

*I am for the Preservation of the Liberty and Properties of the Subject, and I am for the Law; but I find the City is strangely run down in their Rights and Privileges, and there are very Arbitrary Proceedings. And I am a Citizen, and have taken my Oath to preserve the Privileges of the City; and I will rather submit to the Inconvenience of a troublesome Office, than let all run thus:* And immediately he sets himself Cock-a hoop, as if there were no one that took care of the City besides himself, and he were such a Patriot, that there were none like him: And he, and Mr. Bethel, and Mr. Cornish, forsooth, are the only men of the Times, the only good men; men that are for the Liberties and Properties of the Subject, and the Rights of the City: Whereas these are the only men that have made an Invasion upon them, and done what they could to destroy them; and God knows we might all of us have enjoyed very quietly, every man his own, if these contesting Rioters, and busy factious Fellows, had not come among us. Every honest man, I tell you, knows this to be true.

Gentlemen, As to the Business concerning the Damages, that if you find for the Plaintiff, is left to your Judgments to consider of, and give what you shall think fit upon such an Occasion. It is very true, it is not so easy a matter to ascertain particular Damages in such a Case; nor is it in an ordinary way so easy to prove, that because Sir *William Pritchard* was in Prison but five or six Hours there, he could suffer so much Damage as comes to ten thousand Pounds. As in the Case of a Person of great Quality and Honour it is not easy to prove his particular Damage; nor in the Case of any of you, that are wealthy, able sufficient Citizens, to say you are a Bankrupt, when we all know it is impossible to be true; and so no particular Damage doth ensue, that can be proved; yet however, if the thing, for which the Action is brought were designed with Malice, tho' the ill Design be not effected, that is no thanks to the Party, nor is to weigh with you, but the malicious Design must govern you.

Now, here I have taken notice to you, that the Malice of this Design here was not against Sir *William Pritchard* as such a particular man, but against my Lord Mayor, that this Clan that met at *Russel's* was an Overflowing of that Gall or Malice that was in his Heart.

If Mr. *Papillon* had brought an Action upon a Bond only, certainly it had been nothing but what he might very well do; or if he had pretended to sue for a bad Debt, that if he had staid, would have been lost, it had been something: But you see what it was, and it is as apparent why it was, in that Mr. *Goodenough* said to *Keeling*, threatening him with the displeasure of the Party, if he did not do it; and Mr. *Good-*

*enough* and Mr. *Brome* were such Strangers to one another, that he must threaten *Brome* to complain of him, if he did not execute his Writs presently. Do they think all Mankind are so dull or blind, as not to see through such thin artificial Stuff as this?

Gentlemen, this is the Matter, The Government is a Thing that is infinitely concerned in the Case, that makes it so popular a Cause: The Government of the City, the Honour of your Chief Magistrate, and indeed the Honour of the King, whose Substitute he was, is concerned, and that puts a Weight upon your Inquiry into the Damages of this Case. You are to consider you give Damages to the Plaintiff, not as Sir *William Pritchard*, but as Lord Mayor: And your Severity in this Case will deter all People from entering into Clans and Cabals, to make Disturbances, and affront the Government.

It is a thousand times better to keep within their own Bounds, mind their Callings and Employments, and concern themselves with their own Affairs, and leave the Administration of the Publick to them, to whom it belongs, and is intrusted with. And according as we say in the Law Maxim, so say I to Mr. *Papillon* and all the Party, *Ad Concilium ne accedas, antequam voceris.* And do not be scared with imaginary Dangers, and groundless Jealousies, into tumultuous and disorderly Courses. You had much better keep in your Counting-House, I tell you again, and mind your Merchandise. Nay, and I do not doubt but you would much rather have done so, if there had not been some further fetch in it. It was not, I dare say, out of a frank, generous Humour to oblige the City, that Mr. *Papillon* would have spent his Time and Money in the Office of Sheriff; no, I know he had better ways to employ both.

It was not the generous Mind of Mr. *Bethel*, that called him on to be Sheriff of *London*, to entitle him to spend his Money; but on purpose to be one of the first, that should turn all things upside down in the City, and disturb the Government: And they that succeeded him, carried on the Project; and they that would have been in, but could not, had a mind no doubt to follow so worshipful an Example as he laid before them.

*Then the Jury withdrew to consider of their Verdict, and after half an hour's Stay, returned, and found for the Plaintiff, and assessed Damages to Ten Thousand Pounds, and Costs to Four Marks.*

L. C. J. Gentlemen, You seem to be Persons that have some Sense upon you, and Consideration for the Government, and I think have given a good Verdict, and are to be greatly commended for it.

CXXXIII. *The Trial of* ROBERT BAILLIE \* *in* Scotland,  
for High-Treason, December 3, 1684. 36 Car. II.

*Curia Justiciarie S. D. N. Regis tenta in prætorio Burgi de Edinburgh vigesimo tertio die mensis Decembris, 1684, per Nobilem & Potentem Comitem Georgium Comitem de Linlithgow, Dominum Livingstoun, &c. Justiciarium generalem totius Regni Scotiæ, & honorabiles viros, Dominos Jacobum Foulis de Colintoun Justiciarie Clericum, Joannem Lockhart de Castlehill, Davidem Balfour de Forret, Rogerum Hoge de Harcars, Alexandrum Seaton de Pitmedden, & Patricium Lyon de Cars, Commissionarios Justiciarie dicti S. D. N. Regis.*

*Curia legitime affirmata.*

*Intrat*

*Mr. Robert Baillie of Jerviswood Prisoner,*

**L**NDITED and accused, that where not withstanding by the Common Law of this, and all other well-governed Nations, the Conspiring to overturn the Government of the Monarchy, or of the Established Government of this Kingdom, or the concealing, and not revealing of any Treasonable Design, Project, or Discourse tending thereto; or the assisting, aiding, or abetting such as have any such Designs, doe infer the Pains and Punishment of Treason. And by the third Act of the first Parliament of King James I. *The Rebelling openly against the King's Person; and by the thretty seventh Act of His second Parliament, The Resetting, Maintaining, or doing Favours to open, or notour Rebels against the King's Majesty, is declared Treason, and punishable by Forfaulture.* And by the hundred fourth and fourth Act of the twelfth Parliament of King James VI. *It is declared Treason to Resist, Supply, or Intercommune with Traitors.* And by the first Act of the first Session of His Majesty's first Parliament, *It is declared, That it shall be High-Treason for the Subjects of this Realm, or any number of them, less or more, upon any ground or pretext whatsoever, to rise, or continue in Arms, to make Peace or War, without His Majesty's special Approbation.* And by the second Act of the second Session of His Majesty's said first Parliament, *To Plot, Contrive, or Intend Death, or Destruction, or to put any Restraint upon His Majesty's Royal Person, or to Deprive, Depose, or Suspend him from the Exercise of His Royal Government, or to levy War, or take up Arms against his Majesty, or any Commissionated by Him, or to intice any Strangers or others, to Invade any of His Majesty's Do-*

*minions, or to Write, Print, or Speak any thing that may express or declare such their Treasonable Intentions, is declared Treason, and punishable as such.* Likeas, by the second Act of His Majesty's third Parliament, *It is declared High-Treason in any of the Subjects of this Realm, by Writing, Speaking, or any other manner of way to endeavour the Alteration, Suspension, or Diversion of the Right of Succession, or debarring the next lawful Successour.* Nevertheless, it is of verity that the said Mr. Robert Baillie of Jerviswood, shaking off all Fear of God, Respect and Regard to His Majesty's Authority and Laws, and having conceived most unjustly, a great and extraordinary Malice and Hatred against His Majesty's Person and Government, and having designed most Traiterously to debar His Royal Highness, His Majesty's only Brother, from His due Right of Succession, did amongst many other Traiterous Acts, tending to promote that wicked Design, endeavour to get himself Elected one of the Commissioners for negotiating the Settlement of a Colony of this Nation in *Carolina*, in one or other of the Days of the Moneths of *January, February, March, April, or May*, One thousand six hundred and eighty three Years; and that he might thereby have the freer and better Access to treat with the Earls of *Shaftsbury* and *Essex*, the Lord *Ruffel* and others, who had entered into a Conspiracy in *England* against His Majesty's Person and Government, and with Colonel *Rumsey, Walcot, West, and Ferguson*, and others, who had likewise Conspired the Murder of his Majesty's sacred Person, and of the Person of His Royal Highness; and finding that he could not get himself Elected one of the said Commissioners, he resolved to go to *London* upon his own Expences, and declared to severals (whom he took great pains to draw in to be his Accomplices) that his Design was to push foreward the People of *England*, who did nothing but talk, that they might go on effectually; and after he had settled a Correspondency here, he did go up to *London* in one or other of the said Moneths, with Sir *John Cockran* and Commissar *Monro*, and did then, and there, transact with the said Conspirators, or one or other of them, to get a Sum of Money to the late Earl of *Argyle*, a Declared Traitor, for bringing home of Men and Arms, for raising a Rebellion against His Majesty, and Invading this his Native Countrey; and so earnest was he in the said Design, that he did chide those *English* Conspirators, for not sending the same timeously, and lamented the Delays used in it; and persuaded the late Earl of *Argyle*, and others in his Name to accept of any Sum, rather than not to engage; and amongst the many Meetings

\* *Burn.* Hist. of his own Times, Vol. I. p. 585.

ings that he had at *London*, for carrying on the said Traiterous Design, there was one at his own Chamber, where he did meet with the Lord *Melvil*, Sir *John Cockran*, and the *Cassnocks* Elder and Younger, and amongst others, with Mr. *William Veitch* a Declared Traitor, and there he did treat of the carrying on of the said Rebellion, and of the Money to be furnished by the *English* for *Argyle*, for buying of Arms. And that if the *Scots* would attempt any thing for their own Relief, they would get Assistance of Horse from *England*; and from that Meeting, he or one or other of them did send down Mr. *Robert Martin* to prevent any rising, till it should be seasonable for carrying on of their Designs; which Mr. *Robert*, after he came to *Scotland*, did treat with *Polwart* and others, for carrying on of the said Rebellion, by securing His Majesty's Officers of State, his Castles and Forces, and by putting his Correspondents here, and their Associates, in readiness to assist the late Earl of *Argyle*; and after the said Mr. *Baillie* had engaged many of his Countrey-men in *England*, and had assured his Correspondents here, that the *English* were resolved to seclude His Royal Highness from his due Right of Succession, thereby to encourage them to concur in the said Rebellion, and Exclusion, he flew to that hight, that he did particularly and closely correspond with Mr. *Robert Ferguson*, Sir *Thomas Armstrong*, Colonel *Rumsey*, and *Walcot*, who were accessory to that horrid Part of the Conspiracy, which was designed against the sacred Life of His Majesty, and the Life of His Royal Highness, and did sit up several Nights with them, concerting that bloody Massacer; at least the said Mr. *Robert Baillie* of *Jerviswood* was and is guilty of having Correspondence with the late Earl of *Argyle*, and Mr. *William Veitch*, declared Traitors, and of being art and part of an Conspiracy, for assisting of these, who were to rise in Arms against His sacred Majesty, and for Exclusion of His Royal Brother, and of concealing and not revealing the Accession and Proposals of others for that effect. Wherethrow he has committed, and is guilty of the Crymes of High-Treason, Rebellion, and others above specified, and is art and part of the same, which being found by ane Assize, he ought to be punished with Forfeiture of Life, Land, and Goods, to the Terror of others to commit the like hereafter.

His Majesty's Advocat produced an Act and Warrant from the Lords of his Majesty's most Honourable Privy Council, for pursuing, and insisting against the said Mr. *Robert Baillie* of *Jerviswood*, whereof the Tenor follows. *Edinburgh*, the twenty two Day of *December*, one thousand six hundred and eighty four Years: The Lords of his Majesty's Privy Council do hereby give Order and Warrant to His Majesty's Advocat, to pursue a Process of Treason and Forfeiture, before the Lords of his Majesty's Justiciary, against Mr. *Robert Baillie* of *Jerviswood*, to morrow at two o'Clock in the Afternoon precessily, and the said Lords do hereby Require and Command Sir *George Lockhart* of *Carnwath*, and Sir *John Lauder* Advocats, to concur, and assist in the said Process with His Majesty's Advocat, from the intenting, until the End thereof, as they will be answerable upon their Alledgeance. Extract by me, *sic subscribitur*,

*Colin Mackenzie*, Cls. *Sti. Concilii*.

Pursuers.

Sir *George Mackenzie* of *Rosbaugh*, Our Sovereign Lord's Advocat.

Sir *George Lockhart*  
Sir *John Lauder* } Advocats.

Procurators in Defence.

Sir *Patrick Hume*,  
Mr. *Walter Pringle*,  
Mr. *James Graham*,  
Mr. *Will. Fletcher*,  
Mr. *William Baillie*,  
Advocats.

The Pannals Procurators produced ane Act of His Majesty's Privy Council, in their favours, whereof the Tenor follows. *Edinburgh*, the twenty third of *December*, one thousand six hundred eighty four Years: The Lords of His Majesty's Privy Council having considered ane Address made to them, by Mr. *Robert Baillie* of *Jerviswood*, now indited at the Instance of His Majesty's Advocat, before the Lords Commissioners of Justiciary, of Treason, do hereby Require and Command Sir *Patrick Hume*, Mr. *Walter Pringle*, Mr. *James Graham*, Mr. *William Fletcher*, Mr. *James Falconer*, Mr. *William Baillie*, Advocats, to Consult, Compear, and Debate for the Petitioner, in the Process of Treason, mentioned in his Address, without any hazard, as they will be answerable at their Peril. Extract by me, *sic subscribitur*,

*William Paterson*, Cls. *Sti. Concilii*.

After reading of the Inditement, the Lord Justice General required the Pannal to make answer thereto.

The said Mr. *Robert Baillie* Pannal pleaded *Not Guilty*.

Mr. *Walter Pringle* Advocat, as Procurator for the said Mr. *Robert Baillie* of *Jerviswood* Pannal, alleadges that he ought not to pass to the knowledge of an assize; because he had not got a Citation upon fyfteen Days, or at least on a competent time, which is usual, and absolutely necessary in all Actions, and much more in Criminal Pursuits, especially, seeing, if a competent time be not allowed to the Pannal, he is precludit of the Benefit of ane Exculpation, without which he cannot prove his Objections against Witnesses, or Assyzers, or any other legal or competent Defences; and by the late Act of Parliament concerning the Justice Court, all Pannals are allowed to raise Precepts of Exculpation, and thereupon to cite Witnesses for proving the Objections against Witnesses, and Assyzers, which necessarily presupposeth, that a competent time must be allowed to the Pannal to execut his Diligence, or otherwise, how is it possible he can prove a Defence of *alibi*, or any other just Defence? And as this is most consonant to that clear Act of Parliament, and to material Justice, and to the Rules of Humanity; so this Point has been already fully and often decided, and lately in the Case of one *Robertson*, in *July* 1673, the Instance whereof is given by His Majesty's Advocat in his Book of Criminals, and Title of Libels, where the Lords found, that albeit *Robertson* got his Inditement in Prison, yet he behoved to get it upon fyfteen Days.

His Majesty's Advocat oppons the constant Tract of Decisions, whereby it is found, that a Person incarcerated may be tried upon twenty four Hours; and the late Act of Parliament is only in the Case where a Summons or Libel is to be raised; but here there is no Libel or Summons, but only

only an Inditement; nor was any Exculpation sought in this Case, before the Trial, which is the Case provided for by Act of Parliament.

The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, repel the Defence, in respect the Pannal is a Prisoner, and that it has been the constant Custom of the Court, and that the Pannal made no former application for an Exculpation.

Sir *Patrick Hume* for the Pannal alleadges (always denying the Libel, and whole Members, and Qualifications thereof) that in so far as the Libel is founded upon harbouring, maintaining, and intercommuning with the Persons mentioned in the Dittay, the Pannal ought to be affoylized, because it is *res haftenus judicata*, he having been formerly pursued before the Lords of his Majesty's Privy Council for the same Crimes, and fined in a considerable Sum; and therefore that Crime cannot now be made use of as a ground of Treason against the Pannal.

His Majesty's Advocat answers, That he restricts his Libel to the Pannal's entering in a Conspiracy, for raising Rebellion, and for procuring Money to be sent to the late Earl of *Argyle*, for carrying on the said Rebellion; and for concealing, and not revealing; neither of which is referred to his Oath; and consequently was not *res judicata*, there being nothing referred to his Oath; but his Converse and Correspondence with some Ministers, and others within the Kingdom, and his own Gardiner, and his writing Letters to my Lord *Argyle*; and oppons the Decreet of Council itself, and restricts the Libel to all the Crimes not insisted on in the Decreet.

Sir *Patrick Hume* replies, That as to the Corresponding with the late Earl of *Argyle* at any time since his Forfaulture, was expressly proponed as an Interrogator to the Pannal in that Pursuit, at His Majesty's Advocat's Instance against him, before the Lords of His Majesty's Privy Council, and that not only his own Correspondence by himself, but also by Major *Holms*, Mr. *Carstares*, *Robert West*, *Thomas Shepherd*, *Richard Rumbold*, and Colonel *Rumsey*, as the Interrogator bears, as appears by a double of the Act of Council, written by the Clerk of Council's Servant, and is offered to be proven by my Lord Advocat's Oath: And as to any Correspondency with Mr. *Veitch*, it is not relevant, since he was not declared Rebel.

Sir *John Lauder* for His Majesty's Interest, answers, That he oppons the Decreet of Privy Council, where no such Interrogator was put to the Pannal, and the Decreet must make more Faith than any pretended Scroll, and cannot be taken away by His Majesty's Advocat's Oath, to His Majesty's Prejudice; and for Mr. *William Veitch*, he stands expressly Forfault in *Anno 1667*, and the Doom of Forfaulture is ratified in the Parliament 1669.

Sir *Patrick Hume* oppons the Reply, That as to the Corresponding with Mr. *Veitch*, it does not appear that he is the Person mentioned in the Act of Parliament; and albeit he were, as he is not, he having thereafter come home to *Scotland*, all the Punishment inflicted upon him was Banish-

ment, not to return under the Pain of Death, which did take off any former Punishment; and it was no Crime in any Person to intercommune with him, especially in another Kingdom; and by the late Act of Council in *Anno 1683*, even the Conversing and Intercommuning with declared Traitors, is restricted to an Arbitrary Punishment.

His Majesty's Advocat oppons the standing Doom of Forfaulture against *Veitch*, and the Proclamation, or Act of Council itself.

The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, having considered the Libel pursued by his Majesty's Advocat, against Mr. *Robert Baillie* of *Ferrieswood*, with my Lord Advocat's Declaration, whereby he restricts the same to the Crimes not insisted on in the Decreet of Council formerly pronounced against the Pannal: They find the same Relevant as it is restricted, to infer the Pain of Treason, and remits the same to the knowledge of the Assize, and repels the remnant Defences proponed for the Pannal, in respect of the Decreet of Council produced, bearing no such thing as is alledged, and of the Answers made by His Majesty's Advocat thereto.

## A S S I S A.

The Earl of <i>Strathmore</i> ,	<i>Alexander Miln</i> of <i>Car-</i> <i>rin</i> ,
The Earl of <i>Belcarras</i> ,	Mr. <i>James Elies</i> of <i>Stenhopsmilns</i> ,
Sir <i>George Skeen</i> , Pro- voft of <i>Aberdeen</i> ,	Sir <i>William Drummond</i> of <i>Halthornden</i> ,
Sir <i>James Fleming</i> , late Provost of <i>Edin-</i> <i>burgh</i> ,	Major <i>Andrew White</i> ,
Sir <i>John Ramsay</i> of <i>Whitehill</i> ,	Lieutenant of <i>Edin-</i> <i>burgh Castle</i> ,
<i>Adam Hepburn</i> of <i>Humby</i> ,	Mr. <i>David Graham</i> ,
<i>Andrew Bruce</i> of <i>Earle-</i> <i>shall</i> ,	Sheriff of <i>Wigtoun</i> ,
<i>John Stuart</i> , Tutor of <i>Alpin</i> ,	<i>Colin Mackenzie</i> , Col- lector of <i>Rofs</i> ,
	<i>David Burnet</i> , Mer- chant.

THE Assize lawfully sworn, no Objection of the Law in the contrary.

His Majesty's Advocat for Probation adduced the Witnesses and Writs aforementioned; and first,

*Walter* Earl of *Tarras*.

Sir *Patrick Hume* Procurator for the Pannal, objects against the Earl of *Tarras*, that he cannot be a Witness, because he is *socius & particeps criminis*; and it is clear by the 24 *Chap. Stat. 2. Rob. 1.* concerning these that are excluded from bearing of Testimony, that *Socii & Participes ejusdem criminis, vel incarcerati & vinculati*, cannot bear Testimony: As also, the Earl of *Tarras* being presently under an Inditement of High-Treason, and under the Impressions of Fear, and Death, no Person in his Circumstances can be admitted a Witness, as is not only clear from the foresaid Statute, but from the Common Law.

His Majesty's Advocat answers, That it is an Exception from that Rule, both by the Common Law,

Law, and ours, that in the Crime of lese Majestie, and especially that Branch thereof, which we call a Conspiracy, *socius Criminis* may be a Witness, and which is introduced very reasonably by Lawyers, to secure the Common Interest of Mankind, which is the Chief of all Interests; and because Conspiracies cannot be otherways proved, and not to allow this manner of Probation, were to allow Treason, since no Man can prove a Plot, but he that is upon it, and how can a Man object against him as a Witness, whom himself trusted with his Life, his Fortune, and their common Plot? Nor is the intending of the Libel any stronger Qualification, since every Man that is *socius criminis*, is under the same Impression, and it would rather seem the greater and nearer apprehensions a Man has of Death, he will be the more sincere and faithful; nor has the Earl of *Tarras*, nor did he ever seek any Security, in order to his deponing. And this has been constantly, and latlie, conform to the Common Law, as may be seen in the hundreds of Citations set down by *Mascard, de probationibus, Vol. 4. conclus. 1318. Num. 21.* and the contrary Citations prove only, that regularly *socius criminis* cannot be a Witness.

Sir *Patrick Hume* replies, That the Statutes of *Robert* the first is opposed, and *non est distinguendum, ubi lex non distinguit*, and not only was he *socius criminis*, which is acknowledged, but he is *in carceratus*, and lying under an Inditement of High Treason, and has thrown himself on the King's Mercy, and it is not proper he should be a Witness, seeing he is in the King's Mercy, who may give him his Life, or not; and there was never a Person in these Circumstances, that ever was admitted a Witness.

Mr. *Walter Pringle* adds, That the Earl of *Tarras* is not only in the Case of a Person who stands indited for High Treason; but must be looked upon as a Person condemned for the said Crime, seeing he fully and amply confest the Crime; & *confessus habetur pro convicto*, and never any Lawyer asserted, That *damnatus criminis lese Majestatis* could be admitted as a Witness, and there is nothing more clear, than that by the common Law, and the Law of all Nations, this Objection ought to be sustained; for the civil Law is clear, *leg. 11. cod. de testibus*, and *Mathews* in his Title, *de probationibus, cap. de testibus*, doth assert positivlie, that the Cryme of lese Majestie, Heresie, and generally all these Crymes, *quæ sine sociis non possunt facile admitti*, are not excepted. And he asserts, that the Lawyers, *viz. Gomezius*, and *Decianus*, who are of another Opinion, do acknowledge, *nominatum à reo damnandum non esse*, and that they contravert only, *An nominatio rei sit indicium sufficiens ad torquendum nominatum*.

Sir *George Lockhart* repeats, and opposes the Answer, and the Cryme libelled, being a Conspiracy of Treason, which of its own Nature is managed and carried on by Secrecie and Contrivance; and which is only known to the Complices of the Treason, and which cannot be committed *sine sociis*, the Law of this Kingdom, and of all Nations, do allow *socios criminis* to be *testes habiles*; and not only are they admitted in the case of such Conjurations, but generally *in omnibus criminibus exceptis*, amongst which the Crime of *Perduellion*, and lese Majestie is the chief, and it is ab-

solutely impossible, that Plots and Conspirations of Treason can be otherways proven, than *per socios*, and such as are *participes criminis*, and which is the common Opinion of all Lawyers, as may appear by *Farin. Quest. 45.* And the Authorities cited by him, and which is the inviolable Practique of this Kingdom: And as to that Pretence, That the Earl of *Tarras* is under a Process of Treason, and has submitted to His Majesty's Mercy, and that *confessus habetur pro convicto*, it imports nothing, and infers no more then that he is *socius criminis*, and is still a habil Witness; as to Conjuraton of Treason, *socius criminis hoc ipso*, that it is acknowledged, or proven, being still under the hazard of Process, or Condemnation, which Law regards not in regard of the Secrecie involved in the nature of the Crime, that either Witnesses *neque actu, neque habitu*, can be present; so that the Objection amounts to no less then that Conjurations of Treason cannot at all be proven; And as to the Law cited from the Majestie, it imports no more than that the Objection *regulariter procedit*, in Crimes, which of their own nature are not *perdifficilis probationis*, and are not *inter crimina excepta*, such as the Cryme of Conspiracy and Treason is.

Mr. *William Fletcher* opposes the Objection, and Reply, and further adds, that albeit *crimen lese Majestatis* be reckoned *inter crimina excepta*, and so have some Privilege, as to the Qualification of Witnesses; yet it cannot be denied, but there are some Objections competent against Witness adduced for proving Conspiracies, and Treason, *verbi causa*, that a Witness is a capital Enemy, or that he is *sub potestate accusatoris*, and the Objection now pleaded, being taken complexlie, *viz.* That the Earl of *Tarras* is not only *socius criminis*, but also, that he is *publico judicio reus*, upon the same Crime, and that as means to procure his Majesty's Favour, he has submitted himself, and come in his Majesty's Mercy, by an acknowledgment of the Cryme, before the Diet of Citation, he is obnoxious to a most just Objection, *viz.* That he is *sub potestate*, and by the Submission and Confession, his Life and Estate is now in His Majesty's Hand, so that he is not only in the Case of a *reus confessus*, but in the Case of a Witness, who does absolutely depend upon His Majesty's Advocat the Pursuer; and as a private accuser could not adduce his own Servants to be Witnesses, because they are *testes domestici*, and depend upon him; so far less ought a Witness to be adduced, who not only depends, as to his Estate, but as to his Life; and the Law gives a very good Reason, and which is mentioned by *Paulus, Lib. I. receptarum sententiarum, cap. 12. parag. ult.* in these Words, *De se confessus non est audiendus ut testis, ne alienam salutem in dubium deducat, qui de sua desperavit.* And as to the Pretence that a Conjuraton is a Crime so occult, that it must either be proven by such Witnesses, or otherways the guilty Person will escape: It is answered, That in this Case, His Majesty's Advocat had an easie Remedy, for he might have pursued the Panaal, before he pursued the Witness, and the Terror and Apprehension of the event of a Process for Treason cannot be constructed otherways, then to have influence upon the Deposition of the Witness; and as to the Citation out of *Farinacius*, it is only in the Case of *socius criminis*; but when he comes to treat *de teste accusato vel carcerato, Quest. 56. articulo quarto*, he says, *Regula fit in accusato*

*cusato, quod is pendente accusatione a testimonio repellitur.* And by the second Rule of the same Article, he says, it is a Principle *quod carceratus testimonium ferre prohibetur*, and he gives this Reason, *quia presumitur, quod falsum testimonium diceret pro aliquo, qui ei promiserit se liberare a vinculo*, and limits this Rule, that he must be *carceratus propter crimen*.

Sir *Patrick Hume* adds, That it is a certain Principle, that any Person that is guilty *infamia juris*, cannot be a Witness, no more than a Person that is convict, and condemned of Treason, and if he were convict, and condemned of Treason, he could not be a Witness, even in the Case of Treason: So neither can the Earl of *Tarras* in this Case be received a Witness, for he being adduced a Witness after he received his Inditement, and confessed the Crime, is equivalent, as if he had been actually convict; and whatever may be pretended, that *testes infames* may be admitted; yet it was never asserted by any Lawyer, that a Person convict of Treason can be admitted a Witness.

*Nota, That the Earl of Tarras deponed nothing against Jerviswood, but what the other two Witnesses deponed against himself before the Tryal, and upon which thereafter they being renewed, the Earl was forfeited, so that there could be no ground of Suspicion from his Circumstances.*

*The Lords repelled the Objection, against the Earl of Tarras, and ordains him to be received a Witness.*

*Walter Earl of Tarras*, aged forty Years, married, purged, and sworn; being interrogat, if about the Time that Sir *John Cockran*, and *Commislar Monro* got their Commission from the *Carolina Company for London*, the Pannal *Mr. Robert Baillie of Jerviswood* did not desire the Deponent to speak to *Commislar Monro*, to try if he could get him the said Pannal added to that Commission, depones affirmative. Being Interrogat, if the said *Jerviswood*, the Pannal, did not tell the Deponent that he was resolved to go to *London* however upon his own Expences, and that his and their going about the *Carolina Business* was but a Pretence, and a Blind; but that the true Design was to push forward the People of *England*, who could do nothing but talk, to go more effectually about their Business, depones affirmative. Depones that the Pannal did settle a Correspondence with the Deponent, whereby he was to give an Account to the Deponent of what should pass betwixt the Country Party in *England*, and the *Scotsmen* there: And on the other Hand, the Deponent was to write to him what occurred here. Depones that the Pannal did say to the Deponent, if the King would suffer the Parliament of *England* to sit, and pass the Bill of Seclusion, that that was the only way to secure the Protestant Religion. Depones that the Pannal said to him, that the King might be induced to do so, if the Parliament would take sharp or brisk Measures with him, or the like. Depones these Words were spoke to him by the Pannal, since the holding of the last Session of this current Parliament; and before the Pannal

and *Commislar Monro* went for *London*. Depones that after the Pannal went to *London*, he did give the Deponent an Account by Letters, that Things were in great Disorder there, and that he hoped there would be effectual Courtes taken to remedy them. Depones that *Mr. Robert Martin* did come to *Mr. Pringle of Torwoodlie's House* in *May*, 1683, or thereby, and brought a Letter to the Deponent's Lady unsubsribed, but the Deponent knows it was *Jerviswood's* Hand-writing, who was then at *London*, and that *Mr. Martin* told the Deponent, that Things in *England* were in great Disorder, and like to come to an height, and that the Country Party were considering on Methods for securing the Protestant Religion. And that *Archibald* sometime Earle of *Argyle*, was to get Ten thousand Pounds *Sterling*, whereas Thirty thousand Pounds *Sterling* was sought by the *Scotsmen* at *London*, which was to be sent over to *Holland* to provide Arms; and that the late Earle of *Argyle* was to land with these Arms in the *West-Highlands of Scotland*, and that the Deponent's Friend *Jerviswood* the Pannal, was to be sent over with the Money. Depones that *Philiphaugh* and he went to *Gallowshiels House*, where they met with *Polwart* and *Gallowshiels*, and that it was talked amongst them there, that in case those in *England* should rise in Arms, that it was necessary in that Case, that so many as could be got on the Borders, should be in a readiness to deal with Straglers, and seize upon Horses, and that thereafter they should join with those that were in Arms on the Borders of *England*. Depones, That in the Case foresaid, it was said, it was convenient the Castle of *Stirling*, *Berwick*, and some other Strengths should be seized upon; and it was likewise spoke amongst them, that some Persons should be employed, to inquire what Arms was in that Countrey. Depones, that it was spoke then, that the best time for *Argyle* was to land in the West, when there was a Stur in *England* or *Scotland*, or Words to that Purpose. Depones, that every one desired another to speak to such particular Persons as they could trust, by letting a Word fall indirectly upon supposition, in case of the Rising in *England*, concerning the Affair for preparing of them: And that he was told by *Philiphaugh* thereafter, that there was a Word and Sign to be used amongst them, viz. the Sign was by loosing a Button on the Breast, and that the Word was Harmony. Depones, the Pannal spoke to the Deponent, to advertise *Torwoodlie*, that he might acquaint *Mr. William Veitch* a forfault Traytor, who was in *Northumberland*, that he might keep himself close, and be on his Guard, lest he should be catched; which was since the Pannal was Prisoner in the Tolbooth of *Edinburgh*. And this is the Truth, as he shall answer to G O D.

*Sic subscribitur,*

*Tarras.*

*Linlithgow. I. P. D.*

*Alexander Monro of Bear-crofts*, aged forty five Years or thereby, *solutus*, solemnly sworn and purged. Depones, that the Earl of *Tarras* proposed to the Deponent, that *Jerviswood* might be made one of the Commissioners for the Affair of *Carolina*, for that he could not safely stay at Home; and that the Deponent's answer was, that he had no Interest in the Affair, and so

could

could not be a Commissioner. Depones, That the Pannal did wait for the Deponent at *Wooler*, and did go alongst with him to *London*, and that by the way he heard him regrave his own hazard and others, because of *Blackwood's* Sentence; and that he heard him regrave the hazard our Laws, and Liberties, and the Protestant Religion were in. Depones, That the Pannal spoke to the Deponent and others, more than once at *London* for getting of Money from the *English*, to be sent to the late Earl of *Argyle*, for bringing home Arms for the said Earl's Use, as he understood, for carrying on an Insurrection and Rebellion in *Scotland*. Depones, That at the time libelled, in *Ferriewood's* Chamber in *London*, Mr. *William Veitch*, a forfault Traytor was present; and that Sir *John Cockran* did at that Meeting expressly speak of Money to be sent to *Argyle*, for bringing home Arms for invading the Kingdom of *Scotland*; and that at another Occasion he heard some of them say, That there would be twenty thousand Men in *Scotland* who would assist the Rebellion, and that he heard Sir *John Cockran* and *Ferriewood* speaking of it, but cannot be positive which of the two said it. Depones, That at the Meeting he heard *Ferriewood* speak, but did not hear him oppose that Treasonable Proposal, or contradict the Overture proposed by Sir *John Cockran*. Depones, That Mr. *Robert Martin* was sent down from that Meeting which was at *Ferriewood's* Chamber, to *Scotland*, to try what the People of *Scotland* would do for their own Safety: And that it was understood that the People of *Scotland* should not rise 'till there should be a rising in *England*, and that the Commission was granted to Mr. *Robert Martin*, by all the Persons present, whereof *Ferriewood* was one, and that there were present, the Lord *Melvil*, Sir *John Cockran*, *Cessnocks* elder, and younger, Mr. *William Castares*, Mr. *William Veitch*, *Ferriewood*, and the Deponent; and depones, they did contribute Money for Mr. *Martin's* Journey. Depones, That at his return, he meeting with the Deponent, told him, that Matters were in that Condition in *Scotland*, and that the Countrey was in such a Condition, as little would kindle the Fire in order to the Rebellion. And this is the Truth as he shall answer to G O D.

*Sic subscribitur,*

*Alexander Monro,*

*Linlithgow, I. P. D.*

*James Murray of Philiphaugh*, aged 30 Years, married, purged, and sworn, produces four Leaves of Depositions, emitted by him before the Lords of the secret Committee, and all written and subscribed with his own Hand, which being publickly read, in Presence of the Justices, and Assize, he adheres thereto, in all Points, whereof the Tenor follows. Upon the Day of *May*, 1683, Upon a Letter from Mr. *Pringle* of *Torwoodlie*, I came to his House in the Morning, and he presently led me to a Chamber, where I found Mr. *Robert Martin*, who was lately come from *London*, with whom we stayed a little, and discoursed of the News, and about the present Condition, and Temper of *England*, and in particular of *London*, which Mr. *Martin*

said, was much irritated through some Attempts upon their Priviledges, either as to the Concern of the Sheriffs, or their Charter, but that all honest Men were of good Heart and very brisk; and after some general Discourses to this Purpose, *Torwoodlie* and I left him and walked out a little, and he told me, he was expecting the Earl of *Tarras* presently, for he had sent to him; and Mr. *Martin* had a Letter to him from *Ferriewood*; then he told me that there were great Matters in agitation at *London*, and that Mr. *Martin* had come down with a Commission from our Friends there (I do not remember he named any, but that I behoved not to expect he would impart his Instructions to me, for he was to communicate them only to *Polwort* and himself, at least for these Shyres) and they were to pitch on such as they thought fit to intrust with the Affair, whereupon he assured me, that he had great Confidence in me, and his Kindness to me obliged him to send for me, to acquaint me that Matters were now come to a crisis, and that he had reason to think *England* would shortly draw to Arms, and stand by them, 'till they were satisfied anent the Bill of Exclusion, and what other Security they could propose for the Protestant Religion, and their Liberties; and that it was no Project of any inconsiderable Party, but a Design through the Kingdom, and that many of the finest Men, and of the greatest Interest and Credit there, had adjusted almost every thing necessary for the purpose, and had concerted Matters with our Friends there, in order to Concurrens from this, and had agreed to advance Money for furnishing Arms here (I do not remember he told me more Particulars at this time) but said, *Polwort* would be at *Gallowshells* that Night, and it would be necessary that the Earl of *Tarras* and I should confer with him fully on the Business; about this time the Earl of *Tarras* lighted, and *Torwoodlie* having left us for a little time, being gone to bring Mr. *Martin*, the Earl of *Tarras* asked me, what News? I told him of Mr. *Martin's* being there, but that he had given me no account of the Design of his down-coming, which perhaps he would acquaint him with, but by what I had heard from *Torwoodlie*, I understood it to be, to engage us to rise in Arms shortly, whereat the Earl of *Tarras* hummed, and said, he would look ere he leapt such a Leap, or some such Expressions; presently Mr. *Martin* came, and the Earl of *Tarras*, and he retired a little after the reading an Letter he gave him, the Contents whereof was (as the Earl of *Tarras* informed me) only an Order from *Ferriewood* to deliver some Money to the Bearer, which he had left with him, and the Earl of *Tarras* called for his Servant, and bad him bring up the Money, in the mean time, *Torwoodlie* asked me, if I had acquainted the Earl of *Tarras* with what he spoke to me, and I told him, I had let something of it fall to him, but it was not to be thought, that Persons of Sense and Quality would engage in such Designs at random; so *Torwoodlie* said, that (tho' Mr. *Martin* would not commune with us upon his Commission directly) yet he thought it would be fit we conferred, and without taking notice of his Commission, discoursed of things upon Suppositions, and as our own private Notions, abstract from any Prospect of a present Design; so after Dinner we four went to a Chamber, and after some general Discourses of the Discontents of both Kingdoms, these Suppositions following were discoursed (and

as I remember Mr. *Martin* started them all, or the most part) *viz.* What if the Countrey-Party in *England* should have Thoughts of going to Arms (whereof he knew nothing, but only supposed such a thing, for discoursing a little freely, and to know our Sentiments, what we thought could be expected here in such a Case) would it not be expedient to have a settled Correspondence betwixt that Party there and here, and might not Matters be so adjusted, that both Kingdoms should draw out in one day, and might not as many be expected to undertake in these Shires, and about *Edinburgh*, as would serve to surprize, and seize our Rulers (I do not remember any named, but the then Chancellor and Treasurer) and some to join with these on the *English* Borders, to assist them to surprize *Berwick*, and if for that effect, any Horse, or Dragoons, that should be in the Bounds, might not be surprized, that their Horse and Arms might be gotten to furnish the Country People, and *Stirling* Castle, and if *Argyle* should at the same time land in the *West*, and raise that Countrey; would not these Measures contribute much to the Advancement and Security of the Interest of that Party here, since thereby the Government would be disordered, and such Steps would encourage all that had an Inclination to the Countrey-Party, to draw to them frankly, and scar many of the other side to act against them, and so they might have leisure to join from all Places; and might it not be expected, there would be as many in this Kingdom, as would be able to deal with the Forces here, at least divert them from troubling *England*? This is the Sum, as I remember, of what was proposed, and discoursed of, tho' I cannot distinctly say, it was in this Method and Expression, nor was all moved at once, but dropped now and then, as the Discourse seemed to give Rise to it; and tho' I cannot fully recount all that was spoke on these Heads, and tell distinctly what this and that Man said, yet I remember these following Answers were given, and (as I judged) acquiesced to by the whole Company; and they were certainly the Earl of *Tarras* his Sentiments and mine; and every one that spoke, used this or some such Precaution, that if they were concerned, or to give Counsel in any such Cause (as they were not, &c.)

1. As to the settling a Correspondence, it was confessed to be very convenient for those of a common Interest, but the present Circumstances of Affairs were such (as we thought) that none could be found here, who was fit to manage it, and would undertake it.
2. As to the trysting at the same time it could not be done without the divulging the Design to all Ranks of People, which none would undertake, except these already in desperat Circumstances; and they could not have generally much Influence.
3. The thing was not at all adviseable for this Kingdom, since if any of *England's* own Measures miscarried, they would not stir for any such Trust; and the spring of their Motions being always at *London*, there might happen an Interruption near the Appointment, whereof these here could have no timeous Notice, and so might keep Tryst, whereby they would be exposed a Prey, and if they should subsist any time, or prevail (which was hardly possible) the multitude that must be employed, are tainted with such wild and unruly Principles, that if once they got the Sword in their Hands, they would never be brought to Order, without a greater Force to over-awe them, neither would any Expectation of *Argyle's* landing be a

just ground for such a Tryst, considering the Uncertainty of Sea-Voyages; and if *Argyle* were to be the Head, undoubtedly many People would conclude that he were to be suspected of private Designs, and that restoring him might lay him aside: As also, that Despair might blind his usual Prudence, and prompt him to unsolid and undigested Methods, and so it was to be expected, that few of the Gentry (except such as he had special Influence on, or such as were under hard Circumstances) could embarque with him.

4. As to the surprizing Rulers, &c. It was inveighed against, as an Action not to be thought of amongst Protestants (especially when the very Design of it was pretended to secure that Religion, which taught its Professors to abhor and detest such Principles as Popish, yea Unchristian) since it could not be effectuat without Bloodshed of People, secure in Peace, which being by all approven Divines and Casuists condemned as unlawful, and meer Assassination, it was not to be doubted, that as such a Practice would cast a blot upon the whole Affair, and quite take off any pretence of Defensive Arms, so it would scar many from joining. These things were reasoned again and again; but I do not remember there was any formal Conclusion made, but the Discourse was let fall; and Mr. *Martin* told us, if any of us had a mind for a Suit of Armour, he could provide as many as we pleased, from one who had made a great many lately to honest Men at *London*, of a new fashion, very light, and at an easy rate, so *Torwoodlie* and I gave him our Measures, Earl of *Tarras* told he he had a Suit already, then *Torwoodlie* said to the Earl of *Tarras* and me, we would meet *Polwort* at *Gallowshells*, and desired we might commun with him, anent what we had been discoursing; so we hasted away, that if possible we might both get home that Night, it being *Saturday*, and we unfurnished for staying abroad, and *Torwoodlie* whispered me just, as I was mounting (as I think) that he was not clear we should commune before *Gallowshells*, for he was sometimes too much Good fellow, or the like; so the Earl of *Tarras* and I rode away together, and upon the way we were both of Opinion, that the Suppositions we had discoursed of, were in effect Propositions; and resolved, if they were insisted on by *Polwort*, as we suspected, we would adhere to the former Answer, and would undertake nothing in these Methods.

When we came to *Gallowshells*, the Laird was abroad, and *Polwort* was not come; so we had Thoughts to go away, being both damped with what had passed, and inclining to be free of farther meddling; but the Lady would by no means hear of our going till her Husband came, who, she assured us, was about the Doors, and she having sent to call him, he would be in presently; yet it was so late ere he came, that the Earl of *Tarras* could hardly have day enough to go home with; so *Gallowshells* would not let him go, and he would not stay, unless I stayed, so we both stayed; and not being resolved to discourse with *Gallowshells* on what passed, we went to the Tavern, on pretence I might call the Baillic, and seek Horses or Lime, and stayed there till *Polwort* came, which seemed unknown to *Gallowshells*; then we returned to *Gallowshells* House, and after Supper *Polwort* whispered the Earl of *Tarras* and me, and enquired if we had seen Mr. *Martin*; and we having told him we had, he enquired if we were free to commun on the Affair before *Gallowshells*, we told, as he thought fit, for we could trust him: Then he whispered *Gallowshells*,



*sheils*, and (as I understood afterwards) asked if he was free to commune on Matters of great Secrefy and Importance with that Company, to which he assented; then we sat down clos together, and, as I remember, *Polwort* began the Discourse, but since I am not able to follow exactly the Method of our Conference, or keep the very Expressions used, or repeat all that was spoke, or to tell distinctly what was every Man's part of the Discourse, I shall set down the Heads, and most remarkable Passages thereof, that I remember, in some Articles following; 1. *Polwort* signified that he was credibly informed (but I do not remember he named his Informer) that the Country Party in *England* would draw to the Fields shortly, as he heard before *Lambafs*; wherewith *Gallowsheils* seemed visibly surpris'd, and being asked, if his Heart failed him already, he said he did love it better truly to be walking in his own Parks in Peace and Quiet, than to be meddling in such Matters; however he assured the Company, that if there came any troublesome World, he would join with them firmly; and the Earl of *Tarras* said, he wondered to hear of any such Resolution in *England*; for he took it for a Principle amongst that Party there, that they should make no Stir in the King's Life (which the whole Company owned to be their Opinion and Desire) because that might strengthen the Duke's Interest, and he suspected it was the Project of the Commonwealth's Men, with whom he believed few *Scots* Gentlemen would join; and he was almost persuaded the Duke of *Monmouth* would not concur in any Rising during the King's Life; to which it was answered by *Polwort*, That he had indeed heard that Principle had been generally agreed to, but it seemed they found they behoved either to do their Business now, or lay aside Hopes of doing it hereafter, which might be, that if the Charter of *London* were let fall, they would not only lose all safe opportunity of digesting Matters, but a great part of their Strength, and he heard all things were concerted mutually betwixt *Monmouth's* Friends, and the Heads of the Commonwealth Party; and tho' he heard *Monmouth* was shy on that account, yet it was hoped he would engage, for otherwise he would be deserted by that Party. 2. *Polwort* told us the Suppositions above-written as Overtures concerted betwixt our Friends at *London*, and the principal Men of that Party there; so the Earl of *Tarras* and I renewed our former Answers also above-written, and maintained them with all our Vigour, wherein *Gallowsheils* joined forwardly with us, and *Polwort* asserted, we went on very good grounds, and he was fully of our Opinion, if things were entire; but referred it to be considered, whether it were better to comply with some of these Methods, tho' not so proper and justifiable as were to be wished, than to disappoint the Business totally, which might be of the best consequence to all the Party; yet we did not condescend, as I remember, to undertake any of these Methods. And there was a further Argument adduced against the trysting above-written, *viz.* That it was talked there was a Day appointed in *England*, lately in *Shaftsbury's* Time, which did not hold, so they were not to be relied upon. 3. It was propos'd to be considered what Methods were most proper in the Company's Opinion for *Scotland* to follow in case of *England's* Rising; wherewith it was said, that all that could be expected or desired from *Scotland*, was, that upon the certain News of *England's* being in the Fields, those in the Southern Shyres, who would

own that Party, should presently rise, and (how soon they could get as many convened as would be able to deal with stragling Parties, or any sudden Rising in the Countrey) march to join them, and that it would be fit these in the Northern Shyres of *England* waited near the Borders for such; and that they had Officers trysted there to command; and that then it would be seasonable for *Argyle* to land in the *West*, and these Parties on the Borders might divert the Forces, till he had time to put himself in a Posture. These things seemed to be the Sentiments of the whole Company, but were not finally determined till the Opinion of others, who were to be communed with by *Polwort*, were known: And it was represented, there behoved not to be any wilful and obstinate adhering to our own Thoughts of things, but an mutual Condescendance to others concerned, otherwise it were not possible to bring a publick Design to any good Issue. 4. All the Company seemed to agree, that they should undertake nothing, or move in that Affair, till they had a full and certain account what *England* propos'd, what Methods they resolv'd to follow there, who were to be their Heads; and that if they design'd any Attempt on the King's Person, or overturning Monarchy, they would not be forward or clear to joyn. And it being here insinuated, that the most they could do, at least for which there could be any plausible pretence to justify, was to draw together, and without any act of Hostility, send Addresses to His Majesty for Redress of the present Abuses of the Government, and for obtaining sufficient Security against the Hazard they apprehended to their Religion and Liberties: It was said by *Polwort*, that he was apt to think, that was their very Design; for he had heard it was generally believed by that Party in *England*, that if once they were in a Body, the King would be prevailed with to quite the Duke, to be tried for Popery, Correspondence with *France*, and Accession to the Popish Plot; and then, if the King were once free from the Influence of the Duke's Counsels, they were confident he might be moved to reform their Abuses, and secure their Religions and Liberties for the future to their Contentment. 5. It was resolv'd, that till we got the aforesaid Account from *England*, and were satisfied thereanent, and knew others here, who were to be communed with, their Sentiments of what Methods were most proper for us, in case we should undertake, we should not meddle further, only it was left to the Earl of *Tarras* and me, if we thought fit to acquaint Sir *William Scot* younger, with some of the Matter of this Conference overly, without taking notice of our Informers, or such an Conference; and it was recommended to all to be enquiring, at such as they had some Trust in, indirectly about the Affection of our Neighbours, and what Arms there was amongst them, that if we should get an satisfying account, and resolve to join, we might know where to seek Men and Arms suddenly; here it was said by *Polwort*, as I think, that if the Earl of *Tarras*, *Torwoodlie*, *Gallowsheils*, and I, once took Horse, he thought the most part of the *West* end of *Tiviotdale* and *Selkirkshyre* would soon come to us, especially, when they heard *England* was risen; then we trysted to meet there against *Midsummer* Fair, betwixt which the foresaid Account was expected; but in case it came to any of our Hands sooner, we promised to advertise the rest, that we might meet presently, if the Case required: This is the Substance and Sum of what pass'd at the foresaid Conference, that I can

now remember; but I remember, I was likewise told these following Particulars in privat, by *Polwort* or *Torwoodlie* (which of them I cannot distinctly tell) the Day of the forsaide Conference, or within a short time after. 1. That *Polwort* kept the Correspondence with our Friends at *London*; I remember not positively of any of them that was named, to be on the Intrigue there, except my Lord *Melvil*, Sir *John Cochran*, *Ferwiswood*, and Commissar *Monro* (for I hardly knew any of the rest) and, as I think, Commissar *Monro* was called his Correspondent there. 2. That the Money to be advanced by the *English* Partie to *Scotland*, was ready when Mr. *Martin* came from *London*; and it was expected, that within few Days after, it would be dispatched with some Confident to *Holland* (whether by Bills, or in Cash, I cannot say) it was called ten Thousand Pound Sterling, and was to be employed (as I was told) by that Confident, at *Argyle's* Sight, for buying Arms, providing Ships to transport them with *Argyle*, to the *West* here, and such other Charges. 3. That how soon our Friends at *London* got notice of the safe Arrival of the Confident forsaide, and all other things were finally concluded there (which was expected would be about the middle of *June*, as I remember) they would come home, and, as they passed, would give them, or one of them, an particular Account of all Resolutions taken, to be communicat to the rest, that it was not to be expected by Letters, that behoved to be under Figures and dark expressions; and, as I remember, they were written as it were about the *Carolina* Business, or some Household Furniture, as I was told; for I never remember saw any Letter, either direct to *London*, or sent from it on that Head. 4. I was told there was a Sign and a Word agreed on by that Party, so that Men might know with whom they might use Freedom; the Word, as I remember, was *Harmony*, and the Sign, the opening two Buttons in the Breast-coat, and shutting them presently; this I communicat to the Earl of *Tarras*, but does not mind I ever saw it used, except when I visited *Park-Hay* here in Town, about the End of *June*; we discoursing a little freely, he asked if I had the Word and Sign of the *Carolina* Men; and I having given them, he said something to this purpose, that he was afraid that the *Carolina* Business did not go well, for there had been some of the Managers expected here (as I think he named *Ferwiswood* or Commissar *Monro*) these eight Days past, but there was none come, nor could he learn that any of their Friends had heard from them for several Posts. *Polwort*, *Torwoodlie*, and I, met at *Gallowshells*, on *Midsummer* Fair; but I mind nothing passed but private *Whisperings*. Dated *September 15*, 1684, and subscribed thus,

*James Murray.*

*Edinburgh, December 23, 1684.*

The Deposition above written being read to the said *James Murray* of *Philiphaugh*, in presence of the Justices and Officers, he adheres thereto in all Points upon Oath.

*Sic subscribitur,*

*James Murray.*

*Linlithgow, I. P. D.*

The said *James Murray* further depons, That at their meeting at *Gallowshells*, it was resolved, that they should keep up their Cess unpayed till their next meeting at *Midsummer*, which was to be at *Gallowshells*, and should deal with all these they had influence upon to do the like; and that upon the Supposition mentioned in his Oath given in, it was spoke amongst them, that the Troopers Horses should be seized upon when they were grazing. And this is the Truth, as he shall answer to God.

*Sic subscribitur,*

*James Murray.*

*Linlithgow, I. P. D.*

*Hugh Scot* of *Gallowshells*, aged 36 Years, married, purged, &c. and sworn; Depons, That the Earl of *Tarras*, and *Philiphaugh*, did come to the Deponent's House, in *May*, 1683, and *Polwort* came likewise there, where there were Discourses and Proposals, that if the *English* would rise in Arms, their Friends in the South Shires should rise with them; and that they should seize the Horses belonging to the King's Troops, where they grazed; and the Town of *Berwick*, and the Castle of *Stirling*: And likewise it was there discoursed anent the late Earl of *Argyle's* coming to invade *Scotland*; but because of the uncertainty of Sea Voyages, there was not much stress laid upon it. Depons, It was also proposed, that some of the South Countrey, whom they trusted in, should be acquainted with it, and that Endeavours should be used to learn what Arms was in the Countrey. Depons, There was some such Discourse there, as that the Earl of *Tarras*, *Philiphaugh*, *Torwoodlie*, *Polwort*, and some others should draw to Horse with the first, when the rising should be in readiness, that it might be expected that the South Parts of *Teviotdale* and *Selkirk* Shire would join with them. And this is the Truth, as he shall answer to GOD.

*Sic subscribitur,*

*Hugh Scot.*

*Linlithgow, I. P. D.*

His Majesty's Advocat produced other Depositions, emitted by *Gallowshells*, before the Lords of the Secret Committee, whereof the Tenor follows.

*Edinburgh, the 14th of September, 1684.*

*Gallowshells* depons, That the Earl of *Tarras* and *Philiphaugh*, being in his House in *May*, 1683, discoursed of an intended rising in *England*, and of Proposals made to *Scotsmen*, to rise with them, and of *London* in particular, and that *Polwort* was present at that Meeting; and told he was sure the *Englishmen* intended so, and that it was discouried at that Meeting amongst them, that it were fit to seize *Berwick* and *Stirling*; and that it was talked amongst them of bringing the Duke of *York* to Tryal, and that the King would abandon him.

*Sic subscribitur,*

*Hugh Scot.*  
*Perth*

*Perth Cancel.*

*Queensbury.*                      *Jo. Drummond.*  
*George Mackenzie.*              *George Mackenzie.*

*Edinburgh, October 29. 1684.*

Sederunt

*Lord Chancellor,*                  *Lord President,*  
*Lord Secretary,*                  *Lord Advocat.*

The Laird of *Gallowshells*, Prisoner in the Tolbooth of *Edinburgh*, being called and examined upon Oath, Depons, That in the Moneth of *May*, 1683, the Earl of *Tarras*, *Hume* of *Polwort* Elder, and Laird of *Philiphaugh*, came to the Deponent's House, himself being absent, at his coming Home, they were speaking of the Security of the Protestant Religion; and of a Party in *England*, who would secure or seize the King or Duke; and that if any should rise in Arms to defend them, or to rescue the King and Duke, here was another Party who would rise in Arms against them; it was proposed, that some Country-men should be spoken to, to try their Resolutions, and that the Resolutions of *England* should be told them, to see if they would concur. But the Deponent does not remember that this Proposition was approved, or undertaken to be done by any present; nor does he remember who managed the Discourse. It was likewise proposed, to seize the Officers of State, especially the Chancellor and Thesaurer; and the said Sir *John Cochran* was to come to the West from *England*, for advancement of the Design; and that the Earl of *Argyle* was to land in the West-Highlands, and to raise that Country. Of these Matters all these who were present, discoursed as of an Affair that they were agitating, and wherein themselves were particularly concerned, though at that time they did not conclude what their Carriage should be. The reason why the Deponent cannot be more particular is, because he was sometimes going out, and sometimes walking up and down the Room; and though the Deponent cannot be positive of the very Words, yet he is positive they were either these Words, or Words to that purpose.

*Sic subscribitur,*

*Hugh Scot.*

*Perth Cancellarius.*

*Edinburgh, December 23, 1684.*

*Hugh Scot* of *Gallowshells*, being solemnly sworn, in presence of the Justices and Assize, adheres to the Depositions within and above written in all Points.

*Sic subscribitur,*

*Hugh Scot.*

*Lialitbgow, I. P. D.*

His Majesty's Advocat, in fortification of the former Probation, adduces the Printed Copy of Mr. *William Carstares's* Depositions, emitted before the Officers of State, and other Lords of Privy Council, and leaves the same to the Assize, and uses it as an Adminicle of Probation; for though it was capitular, that he should not be made use of as a Witness; yet it was agreed, that the Deposition should be published: And likewise produces the principal Deposition signed by himself, and the said Lords.

The Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, admit the Paper produced as an Adminicle, and refers the Import thereof to the Inquest, and ordains the Printed Paper, as it is collationed, to be taken in, and considered by the Inquest.

Sir *William Paterson*, and Mr. *Colin Mackenzie*, Clerks of His Majesty's Privy Council, being interrogat, if they heard Mr. *William Carstares* own the Depositions read, Depons they saw and heard him swear, and own the same upon Oath, and they collationed the Printed Copy with the Original formerly, and now they heard it collationed.

*Sic subscribitur,*

*William Paterson.*

*Colin Mackenzie.*

*The Deposition of Mr. William Carstares, when he was examined before the Lords of Secret Committee, given in by him, and renewed upon Oath, upon the 22d. of December, 1684, in presence of the Lords of His Majesty's Privy Council.*

*Edinburgh-Castle, September 8. 1684.*

Mr. *William Carstares* being examined upon Oath, conform to the Condescension given in by him, and on the Terms therein mentioned; Depons, That about *November*, or *December*, 1682, *James Steuart*, Brother to the Laird of *Cultness*, wrote a Letter to him from *Holland*, importing, That if any considerable Sum of Money could be procured from *England*, that something of Importance might be done in *Scotland*: The which Letter the Deponent had an inclination to inform *Shepherd* in *Abchurch-Lane*, Merchant in *London*, of; but before he could do it, he wrote to Mr. *Steuart* above-named, to know from him, if he might do it; and Mr. *Steuart* having consented, he communicat the said Letter to Mr. *Shepherd*, who told the Deponent that he would communicat the Contents of it to some Persons in *England*; but did at that time name no body, as the Deponent thinks: Sometime thereafter Mr. *Shepherd* told the Deponent, that he had communicat the Contents of the Letter above-named to Colonel *Sidney*, and that Colonel *Danvers* was present; and told the Deponent, that Colonel *Sidney* was averse from imploying the late Earl of *Argyle*, or meddling with him, judging him a Man too much affected to the Royal Family, and inclined to the present Church Government; yet Mr. *Shepherd* being put

put upon it by the Deponent, still urged, that one might be sent to the Earl of *Argyle*; but, as *Mr. Shephard* told him, he was suspected upon the account of his urging so much; yet afterwards he pressed, without the Deponent's knowledge, that the Deponent being to go to *Holland*, however might have some Commission to the Earl of *Argyle*; which he having informed the Deponent of, the Deponent told him, that he himself would not be concerned; but if they would send another, he would introduce him; but nothing of this was done: Upon which the Deponent went over, without any Commission from any body, to *Holland*, never meeting with *James Stuart* above-named: He was introduced to the Earl of *Argyle*, with whom he had never before conversed, and did there discourse what had past betwixt *Mr. Shephard* and him; and particularly about remitting of Money to the said Earl from *England*; of which the said *Mr. Stuart* had written to the Deponent, namely of 30,000 Pounds *Sterling*; and of the raising of 1000 Horse and Dragoons; and the securing the Castle of *Edinburgh*, as a Matter of the greatest Importance. The Method of doing this was proposed by the Deponent, to be one Hour, or thereby, after the relieving of the Guards: But the Earl did not relish this Proposition, as dangerous; and that the Castles would fall of consequence, after the Work Abroad was done. *James Stuart* was of the Deponent's Opinion for seizing the Castle, because it would secure *Edinburgh*, the Magazines and Arms; as to the 1000 Horse and Dragoons, my Lord *Argyle* was of Opinion, that without them nothing was to be done; and that if that Number were raised in *England* to the said Earl, he would come into *Scotland* with them; and that there being so few Horse and Dragoons to meet them, he judged he might get the Country without trouble, having such a standing Body for their Friends to rendezvous to; and the said Earl said he could show the Deponent the convenient Places for landing, if he understood, and, as the Deponent remembers, where the Ships could attend. The Deponent remembers not the Names of the Places. The Deponent spoke to the Lord *Stairs*; but cannot be positive that he named the Affair to him, but found him shy: But the Earl of *Argyle* told him, he thought *Stairs* might be gained to them; and that the Earl of *Lowdown* being a Man of good Reason, and disobliged, would have great Influence upon the Country, and recommended the Deponent to Major *Holms*, with whom the Deponent had some Acquaintance before, and had brought over a Letter from him to the Earl of *Argyle*; but the Deponent had not then communicated any Thing to the said *Holms*, *James Stuart* laid down a way of Correspondence by Cyphers and false Names, and sent them over to *Holms*, and the Deponent, for their use (which Cyphers and Names are now in the Hands of His Majesty's Officers, as the Deponent supposes) and did desire the Deponent earnestly to propose the 30,000 Pound *Sterling* abovenamed to the Party in *England*, and did not propose any less; for, as the Earl told the Deponent, he had particularly calculated the Expence for Arms, Ammunition, &c. But *James Stuart* said, that if some less could be had, the Earl would content himself, if better might not be; but the Earl always said, that there was nothing to be done without the Body of Horse and Dragoons above-mentioned.

During the time of the Deponent his Abode in *Holland*, tho' he had several Letters from *Shephard*, yet there was no satisfactory Account, till some time after the Deponent parted from the Earl of *Argyle*, and was making for a Ship at *Rotterdam*, to transport himself to *England*, *James Stuart* wrote to him that there was hopes of the Money. The next Day after the Deponent came to *England*, he met with Sir *John Cochran*, who, with Commissar *Monro*, and *Jerviswood*, was at *London* before he came over; and depons, that he knows not the Account of their coming, more than for the perfecting the Transaction about *Carolina*: And having acquainted Sir *John Cochran* with the Earl's Demands of the 30,000 Pound *Sterling*, and the 1000 Horse and Dragoons, Sir *John* carried him to the Lord *Ruffel*, to whom the Deponent proposed the Affair; but being an absolute Stranger to the Deponent, had no return from him at that time; but afterwards having met him accidentally at *Mr. Shephard's* House, where the Lord *Ruffel* had come to speak to *Shephard* about the Money above-named, as *Mr. Shephard* told the Deponent: The Deponent (when they were done speaking) desired to speak to the Lord *Ruffel*, which the Lord *Ruffel* did, and having reiterate the former Proposition for 30,000 Pound *Sterling*, and the 1000 Horse and Dragoons, he the Lord *Ruffel* told the Deponent, they could not get so much raised at the time; but if they had 10,000 Pound to begin, that would draw People in; and when they were once in, they would soon be brought to more; but as for the 1000 Horse and Dragoons he could say nothing at the present; for that behoved to be concerted upon the Borders. The Deponent made the same Proposal to *Mr. Ferguson*, who was much concerned in the Affair, and zealous for the promoting of it. This *Mr. Ferguson* had in *October*, or *November* before, as the Deponent remembers, in a Conversation with the Deponent in *Cheapside*, or the Street somewhere thereabout, said, That, for the saving of innocent Blood, it would be necessary to cut off a few, insinuating the King and the Duke; but cannot be positive whether he named them or not: To which the Deponent said, That's Work for our wild People in *Scotland*, my Conscience does not serve me for such Things; after which the Deponent had never any particular Discourse with *Ferguson*, as to that Matter; but as to the other Affair, *Ferguson* told the Deponent that he was doing what he could to get it effectuate, as particularly that he spoke to one Major *Wildman*, who is not of the Deponent his Acquaintance. *Ferguson* blamed always *Sidney*, as driving Designs of his own. The Deponent met twice or thrice with the Lord *Melvil*, Sir *John Cochran*, *Jerviswood*, Commissar *Monro*, the two *Cessnocks*, *Montgomery* of *Landshaw*, and one *Mr. Veitch*, where they discoursed of Money to be sent to *Argyle*, in order to the carrying on the Affair; and though he cannot be positive the Affair was named, yet it was understood by himself, and, as he conceives, by all present, to be for rising in Arms for rectifying the Government. Commissary *Monro*, Lord *Melvil*, and the two *Cessnocks* were against meddling with the *English*, because they judged them Men that would talk, and would not do, but were more inclined to do something by themselves, if it could be done. The Lord *Melvil* thought every thing hazardous, and therefore the Deponent

nent cannot say he was positive in any thing, but was most inclined to have the Duke of *Monmouth* to head them in *Scotland*, of which no particular Method was laid down. *Fervifwood*, the Deponent, and *Mr. Veitch*, were for taking Money at one of these Meetings. It was resolved, that *Mr. Martin*, late Clerk to the Justice-Court, should be sent to *Scotland*, to desire their Friends to hinder the Country from rising, or taking rash Resolutions upon the Account of the Council, till they should see how Matters went in *England*. The said *Martin* did go at the Charges of the Gentlemen of the Meeting, and was directed to the Laird of *Polwort* and *Torwoodlie*, who sent back Word that it would not be found so easy a matter to get the Gentry of *Scotland* to concur: But afterwards in a Letter to Commissar *Monro*, *Polwort* wrote that the Country was readier to concur than they had imagined, or something to that purpose. The Deponent, as above-said, having brought over a Key from *Holland*, to serve himself and Major *Holms*: He remembers not that ever he had an exact Copy of it, but that sometimes the one, sometimes the other kept it, and so it chanced to be in his Custody, when a Letter from the Earl of *Argyle* came to Major *Holms*, intimating, that he would join with the Duke of *Monmouth*, and follow his Measures, or obey his Directions. This *Mr. Veitch* thought fit to communicat to the Duke of *Monmouth*, and for the understanding of it was brought to the Deponent; and he gave the Key to *Mr. Veitch*, who, as the Deponent was informed, was to give it and the Letter to *Mr. Ferguson*, and he to shew it to the Duke of *Monmouth*; but what was done in it the Deponent knows not. The Deponent heard the Design of killing the King and Duke, from *Mr. Shephard*, who told the Deponent some were full upon it. The Deponent heard that *Aaron Smith* was sent by those in *England*, to call Sir *John Cochran*, on the account of *Carolina*; but that he does not know *Aaron Smith*, nor any more of that Matter, not being concerned in it. *Shephard* named young *Hambden* frequently as concerned in these Matters.

Signed at *Edinburgh-Castle*, the 8th of *September*, 1683, and renewed the 18th of the same Month.

*William Carstares.*

PERTH Cancell. I. P. D.

*Edinburgh-Castle*, 18th *September*, 1684.

*Mr. William Carstares* being again examined, adheres to his former Deposition, in all the Parts of it, and Depones he knows of no Correspondence between *Scotland* and *England*, except by *Martin* before named; for those Gentlemen, to whom he was sent, were left to follow their own Methods. *Veitch* sometimes, as the Deponent remembers, stayed sometimes at *Nicolson*, Stabler's House at *London-Wall*; sometimes with one *Widow Hurdcastle* in *Moor-fields*. The Deponent did communicat the Design on foot to *Doctor Owen*, *Mr. Griffil*, and *Mr. Mede*, at *Stepney*, who all concurred in the promoting of it, and were desirous it should take effect; and to one *Mr. Freth* in the *Temple*, Counsellor at Law, who said that he would see what he could do in reference to the

Money; but there having gone a Report, that there was no Money to be raised, he did nothing in it; nor does the Deponent think him any more concerned in the Affair. *Nelthorp* frequently spoke to the Deponent of the Money to be sent to *Argyle*, whether it was got, or not; but the Deponent used no freedom with him in the Affair. *Goodenough* did insinuate once, that the Lords were not inclined to the Thing, and that before, they would see what they could do in the City. The Deponent saw *Mr. Ferguson*, and *Mr. Rumsey*, lurking, after the Plot broke out, before the Proclamation, having gone to *Ferguson*, in the back of *Bishopsgate-street*, at some new Building, whether he was directed by *Fervifwood*, who was desirous to know how Things went. *Rumsey* was not of the Deponent his Acquaintance before, but they knew as little of the Matter as the Deponent. This is what the Deponent remembers; and if any thing come to his Memory, he is to deliver it in betwixt the first of *October*. And this is the Truth, as he shall answer to G O D.

*William Carstares.*

PERTH Cancell. I. P. D.

At *Edinburgh*, the 22d of *December*, 1684.

These foregoing Depositions, Subscribed by *Mr. William Carstares* Deponent, and by the Lord Chancellor, were acknowledged on Oath by the said *Mr. William Carstares*, to be his true Depositions; and that the Subscriptions were his, in Presence of us Underscribers,

*William Carstares.*

*David Falconer.*

*George Mackenzie.*

PERTH Cancell.

*Queensberry.*

*Atbol.*

His Majesty's Advocat for farther Probation adduces the Examinations of *Mr. Shephard*, taken before Sir *Leolin Jenkins*, Secretary of State for *England*, with the Information or Deposition of *Mr. Zachary Bourn*, relating to the Plot, signed by him and Secretary *Jenkins*, of which Depositions the Tenors follow.

*The Examination of Thomas Shephard of London, Merchant, taken upon Oath before the Right Honourable Sir Leolin Jenkins Knight, His Majesty's Principal Secretary of State, the 23d Day of December, 1683.*

The Deponent saith, That *Ferguson* told him, on, or about the Moneth of *April* last, that an Insurrection was intended both in *England* and in *Scotland*; and that for the settling that Affair betwixt the two Nations, *Mr. Baillie*, *Mr. Monro*, Sir *John Cochran*, Sir *Hugh* and Sir *George Campbells*, with some others (whose Names this Deponent heard not) were come to *London*.

That the Deponent had some Acquaintance with *Mr. Baillie*, *Mr. Monro*, and Sir *John Cochran*, and none at all with Sir *Hugh* and Sir *George Campbells*; that *Mr. Baillie* told the Deponent, that the Earl of *Argyle* demanded thirty Thousand Pounds of the *English* to capacitat him to begin the Business

ness effectually in *Scotland*, and that he the said *Baillie* likewise told the Deponent, that having concerted Things with the Lord *Ruffel*, and others, he the said *Baillie* found an impossibility of raising that Sum; after which the said *Baillie* had acquainted the Deponent, that they were certainly promised ten Thousand Pounds, which Sum was agreed to be payed into the Deponent's Hands, in order to be remitted into *Holland*, for the providing of Arms; and that the said *Baillie* told the Deponent at divers times, that the said Sum, or at least one half of it, would be payed such a Day, and such a Day; and sometimes asked the Deponent, if he had received any Part of the said Money; to which the Deponent replied that he had not, and that he the Deponent scarce thought any would be payed.

And the Deponent also saith, that having had some little Conversation with Sir *John Cochran*, he remembers well, that both of them did sometimes lament the Delays in not paying in the Money; and said, that altho' the said ten Thousand Pounds were payed in, they, the said Sir *John Cochran* and *Mr. Monro*, feared it would be too little; and this Deponent further sayeth not as to any new Matter. But the Deponent being asked to explain what he thought was meant by the Words above-written, *viz.* to capacitat him, the Earl of *Argyle*, to begin the Business, he, this Deponent sayeth, that he did understand by the Word *Business*, an Insurrection in *Scotland*.

*Sic subscribitur,*

Thomas Shephard.

*Jurat' coram*  
L. Jenkins.

The Information of *Zachary Bourn*, of *London*, Brewer, taken upon Oath, the 10th Day of *December*, 1683, before the Right Honourable Mr. Secretary *Jenkins*.

The Informant deposeth, and sayeth, That *Mr. Baillie* sat up one Night, if not two, with *Mr. Ferguson*, and went several times in the Evening with him to the Duke of *Monmouth*, and the chief Managers of the Conspiracy: That *Ferguson* told the Deponent, that he the said *Baillie* was the chief Man for the *Scots*, next to the Lord *Argyle*; that the said *Baillie* did sit up the greatest part of one Night with the said *Ferguson*, at which time this Deponent believeth they were busy in preparing the intended Declaration, which the Deponent has the more reason to believe, in as much as the said *Ferguson* did go about to shew him the Deponent such a Paper, wherein the said *Ferguson* was hindered by the coming up Stairs of some Person, to speak with the said *Ferguson*; that the said *Ferguson* told the Deponent, that the main Business of the said *Baillie*, in meeting the saids Conspirators, was in order to get from them the ten Thousand Pounds, promised for the buying of Arms, for the Insurrection intended in *Scotland*.

That the Deponent saw *Mr. William Carstares* come often to the Lodgings of the said *Ferguson*; but that the said *Ferguson* never told the Deponent of any Discourse held by him with the said

*Carstares*; and further this Deponent saith not.

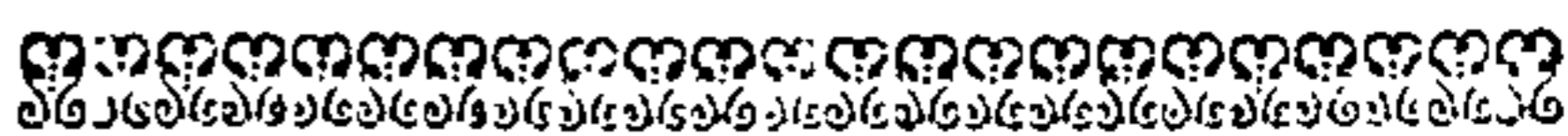
*Sic subscribitur,*

Zac. Bourn.

*Jurat' coram*  
L. Jenkins.

His Majesty's Advocat likewise produced several Warrants, and Papers, to prove that those Depositions are signed by Sir *Leolin Jenkins*.

His Majesty's Advocat also produced the Books of Adjournal, bearing *Mr. William Veitch* to be a Forfault Traitor, and the Act of Parliament whereby the Forfaulture is ratified.



*His Majesty's Advocat's Speech to the Inquest.*

*My Lords and Gentlemen,*

YOU have now a Conspiracy against His Majesty's Sacred Person and Royal Government, so fully discovered, that they must want Reason as well as Loyalty, who do not believe the Discovery; and they must be Enemies to Sincerity, as well as to the King, who do not acknowledge it. Beside, that the Councils of all the three Nations thought the Proof sufficient for Indicting a General Thanksgiving through all these Nations, and that the Judges of *England* thought the same strong enough to infer Forfaulture of Life and Estate against some of all Ranks there; you have a Discovery made here from the late Earl of *Argyle's* own Letters, and the Confession of his own Emissaries, the two surest Proofs that Law ever invented, or the Nature of humane Affairs can allow; and I am this Day to add to all this, a new Set of Proofs in the Process that I now lead against this Pannal, from the Confessions of Noblemen and Gentlemen, who have been engaged in this wicked Conspiracy; and who, from a Sense of their Guilt, are content freely to depose against their nearest Relation, and their most intimate Friend; in which having thus cleared to you, that there was really such a Conspiracy, I shall, in the next place, proceed to prove this Pannal's Accession to it.

It cannot be imagined, that we would willingly involve our Countrymen in it, without a Conviction stronger than our Kindness to *Scotland*, nor did His Majesty's Servants accuse this Pannal, without the Opinion of the ablest Lawyers of the Kingdom, who did with them concur to think, that there was not the least occasion of doubting left to the most indifferent Inquest of his Guilt, after they had seriously and with Reflection read over and pondered the Probation now laid before you.

The Person accused of Accession to this Cryme, is the Ringleader of all those who in this Kingdom concurred with the *English* Conspirators, as you may see by the Testimonies of all who have deposed; and it was indeed fit and just to begin with the most guilty; so that if he be not convicted, there should no Man be punished for this Conspiracy, all the Noise we have heard of it, is but a Cheat, the King's Judges have been Murderers, all the Witnesses have been Knaves, and such as died for it have been Martyrs.

The Accession charged on the Pannal is not an accidental Escape, nor is it proved by Witnesses, who can be suspected of Unkindness to his Person,

or his Cause; for it is a long Tract of a continued Design, gone about with the greatest Deliberation and Concern imaginable, and proved by his nearest Relations, and Persons so deeply engaged in that Cause, for which he suffers, that they were content with him to venture their Lives and Fortunes in that Quarrel. He is not accused of a Cryme that can amount only to a single Murder, tho' that be a dreadful Cryme, but a Rebellion, which was to draw upon us a Civil War, that Murder of Murders, in which hundreds of thousands were to fall; and to crown all, he was to begin, and to be the chief Promoter of a Rebellion, in which one of the first Steps was to kill His Sacred Majesty, and his Royal Brother, and one of the chief Witnesses, which I have led against him, is *Bourn*, which *Bourn* confessed that he was to kill the King, and who confesses the Pannal sat up several Nights with *Ferguson*, the other Contriver of the King's Murder; and so familiar was he with him, that *Bourn* depons, that the said Pannal had been with *Ferguson* at the drawing of the *Manifesto*, whereby he was not only to be an Actor, but to be the Justifier of that horrid Villany; and therefore *Bourn* depons, that *Ferguson* (the best Judge in that Case) looked upon him as the chief Man, next to *Argyle*; but because no Man is presumed to go to such a height, without previous Inclination and Motives, I shall, to convince you that this Gentleman was very capable of all that was libelled against him, remember you, that he is Nephew and Son-in-Law to the late *Warissoun*, bred up in his Family, and under his Tutor; about the time of this Plot it was undeniably known, and is now sufficiently proved by two present Witnesses, the Earl of *Tarras* and Commissar *Monro*, that he thought himself desperat, knowing himself to be guilty of Treason by *Blackwood's* Case, and as it's presumable, that a Man that's guilty of one Point of Treason, will commit another, so when a Man is desperate as to his Life and Fortune, he is capable of any thing; he was likewise animated to commit this Cryme by the Intelligence he had that there was a Plot in *England*, carryed on by Men of so great Parts, Fortune, and Influence, and by the too probable Hopes, that they would get all the *Western* Shyres to join with them here, because of the common Guilt, in which they had engaged themselves, by their late Extravagances, they made an account of an Assistance of twenty thousand Men, and by *Philipbaugh's* Deposition, that these Gentlemen expected the Concourse of the *Southern* Shyres; and thus I am to prove to you a Cryme, which is in it self so probable and liklie, that it should need little Probation, tho' I have adduced for your Conviction sufficient Evidences, albeit the Cryme were in it self very unliklie.

The Crymes, which I hope I have proved, are, That *Ferviswood* the Pannal transacted for Money to the late Earl of *Argyle*, a declared Traitor. 2. That he designed to raise a Rebellion. 3. That he intercommuned with the Earl of *Argyle* and Mr. *Veitch* declared Traitors. 4. That he was present where it was treated, either that *Argyle* should have Money from the *English*, and Assistance from *Scotland*, or that a Rebellion should be raised, and that he did not reveal the same; and all these being found relevant *separatim*, it is sufficient for me to have proved any one of them. And if a Gentleman was lately found guilty of High-Treason, by the Opinion of all the Lords of Session, for not revealing, that Sir *John Cochran*

sought fifty Pounds *Sterling* from him, tho' he refused the same, and tho' he believed it was sought for a charitable Subsistence to preserve him from starving, what deserves this Pannal, who sought thirty thousand Pounds *Sterling*, to buy him Arms, to invade his Native Country?

That *Ferviswood* was designing to carry on a Rebellion, or at least was accessory, or (as our Law terms it) was *Art and Part* thereof, is clearly proved; but that in this occult and hidden Crime, which uses not to be proved by clear Witnesses, I may lead you thorow all the Steps of the Probation, which, like the Links of a Chain, hang upon one another: You will be pleased to consider, that, 1. It is proved that he desired a blind Commission to go to *England*, not to manage the Affairs of the *Carolina* Company, as he confessed, but to push the People of *England* to do something for themselves, because they did only talk, and not do; and what he would have them to do, appears too clearly, because he tells the Earl of *Tarras*, it was probable, that if the King were briskly put to it by the Parliament of *England*, he would consent to exclude the Duke from the Succession: Here is not only a treasonable Design (tho' a Design be sufficient in Treason) but here are express Acts of Treason proved, *viz.* The treating with the Earl of *Tarras* upon this Design, the settling a Correspondence with him for the Prosecution of it, and the writing Letters from *London* to him concerning it, and the sending down Mr. *Martin* to compleat it by a general Rising. As he designed to push on the *English*, so he prosecuted closely this Design upon all occasions. On the Road he complains cunningly and bitterly, that our Lives, Laws, and Liberties, and the Protestant Religion, were in Danger, the Style and Method of all such as design to rebel; after he arrives at *London*, he engages the Conspirators there to assist the late Earl of *Argyle*, a declared Traitor, with Money to buy Arms; this was indeed to push the *English* to do the most dangerous Things by the most dangerous Man, and in the most dangerous Methods. He enters also in a strict Correspondence with *Ferguson* the Contriver, with *Shepherd* the Thesaurer, and *Carstares* the Chaplain of the Conspiracy.

*Alexander Monro*, another present Witness, proves that he argued with him that it was necessary to give *Argyle* Money expressly for carrying on the Rebellion; and that they did meet at *Ferviswood's* Chamber where this was spoke of, and from which Mr. *Robert Martin* was sent to their Friends in *Scotland*, to know what they would do; and tho' the silly Caution was, that they sent him to prevent their Rising, yet a Man must renounce Common Sense, not to see that the Design was to incite them to Rebellion, and to prevent only their doing any thing in this rebellious Design, by which they might lose themselves in a too early and abortive Insurrection here, till things were ready in *England*. For, 1. This Commission was given him in a Place, and by a Company who had been themselves treating immediately before of sending Money to the late Earl of *Argyle* to buy Arms, and certainly those Arms were to be bought for Men, and not for a Magazine. 2. They were treating how many Men could be raised in *Scotland*. 3. *Carstares's* Deposition bears, that *Martin* was sent to hinder rash Resolutions, till they saw how Matters went in *England*; and the Return to their Ambassy bore, that it would

not be an easy matter to get the Gentry of *Scotland* to concur, but afterwards better Hopes of their Rising was given, which could not have been, if the true Commission had not been to raise *Scotland*.

4. That Sir *John Cochran* made a speech to that purpose, is expressly proved, and that *Ferriewood* spoke to the same purpose, is proved by a necessary consequence; for since it's proved; that he spoke, and that he did not speak against it, it must necessarily follow that he spoke for it, tho' the Witness is so cautious, that he cannot condescend upon the Words now after so long a time, and it is against Sense to think, that *Ferriewood*, who in private pressed the same so much upon Commissar *Monro*, and who was the Deacon-Conveener here, and who, as Mr. *Martin* their Envoy declared, was the Person who was to be sent for the Arms, should not himself have been the most forward Man in that Design; but above all *exitus acta probat*, this Commissioner (who being a meer Servant, durst not have proposed any thing from himself, being a mean Person, and being one, who, as the Earl of *Tarras* deposes, would say nothing, but what was in his Paper) does expressly declare, that he came from *Ferriewood* and others; and in the meeting with him, a Rebellion is actually formed and it is resolved, they should seize the King's Officers of State, Garrisons, and Forces, and that they should join with the late Earl of *Argyle*, and put their own Forces in a Condition to join with these Forces, that were to come from *England*, and they gave a Sign, and a Word, which uses only to be done in actual War; so here is Treason clearly proved, by two present Witnesses, from the first Design to its last Perfection.

Nor can it be objected, that they are not concurring Witnesses, but *testes singulares* upon separate Acts; for in reiterable Crimes, Witnesses deposing upon different Acts, do prove, if the Deeds tend to the same end; as for instance, if one Witness should depose, that they saw a Traitor sit in a Council of War in one place, and in another place they saw him in Arms, or that one saw him assist at a Proclamation in one place, and saw him in Arms in another, or that one saw him write a Treasonable Paper, and another saw him use it: These Witnesses are still considered as *Contestes*, or concurring Witnesses; and ten or twelve Inqueists have so found, and upon their Verdict, Rebels have been lately hang'd. The learned Judges of *England* being all met together did expressly find, that one Witness proving, that *A. B.* said, that he was going to buy a Knife to kill the King, and another deposing, that he saw him buy a Knife, without telling for what, that these two Witnesses were *Contestes*, and proved sufficiently the Crime of Treason; yet there the one Witness proved only a remote Design, and the other an Act, which was indifferent of its own nature, and became only Treasonable by the Connexion; but no Witnesses ever deposed upon things so coherent, and so connected together, as these do; for they depose still upon the same Person, carrying on the same Design of a Rebellion, as to which, in one place, he is exciting his own Nephew, and telling him his Resolutions, and settling a Correspondence with him, at another time he presses Commissar *Monro* to the same Rebellion. At a third, he holds a Meeting at his own Chamber, and speaks concerning it, and from that Meeting he sends a Trusty, who forms the Rebellion. Besides all this, tho' two Witnesses be sufficient, I have adduced Mr. *William Carstares*

Chief Conspirator, and who choosed rather to suffer violent Torture, than to disclose it; he likewise deposes upon all these Steps, and connects them together, and this his Deposition is twice reiterated, upon Oath, after much Premeditation. And I likewise adduce two Depositions taken upon Oath, by Sir *Colin Jenkins*, who was empowered by the Law of *England*, and at the Command of the King, and the Council of *England*, upon a Letter from His Majesty's Officers of State here, in which Deposition, *Shephard*, one of the Witnesses, deposes, that *Baillie* came frequently to him, and desired him to advance the Money, and lamented the Delays; and that there was so little to be advanced, and who should be better believed than one who was his own Trusty, and a Person who was able to advance so great a Sum? *Bourn*, another of the Witnesses, deposes, that *Ferguson* told him, that the Pannal spoke frequently to him concerning the same Money, and that he sat up several Nights with *Ferguson* upon the said Conspiracy; and who should be better believed than *Ferguson's* Confident, and one who was so far trusted in the whole Affair, that he was to take away that Sacred Life, which Heaven has preserved by so many Miracles?

Against these three Depositions you have heard it objected, that *non testimonia, sed testes probant*, especially by our Law; in which by an express Act of Parliament, no Probation is to be led, but in presence of the Assise and Pannal. To which it is answered, that these Depositions are not meer Testimonies; for I call a Testimony a voluntar Declaration, emitted without an Oath, and a Judge; but these Depositions are taken under the awe of an Oath, and by the Direction of a Judge. 2. *Shephard* was confronted with the Pannal himself, and he had nothing to say against him, whereas the great thing that can be objected against Testimonies (and by our Statute especially) is, that if the Party who emits the Testimony had been confronted with the Pannal, the Impression of seeing a Person that was to die by his Deposition, would have made him afraid to depose laxly; and the Pannal likewise might by proposing Interrogators and Questions, have cleared himself, and satisfied the Judges in many things deposed against him: But so it is that Mr. *Shephard* having been confronted with the Pannal, before the King Himself, who is as far above other Judges, in His Reason and Justice, as He is in His Power and Authority: He deposes that the Pannal was the chief Manager of this Conspiracy, next to *Argyle*, and that he was so passionate to have this Money to buy Arms, that he lamented the Delays; and can it be imagined that Mr. *Shephard*, whom he trusted with his Life, and his Fortune, and whom all their Party trusted with their Cash, would have deposed any thing against him that was not true, especially when he knew that what he was to depose, was to take away his Life and his Fortune? or that if the Pannal had been innocent he would not, when he was confronted with Mr. *Shephard* before the King Himself, have roared against Mr. *Shephard*, if he had not been conscious to his own Guilt? There is a Surprise in Innocence, which makes the Innocent exclaim; and it inspires Men with a Courage which enables them to confound those who depose falsely against them; and in what occasion could either of these have appeared; more than in this, wherein this Gentleman was charged to have conspired with the greatest of Rascals; against the best of Princes; and that too in Presence of the Prince himself, against whom he had



had conspired? But Guilt stupifies indeed, and it did never more than in this Gentleman's Case, whose Silence was a more convincing Witness than Mr. *Shepherd* could be. Mr. *Carstares* likewise knew when he was to depone, that his Deposition was to be used against *Ferviswood*; and he stood more in awe of his Love to his Friend, than of the Fear of the Torture; and hazarded rather to die for *Ferviswood*, than that *Ferviswood* should die by him: How can it then be imagined, that if this Man had seen *Ferviswood* in his Trial, it would have altered his Deposition; or that this Kindness, which we all admired in him, would have suffered him to forget any thing in his Deposition, which might have been advantageous in the least to his Friend! And they understand ill this height of Friendship, who think that it would not have been more nice and careful, than any Advocate could have been: And if *Carstares* had forgot at one time, would he not have supplied it another; but especially at this last time, when he knew his Friend was already brought upon his Trial; and that this renewed Testimony was yet a further Confirmation of what was said against him? And albeit the King's Servants were forced to engage, that *Carstares* himself should not be made use of as a Witness against *Ferviswood*; yet I think this kind scrupulosity in *Carstares* for *Ferviswood* should convince you more than twenty suspect, nay than even indifferent Witnesses; nor can it be imagined, that the one of these Witnesses would not have been as much afraid of GOD, and his Oath at *London*, as at *Edinburgh*; and the other in the Council-Chamber in the Forenoon, as in the Justice-Court in the Afternoon.

3. The Statute founded on does not discharge the producing of Testimonies, otherways than after the Jury is inclosed; for then indeed they might be dangerous, because the Party could not object against them: But since the Statute only discharges to produce Writ, or Witnesses, after the Jury is inclosed, it seems clearly to insinuat, that they ought to prove, when they are produced in Presence of the Party himself, as now they are. And though the Civil Law did not allow their Judges to believe Testimonies, beause they were confined to observe strict Law, yet it does not from that follow, that our Juries, whom the Law allows to be a Law to themselves, and to be confined by no Rule, but their Conscience, may not trust intirely to the Depositions of Witnesses, though not taken before themselves, when they know that the Witnesses, by whom, and the Judges, before whom these Depositions were emitted, are Persons beyond all Suspicion, as in our Case. But yet for all this, I produce these Testimonies, as Adminicles here only to connect the Depositions of the present Witnesses, and not to be equivalent to Witnesses in this legal Process; albeit, as to the Conviction of Mankind, they are stronger than any ordinary Witnesses.

When you, my Lords, and Gentlemen, remember, that it is not the revenge of a privat Party, that accuses in this Case; and that even in privat Crimes, such as Forgery, or the Murder of Children &c. many Juries here have proceeded upon meer Presumptions, and that even *Solomon* himself founded his illustrious Decision, approved by God Almighty, upon the presumed Assertion of a Mother; I hope ye will think two Friends deposing, as present Witnesses, adminiculated and connected

by the Depositions of others, though absent, should beget in you an intire belief; especially against a Pannal, who has been always known to incline this way, and who, though he was desired in the Tolbooth to vindicate himself from those Crimes, would not say any thing in his own Defence; and though he offers to clear himself of his accession to the King's Murder, yet says nothing to clear himself from the Conspiracy entered into with the late Earl of *Argyle*, for invading his Native Countrey; which is all that I here charge upon him, and which he inclines to justifie, as a necessary mean for redressing Grievances: I must therefore remember you, that an Inquest of very worthy Gentlemen did find *Rathillet* guilty, though there was but one Witness led against him; because when he was put to it, he did not deny his Accession: And two Rogues were found guilty in the late Circuit at *Glasgow*, for having murdered a Gentleman of the Guard, though no Man saw them kill him; but the Murderers having been pursued, they run to the Place, out of which the Pannals then accused were taken, none having seen the Face of the Runaways; and the Pannals being accused, and pressed to deny the Accession, shunned to disown the Guilt, but desired it might be proved against them. This may convince you that there are Proofs which are stronger than Witnesses; and I am sure that there were never more proving Witnesses than in this Case; nor were the Depositions of Witnesses ever more strongly adminiculated. Remember the Danger likewise of emboldening Conspiracies against the King's Sacred Life, and of encouraging a Civil War, wherein your selves and your Posterity may bleed, by making the least Difficulty to find a Man Guilty, by the strongest Proofs that ever were adduced in so latent a Crime as a Conspiracy is. And I do justly conclude, that whoever denies that a Conspiracy can be thus proved, does let all the World see, that he inclines that Conspiracies should be encouraged and allowed. Our Age is so far from needing such Encouragements, that on the other hand in this, as in all other Crimes, because the Guilt grows frequent and dangerous, the Probation should therefore be made the more easy, though in this Case, the King needs as little desire your Favour, as fear your Justice. And I have insisted so much upon this Probation, rather to convince the World of the Conspiracy, than you that this Conspirator is Guilty.

Thereafter the Lords ordained the Affize to inclose, and return their Verdict to Morrow, by Nine-a-Clock in the Morning.

*Edinburgh*, December 24. 1684.

The said Day the Persons, who past upon the Affize of *Mr. Robert Baillie* of *Ferviswood*, returned their Verdict in Presence of the saids Lords; whereof the Tenor follows: The Affize, all in one Voice, finds the Crimes of Art and Part in the Conspiracy, and Plot libelled; and of concealing, and not revealing the same, clearly proven against *Mr. Robert Baillie* the Pannal, in respect of the Depositions of Witnesses and Adminicles adduced.

*Sic subscribitur,*

*Strathmore*, Chancellor.

After

After opening and reading of the which Verdict of Affize, the Lords, Justice General, Justice Clerk, and Commissioners of Julticiary, therefore by the Mouth of *James Jobnstoun* Dempster of Court, decerned and adjudged the said Mr. *Robert Baillie* of *Jerviswood* to be taken to the Mercat-Cross of *Edinburgh*, \* this twenty fourth Day of *December* instant, betwixt Two and Four a Clock in the Afternoon, and there to be hanged on a Gibbet till he be dead; and his Head to be cut off, and his Body to be Quartered in four, and his Head to be affixed on the Nether-bow of *Edinburgh*, and one of his Quarters to be affixed on the Tolbooth of *Jedburgh*, another on the Tolbooth of *Lanerk*, a third on the Tolbooth of *Air*, and a fourth on the Tolbooth of *Glasgow*; and ordains his Name, Fame, Memory, and Honours to be extinct; his Blood to be tainted, and his Arms to be riven forth, and delete out of the Books of Arms; so that his Posterity may never have Place, nor be able hereafter to bruik, or joyse any Honours, Offices, Titles or Dignities, within this Realm in time coming; and to have forfeited, amitted and tint, all and sundry his Lands, Heritages, Tacks, Steadings, Rooms, Possessions, Goods and Gear whatsoever, pertaining to him, to our Sovereign Lord's Use, to remain perpetually with His Highness in Property, which was pronounced for Doom.

*Sic subscribitur,*

LINLITHGOW.

*James Foulis.*

*J. Lockart.*

*David Balfour.*

*Roger Hog.*

*A. Seton.*

*P. Lyon.*

\* This great Expedition was occasioned by the Prisoner's bad state of Health, who they feared might avoid his Execution by a natural Death.

*Extracted forth of the Books of Adjournal, by me Mr. Thomas Gordon, Clerk to the Justice Court,*

*Sic subscribitur,*

THO. GORDON.

He was executed accordingly the same Day; and at the place of Execution persisted in denying his Knowledge of any design against the King's Life, or the Duke's, or of any Plot against the Government: He owned, he thought it lawful for Subjects, being under such Pressurers, to try how they might be relieved from them, and his design went no farther; but he refused to enter into particulars.

Afterwards, in pursuance of the Sentence, His Majesty's Heralds, and Pursevants, with their Coats displayed (after sound of Trumpets) did publicly, in face of the Court, conform to the Custom in the Sentences of Treason, in his Majesty's Name and Authority, cancel, tear and destroy the said Mr. *Robert Baillie* his Arms, threw them in his Face, trampled them under foot; and ordained his Arms to be expunged out of the Books of Heraldry, his Posterity to be ignoble, and never to enjoy Honour and Dignity in time coming: And thereafter went to the Mercat-Cross of *Edinburgh*, and solemnly tore and cancelled the said Mr. *Robert Baillie* his Arms, and affixed the same on the said Mercat-Cross reversed, with this Inscription; *The Arms of Mr. Robert Baillie late of Jerviswood Traytor.*

*The End of the* THIRD VOLUME.

