knowing our selves to be intrusted to advise and act for the Preservation of his Majesty and the Kingdom, and being persuaded in our Consciences that the Dangers aforesaid are so eminent and pressing, that there ought to be no Delay of the best means that are in our Power to secure the Kingdom against them. We have thought fit to propose to all true Protestants an Union amongst themselves by solemn and sacred Promise of mutual Defence and Assistance in the Preservation of the true Protestant Religion, his Majesty's Person and royal State, and our Laws, Liberties and Properties, and we hold it our bounden Duty to join ourselves for the same Intent in a Declaration of our united Affections and Resolutions in the Form ensuing.

I A. B. do in the Presence of God solemnly promise, vow, and protest to maintain and defend to the utmost of my Power, with my Person and Estate, the true Protestant Religion, against Popery and all Popish Superstition, Idolatry, or Innovation, and all those who do or shall endeavour to spread or advance it within this Kingdom.

I will also, as far as in me lies, maintain and defend his Majesty's Royal Person and Estate; as also the Power and Privilege of Parliaments, the lawful Rights and Liberties of the Subject against all Inroachments and Usurpation of arbitrary Power whatsoever, and endeavour entirely to disband all such mercenary Forces as we have Reason to believe were raised to advance it, and are still kept up in and about the City of London, to the great Amazement and Terror of all the good People of the Land.

Moreover J. D. of T. having publickly professed and owned the Popish Religion, and notoriously given Life and Birth to the damnable hellish Plots of the Papists against his Majesty's Person, the Protestant Religion, and the Government of this Kingdom; I will never consent that the said J. D. of T. or any other, who is or hath been a Papist or any ways adhered to the Papists in their wicked Designs, be admitted to the Succession of the Crown of England; but by all lawful

Means and by Force of Arms, if Need so require, according to my Abilities, will oppose him, and endeavour to subdue, expel, and destroy him, if he come into England, or the Dominions thereof, and seek by Force to set up his pretended Title, and all such as shall adhere unto him, or raise any War, Tumult, or Sedition for him, or by his Command, as publick Enemies of our Laws, Religion and Country.

To this End we and every one of us whose Hands are here underwritten, do most willingly bind our selves and every one of us unto the other jointly and severally, in the Bond of one firm and loyal Society or Association, and do promise and vow before God, that with our joint and particular Forces we will oppose and pursue unto Destruction all such as upon any Title whatsoever shall oppose the just and righteous Ends of this Association, and maintain, protect and defend all such as shall enter into it in the just Performance of the true Intent and Meaning of it. And lest this just and pious Work should be any Ways obstructed or hindered for want of Discipline and Conduct, or any evil-minded Persons under Pretence of raising Forces for the Service of this Association, should attempt or commit Disorders; we will follow such Orders as we shall from Time to Time receive from this present Parliament, whilst it shall be sitting, or the major Part of the Members of both Houses subscribing this Association, when it shall be prorogued or dissolved; and obey such Officers as shall by them be set over us in the several Counties, Cities, and Burroughs, until the next meeting of this or another Parliament; and will then show the same Obedience and Submission unto it, and those who shall be of it.

Neither will we for any Respect of Persons or Causes, or for Fear, or Reward, separate our selves from this Association, or fail in the Prosecution thereof during our Lives, upon Pain of being by the rest of us prosecuted, and suppressed as perjured Persons, and publick Enemies to God, the King, and our Native Country.

To which Pains and Punishments we do voluntarily submit ourselves, and every one of us without benefit of any Colour or Pretence to excuse us.

In Witness of all which Premises to be inviolably kept, we do to this Writing put our Hands and Seals, and shall be most ready to accept and admit any other hereafter into this Society and Association.

Sir Fran. Wimbens. This Paper is very plausibly penned in the beginning, and goes a great way so, but in the last Clause but one, there they come to perfect levying War; for they do positively say, they will obey such Officers as either the Parliament or the major Part of them, or after the Parliament is dissolved, the major Part of those that shall subscribe this Paper shall appoint; they will obey all such Officers.

Foreman. Pray what Date is this Paper of?

Sir Fran. Wimbens. It was after the Bill for the Exclusion of the Duke of York, for it says, that way failing, they would do it by Force.

Foreman. There is no Hand to it at all?

Sir Fran. Wimbens. No, none at all. One thing I had forgot, that they would join to destroy the mercenary Forces about London, which is downright levying of War against the King and his Guards.

Mr. *Saunders*. The Design of it is pretended to oppose Popery and arbitrary Power, and destroy the Papists; but that doth not seem so much in it's self: But when you have heard the Evidence you will hear who were the Papists that were to be destroyed by this Army.

John Booth.

Jury. He has stood in the Face of the Court all this while.

L. C. J. When did Mr. *Booth* come down?

Jury. He was here before we went up, my Lord, and hath been here ever since.

L. C. J. Look ye, Gentlemen, they tell you he was carried away, and came down but now.

Mr. *Booth*. No, my Lord, I came down but now.

Mr. *Shepherd*. My Lord, we desire a List of their Names, that we might know who is here, and who is not.

Mr. *Godfrey*. This Man hath been here all this while, and all the others may be here, for ought that I know.

Sir *Fran. Withens*. In the first Place give an Account what Discourse you have had with my Lord *Shaftesbury*.

L. C. J. Speak out, that the Jury may hear you.

Mr. *Booth*. I will speak as loud as I can. In the Month of *January*, about the middle of *January* last, I was introduced into my Lord *Shaftesbury's* Acquaintance by one Captain *Henry Wilkinson*. I say, I was introduced into my Lord *Shaftesbury's* Acquaintance by one Captain *Henry Wilkinson*. This Captain *Wilkinson* is a *Yorkshire* Gentleman, he has known me above twenty Years, and he and I have had familiar Conversation a long while; so waiting upon my Lord *Shaftesbury*, our first Business that we went about was, Captain *Wilkinson* did pretend to receive a Commission from my Lord *Shaftesbury*, and some others of the Lords Proprietors of the Palatinate of *Carolina* to be their Deputy-Governor; and he told me the Prospect of that Journey, was like to be very hopeful, and that his Interest was good, and that he could procure me a Commission, and such a Number of Acres for Quality and Quantity as I did desire: And he said he did not design to go over immediately in his own Person, but he would send his eldest Son, and his youngest Son, and if he went, he would return again as Occasion should serve. I consented to him in all this, and we discoursed it divers times together, and we went to my Lord *Shaftesbury* on purpose to receive Commissions in order to this Purpose. The first time I went there was the Earl of *Craven*, Sir *Peter Colleton*, and one *Archdell*, a Quaker; I thought him a Quaker because he kept his Hat on, when the rest of the Lords stood bare in Civility to him. We discoursed the Thing about *Carolina*. After this, and before, Captain *Wilkinson* and I had several Discourses about the Juncture of Affairs in these Times, though I knew him to be an old Royalist, and one that served his Majesty and his late Father very much in the Wars; yet being under great Disappointments of Preferments at Court, and missing the Reward he expected from the King, his Heart was turned another Way, and he had repented himself of those Services he had done for the King; and was become a Man of another Opinion; and there was some Inducements upon me that I was inclined to the same Opinion: So he expressed himself to my

Lord, and so from one Thing to another we went on in Discourse, and related the several Parliaments, and the proroguing them, and the Disappointments of the People, and the Fear of Popery and arbitrary Power: And this was not done once, nor twice, nor ten times; for I cannot enumerate them, for we kept a continual Club, and conversed together familiarly near three quarters of a Year. After this first Acquaintance with my Lord *Shaftesbury* at his House, I did frequently go with Captain *Wilkinson*, and between *Christmas* and *March* four or five times: And I observed this, that when we came to my Lord *Shaftesbury's* they were cautious in our Accession: In the first Place it was to be known by some of the Servants, who he was in Company with: And in the second Place the Names were sent up, who they were, that were to speak with him: Sometimes we had an Alehouse at the *Bell* in the same Street: (I forget the Name of the Street) we staid at the Alehouse till we had a fit Time, Captain *Wilkinson* had Acquaintance with his Porter and his Gentleman of his Chamber: And so we often discoursed. And from the Concerns of *Carolina* we fell to Matters more publick concerning the State. I remember he would use to inveigh sharply against the Times, and look upon himself as not so valued, nor so respected, nor in those Places and Dignities as he expected he should be, and seemed to be discontented, and he did fear that Popery would be introduced, and arbitrary Power: And when Parliament-men were to be elected, there came every Week News, bringing Particulars of such Boroughs and Counties as had made particular Elections for Members for Parliament; whether Knights, Citizens, or Burgesses: And he would often consider that Parliament that was to sit at *Oxford*, what they were as to their Inclinations and Dispositions: And he said, they would insist upon the same Things the other Parliaments before had done. Particularly he said the Parliament would never grant the King any Assistance of Money, nor satisfy him in those Things that he desired, unless he gave the People first Satisfaction in those Things that they insisted on before, and he believed would insist upon after; and particularly the Bill of excluding the Duke of *York* from the Crown: Another was the abolishing the Statute of the 35th of *Elizabeth*: And the third was giving his Royal Assent for the Passing a new Bill, whereby all Dissenting Protestants, Nonconformists, or what you will term them, should be freed from those Penalties and Ecclesiastick Punishments that they are subject to by the present established Law: And he said, if these and some other wholesom Laws and Bills were passed by the Royal Assent of the King, he believed that when the People had received this Security and Satisfaction, that they would be very willing to grant the King such Accommodations of Money by Way of Assessment, or so, as his necessary Occasions should also require: But without this he believed, there would be a Breach between the King and the Parliament, and that they had ordered the Parliament should meet at *Oxford*, and not at this Metropolis at *London*, where they might go on without Fear of being over-awed: That this was an Intention to awe the Parliament. But he said, himself and divers noble Lords, and Members of the House of Commons had considered themselves and their own Safety, and that they judged

judged it dangerous to go to *Oxford*, where they were sure the Guards, the Retinue of the Court, and the Assistance of the Scholars (which usually incline to the Crown) might so over-awe the Parliament, that they might not so freely proceed in a Way for the Publick Good as they intended; and therefore he and others had considered with themselves, that it were fit for them to have Guards and send them thither; and to this Purpose he had established a matter of fifty Men, Persons of Quality, that he believed would have Men along with them; and he intrusted Captain *Henry Wilkinson* with the Command of these Men, and they were to come to *Oxford* at such a Time, and if there were any Breach between the King and the Parliament, or any Violence offered to any of these Members by the Guards, or Retinue of the Court, that then these Men with others that other Lords had provided, should repel his Force, by greater Force, and should purge the Guards of all the Papists and Tories, and such as were against the Protestant Religion, and the established Laws of the Land; and likewise these Men should be ready to assist himself, and these other Persons in his Confederacy, to purge from the King those evil Counsellors which were about him; particularly there were named, the Earl of *Worcester*, my Lord *Clarendon*, my Lord *Hallifax*, my Lord *Fewersham*, and Mr. *Hide*, now Lord Viscount *Hide*: And these Persons were looked upon to be dangerous, and gave the King evil Advice, and made him continue so very deaf to what the Parliament urged him to; and therefore they said they would not only purge the Guards, and repel that Force by a greater Force, but also take those Lords by Violence from the King, and bring the King to *London*, to the chief Metropolitan City, where those things should be established, which they designed for their Safety in these two Respects, for the preserving the Protestant Religion, and likewise for the keeping and defending us safe from arbitrary Power and Government. Upon this Captain *Wilkinson* did desire me that I would be one of those under his Command: This I did consent to. And he requested me further, that I would provide for myself Horse and Arms; and likewise Arms for my Man, and he would provide me a Horse for my Man. I did accordingly provide Arms for myself, and a good Stone-Horse for my self, and Arms for my Man before the Parliament did sit at *Oxford*. I think the 23d of *March*, I do not punctually remember the Day, and when the Parliament was set, we enquired and heard how things went on, and found that it was as my Lord *Shaftesbury* had predicted, that the Parliament did insist upon those very things that he told they would do, but never believed or imagined they would be so soon dissolved. Upon *Thursday* before the Parliament was dissolved, Captain *Wilkinson* told me he expected that very Week to have a Summons to go up to *Oxford* with those Men that were listed with him; but then *Saturday's* News came of the Dissolution of the Parliament, and therefore it took no further Effect. The whole Matter, the main Design was this, That my Lord *Shaftesbury* should have so many Men to attend him there for the Security of his Person, and likewise to repel the Force of the King's Guards, or any other Persons that followed the King; and also to remove from him those five Lords, and bring the King back to *London*, to establish those Laws that I have mentioned.

Sir *Fra. Withens*. Pray what Time did you discover this?

Mr. *Booth*. About six Weeks ago.

Sir *Fra. Withens*. Had you any Discourse with the Earl of *Shaftesbury* after Captain *Wilkinson* spoke with you, or before the Sitting of the Parliament.

Mr. *Booth*. I said before, that the first Motion of these fifty Men that were to be my Lord *Shaftesbury's* Guard came from Captain *Wilkinson*; but after this, when I went with Captain *Wilkinson* to my Lord *Shaftesbury*, the same thing was discoursed there. The last time I was with my Lord *Shaftesbury* was about a Week before he went to *Oxford*, about ten Days before the Parliament sat, or a Week, and then I heard the same Discourse from my Lord *Shaftesbury's* own Mouth.

Sir *Fran. Withens*. Had you any other Discourse with my Lord *Shaftesbury*?

Mr. *Booth*. I say I made three or four Visits between *Christmas* and *March*, and we had Discourse every time particularly about the King's Person, and if the King did refuse these Motions, that then these Men were to be taken from him, and he repelled with a greater Force, and be brought to it by Force.

Sir *Fran. Withens*. Did you ever make any Solicitation to any to make this Discovery?

Mr. *Booth*. Thus far I did, and I will tell you the whole Matter in that Point; there was one *Walter Banes*, an Acquaintance of mine, and I found that he had, at *Wilkinson's* Request, engaged himself in some Business that one *Brownrig* an Attorney in *Yorkshire* had writ to him about, concerning some Men that were to swear against my Lord *Shaftesbury*. I asked Mr. *Banes* what Men these were, he said, he thought they were *Irishmen*. I said, I don't know what Conversation in that Nature my Lord *Shaftesbury* might have with *Irishmen*, for I know none of them; but I am satisfied that he had Conversation tending to these Ends that you speak of with some *Englishmen*, and that I know. This Mr. *Banes* did take particular Notice of, and he was very frequently upon me to tell him what the Matter was, and I gave him some Intimation of it. Truly 'twas very much upon my Spirit, and I could not tell whether I was able to carry it through or not, or had better to let it alone as it was in Silence: But discoursing still more with him, and at the Result of that Discourse we had by Degrees, I did give him some Intimation of it. And after that upon second Thoughts I took a Resolution to discover it: And when I did discover it, I do here in the Presence of God declare, that no Mortal did know any thing of what I had to say, in reference to the King; nor did I make any more Applications in the World, but took Pen, Ink, and Paper, and writ it down, and sealed it under a Cover and sent it to the Council.

Sir *Fran. Withens*. Gentlemen of the Jury, would you ask him any Questions?

Mr. *Papillon*. The Jury told your Lordship before, that after all had been examined they would consider what Questions.

L. C. J. Where would you have these Witnesses that have been examined to stand?

Mr. *Papillon*. We leave to the Sheriffs to appoint a Place for them.

L. C. J. To keep them a-part 'tis utterly impossible, for we must have as many Rooms then as there are Witnesses.

Jury. Let one Man keep with them.

L. C. J. Empty that Place where they were the last Time, and let them stand there.

[*Edward Turberville.*]

Sir Fra. Withens. Mr. *Turberville*, have you had any Discourse with my Lord *Shaftesbury*?

Turberville. Yes, several times. In *February* last, I am not positive in the Time, but about the beginning of the Month, I waited upon my Lord *Shaftesbury*, about some Moneys. I waited upon him to have his Advice how I might come by't, and to gain my Lord *Shaftesbury's* Letter in my behalf to the President of the Council to stand my Friend, and he said, there was little Good to be had from the King, as long as his Guards were about him; for were it not for his Guards, we would quickly go down to *Whitehall* and obtain what Terms we thought fit. Said I, my Lord, I suppose his Guards can't defend him from the whole Kingdom. His Lordship said that the Rabble were all of that Side, especially the People about *Wapping*, and *Aldersgate-street*; and the rich Men of the City would vote for Elections; but they could not expect they should stand by them in Case there should be any Disturbance, for they valued their Riches more than their Cause. And at *Oxford* I heard my Lord say again, he wondered the People of *England* should stickle so much about Religion, and that if he were to choose a Religion, he would have one that should comply with what was apt to carry on their Cause.

Mr. Saunders. Had you any other Discourse with him at any other Time?

Mr. Turberville. I told you all that is material that I can say to it.

[*John Smith.*]

Mr. Smith. My Lord, I only beg a Word or two from your Lordship, of some Reflections cast upon me.

L. C. J. Go to your Evidence.

Mr. Smith. My Lord, this is something to my Evidence.

L. C. J. You may take another Time for that.

Mr. Smith. My Lord, it hath been reported about in Coffee-houses and Taverns, that I should swear there was a general Design against his Majesty; and that I swore it before the King and Secretary of State; and that I also swore it at the Trial of *Mr. Colledge* and *Mr. Rowse*: I take it upon my Oath I never swore any such Thing, neither can I swear there was a general Design by the City, or the Parliament against the King.

L. C. J. Speak what Discourse you have had with my Lord *Shaftesbury*.

Mr. Smith. My Lord, I suppose it is past all Doubt, that I have been very often with my Lord *Shaftesbury*; and I have often in his Discourse observed that he spake very irreverently and slightly of the King; sometimes saying he was a weak Man, and sometimes saying he was an inconstant Man; a Man of no firm or settled Resolution; and a Man that was easily led by the Nose, as his Father was before him, by a Popish Queen, which was the Ruin of his Father: This was both in publick and in private. I have also observed sometimes in his Discourse, something that he mentioned of the Earl of *Essex*; and that the King should declare, that the Earl of *Shaftesbury*

was not satisfied to be an ill Man himself, but got over the Earl of *Essex* too: this the Earl of *Shaftesbury* declared publickly in his own House. Another Story was of the Rebellion of *Scotland*, that the King should say that the Earl of *Shaftesbury* was the chief Promoter of that Rebellion; and when this was told my Lord *Shaftesbury*, that he should send Word back again to the King, "I am glad (says he) that the King sees not his own Danger, nor what he runs himself into: and pray tell him, that, if I were to raise a Rebellion, I could raise an otherguess Rebellion than the Rebellion was in *Scotland*." But now, as to the particular Points I am to charge him with: I remember, my Lord, that my Lord *Shaftesbury* sent for me one Time, and that by one *Manly*; sometimes they call him Major *Manly*, sometimes Captain *Manly*; and this Man found me at *Mr. Bethel's* Club in *Newgate-street* at the *Queen's Arms*; and there he told me my Lord *Shaftesbury* would speak with me that Night. I immediately left the Club, and went to my Lord *Shaftesbury's*; and I was introduced into the Dining-Room, where there were two Gentlemen in Discourse with my Lord; and as soon as he saw me, he asked me how I did: I told him I was very well, and came in Obedience to his Lordship's Command to wait upon him; for Major *Manly* told me your Lordship had a mind to speak with me: He said he had. Soon afterward, these two Gentlemen went away. Upon this my Lord turns about, *Mr. Smith*, said he, *Mr. Hetherington* was with me this Morning, and told me he was afraid that the *Irish* Witnesses would go over to the Court Party, and retract what they had said formerly. My Lord, says I, I know no Person can better and with more Ease hinder that than your Lordship, by procuring some small Allowance for them; for they complain much of Poverty. Says he, Master *Hetherington* has the Charge of them, and hath a special Care of them, and I believe they don't want. My Lord, says I, I know nothing of that, he knows what Provision he hath made for them. This is the Thing, said my Lord, that I would have you do; they stand in great Awe of you, and you must persuade them from going nigh that Rogue *Fitz-gerald*, that great Villain, that is pampered up, and maintained by the King and the Court-Party, to stifle the Plot in *Ireland*. My Lord, says I, do you think the King would be at such vast Charges for to bring over Witnesses, and at last maintain Men to stifle this Plot, for that is the Way to stifle the Plot in *England* too, as well as that? Says he, what is this frequent Dissolutions and Prorogations of Parliament for, but to stifle the Plot here, and to hinder the Lords in the *Tower* to come to a Trial? This is a strange Thing, my Lord, said I, when he gave *Dr. Oates*, *Mr. Bedloe* and *Mr. Dugdale* such large Allowances to prosecute this Plot. Says my Lord, that is nothing, that may hold for a Year or two, he may take it off when he will, but the chief Means are put by, whereby we might find out the Depth of this Plot; and if *Mr. Dugdale* and *Dr. Oates* be knocked on the Head, then where is this Plot? then there will come an Act of Oblivion for them, and all Things will be well as they were before. My Lord, said I, this is very strange to me. I can give you Instance of it, says he, when I was lately in the *Tower*, I told some, I saw Popery coming in, and that it was hard to prevent it. I

am sorry to hear it, said I, but what would you have me do with these *Irish* Witnesses? Says he, persuade them not to go near *Whitehall*, nor this *Fitz-gerald*. And, said he, one Thing more I would have you mind, Mr. *Smith*, that if the King were not as well satisfied with the coming in of Popery as ever the Duke of *York* was, do you think the Duke of *York* would be so much concerned in the bring-in of Popery as he is? I am sorry for it, my Lord, if it be so. After this I parted with my Lord *Shaftesbury*, with full Instructions from him to those *Irish* Witnesses. I met Mr. *Hetherington* the next Morning, and I told him that I was with my Lord *Shaftesbury*: Says he, I know your Business, and would have you meet us at the *Sun* Tavern in the Afternoon. My Lord, I went according to the Time appointed, and met him at the *Sun* Tavern between six, or seven, or eight of the Clock, as near as I can remember. When I came to them I began to open those great and horrid Crimes that I heard Mr. *Fitz-gerald* accused of, that he was a Man came to discover a Plot, and disowned it here, and retracted all he had said. I told them what a Crime this was. In short, my Lord, they promised never to go near the Man. I parted that Night and came to my Lodging, and the next Morning Mr. *Hetherington* and one Mr. *Bernard Dennis* came to my Lodging and told me, that this *Bernard Dennis* was ready to give in Information against *Fitz-gerald*, that he had tampered with him to forswear all he had sworn before, I went presently with Mr. *Hetherington* and Mr. *Dennis* to my Lord Mayor, who was then Sir *Patience Ward*; after we had told the Business to Sir *Patience Ward*, Sir *Patience* asked this *Dennis* if there were any other Persons present. Yes, says he, there was. Says Sir *Patience*, you are upon your Oath, if you know not the Nature of an Oath, I will tell you. The Information was drawn up; the Copy of this Information I carried to my Lord *Shaftesbury* and shewed it him, he read it, and was very well pleased with it, and said, Mr. *Smith*, don't you see the Villainy of that Man and that factious Party, and that the King runs the same Steps as his Father did before him, how can any Thing of this Nature be done, without the King and the Court pampered him up? My Lord, said I, I think now the Thing is clear. Ay, says he, these are the very same Steps that his Father followed when he was led by his Popish Queen, and the poor Man doth not see his Danger. I parted from my Lord, and came and gave an Account of this very Discourse to the Club in *Newgate-street*, and they were glad of it, and I told what my Lord *Shaftesbury* said, that the King would never be quiet till he came to his Father's End, he followed the same Steps. Another Thing that I have observed particularly before the Parliament went to *Oxford*; I went to see him, and we fell into some Discourse, and my Lord said there was great Preparations made, and a great many gathered together upon the Road between *London* and *Oxford*. My Lord, said I, what is the meaning of that? Any Body may see, says he, that is only to terrify the Parliament to comply with the King's Desire, which I am sure the Parliament never will, for we are as resolute now as ever; and more resolute, for we see clearly what the King aims at, and that is to bring in Popery: Which I told several Years ago, and when I was last in the *Tower*; but, says he, we have this

Advantage of him, if he offer any Violence to us, (for we expect it) that we have the Nation for us, and we may lawfully oppose him, and he will meet with a very strong Opposition; for all that come out of the Country, shall be well horsed and well armed, and so we shall be all; and here is the City which now has a Question in Debate among them, whether they shall bear the Charge of their own Members or no, but they are willing to do it, and send so many Men to wait on them, and if we oppose the King, as we may do, for it hath been done in former Times, the whole Nation is to stand by us, and as I said when I was in the *Tower*, I would die, before I would ever bring in Popery or any Thing of that Nature.

Jury. Repeat that again.

Smith. He said, that the King, if he offered any Violence at *Oxford* to the Parliament, he would meet with a strong Opposition, and that the Gentlemen that came out of the Country were well provided with Horse, Arms, and Men, to oppose him, and that they might lawfully do it if the King offered any Violence to them whilst they sat, and that the Nation stood by them, and that they did represent the Nation, and that for his Part he and all his Friends would do it to the utmost of their Power, and, as old as he was, he would be one that would oppose it to his Power. My Lord, said I, we can expect nothing but Confusion from this Parliament, in this Nature, for then we shall be involved in another Civil War, nothing else can put an end to our Miseries, or make this Nation a settled Nation, but a Civil War. Then, my Lord, said I, by this Means we shall make an end of Monarchy, or else enslave the Nation to Popery for ever. No doubt of one, says he, but we are sure of one, for the Nation is of our Side, and the City you know how they are, and where-ever they strike, I am sure the Nation will, and this I'll stand and die by. This is the Substance of what I have to say against my Lord *Shaftesbury*, and upon the Oath I have taken, I am sure I have not added a Word. One Word more I have to say, 'tis reported I have been hired and suborned, I do admire why this City of *London*, where there are as worthy Men, and as great Lovers of the King and Government as any in the World, should say any such Thing; I was never suborned by them, nor never took a Farthing of their Money, nor never took a Farthing of the King in my Life.

L. C. J. Who supposes it?

Mr. Smith. 'Tis in Print, my Lord, 'twas in the Book that came out last Night; it is supposed, my Lord, for it is in print.

L. C. J. I had reason to expect that there was no such Objection.

Brian Haines.

Mr. Saunders. Give your Knowledge of what Discourse you have heard concerning my Lord *Shaftesbury*.

Mr. Haines. Sir, I have heard him vilify the King very often, and he told me about the Narrative that I made about Sir *Edmundbury Godfrey's* Death, Mr. *Ivy* and I went to him one Day and he spoke to me of it, and I desired him not to expose my Person to the King's Anger, for I was sure he would never grant a Pardon to any Man that impeached the Earl of *Danby*.

Says

Says he, do no fear, if he doth not grant you a Pardon, he makes himself the Author of the Plot; and, says he, the Earl of *Essex*, my Lord *Maxfield* and I, we do all resolve, if you put it in Writing, we will go to the King, and beg a Pardon of his Majesty for you, and if he doth not grant it, we will raise the whole Kingdom against him; for, says he, he must not expect to live peaceably in his Throne, if he doth not grant it. For he makes himself Author of the Plot.

My Lord, said I, he hath dissolved so many Parliaments for the sake of the Earl of *Danby*, and prorogued so many Parliaments, therefore he will never grant me this Pardon. Says he, do not fear, 'tis the best Pretence we can have in the World, and if you will but put in Writing, and let me read it, that I may give my Opinion of it, the Work is done; and if he doth not do it, we are prepared to raise Arms against him. I was with him another Time after I made this Narrative, and he told me the two Mr. *Godfreys* were with the King at *Windsor*, and begged a Pardon of his Majesty for me, but the King would not grant it, but if he be an honest Man, let him lie at my Mercy, let him come in and declare what he knows. Said I, I would not have your Lordship expose my Cause in these Days. This is the best Time for it in the World, says he, if he doth not do it, he can't expect to be long King of *England*. Pray, my Lord, said I, what shall I do in the mean Time? I will go beyond Sea, said I. No, says he, don't leave the Kingdom, he dares as well be hanged as meddle with you. I desired him a second Time not to expose me to the King's Fury, and I prayed him to help me to a little Money to go beyond Sea, for I was sure I could not be safe in *England*. Says he, have a Care of yourself; but, says he, he dares as well be hanged as meddle with you. Then I was in close Conference with him one Day, and I gave him so exact an Account of all Transactions from King *Charles* the First's Reign, the Commencement of coming to the Crown, to this very Day, that he was mightily satisfied; finding by me that I was a Traveller, he was mightily pleased, and free with me. Pray, my Lord, what Model do you take, or intend to do? Says he, Do you not think but there are Families in *England* that have as great Pretences to the Crown as the King? Says he, there is the Duke of *Bucks*, in the Right of his Mother, she was descended from *Edward*, one of the *Edwards*, and in her Right he claims the Barony of *Ross*, he hath as great a Right to the Crown of *England*, as ever any *Stuart* of them all.

Jury. Speak that again.

Mr. *Haines*. I was in Conference with my Lord *Shaftesbury* one Day, and I gave him an exact Account of all Transactions, and I asked what they did intend to do with the Government, if they pulled the King down. Says he, do you think there are no Families in *England*, that have as much Pretence to the Crown as any of the *Stuarts*? I know none, my Lord. Says he, there is the Duke of *Bucks*, that is descended of the Family of the *Plantagenets*; he named some of the *Edwards*, and in her Right he should have the Barony of *Ross*, and in her Right he has as good a Title to the Crown of *England* as ever any *Stuart* had.

John Macnamarra sworn.

Sir *Fr. Withens*. Pray give an Account to the Jury of what Discourse you had with my Lord *Shaftesbury*.

John Macnamarra. My Lord, I was with my Lord *Shaftesbury* a little before he went to *Oxford*, before the Parliament sat there, and my Lord told me at that Time, that he would take Care, together with those that were with him at *Oxford*, for the Witnesses that were concerned in the Popish Plot.

Mr. *Harrison*. Speak out, pray, Sir.

John Macnamarra. My Lord told me he would take Care, with those that were with him, for the Witnesses that were concerned in the Popish Plot; after my Lord went to *Oxford*, I writ him a Letter, giving his Lordship to understand, that whereas his Lordship was pleased to promise, that he would take Care of the Witnesses, that he would be pleased to take Care of me, as well as the rest of the Witnesses; after my Lord came home from *Oxford*, I went to him, to see what was done. His Lordship was pleased to express himself and say, that the King was popishly affected and did adhere to Popery, and that he took the same Methods that his Father before him took, which brought his Father's Head to the Block, and we will also bring his thither; and told me also, that he told some Persons of Quality that this would fall out five Years before; at the same Time my Lord told me, that there was a Collection of Money made, and that the Meeting was at the *Sun Tavern*, and that there came a *Tory* Lord in to hinder their Proceedings, but says he, we do remove to *Ironmonger-Lane*, and says he, you shall hear further in a Fortnight. I came to my Lord a Fortnight afterwards, and his Lordship was pleased to tell me, that there was Provision made for the Witnesses, and that it was in the Hand of one Mr. *Rowse*, that was Servant to Sir *Thomas Player*; there was one Mr. *Ivy*, and I think my Brother was by too, when his Lordship spake these Words: He said that the King was a Faithless Man, that there was no Credit to be given to him, and that the Duchess of *Mazarine* was his Cabinet Council, who was the first of Womankind. This is all that I have to say, my Lord.

Sir *Fr. Withens*. Do you remember nothing at any other Time?

John Macnamarra. No.

Sir *Fr. Withens*. Did you hear any Thing about deposing the King?

John Macnamarra. Yes, he did at the same Time say, the King deserved to be deposed as much as ever King *Richard* the Second did.

Dennis Macnamarra.

Mr. *Saunders*. Tell these Gentlemen whether you have had any Discourse with the Earl of *Shaftesbury*.

Dennis Macnamarra. He said, my Lord, that the King was a Man that ought not to be believed, and there was no Belief in him, and that he ought to be deposed as well as King *Richard* the Second, and that the Duchess of *Mazarine* was one of his Cabinet Council, and that he did nothing but by her Advice.

Sir Francis Withens. Begin again.

L. C. J. Raise your Voice a little, for the Jury don't hear you.

Dennis Macnamarra. That the King is a Man that ought not to be believed, that there was no Belief in him, and that he ought to be deposed as well as King Richard the Second, and that the Duchess of Mazarine was his Cabinet Council, and that he did nothing but by her Consent.

L. C. J. Who was with you at that Time?

Dennis Macnamarra. There was Mr. Ivy and my Brother at his own House.

L. C. J. When was this?

Dennis Macnamarra. 'Twas at the latter end of March or the beginning of April.

Sir Francis Withens. You say Mr. Ivy was by at the same Time?

Dennis Macnamarra. Yes.

Sir Francis Withens. Call Mr. Ivy.

Jury. What Place was it in?

Dennis Macnamarra. In his own House.

Edward Ivy sworn.

Mr. Ivy. My Lord, soon after the Parliament was dissolved at Oxford, I was at my Lord Shaftesbury's House, where he was speaking against the King, and said, that he was an unjust Man, and unfit to reign, and that he was a Papist in his Heart, and would introduce Popery.

Jury. Say that again.

Mr. Ivy. I tell you I was at my Lord Shaftesbury's House, where he was then speaking against the King, saying, that he was altogether unjust, and not fit to reign, and he wondered he did not take Example by his Father before him, and did really believe that he was a Papist in his Heart, and intended to introduce Popery. I was sometimes after with him, and I told him one Haines had told me he had something to discover about the Death of Sir Edmundbury Godfrey and several other Things, and my Lord desired to see him, and I brought Mr. Haines to his House, and he desired him that what he had to say he would put in Writing, and he should have a Pardon, and that if the King did deny it, as he dares not deny it, but if he does, we will rise upon him and force him.

Sir Fr. Withens. Had you any other Discourse at other Times?

Mr. Ivy. Yes, I had other Discourse, but not to this Purpose.

Sir Fr. Withens. Was you frequently with him?

Mr. Ivy. I was frequently with him; he desired at the Time I was with him to bid Colledge to come to him, and I went and came again to Haines with Instructions how to proceed, and I took his Examination of him, and carried it to my Lord, and he desired it might be explained what he meant by the tall black Man, and, says he, if he does mean the King, he must explain himself, and speak of the King, or of the Duke of York, or the rest, and if he does, we will take Care of him as long as he lives, but unless he does, we will do nothing for him: And I was with him with my Lord Shaftesbury, and my Lord Shaftesbury did exclaim against the King.

Sir Fr. Withens. What Words did he speak?

Mr. Ivy. He said he was altogether an unjust Man, and not fit to reign, and that he believed he was a Papist in his Heart, and designed to introduce Popery, and therefore they designed to depose him, and set up another in his stead.

Sir Fr. Withens. Do you remember any Discourse of Richard the Second at that Time?

Mr. Ivy. No, Sir, I do not remember any Thing of it.

Bernard Dennis sworn.

Sir Francis Withens. Pray tell the Jury what Discourse you had with the Earl of Shaftesbury at any Time, and what it was.

B. Dennis. My Lord, I came upon a Design to make clear the Plot in general, as far as I have travelled, as in Ireland, France, Spain, Maryland, Virginia, and England, and upon that Account I was brought before a Justice of the Peace in Westminster, November last, this Time Twelvemonth, and examined before Justice Walcup, a Justice of the Peace, and from thence to the Committee of the House of Commons, of whom Colonel Birch (I believe he is here) was Chairman, and gave in my Evidence, and being called upon at the Trial of the Earl of Stafford, I was commended, as I suppose, to the Earl of Shaftesbury, and upon the Account he sent me word of it, by William Hetherington, who was then very intimate with the Earl of Shaftesbury, to my Knowledge; and William Hetherington came to me several Times, and he precisely was my Maintainer at that Time, that is, to find me whatever I wanted, and provide me my Lodging, and carry me to some Place where Accommodation might be more better for me. Upon this Account one Time the Earl of Shaftesbury sent to me desiring that I would wait upon him at his own House. I came to him, and there in the Gallery of his own House, walking very slowly, he told me what I gave in of the Plot in general was very good and sufficient, but as to the Queen and the Duke of York, that I should speak more home and positive against them; at least, that I might be a Corroboration to others in what they swore against them. This was all at that present Time, that the Earl of Shaftesbury spake to me, and he desired me to go home to his Lodgings. With that I went home, and within a Month, it may be, or thereabouts, he sent for me again, by the same William Hetherington, and William Hetherington told me, that the Earl of Shaftesbury would speak with me. So I came and waited upon his Lordship at his own House, and says he, Mr. Dennis, I understand that you are a Clergyman. Yes, my Lord, said I. And, says he, I would advise you to take a black Gown, and I will prefer you to a Benefice, 'till such Time as this Business is over; and, says he, at the End of this Business I will not fail to prefer you to a better, and in the mean Time I would advise you to take a black Gown; and this was a little, as I remember, after the Parliament was dissolved at Oxford; and he sent a Gentleman out of his own House along with me, to a Doctor of Divinity living hard by Lincoln's-Inn Fields, Dr. Burnet by Name, as I remember, and the Gentleman acquainted the Doctor what I was, and about what Occasion I came there; so the Doctor indeed discoursed with me very familiarly, and rendered Thanks to the Earl for recommending me into his Conversation rather than another's. What Discourse we had then was nothing to the Matter, it was about Matters of Conscience and Religion. But Mr. Colledge, that was the Joiner here in Town, and executed afterwards, being familiar with me, brought me to one Mr. Ferguson, a Minister, as I suppose of the Presbyterian Form, for he goes in their Grab as near as I can tell, and Mr. Ferguson

son at our first Meeting was in *Richard's* Coffee-House, in an upper Room one Pair of Stairs, and in some Company; and *Colledge* going to him brought him aside, and spake to him concerning me, and he came to me apart, and discoursed with me: From whence he brought me to a Bookseller's Shop, and bought for me the Articles of the Church of *England*, and in all these Discourses there was a Hand, as *Colledge* told me, of the Earl of *Shaftesbury*, who did procure him, and sent to *Dr. Burnet* to bring me that Way. I do not deny neither, that I had an Inclination before I left *Ireland*, and when I was in *Spain*, and when I was in *France*, for to become a Protestant, according to the Laws and Rules of the Church of *England*. The Force of what I have to say is this, the Earl of *Shaftesbury* one Day after all these Things were past, and after the Parliament were dissolved at *Oxford*, discoursing with me in his own House, Major *Manley* being in the same Room then, who lives beyond *Tower-Hill*, he asked me what was the present Occasion I came to him there? And it was pretty early in the Morning, and the Earl had a Barber to trim him in his Room. I told him my Occasion was then, that I was something low in Money, that I did a little want Money at that Time, and did not know to whom to speak for any Thing but his Lordship, and said, I came to tell you so. Well, said he, *Mr. Dennis*, I have appointed *Mr. Rowse*, *John Rowse* whom you know, for to give you and maintain you in Money; go to him especially once a Week, and he will give you Money, and, said he, *Mr. Dennis*, what is the Number of your Name in the Country, as near as you can tell, how many are you? My Lord, said I, to tell you exactly what Number they be of, I cannot at present, but within a little Time I may tell you. I believe really there may be upon the Matter three or four hundred able Men of my Name, in the County where I was born. Says the Earl of *Shaftesbury*, *Mr. Dennis*, I would very willingly have you to advise those of your Name, and those of your Friends for to be in a Readiness, whenever Occasion shall serve, and to stand by, if Occasion should be, for to assist the Commonwealth of *England*; for we do really intend to have *England* under a Commonwealth and no Crown; and, says he, we intend to live as we see *Holland* does, that is, to have a Commonwealth, and to have no supreme Head, particular Man, says he, or King, nor owe Obedience to a Crown; and, says he, we will extirpate the King, and all his Family as near as we can; and *Mr. Dennis*, says he, I do admire that your Nation should be such Fools as they are, for it is very certain that King *James*, Queen *Elizabeth*, King *Charles* the First, says he, and the King that now is, does wrong you to very Destruction; and, says he, if you had been under a Commonwealth, the Commonwealth would take more Pity of your Nation, and the Gentry of your Nation, than any do of them now, in this Time wherein the King governs, and upon this I do count the *Irish* Fools. This is all that I can say.

L. C. J. The King's Council declare they will call no more Witnesses, for they think they have called enough already, and there are several of them that do swear Words that are treasonable in themselves, if you do desire to ask any of the Witnesses any Thing, you shall have them all called one by one.

Foreman. My Lord, we will walk up again, and consider what Questions to ask, and come again presently.

Mr. Papillon. It seems they will call no more Witnesses than these.

L. C. J. Not against the Earl of *Shaftesbury*, being you are charged only with that.

Mr. Papillon. It is so, my Lord, but we pray we may be satisfied about the Statute upon which the Indictment is grounded. and that we may hear it read before we go up, because your Lordship speaks of two different Statutes, the 25th of *Edward*, and you mention the Statute of the 13th of this King; your Lordship in your Discourse to the Jury mentioned them both, we pray your Lordship to acquaint us upon what Statute it is grounded, whether upon both or one of them.

L. C. J. Look ye, Gentlemen, this is grounded upon the Statute of this King, though there is enough to find an Indictment of Treason upon the Statute of the 25th of *Edward* the Third. That which is Treason within the Statute of the 25th of *Edward* the Third, is Treason within this Statute, so this is the more copious Statute; for as I told you before, this Statute has enlarged that of *Edward* the Third in a great many Particulars; and therefore, look ye, Gentlemen, always consider this, when one Statute contains the Matter of another, and enlarges it, the Indictment is always upon the last Statute, that being the more copious Statute: But you are to consider both.

L. C. J. North. The Indictment is *Contra formam Statuti*, and it being *Contra formam Statuti*, it may be understood, *Statutorum* or *Statuti*, so that all Statutes that may be the Foundation of this Indictment you may go upon.

Jury. We desire to know whether any of these Witnesses stand indicted, or no?

L. C. J. Look you, Gentlemen, don't talk of this, but consider with yourselves, an Examination of Proofs concerning the Credibility of the Witnesses is not properly before you at this Time; for I must tell you, and inform you as to that, you are not to examine properly here concerning the Credibility of the Witnesses, that is not to be proved or controverted here before you, that is Matter upon a Trial by the Petty Jury, for there the King will be heard for to defend the Credit of his Witnesses, if there be any Thing that can be objected against them; it is proper for the Prisoner to do that, you are only to see whether the Statute be satisfied, in having Matter that is treasonable, and having it witnessed by two Men, by two Witnesses, who are intended *prima facie* credible, unless you of your own Knowledge know the contrary; for otherwise, you must consider what a Disadvantage this would be in all such Cases, if the Credibility of the Witnesses should be examined before the Grand Jury, where the King is not present, nor in a Possibility of defending the Credit of his Witnesses; nor is the Prisoner or the Party indicted present; that is a proper Objection when he comes upon his Trial; for all men are intended credible, till there are Objections against them, and till their Credits come to be examined one Side and the other.

Mr. Papillon. My Lord, if your Lordship thinks good, I will beg this; I desire your Lordship's Pardon, whether your Lordship doth not think that we are within the Compass of our own

Understanding and Consciences to give our Judgment?

L. C. J. Your own Understanding and Consciences, yes; but look ye, Gentlemen—

Mr. Papillon. If we are not left to consider the Credibility of the Witnesses, we cannot satisfy our Consciences.

L. C. J. Look ye, Gentlemen, you are to go according to the Evidence of the Witnesses; you are to consider of the Case according to the things alledged and proved, unless you know any thing your selves: But if any of you know any thing of your own Knowledge, that you ought to take into Consideration, no doubt of it.

Jury. Very well, my Lord.

L. C. J. The Grand Jury are to hear nothing, but the Evidence against the Prisoner; therefore for you to enter into Proofs, or expect any here, concerning the Credit of the Witnesses, it is impossible for you to do Justice at that Rate.

The Jury withdrew, and the Court adjourned till Three o'Clock.

L. C. J. Let the Witnesses be brought in one by one.

Foreman. We will first ask a Question of Mr. Gwyn.

Mr. Gwyn.

Foreman. Who put up the Papers?

Mr. Gwyn. I put up the Papers my self.

Foreman. Who went in with you?

Mr. Gwyn. None but my Lord's Servants, I think, were there: But I put up the Papers my self.

Foreman. Pray, Sir, whose Hand-writing is that Paper of?

Mr. Gwyn. Indeed, Sir, I cannot tell.

Foreman. How did it come into my Lord *Shafesbury's* Closet?

Mr. Gwyn. My Lord, this is a strange Question. Indeed, Sir, I can't tell; all the Papers that I found in that Closet I put into that Bag.

L. C. J. To satisfy the Jury, Was the Paper in the Closet before you came there?

Mr. Gwyn. My Lord, it was certainly there, for there I found it. I don't know the particular Paper, but all the Papers in that Bag were there.

L. C. J. From whom had you the Key?

Mr. Gwyn. From my Lord *Shafesbury*.

Foreman. Don't you know, Sir, there was a Discourse in the Parliament of an Association?

Mr. Gwyn. Sir, I was not of the last Parliament. Sir, I know nothing of it.

Foreman. You have not heard then, that there was such a Thing in Parliament concerning an Association?

Mr. Gwyn. I have heard of an Association talk'd of.

Foreman. Mr. Secretary, I would ask you some Questions: If you did not know of a Debate in Parliament of an Association?

Mr. Secretary. I was not present at the Debate; but there was a Talk in Town of an Association.

Foreman. Did not you hear of it in Parliament?

Mr. Secretary. Indeed there was an Answer to a Message from the House of Commons that had something in it that did strongly imply an Association; but this particular Association I do not remember to have heard propos'd.

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Foreman. Don't you remember in the House of Commons, Sir, it was read upon Occasion of that Bill?

Mr. Secretary. I heard such a Thing spoke of; but at the Reading of it I was not present, to the best of my Remembrance.

Foreman. What Date, Sir, was the Warrant for my Lord *Shafesbury's* Commitment?

Mr. Secretary. I refer my self to the Warrant, for that I don't know the Date.

L. C. J. Mr. Secretary, you must speak about the Time that it was.

Mr. Secretary. I was the Man that had the Honour to sign that Warrant by which the Serjeant at Arms did apprehend my Lord *Shafesbury*, but what Day of the Month I do not remember; and therefore I refer my self, if you please, to the Warrant, and to the Serjeant at Arms.

Foreman. What Month was it?

Mr. Secretary. Sir?

Foreman. About what Month?

Mr. Secretary. July.

Foreman. The Beginning of July?

Mr. Secretary. Sir, I do not remember the Day precisely; for I did not foresee that Question would be asked me; but I refer my self to the Warrant, and that is beyond all Doubt.

Foreman. I suppose all these Witnesses that are examined, were examined before the Committee?

Mr. Secretary. Sir, they were examined, and I was present at the Examination.

Foreman. All of them?

Mr. Secretary. I don't know whether all of them; but I am sure I was at the Examination of several of them.

Foreman. How many, Sir?

Mr. Secretary. I can't tell truly how many.

Foreman. Call Mr. *Booth*.

Officer. He is not here, the Tipstaff has him somewhere.

Foreman. Is that Witness a Prisoner?

L. C. J. *Booth* is a Prisoner.

Foreman. Then call Mr. *Turberville*.

Mr. Papillon. Is Mr. *Turberville* there?

Officer. Here is Mr. *Booth* come now.

Mr. Godfrey. Put *Turberville* out again.

Foreman. Mr. *Booth*, you told me of a Discourse that passed between the Lord *Shafesbury* and your self, we desire to know where it was, and when.

Mr. Booth. It was in *Tbanet-House*, Sir, where he lived, about a Week or ten Days before the Parliament sat at *Oxford*.

Foreman. The precise Time?

Mr. Booth. I cannot be more precise.

Foreman. Who introduced you?

Mr. Booth. I think one Mr. *Wilson* led me into the Chamber.

Foreman. Who was present when the Discourse was?

Mr. Booth. None but he and I, Sir.

L. C. J. If we have these Noises, we will have every one of you put out of Court.

Mr. Att. Gen. Richardson, Richardson, Pray turn them all out; they are brought in on purpose.

Mr. Booth. It was not the first, second, nor third Time that I had waited upon the Lord of *Shafesbury*.

Foreman. In what Room was it that my Lord spake those Words to you?

Mr. Booth. It was in the Room he usually sits in, on the Left-Hand as we came out of the Long Gallery, I think we passed through a Room before

it, waincotted about, as I remember, and hung. I have been in that Room with him four or five Times, I am sure.

Foreman. After this Discourse with you, how long was it before you spake of it to any body else?

Mr. Booth. Truly I think I did not publish this Discourse that my Lord and I had, from the Time it was, till within this seven or eight Weeks.

Foreman. You were never examined before then as a Witness?

Mr. Booth. No, Sir, I never was, nor no body will pretend it, I suppose.

Foreman. To whom, Sir, did you give your first Information?

Mr. Booth. Sir, I sent my first Information in Writing to the Lords in the Council.

Foreman. By whose Hand?

Mr. Booth. By the Hand of *Walter Banes*.

Foreman. You had several Discourses with him; had you easy Admission, or was it with Difficulty you came into his Company?

Mr. Booth. I was admitted by the Influence of Captain *Wilkinson* at first, and ever after went with him, and had easy Admittance and Familiarity with him.

Foreman. Was he with you every Time?

Mr. Booth. No, not every Time; he was not this Time with me.

Foreman. Did he talk to this Purpose every Time?

Mr. Booth. Something to this Purpose he did talk every Time, but not so fully; for I was first acquainted with this Business of *Oxford* by Captain *Wilkinson*, and I had a great Desire to understand it from my Lord's own Mouth, because I would be satisfied in my Lord's Interest as well as his Conduct.

Foreman. Pray, Sir, what Education have you had?

Mr. Booth. I have had the Education of a Gentleman, an Academical Education.

Foreman. Were you ever in Orders?

Mr. Booth. Yes.

Foreman. Do you own yourself to be in Orders still?

Mr. Booth. How do you mean to be in Orders? I tell you I was in Orders; but I am not now beneficed.

Foreman. Do you officiate as a Minister?

Mr. Booth. No.

Foreman. Were you ever an Attorney's Clerk?

Mr. Booth. Never.

Foreman. Or a Justice's Clerk?

Mr. Booth. Never, nor to no Mortal.

Foreman. Were you ever indicted for any Felony?

Mr. Booth. No.

L. C. J. That is a Question not to be asked by any Juryman of any Witness whatsoever: No Man is bound to discover any thing of that Nature, that is criminal, concerning himself.

Foreman. If it be pardoned, my Lord, he may.

L. C. J. Pardoned or not pardoned, he is not bound to accuse himself, nor to fix a Scandal on himself.

Mr. Booth. No, my Lord, *Nemo tenetur seipsum prodere*.

L. C. J. Sir, we must not suffer such Questions; I will tell you the Reason: It is proper for a Prisoner that stands upon his Justification to object it, but then the Prisoner must prove it: It lies upon him to prove it.

Mr. Papillon. *Mr. Booth*, you told us of fifty Men that were listed under Captain *Wilkinson*, do you know any more of them?

Mr. Booth. I never directly conversed with any other.

Mr. Papillon. Did you know any more of them?

Mr. Booth. No, not directly I did not, but only by Captain *Wilkinson's* Information.

Mr. Papillon. How many Stories was that Room where you talked with my Lord?

Mr. Booth. One Pair of Stairs, as I remember.

Mr. Godfrey. Was it the Right-Hand as you came in?

Mr. Booth. I think so.

Mr. Godfrey. Was it the Right-Hand or the Left?

Mr. Booth. I went into the Long Gallery first, and staid there about a Quarter, or Half an Hour; and I remember very well I looked upon some Maps that were there, to divert myself a while; and when I was called in, went out of the Gallery on the Left-Hand, and went through another Room before I came into my Lord's Room.

Foreman. Did you never hear my Lord speak Treason in any House but his own?

Mr. Booth. I never had Occasion to hear this Discourse from my Lord, but in his own House: I never waited upon him in any other House.

Foreman. Was you never desired to be a Witness against my Lord *Shaftesbury*?

Mr. Booth. Not till I intimated something of it?

Foreman. Who was that to?

Mr. Booth. That was to *Mr. Banes*; I told you before so.

Foreman. And what then?

Mr. Booth. When he told me of this Business with the *Yorkshire* Attorney, *Brownrig*, I did say again, I did not know what my Lord had done, as to any thing of *Irishmen*, but I was sure there was something as to *Englishmen*, as to that Purpose.

Foreman. Did he propose any Reward, or any thing of that Nature?

Mr. Booth. Not a Farthing; for I think he had no Commission to do it.

Foreman. Are you acquainted with one *Callaghan* and *Downing*, two *Irishmen*?

Mr. Booth. No.

Mr. Godfrey. Were you never in their Company?

Mr. Booth. Not that I know of.

Mr. Godfrey. Did you ever hear their Names?

Mr. Booth. I don't know that I have.

Foreman. Were you in their Company lately?

Mr. Booth. Not as I know of. I do not remember either their Names, or their Persons, nor do I know them from other Men.

Foreman. Do you know one *Mr. Shelden*?

Mr. Booth. No.

Foreman. Do you know one *Mr. Marriot*?

Mr. Booth. No, Sir: I have heard of one *Marriot* that did belong to my Lord Duke of *Norfolk*.

Foreman. When were you in his Company?

Mr. Booth. Never that I know of.

Foreman. Has no body discoursed you from him?

Mr. Booth. No, no body.

Foreman. Did you never hear of any Witnesses he sent to his Tenants?

Mr. Booth. I have heard from *Banes* about *Brownrig*, about *Irish* Witnesses.

Mr. *Godfrey*. Did you never hear of any *Irish* Witnesses sent down by Mr. *Marriot* to the Isle of *Ely*?

L. C. J. We gave you all the Liberty in the World, hoping you would ask pertinent Questions, but these are Trifles. I did not expect that any wise Men would have asked these Questions. Mr. *Godfrey*, was it to the Purpose, whether Mr. *Marriot* sent any *Irish* Witnesses to his Tenant, or no? What is that to this Business?

Foreman. My Lord, I have it under the Hand of the Clerk of the Council.

Mr. *Booth*. Pray, Sir, Did any inform you that I had any Correspondence with this Man?

L. C. J. Nay, Sir, you must ask no Questions.

Mr. *Godfrey*. Mr. *Booth*, Do you go under no other Name but *Booth*?

Mr. *Booth*. No, nor never did in my Life.

Mr. *Booth*. My Lord, I cannot go in Safety here for the Tumult.

L. C. J. Let Officers secure him: Mr. Sheriff, look to him, that the Man be secure and safe; I will require him at your Hands else.

Mr. Sheriff *Pilkinton*. What should I do?

L. C. J. Send your Officers to protect him, as becomes you, that he may be secured from the Rabble here.

Mr. *Turberville*.

Foreman. Mr. *Turberville*, When you had this Discourse with my Lord *Shaftesbury*, who was present with you?

Mr. *Turberville*. One of his Servants; truly I cannot tell his Name.

Foreman. No body else?

Mr. *Turberville*. I know the Name of none of his Servants, but Mr. *Sheppard*; I cannot remember any body else.

Foreman. Did he carry you up to my Lord?

Mr. *Turberville*. It was he, I think, told me I might go in: I was in the Dining-Room.

Foreman. What Time was this?

Mr. *Turberville*. In the Morning.

Foreman. What Time was it when you had this Discourse with my Lord *Shaftesbury*?

Mr. *Turberville*. It was in *February*.

Foreman. What Time in *February*?

Mr. *Turberville*. About the Beginning; I cannot tell exactly to a Day.

Foreman. How long was this before you communicated this to any body?

Mr. *Turberville*. It was about the 4th of *July*.

Foreman. Then you concealed it from *February* to *July*: Who did you communicate it to first of all?

Mr. *Turberville*. The first Deposition I gave was to Mr. Secretary.

Foreman. Which Secretary?

Mr. *Turberville*. Secretary *Jenkins*.

Foreman. Pray, what Room was it you had this Discourse in?

Mr. *Turberville*. Sir, it was the Room at the upper End of the Dining-Room; I think they call it the Dining-Room; at the upper End of the Room, and turns on the Left-Hand, where he lay.

Foreman. Did you meet with no body about the Beginning of *July*, after my Lord's Commitment, and tell them, when you were challenged and told you were to be a Witness against him, as you were alive you knew no such Thing?

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Mr. *Att. Gen.* My Lord, this is not to be allowed: This is private Instructions which the Jury are not to take.

Foreman. No, Sir, it is not private Instructions. Did you not speak such Words to *William Herbert*?

L. C. J. Have you had any Information concerning this to Mr. *Herbert*?

Foreman. My Lord, I have a long Time ago. My Lord, such a Person did tell me so and so, and set down the Day; and he then said he was very angry with him for it.

L. C. J. Look ye, Gentlemen, what Discourse you take up at Random in every Coffee-house, is that fit to be brought in when Treason is in Question against the King's Life? Are these Coffee-house Discourses, do you think, Ground enough for you to cavil at Persons, because you have heard this Discourse in a Coffee-house?

Foreman. My Lord, I never was in a Coffee-house in my Life with Mr. *Herbert*; but he declared this to me some Months ago.

L. C. J. And you think this is Ground enough for you against him?

Mr. *Papillon*, My Lord, we only ask this Question, whether he hath not contradicted this, or said the contrary to any body else?

Mr. *Turberville*. I do not remember that ever I spake one Word to Mr. *Herbert* in my Life; and I can give you one Reason: For I was discarded by all People of my Lord's Interest at that Time? and if I had given under my Hand that I had known nothing against him, I believe I might have been in their Favour as much as before.

Mr. *Papillon*. Were not you one that petitioned to the Common-Council in *London*?

Mr. *Turberville*. I did, Sir.

Mr. *Papillon*. And did not you declare then that you were tempted to witness against your Conscience?

Mr. *Turberville*. I believe I never read the Petition: It was drawn by the Order of Mr. *Colledge*, by a Man that lives about *Guildhall*; by a Scribe about *Guildhall*; and I signed that Petition, but never read it, nor knew what was in it.

L. C. J. Mr. *Richardson*, any you Officers; watch by those Men that make a Noise, and bring me in one to make an Example.

Mr. *Turberville*. My Lord, I go in Danger of my Life, for the People threaten to stone me to Death, and I cannot go safe to my Lodging.

Mr. *Papillon*. What was your Design in signing that Petition? What did you look for?

Mr. *Turberville*. The Design was, that the City should take Care of us.

Mr. *Papillon*. Were you in a poor Condition?

Mr. *Turberville*. Truly, I was not very poor, though I was not over full of Money.

Mr. *Papillon*. It is a strange Thing that you should petition for Relief, if you were not in Want.

Mr. *Turberville*. We were told by some Members of the House of Commons, that there was a Vote in the House of Commons ready to pass, that the City should advance Money for the Support of the Witnesses, and that if we would petition that they would answer the Design of the Parliament.

Mr. *Papillon*. What Members were they?

Mr. *Turberville*. It was a Member of the House of Commons that told me so, I will assure you; two of them.

Mr. *Papillon*. Did never any body move you, or desire you to be a Witness in this Case against my Lord *Shaftesbury*?

Mr. *Turberville*. No body in my Life. When I came to speak the Truth of what I knew, I did it voluntarily.

Mr. *Papillon*. You did it voluntarily?

Mr. *Turberville*. I did, I will assure you.

Mr. *Papillon*. Do you know any thing more than what you have said here?

Mr. *Turberville*. No, not one Tittle.

Mr. *Papillon*. Mr. *Turberville*, I desire to be satisfied in one thing, whether my Lord *Shaftesbury* was committed before or after your Information?

Mr. *Turberville*. Truly, Sir, I cannot tell positively, as to that Point; but I believe it was before; I cannot tell.

Mr. *Papillon*. Did you hear my Lord speak these Words in any other Room or Place?

Mr. *Turberville*. No, indeed, I did not.

Mr. *Papillon*. It was about the fourth of *July*, you say, your Depositions were taken?

Mr. *Turberville*. About that Time; I suppose the fourth of *July* — I hope your Lordship will take Care that we be not knocked on the Head.

L. C. J. That we give in Charge to Mr. Sheriff; and see you do take Care of the King's Witnesses at your Peril. It is a Reflection, not only upon the Government of the City to suffer these Disorders, but upon the whole Kingdom; therefore, Mr. Sheriff, look the Witnesses come by no Hurt.

Mr. *John Smith*.

Mr. *Papillon*. Mr. *Smith*, the Jury ask you a Question, whether or no you did not use to go by the Name of *Barry*?

Mr. *Smith*. Sir, what Names I have gone by is not pertinent to this Purpose; I tell you I have gone by several Names, as all Popish Priests do.

Mr. *Papillon*. Did you never go by the Name of *Barry*?

Mr. *Smith*. It may be I might; I have gone by several Names, as all Popish Priests do.

L. C. J. Did you ever go by the Name of *Barry*?

Mr. *Smith*. I did, my Lord; it is usual for Popish Priests so to do.

Mr. *Papillon*. What Religion are you of, Mr. *Smith*?

Mr. *Smith*. I am a Protestant, Sir.

Mr. *Papillon*. How long have you been a Protestant?

Mr. *Smith*. Many Years.

Mr. *Papillon*. When were you first converted?

Mr. *Smith*. First converted?

Mr. *Papillon*. Ay, to the Protestant Religion: You say you have been one many Years?

Mr. *Smith*. I have been a Protestant, and was perverted to the Popish Religion, and afterwards became a Protestant again.

L. C. J. Bring in one of those Men that make the Noise. Cannot you bring in one of them?

Mr. *Papillon*. When did you receive the Sacrament?

Mr. *Smith*. I believe not above three Months ago, as the Rector of *Bow-Church* will inform you: I have it under the Church-Wardens Hands in other Places in *London*.

Mr. *Papillon*. Have you been desired to be a Witness, or did you do it voluntarily?

Mr. *Smith*. Never desired, I declare it; I did it voluntarily my self.

Mr. *Papillon*. When did you give in your Evidence first?

Mr. *Smith*. Truly I cannot exactly tell when I gave it in; I did not keep an Account of it.

Mr. *Papillon*. What Month?

Mr. *Smith*. I cannot tell.

Mr. *Papillon*. Was it before my Lord was committed, or after?

Mr. *Smith*. I believe it might be a little after. Whether it was before or after, I cannot exactly tell.

Mr. *Papillon*. To whom did you give your Information?

Mr. *Smith*. My Lord, they commanded the People to stone us to Death.

L. C. J. Who did?

Mr. *Smith*. Several Persons: And when we were at the Tavern, Dr. *Oates's* Man came out and gave the Rabble a Bottle of Wine, and bid them knock us down.

L. C. J. Do you know what the Man's Name is?

Dr. *Oates*. I know nothing of it, my Lord.

L. C. J. What is your Man's Name?

Dr. *Oates*. I keep half a Dozen Men, my Lord.

L. C. J. I hope you keep no Men to affront the King's Witnesses.

Dr. *Oates*. No, my Lord, it is a Mistake, I know nothing of it; we went thither to refresh our selves.

Mr. *Papillon*. Mr. *Smith*, who did you give your Information to?

Mr. *Smith*. What Information?

Mr. *Papillon*. The first Information.

Mr. *Smith*. My Lord, am I to answer to these Questions?

L. C. J. Ay, answer them; tell them.

Mr. *Smith*. My Lord, the Information I gave in to Secretary *Jenkins*; but I gave Notice long before of what I intended to do to other Persons.

Mr. *Papillon*. When did you hear these Words; speak to the Time exactly?

Mr. *Smith*. Which Words do you ask?

Mr. *Papillon*. Those you mentioned even now.

Mr. *Smith*. Sir, if you please, I know you take all in Short-Hand; if you ask me what Words, I will tell you; for if I do not express my self in the same Words as before, you will take hold of me.

L. C. J. I will tell you this; this may be an ill Question, for he told you, he had discoursed my Lord *Shaftesbury* at a great many Times, and that at some Times he said these Words, at other Times other Words, and for you to catch him upon a Question, it doth not shew a fair Inclination.

Mr. *Papillon*. My Lord, under your Lordship's Favour, we only desire to discover the Truth, we are not for Catches.

L. C. J. Ask him then which of the Words you would have him declare the Time of, and he will tell you.

Mr. *Papillon*. Let him speak his own Words, it was about the Time when *Hetherington* went thither.

Mr. *Smith*. Truly, I will answer that as punctually as I can; the Month or Day I cannot well tell, but the Person that came from me was Major *Manly*; and he came to *Bethel's* Club, what Time that was I cannot say; but if you please to inform yourselves of those Gentlemen that I name, I believe,

I believe they will tell your Mr. *Belbel*, was there present, and knew very well I went to my Lord *Shaftesbury* that Night, and returned to the Club again.

Mr. *Godfrey*. Was it in the Evening or the Morning?

Mr. *Smith*. Mr. *Godfrey*, Clubs are usually at Night, I suppose; you know that was.

Mr. *Papillon*. Where did you see my Lord *Shaftesbury*?

Mr. *Smith*. It was in his Dining-Room.

Mr. *Papillon*. Did you hear these Words in any other Place, or at any other Time, or any treasonable Words against the King?

L. C. J. Look you, Gentlemen, he told you of several other Words at several other Times.

Mr. *Papillon*. But he said all at his House, my Lord.

L. C. J. Ay, but at several Times.

Mr. *Smith*. I know Mr. Attorney, what the Gentleman would be at very well.

L. C. J. Answer them whether you did hear him speak any Words that you conceive treasonable at any other Time?

Mr. *Smith*. I did not indeed.

Mr. *Papillon*. In another Place?

Mr. *Smith*. I do say I did not.

Mr. *Papillon*. Did you petition to the Common Council?

Mr. *Smith*. No, Sir, I never did.

Mr. *Papillon*. Are you an *Englishman* or an *Irishman*?

Mr. *Smith*. That's no Matter, no more than if I were a *Frenchman* or a *Dutchman*?

L. C. J. Give them an Account whether you are an *Englishman* or an *Irishman*.

Mr. *Smith*. My Lord, I beg your Lordship's Pardon for that; if I were an *Irishman*, whether thereupon my Evidence would be prejudiced.

L. C. J. Look you, Mr. *Smith*, I do hope the Gentlemen of the Jury have more Discretion among them all, than to think that an *Irishman* is not a good Witness, I hope they are not such Persons.

Mr. *Smith*. My Lord, if you please; whilst I was in the City amongst them, I never petitioned to the City: I never had a Farthing from them, nor ever spake to any for it: I never had any Occasion for it; but if I had, it is probable I have enough in *England*, and other Places, without being beholden to your Common-Council.

L. C. J. Will you ask him any more Questions?

Jury. No, no.

Mr. *Papillon*. Is Mr. *Smith* gone? I would ask him one Word: We would fain know what Allowance you have, or what you receive, if you have any Allowance from any Body?

Mr. *Smith*. From whom?

Mr. *Papillon*. Nay, I know not from whom: I ask whether you have any from any Body?

L. C. J. Look ye, Gentlemen, is that a Question that is pertinent? I wonder you will go to such Questions: We allowed you to ask Questions yourselves, because we look upon you as Men of Reason.

Mr. *Papillon*. My Lord, I do not know but it may be a proper Question to ask him, if he have any Allowance from any Man upon this Account?

L. C. J. Upon what Account?

Mr. *Papillon*. Upon this Account: If he says he has none, 'tis an Answer.

L. C. J. Do you intend your Question, whether he is bribed to give Evidence? If you mean so speak plain.

Mr. *Papillon*. We ask if he have any Allowance?

Mr. *Smith*. You don't ask me how the 6 or 700*l.* was made up.

L. C. J. You that are upon your Oaths should have a Care what you do.

Bryan Haynes.

Mr. *Papillon*. Mr. *Haynes*, when did you give in your Information upon this Matter?

Mr. *Haynes*. Against the Earl of *Shaftesbury*, Sir?

Mr. *Papillon*. Ay.

Mr. *Haynes*. The Day that I was taken by the Messenger.

Mr. *Papillon*. That was before my Lord was committed, was it not?

Mr. *Haynes*. Yes, Sir, it was before my Lord was committed.

Mr. *Papillon*. Did you ever make any other Information to a Justice of the Peace?

Mr. *Haynes*. Not of my Lord of *Shaftesbury*.

Mr. *Papillon*. Nor touching this Matter?

Mr. *Haynes*. No, not any Information upon Oath: I may have discoursed with a Justice of the Peace.

Mr. *Papillon*. Did not you give in an Information of a Design against the Earl of *Shaftesbury*?

Mr. *Haynes*. To none but Secretary *Jenkins*.

Mr. *Papillon*. You understand the Question; whether you did give no Information of a Design against my Lord *Shaftesbury* to some Justice of the Peace?

Mr. *Haynes*. No, no, to none but Mr. Secretary *Jenkins*.

L. C. J. You do not observe his Question: Did you ever give to any Justice any Information of a Design against my Lord *Shaftesbury*?

Mr. *Haynes*. Yes, my Lord, I did, to Sir *George Treby*; I made Affidavit before him.

Mr. *Papillon*. When was that?

Mr. *Haynes*. I think it was in *March* last.

Mr. *Papillon*. What was that Design against my Lord *Shaftesbury*?

Mr. *Haynes*. The Design was what Mr. *Fitzgerald* told me; he told me he gave under his Hand to the King, that the Earl of *Shaftesbury* did resolve to set the Crown upon his own Head, or otherwise to turn the Kingdom into a Commonwealth.

Mr. *Papillon*. *Fitzgerald* told you this, and so you made Affidavit of it?

Mr. *Haynes*. Yes, before Sir *George Treby*.

Mr. *Papillon*. What Time?

Mr. *Haynes*. It was before the Parliament met at *Oxford*.

Mr. *Papillon*. So you say the Words were: When were the Words spoken that you mentioned?

Mr. *Haynes*. The Words against my Lord?

Mr. *Papillon*. Ay.

Mr. *Haynes*. He spake them to me a little before I made Affidavit: I cannot tell positively the Time?

Mr. *Papillon*. That was before his Commitment.

Mr. *Haynes*.

Mr. Haynes. Yes, yes, my Lord was committed in *June* last; this Affidavit was made in *March* last, before the Recorder of *London*.

L. C. J. North. When you ask him about the Information of the Design against my Lord *Shaftesbury*, he says that was in *March* last; and when you ask him about the Evidence he gives now, that was the same Day he was apprehended by the Messenger.

Mr. Papillon. About *June* you say it was, that you say you gave in the Information against my Lord *Shaftesbury*.

Mr. Haynes. The Information I made against the Lord *Shaftesbury* was in *June* last, the 28th, as I take it, of *June* last.

Mr. Papillon. Where was it you had this Discourse?

Mr. Haynes. I had several Conferences with my Lord.

Mr. Papillon. Did he every Time say the same?

Mr. Haynes. The last Time I spake with him was in *Ironmonger-Lane*: For Mr. *Whitaker* told me he would speak with me, and he would fain have me explain myself what I did mean by the tall Man I mentioned in the Narrative; and I went to the House, and they told me he was there, and I sent up a Note, and he desired me to come up; but I sent Word I did not care to come up, because I would not be known; and so he sent me Word to meet him after Dinner; and when I came, my Name is *Haynes*, my Lord, said I; and I led his Lordship by the Hand and went in there. I had, I believe, a whole Hour's Discourse with him: And pray, my Lord, said I, among other Questions, What Religion is the King of? Truly, says he, Mr. *Haynes*, he hath no more Religion than an Horse; for, saith he, they say, Sir, he was inclined to Popery when he came first to *England*; says he, he had a Tincture of Popery, and was much inclined that way; but since he was degenerated from all the Principles of Christianity, for he is just like a perfect Beast.

Mr. Papillon. This, you say, was in *Ironmonger-Lane*.

Mr. Haynes. Ay, Sir, at a Pastry-Cook's Shop.

Mr. Papillon. What Time was it?

Mr. Haynes. After Dinner in the Afternoon.

Mr. Papillon. In *June*, or when?

Mr. Haynes. I cannot tell what Time positively; it was about the Time of the Trial of *Fitz-Harris*.

Mr. Papillon. Was it the same Time he spake about the Duke of *Buckingham*?

Mr. Haynes. No, no.

Mr. Papillon. When was that?

Mr. Haynes. That was when I was with him at his own House, and desired him not to expose me.

Mr. Papillon. What Time?

Mr. Haynes. I cannot tell, Sir, for I never thought I should be called to an Account for it, and I cannot keep an Almanack in my Head; and I desired them not to expose me to the King's Fury, for I heard the King was displeased with me. No, says he, you are mistaken, this is the best Opportunity we can have; and if he will not give you a Pardon, we will raise the whole Kingdom against him in Arms; and then he makes himself the Master and Author of the Plot, and consequently he must expect to be ruined, unless he grant you a Pardon.

Mr. Papillon. Did you ever hear any other Words than what you have now testified?

Mr. Haynes. Yes, Sir, for I discoursed with him in *Ironmonger-Lane* a great while, and told him, that our only and best way to have our Ends of the King, was to raise a Rebellion in *Ireland*, and that I had Relations and Friends, and could get discontented Persons enough, and his Lordship would do the Work here.

Mr. Papillon. What, did you propound a Rebellion in *Ireland*?

Mr. Haynes. I offered to go beyond Sea, and that now was the best Time to raise a Rebellion in *Ireland*; and he said that was not the best way, for they had other Means to take, and so the Discourse was waved.

Mr. Papillon. And is that all?

Mr. Haynes. That is all I remember now.

Mr. Papillon. Do you know of any other Place or Time?

Mr. Haynes. I was with him at his House.

Mr. Papillon. Were you ever a Witness for my Lady *Wyndham*, or against her?

Mr. Haynes. No, Sir; but she arrested me, because I said I lay with her.

John Macnamarra.

Mr. Papillon. Mr. *Macnamarra*, When was it you had this Discourse with my Lord *Shaftesbury*, what is the Time, as near as you remember?

Mr. *Macnamarra*. In *March* and *April* last, Sir.

Mr. Papillon. Twice, then, do you speak of?

Mr. *Macnam*. Yes, Sir.

Mr. Papillon. Which is that that was in *April*?

Mr. *Macnam*. That was the last; the last Discourse was in *April*.

Mr. Papillon. To what Purpose was that?

Mr. *Macnam*. My Lord said that the King deserved to be deposed as much as King *Richard* the Second did.

Mr. Papillon. In *April* you say.

Mr. *Macnam*. In *April*.

Mr. Papillon. When did you give Information of this?

Mr. *Macnam*. I cannot exactly tell, Sir.

Mr. Papillon. Repeat what you said.

Mr. *Macnam*. That the King deserved to be deposed as much as King *Richard* the Second, and that he took the Duchess of *Mazarine's* Advice in every Particular, which was the worst of Womankind.

Mr. Papillon. What Time in *April* was this?

Mr. *Macnam*. It was in the beginning of *April*.

Mr. Papillon. Where?

Mr. *Macnam*. In his own House.

Mr. Papillon. Who was present?

Mr. *Macnam*. There was Mr. *Ivy* by.

Mr. Papillon. When did you make Information of this?

Mr. *Macnam*. I cannot tell, it was a good while ago.

Mr. Papillon. Was it before his Commitment?

Mr. *Macnam*. Yes, Sir, it was.

Mr. Papillon. To whom did you give Information?

Mr. *Macnam*. To the Secretary of State, Sir.

Mr. Papillon. Which of them?

Mr. *Macnam*. Mr. Secretary *Jenkins*, Sir.

Mr. Papillon. Did not you petition the Common-Council, Sir, for Relief?

Mr. *Macnam*. Yes, Sir, I signed a Petition that was drawn up, but I did not see it till it was brought to me to sign.

Mr. Papillon. Did you read it ?

Mr. Macnam. No, I never read it neither.

Mr. Papillon. Nor don't know what is in it ?

Mr. Mac. No, nor don't know the Contents of it.

Mr. Papillon. My Lord, in that Petition they say, they were tempted to swear against their Consciences, and that some of the Witnesses had made Shipwreck of their Consciences ; we ask them now, and they say, they do not know what was in the Petition : If we should ask them who tempted them, and who those Witnesses were, that made Shipwreck of their Consciences, it would signify nothing ; for since they do not know what was in the Petition, it is in vain to ask them any more.

Mr. Mac. For my Part, my Lord, I never saw it till it was brought to me to be signed, and do not know the Contents of it : But I heard Mr. Colledge, that was executed at Oxford, was concerned in promoting the Petition, by my Lord Sbaftebury's Advice.

Dennis Macnamarra.

Mr. Papillon. Dennis Macnamarra, tells us how you were introduced to my Lord Sbaftebury when you had this Discourse ?

D. Mac. By my Brother, Sir.

Mr. Papillon. What, he that was here last ?

D. Mac. Yes, Sir.

Mr. Papillon. He introduced you ?

D. Mac. Yes, Sir.

Mr. Papillon. When was it ?

D. Mac. It was in March last ; the latter End of March, or beginning of April.

Mr. Papillon. Cannot you tell which of the Months ?

D. Mac. No, I cannot be positive in it.

Mr. Papillon. Who was by ?

D. Mac. There was Mr. Ivy.

Mr. Papillon. No Body but Mr. Ivy ?

D. Mac. No Body but Mr. Ivy and my Brother.

Mr. Papillon. Where was it ?

D. Mac. It was in his own Dining-Room.

Mr. Papillon. Were none of his Servants in the Room ?

D. Mac. Not that I know of.

Mr. Papillon. Are you sure none of his Servants were there ?

D. Mac. Not that I know of.

Mr. Papillon. Did you hear any Thing else at any other Time ?

D. Mac. No.

Mr. Papillon. Nor in any other Place ?

D. Mac. No.

Mr. Papillon. When did you give in this Information ?

D. Mac. I gave it in a good while ago ; Sir, I cannot be positive.

Mr. Papillon. Was it before my Lord was committed ?

D. Mac. Yes, a great while.

Mr. Papillon. To whom did you give it ?

D. Mac. I gave it to the Secretary of State.

Jury. Cannot you remember how long it was before ?

D. Mac. No, I cannot at the present.

Mr. Papillon. Which of the Secretaries ?

D. Mac. Secretary Jenkins.

Mr. Papillon. My Lord, I only propose, whe-

ther we may not ask whether he have not a Pardon ? For it would be Satisfaction to us, for some Reason.

L. C. J. North. Look you here, Gentlemen, when the Prisoner makes Exceptions to the Witnesses, then it is proper, but here are no Exceptions to the Witnesses.

Mr. Papillon. My Lord, we make no Exceptions, but we must satisfy our Consciences, my Lord, that we must do, and that is very much, as we find the Credibility of the Witnesses.

L. C. J. North. Gentlemen, what do you mean that he should have a Pardon for ?

Mr. Papillon. For Crimes.

L. C. J. North. You must not ask him to accuse himself.

Mr. Papillon. If he hath a Pardon he is in *statu quo* : Suppose, my Lord, some of them have been guilty of poisoning, some of Felony, some of robbing on the Highway, we do but ask them if they be pardoned ?

L. C. J. North. A Man must not be impeached but where he may answer for it.

Mr. Papillon. My Lord, if you do not give us Leave, we must forbear then.

L. C. J. North. I do not think it proper to ask.

Edward Ivy.

Mr. Papillon. The Discourse that you had with my Lord Sbaftebury, when was it, at what Time ?

Mr. Ivy. It was a little after the sitting of the Parliament at Oxford.

Mr. Papillon. Was it more Times than one ?

Mr. Ivy. Yes, Sir, several Times.

Mr. Papillon. All the same Discourse ?

Mr. Ivy. No, not the same Discourse.

Mr. Papillon. The Words that you spoke of, when was that ?

Mr. Ivy. That was after the sitting of the Parliament at Oxford.

Mr. Papillon. About what Time was it ?

Mr. Ivy. It was about the latter End of March or beginning of April.

Mr. Papillon. When did you make Information of this ?

Mr. Ivy. I cannot be positive in that neither.

Mr. Papillon. Before my Lord's Commitment or after ?

Mr. Ivy. A while before.

Mr. Papillon. To whom did you give it ?

Mr. Ivy. To the Secretary of State.

Foreman. Who was present when my Lord Sbaftebury spake those Words ?

Mr. Ivy. Both the Macnamarra's, as I remember.

Foreman. Who else ?

Mr. Ivy. Truly, I do not remember any else privy to our Discourse ; neither am I certain, that both the Macnamarra's were there ; one of them was there I am sure of it.

Foreman. What was the Reason you concealed this Information so long ? Had you no Inducement to make it at that Time ? How came you to do it then and not before ? What was the Reason ? You say it was the latter End of April and May ; my Lord was not committed for a good while after ; here was two Months Time ?

Mr. Ivy. I am not certain how long a Time it was before, but I made it as soon as I could.

Foreman. I ask you whether you know anything either of Words or treasonable Actions, or any thing

thing of my Lord *Shaftesbury*, spoken or acted at any other Time or Place.

Mr. *Ivy*. No, I have declared what I know as to the Particulars.

Bernard Dennis.

Mr. *Papillon*. Mr. *Dennis*, in the Morning you told me something about the Discourse you had with my Lord of *Shaftesbury*, tell me when it was?

Mr. *Dennis*. It was in *April*, four or five Days after the Parliament was dissolved at *Oxford*.

Mr. *Papillon*. In the beginning?

Mr. *Dennis*. In *March*, after the Parliament was dissolved at *Oxford*.

Mr. *Papillon*. It was in *March*, and where?

Mr. *Dennis*. In his own House, here in this Town, four or five Days after the Parliament was dissolved at *Oxford*, immediately after he came home, I do not think he was at home three Days before.

Mr. *Papillon*. Who was present with you then?

Mr. *Dennis*. There was in the Room Mr. *Sheppard*, his Gentleman.

Mr. *Papillon*. Who else?

Mr. *Dennis*. Some of his Servants, his Pages I suppose, but whether they did hear this or no, I cannot tell.

Mr. *Papillon*. Did my Lord whisper it, or speak out?

Mr. *Dennis*. My Lord is not a Man of an high Voice, but of mediocrite Voice.

Mr. *Papillon*. Did he whisper it in your Ear?

Mr. *Dennis*. No, I was jult by him.

Mr. *Papillon*. Who was in the Room besides?

Mr. *Dennis*. No Body, only his Servants.

Mr. *Papillon*. When did you make this Information?

Mr. *Dennis*. I made it in the Month of *June*.

Mr. *Papillon*. In the Month of *June*?

Mr. *Dennis*. Yes, Sir.

Mr. *Papillon*. Before my Lord was committed or after?

Mr. *Dennis*. Before.

Mr. *Papillon*. Who did you make it to?

Mr. *Dennis*. I made my Information to the Secretary of State.

Mr. *Papillon*. Which of them?

Mr. *Dennis*. Secretary *Jenkins*.

Mr. *Papillon*. Why did you conceal it so long?

Mr. *Dennis*. Because I was in the City so long.

Mr. *Papillon*. Did you ever go about to muster your 400 Men you had in *Ireland*, I ask you whether you did or no?

Mr. *Dennis*. Upon my Word I did advise some of them to be ready.

Mr. *Papillon*. And did you provide them with Arms?

Mr. *Dennis*. Not I, Sir, I was not able to do it.

Mr. *Papillon*. What Religion are you of?

Mr. *Dennis*. I am a Protestant.

Mr. *Papillon*. How long have you been a Protestant?

Mr. *Dennis*. I have been a Protestant since *February* last. And this I must confess, that when I was in *Spain* and *France*, my Resolution was to be a Protestant.

Mr. *Godfrey*. Mr. *Dennis*, pray who was in the Room when you were there?

Mr. *Dennis*. The Earl of *Shaftesbury*, Sir.

Mr. *Godfrey*. Who else?

Mr. *Dennis*. Mr. *Sheppard*.

Mr. *Godfrey*. Who else?

Mr. *Dennis*. I cannot name them.

L. C. J. Mr. *Godfrey*, when another Man asks a Question, you should consider what is said, and not ask the same Question over and over again.

Mr. *Papillon*. In what Place in his House?

Mr. *Dennis*. In his own Chamber, in the great Chamber, I do not know whether you call it the Hall or the Parlour.

Mr. *Papillon*. Was it above Stairs?

Mr. *Dennis*. Yes, it was above Stairs, my Lord does not use to speak with any below Stairs.

Mr. *Papillon*. Is this all that you know? Have you heard my Lord say any treasonable Words in any other Place, or at any other Time?

Mr. *Dennis*. In the long Gallery in his own House at another Time?

Mr. *Papillon*. Why did not you say so before?

Mr. *Dennis*. I did say so before. In the long Gallery he told me he would have a Commonwealth in *England*, and extirpate the Crown of *England* and the King of *England*.

Mr. *Papillon*. Is that all? Speak all your Knowledge.

Mr. *Dennis*. He said we should all *Irishmen*, conform ourselves to a Commonwealth, and by that we should get our Estates again.

Mr. *Papillon*. I ask you if this is all you have to say?

L. C. J. Do you remember any more?

Mr. *Papillon*. More than you said in the Morning?

Mr. *Dennis*. He said he would extirpate the King, and make *England* a Commonwealth, and that we were Fools and silly Folks that did not comply our selves to their factious Party, and that we should get our Estates, and that he would get me a black Gown and a Benefice in the mean Time; and when all Things were done, he would prefer me to a better; and not only my self, but all that were of my Name, and would stick to me.

Mr. *Papillon*. Is this all?

Mr. *Dennis*. This is all.

Mr. *Papillon*. Then you have nothing more?

Mr. *Dennis*. I never spake to him but in his own House.

Mr. *Papillon*. All your Kindred are Papists, are not they?

Mr. *Dennis*. No, Sir, I cannot say so, but most of them are.

L. C. J. *North*. Who can say that? That Question no Body can answer.

L. C. J. Look ye, Gentlemen, now you have asked these Questions, you had best go and consider what Evidence is delivered, and weigh well all those Things that have been said to you; and you must consider your Duty; you are to enquire here, whether it be fitting for the King to call my Lord *Shaftesbury* to question upon this Account of treasonable Words.

Mr. *Papillon*. My Lord, we desire, before we go, that either the Law may be read, or we may have the Statute-Book up with us.

L. C. J. The Statute-Book was never denied, but you shall have the Law read here: First the Statute of the 25th of *Edward* the Third, and then this last Statute.

L. C. J. *North*. I would say one Thing, because I observed that some of you asked the Question, whether the Parliament did not debate about an Association? Whether it related to that Paper or no,

no, I am not certain; I hope you will consider that Paper well; for my Part, I must needs say for my self, I heard of it, but I never heard it read before, and never heard the Contents of it; but it seems to me to shew what those Officers were to do, for the Ends of this Association; and one of those Ends, as I remember (Gentlemen, I refer you to the Paper, and hope you will consider it, you are Men of Understanding) I thought that one of those Ends was to destroy the mercenary Forces in and about the Cities of *London* and *Westminster*, and that the Government was to be by the major Part of the Members of Parliament in the Sitting of Parliament, not with the King, but the major Part of the Members of Parliament. Gentlemen, I may mistake, for I profess I speak only out of Memory; but it seems to me to be of great Consequence, and there is great Matter to be presumed upon it, it being found under Lock and Key in his Study: But I suppose my Lord

Shaftesbury may give an Account of it, but there is great Presumption upon it; it doth not import to be an Association by Act of Parliament.

Mr. Att. Gen. When the Parliament was prorogued or dissolved, then the major Part of the Members in each County engage themselves to follow their Command and obey their Order.

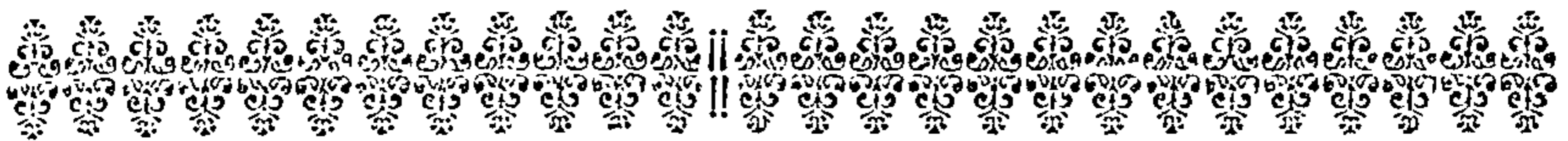
L. C. J. North. Gentlemen, I hope you will consider your Oaths, and give all Things their due Weight.

L. C. J. Will you have the Statute read?

Jury. We will read it above.

The Jury withdrew to consider the Evidence, and returned the Bill Ignoramus: Upon which the People fell a hollowing and shouting.

Mr. Att. Gen. My Lord, let it be recorded this Hollowing and Hooping in a Court of Justice.



CIX. *The Trial of the Earl of Argyle**, in Scotland, for Treason, November, &c. 1681. 33 Car. II.

EDENBURGH.

Sederunt tertio die Novembris, 1681.

His Royal Highness, &c.

| | |
|-----------------------|------------------------------|
| <i>Athol Praeses,</i> | <i>Levingston,</i> |
| <i>Montrose,</i> | <i>Bishop of Edenburgh,</i> |
| <i>Argyle,</i> | <i>Elphinston,</i> |
| <i>Winton,</i> | <i>Rosse,</i> |
| <i>Linlithgow,</i> | <i>Dalziel,</i> |
| <i>Perth,</i> | <i>President of Session,</i> |
| <i>Strathmore,</i> | <i>Treasurer Deputy,</i> |
| <i>Roxburgh,</i> | <i>Register,</i> |
| <i>Ancram,</i> | <i>Advocate,</i> |
| <i>Airley,</i> | <i>Justice Clerk,</i> |
| <i>Balcarres,</i> | <i>Collintoun,</i> |
| <i>Lorn,</i> | <i>Lundie.</i> |

THIS Day the Earl of *Argyle* having first openly declared his Sense, as you have it hereafter set down in his Explication, took the Test as a Privy-Counsellor; and after he was called to, and had taken his Place, the Council's Explication having been read and debated, was put to the Vote, and passed, the Earl not voting thereto.

Edenburgh, the 3d Day of November, 1681.
The Privy-Council's Explication of the Test.

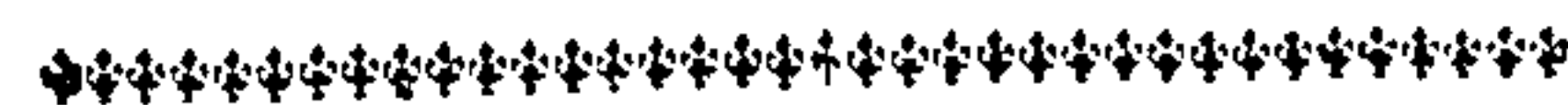
FORasmuch as some have entertained Jealousies and Prejudices against the Oath and Test appointed to be taken by all Persons in publick Trust, Civil, Ecclesiastical, or Military, in this Kingdom, by the Sixth Act of his Majesty's third Parliament; as if thereby they were to swear to every Proposition, or Clause of the Con-

session of Faith therein mentioned; or that Invasion were made by it upon the intrinsic spiritual Power of the Church, or Power of the Keys, or as if the present Episcopal Government of this National Church, by Law established, were thereby exposed to the Hazard of Alteration or Subversion: All which are far from the Intention or Design of the Parliament's imposing this Oath, and from the genuine Sense and Meaning thereof: Therefore his Royal Highness, his Majesty's High Commissioner, and Lords of the Privy-Council, do allow, authorize, and empower the Archbishops and Bishops to administer this Oath and Test to the Ministers, in their respective Diocesses, in this express Sense: (1.) That though the Confession of Faith, ratified in Parliament 1567, was framed in the Infancy of Reformation, and deserves it's due Praise, yet by the Test we do not swear to every Proposition, or Clause therein contained, but only to the true Protestant Religion, founded on the Word of God, contained in that Confession as it is opposed to Popery and Fanaticism. (2.) That by the Test, or any Clause therein contained, no Invasion or Encroachment is made or intended upon the intrinsic spiritual Power of the Church, or Power of the Keys, as it was exercised by the Apostles, and the most pure and primitive Church in the first three Centuries after Christ, and which is still reserved entirely to the Church. (3.) That the Oath and Test is without any Prejudice to the Episcopal Government of this national Church, which is declared by the first Act of the second Session of his Majesty's first Parliament, to be most agreeable to the Word of God, and most suitable to Monarchy, and which upon all Occasions his Majesty hath declared he will inviolably and unalterably preserve. And appoint the Archbishops and Bishops to require the Ministers in their respective Diocesses, with their first Conveniency, to obey the Law in swearing

* Burnet's History of his own Times, Vol. I. p. 519—522.

and subscribing the aforesaid Oath and Test with Certification, that the Refusers shall be esteemed Persons disaffected to the Protestant Religion, and to his Majesty's Government; and that the Punishment appointed by the foresaid sixth Act of his Majesty's third Parliament, shall be impartially and without Delay inflicted upon them. By me

PET. MENZIEIS.



Sederunt quarto die Novembris, 1681.

His Royal Highness, &c.

Montrose Praeses,
Perth,
Ancram,
Levingston,
President of Session,
Advocate,
Winton,
Strathmore,
Airley,

Bishop of Edenburgh,
Treasurer Deputy,
Lundie,
Linlithgow,
Roxburgh,
Balcarres,
Elphinston,
Register.

This Day the Earl of Argyle being about to take the Test, as a Commissioner of the Treasury, and having upon Command produced a Paper bearing the Sense in which he took the Test, the preceding Day, and in which he would take the same, as a Commissioner of the Treasury; upon Consideration thereof, it was resolved, that he cannot sit in Council, not having taken the Test in the Sense and Meaning of the Act of Parliament, and therefore was removed.



The Earl of Argyle's Explication of the TEST when he took it.

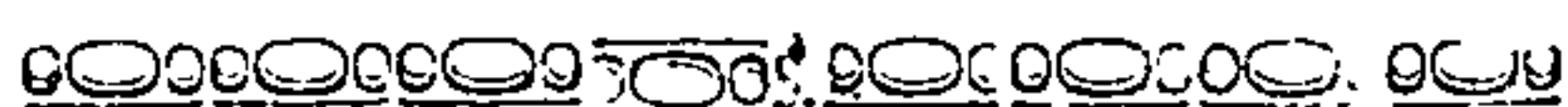
I Have considered the Test, and I am very desirous to give Obedience as far as I can. I am confident the Parliament never intended to impose contradictory Oaths; therefore I think no Man can explain it but for himself. Accordingly I take it, as far as it is consistent with itself, and the Protestant Religion. And I do declare, that I mean not to bind up myself in my Station, and in a lawful way, to wish and endeavour any Alteration I think to the Advantage of Church or State, nor repugnant to the Protestant Religion and my Loyalty. And this I understand as a Part of my Oath.

But the Earl finding, as hath been narrated, this his Explication, though accepted and approven by his Highness and Council the Day before, to be this Day carped and offended at, and Advantages thereupon sought and designed against him, did immediately draw up the following Explication of his Explication; and for his own Vindication, did first communicate it to some privately, and thereafter intended to have offered it at his Trial for clearing of his Defences.

The Explanation of his Explication.

I Have delayed hitherto to take the Oath appointed by the Parliament to be taken, betwixt and the first of January next; but now being required, near two Months sooner, to take it, this Day peremptorily, or to refuse, I have considered the Test, and have seen several Objections moved against it, especially by many of the Orthodox Clergy, notwithstanding where-

of, I have endeavoured to satisfy myself with a just Explanation, which I here offer, that I may both satisfy my Conscience and obey your Highness, and your Lordships Commands in taking the Test, though the Act of Parliament do not simply command the thing, but only under a Certification, which I could easily submit if it were with your Highness Favour, and might be without Offence, but I love not to be singular; and I am very desirous to give Obedience in this and every thing as far as I can; and that which clears me is, that I am confident whatever any Man may think or say, to the Prejudice of this Oath; the Parliament never intended to impose contradictory Oaths; and because their Sense (they being the Framers and Imposers) is the true Sense, and that this Test enjoined is of no private Interpretation, nor are the King's Statutes to be interpreted but as they bear, and to the Intent they are made, therefore I think no Man, that is, no private Person, can explain it for another, to amuse or trouble him with (it may be) mistaken Glosses. But every Man, as he is to take it, so is to explain it for himself, and to endeavour to understand it, (notwithstanding all these Exceptions) in the Parliaments, which is it's true and genuine Sense. I take it therefore, notwithstanding any Scruple made by any, as far as it is consistent with itself and the Protestant Religion, which is wholly in the Parliament's Sense, and their true Meaning; which [being present] I am sure was owned by all to be the Securing of the Protestant Religion, founded on the Word of God, and contained in the Confession of Faith recorded J. 6. p. 1. c. 4. and, not out of Scruple, as if any thing in the Test did import the contrary, but to clear myself from all Cavils; as if thereby I were bound up further than the true Meaning of the Oath. I do declare, that by that part of the Test, that there lies no Obligation on me, &c. I mean not to bind up myself, in my Station, and in a lawful way, still disclaiming all unlawful Endeavours, to wish, and endeavour any Alteration, I think, according to my Conscience, to the Advantage of Church or State, not repugnant to the Protestant Religion, and my Loyalty, and by my Loyalty, I understand no other thing than the Words plainly bear, to wit the Duty and Allegiance of all loyal Subjects; and this Explanation I understand as a Part not of the Test, or Act of Parliament, but as a qualifying Part of my Oath that I am to swear; and with it I am willing to take the Test, if your Royal Highness and your Lordships allow me, or otherwise, in Submission to your Highness, and the Council's Pleasure, I am content to be held as a Refuser at present.



The Council's Letter to his Majesty, concerning their having committed the Earl of Argyle.

May it please your Sacred Majesty,
THE last Parliament having made so many and so advantageous Acts, for securing the Protestant Religion, the Imperial Crown of this Kingdom, and your Majesty's sacred Person (whom God Almighty long preserve) and having, for the last, and as the best Way for securing all these, appointed a Test to be taken by all who should be entrusted with the Government; which bears expressly that the same should be taken in the plain and genuine Sense and Meaning of the Words; We were very careful not to suffer any to take the said Oath or Test with their own Glosses or Explications: But the Earl of Argyle having, after some Delays, come

come to Council, to take the said Oath, as a Privy Councillor, spoke some Things which were not then heard, nor adverted to, and when his Lordship at his next Offering to take it in Council, as one of the Commissioners of your Majesty's Treasury, was commanded to take it simply, he refused to do so, but gave in a Paper, shewing the only Sense in which he would take it; which Paper we all considered, as that which had in it gross and scandalous Reflections upon that excellent Act of Parliament; making it to contain Things contradictory and inconsistent, and thereby depraving your Majesty's Laws, misrepresenting your Parliament, and teaching your Subjects to evacuate and disappoint all Laws and Securities that can be enacted for the Preservation of the Government; suitable to which, his Lordship declares in that Paper, That he mean not to bind up himself from making any Alterations he shall think fit for the Advantage of Church or State; and which Paper he desires may be looked upon as a Part of his Oath, as if he were the Legislator, and able to add a Part to the Act of Parliament. Upon serious Perusal of which Paper, we found ourselves obliged to send the said Earl to the Castle of *Edinburgh*, and to transmit the Paper to your Majesty, being expressly obliged to both these by your Majesty's express Laws. And we have commanded your Majesty's Advocate to raise a Pursuit against the said Earl, for being Author, and having given in the said Paper: And for the further Prosecution of all relating to this Affair, we expect your Majesty's Commands, which shall be most humbly and faithfully obeyed, by

Your Majesty's

Most humble,

Most faithful,

and most obedient

Subjects and Servants

Sic Subscritur,

| | | |
|---------------------|--|------------------------|
| <i>Glencairne,</i> | | <i>Jo. Edinburgen,</i> |
| <i>Winton,</i> | | <i>Rofs,</i> |
| <i>Linlithgow,</i> | | <i>Geo. Gordoun,</i> |
| <i>Pertb,</i> | | <i>Ch. Maitland,</i> |
| <i>Roxburgh,</i> | | <i>G. Mekenzie,</i> |
| <i>Ancram,</i> | | <i>Ja. Foulis,</i> |
| <i>Airlie,</i> | | <i>J. Drummond.</i> |
| <i>Levingstoun,</i> | | |

Nov. 15, 1681:

The King's Answer to the Council's Letter.

C. R.

MOST dear, &c. having in one of your Letters directed unto us, of the 8th Instant, received a particular Account of the Earl of *Argyle's* refusing to take the *Test* simply, and of your Proceedings against him, upon the Occasion of his giving in a Paper, shewing the only Sense in which he will take it, which had in it gross and scandalous Reflections upon that excellent late Act of our Parliament there, by which the said *Test* was enjoined to be taken: We have now thought fit to let you know, that as we do hereby approve these your Proceedings, particularly your sending the said Earl to our Castle of *Edinburgh*; and your commanding our Advocate to raise a Pursuit against him, for being Author of,

and having given in the said Paper; so we do also authorize you to do all Things that may concern the further Prosecution of all relating to this Affair. Nevertheless, it is our Express Will and Pleasure, that before any Sentence shall be pronounced against him, at the Conclusion of the *Process*, you send us a particular Account of what he shall be found guilty of, to the End that, after our being fully informed thereof, we may signify our further Pleasure in this Matter. For doing whereof, &c.

But as notwithstanding the Council's demanding, by their Letter, his Majesty's Allowance for prosecuting the Earl, they, before any Return, caused his Majesty's Advocate exhibit an Indictment against him, upon the Points of slandering and depraving, as hath been already remarked, so after having received his Majesty's Answer, the Design grows, and they thought fit to order a new Indictment containing, beside the former Points, the Crimes of Treason and Perjury, which accordingly was exhibit, and is here subjoined, the Difference betwixt the two Indictments being only in the Particulars above-noted.



A Copy of the Indictment against the Earl of Argyle.

Archibald Earl of Argyle,

YOU are indicted and accused, that albeit by the Common-Law of all well-govern'd Nations, and by the Municipal-Law and Acts of Parliament of this Kingdom; and particularly, by the 21st, and by the 43d Act, Par. 2. *James I.* and by the 83d Act, Par. 6. *James V.* and the 134th Act, Par. 8. *James VI.* and the 205th Act, Par. 14. *James VI.* All Leasing-makers and Tellers of them, are punishable with Tinsel of Life and Goods; like as by the 107th Act, Par. 7. *James I.* it is statuted, that no Man interpret the King's Statutes otherwise than the Statute bears, and to the Intent and Effect that they were made for, and as the Makers of them understood; and who so does in the contrary to be punished at the King's Will: And by the 10th Act, Par. 10. *James VI.* it is statuted, that none of his Majesty's Subjects presume or take upon him publickly to declare, or privately to speak or write any Purpose of Reproach or Slander of his Majesty's Person, Estate, or Government, or to deprave his Laws, or Acts of Parliament, or misconstrue his Proceedings, whereby any Mistaking may be moved betwixt his Highness, his Nobility, and loving Subjects, in Time coming; under Pain of Death; certifying them that does in the contrary, they shall be reputed as seditious and wicked Instruments, Enemies to his Highness, and to the Commonwealth of this Realm, and the said Pain of Death shall be executed against them with all Rigour, to the Example of others: And by the second Act, Sef. 2. Par. 1. *Char. II.* it is statuted, that whosoever shall by writing, libelling, remonstrating, express, publish, or declare any Words or Sentences, to stir up the People to the Dislike of his Majesty's Prerogative and Supremacy, in Causes Ecclesiastick, or of the Government of the Church by Archbishops and Bishops, as it is now settled by Law, is under the Pain of being declared incapable to exercise any Office

such Man shall be found, and attainted thereof, incontinent he shall be taken and put in Prison, and there shall be surely kept up, ay and while the King declare his Will anent him.

Act 43. Par. 2. King James I. March 11, 1424. Leasing-makers forfault Life and Goods.

Item, It is ordained by the King and whole Parliament, That all Leasing-makers, and Tellers of them, which may engender Discord betwixt the King and his People, where-ever they may be gotten, shall be challenged by them that Power has, and tyne Life and Goods to the King.

Act 83. Par. 6. James V. Dec. 10, 1530. Of Leasing-makers.

Item, Touching the Article of Leasing-makers to the King's Grace, of his Barons, great Men and Leiges, and for Punishment to be put to them therefore, the King's Grace, with Advice of his three Estates, ratifies and approves the Acts and Statutes made thereupon before, and ordains the same to be put in Execution in all Points; and also statutes and ordains, That if any manner of Person makes any evil Information of his Highness to his Barons and Leiges, that they shall be punished in such Manner, and by the same Punishment as they that make Leasings to his Grace of his Lords, Barons, and Leiges.

Act 134. Par. 8. James VI. May 22, 1584. Anent Slanderers of the King, his Progenitors, Estate and Realm.

FOrasmuch as it is understood to our Sovereign Lord, and his three Estates assembled in this present Parliament, what great Harm and Inconveniency has fallen in this Realm, chiefly since the beginning of the civil Troubles occurred in the Time of his Highness *minority*, through the wicked and licentious, publick and private Speeches, and untrue Calumnies of divers of his Subjects, to the Disdain, Contempt, and Reproach of his Majesty, his Council and Proceedings, and to the Dishonour and Prejudice of his Highness, his Parents, Progenitors and Estate, stirring up his Highness's Subjects thereby to Misliking, Sedition, Unquietness, and to cast off their due Obedience to his Majesty, to their evident Peril, Tinsel and Destruction: His Highness continuing always in Love and Clemency toward all his good Subjects, and most willing to seek the Safety and Preservation of them all, which wilfully, needlessly, and upon plain Malice, after his Highness's Mercy and Pardon oft-times afore granted, has procured themselves, by their treasonable Deeds, to be cut off, as corrupt Members of this Commonwealth. Therefore it is statute, and ordained by our Sovereign Lord, and his three Estates in this present Parliament, that none of his Subjects, or whatsoever Function, Degree, or Quality, in Time coming, shall presume, or take upon Hand, privately or publickly, in Sermons, Declamations, and familiar Conferences, to utter any false, slanderous, or untrue Speeches, to the Disdain, Reproach and Contempt of his Majesty, his Council and Proceedings, or to the Dishonour, Hurt, or Prejudice of his Highness, his Parents and Progenitors, or to meddle in the Affairs of his Highness, and his Estate present, by-gone, and in time coming, under the Pains contained in the Acts of Parliament-anent Makers and Tellers of Leasings, certifying them that shall be tried, Con-

traversers thereof, or that hear such slanderous Speeches, and reports not the same with Diligence, the said Pain shall be executed against them with all Rigour, in Example of others.

Act 205. Par. 14. King James VI. June 8, 1594. Anent Leasing-makers, and Authours of Slanders.

OUR Sovereign Lord, with Advice of his Estates, in this present Parliament, ratifies, approves, and for his Highness and Successors, perpetually confirms the Act made by his noble Progenitors, King James the First, of worthy Memory, against Leasing-makers, the Act made by King James the Second, entituled, *Against Leasing-makers and Tellers of them*; the Act made by King James the Fifth, entituled, *of Leasing-makers*; and the Act made by his Highness's self, with Advice of his Estates in Parliament, upon the 22d Day of May, 1584. entituled, *For the Punishment of the Authours of Slanders and untrue Calumnies against the King's Majesty, his Council and Proceedings, to the Dishonour and Prejudice of his Highness, his Parents, Progenitors, Crown and Estate*; as also the Act made in his Highness's Parliament holden at *Linlithgow* upon the 10th of Dec. 1585, entituled, *Against the Authours of slanderous Speeches or Writs*; and statutes and ordains all the said Acts; to be published of new, and to be put in Execution in Time coming, with this Addition, that whoever hears the said Leasings, Calumnies, or slanderous Speeches or Writs to be made, and apprehends not the Authors thereof, if it lies in his Power, and reveals not the same to his Highness, or one of his Privy-Council, or to the Sheriff, Steward, or Bailiff of the Shire, Stewards in Regality or Royalty, or to the Provost, or any of the Bailiffs within Burgh, by whom the same may come to the Knowledge of his Highness, or his said Privy-Council, where through the said Leasing-makers, and Authors of slanderous Speeches may be called, tried, and punished according to the said Acts: The Hearer, and not Apprehender, [if it lie in his Power] and Concealer, and not Revealer of the said Leasing-makers, and Authors of the said slanderous Speeches or Writs, shall incur the like Pain and Punishment as the principal Offender.

Act 107. Par. 7. King James I. March 1, 1427. That none interpret the King's Statutes wrongously.

Item, The King, by Deliverance of Council, by manner of Statute, forbids, That no Man interpret his Statutes otherwise than the Statutes bear, and to the Intent and Effect that they were made for, and as the Maker of them understood: And whofo does in the contrary, shall be punished at the King's Will.

Act 10. Par. 10. King James VI. Dec. 10, 1585. Authours of slanderous Speeches or Writs should be punished to the Death.

IT is statuted and ordained by our Sovereign Lord and three Estates, That all his Highness's Subjects content themselves in Quietness and dutiful Obedience to his Highness and his Authority; and that none of them presume, or take upon Hand publickly to declaim, or privately to speak or write any Purpose of Reproach or Slander of his Majesty's Person, Estate or Government; or misconstrue his Proceedings, whereby any Mislik-