

Mr. Powell. Here.

Cryer. Vous avez. (*And so of the Rest.*)

Cl. of Arr. Gentlemen, are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *Ambrose Rookwood*, hold up thy Hand, (*which he did.*) Look upon the Prisoner; how say you, is he guilty of the High-Treason whereof he stand indicted, or not guilty?

Foreman. Guilty.

Cl. of Ar. What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed?

Foreman. None to our Knowledge.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that *Ambrose Rookwood* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods,

or Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

Jury. Yes.

Mr. Powell. We desire we may be discharged.

L. C. J. We cannot do that, till we see whether there be enough upon the other Pannel, we will give you as much Ease as we can, we shall not I suppose try the other till the Afternoon, therefore you may take your Ease for the present, but you must be about the Court when the other Trials come on.

*While the Jury was withdrawn, the Court offered to the Council for the Prisoners, that they might move what Exceptions they had before the Jury was sworn as to any of the other; which accordingly they did; but that relating to the Case of Mr. Charles Cranburne, in whose Presence, being then at the Bar, the Objections were made, that Part is left to his Trial.*



## CLVII. *The Trial of CHARLES CRANBURN, for High-Treason, April 21, 1696. 8. Will. III.*

*At the Session of Oyer and Terminer for the County of Middlesex, sitting in the Court of King's Bench at Westminster.*

**A**FTER the Trial of *Ambrose Rookwood* was over, while the Jury were withdrawn to consider of their Verdict, the Court proceeded in this Manner.

Sir John Holt. L. C. J. Mr. Attorney, Whom will you have try'd next?

Sir Thomas Trevor. Mr. Att. Gen. Cranburne, if your Lordship pleases.

Cl. of Ar. Then, Keeper of Newgate set *Charles Cranburne* to the Bar.

L. C. J. You, Gentlemen, that are of Council for the Prisoner, if you have any Thing to move for your Client, you may move it; but first let the Prisoner be here.

*Then Charles Cranburne was brought to the Bar in Irons.*

L. C. J. Look you, Keeper, you should take off the Prisoners Irons when they are at the Bar, for they should stand at their Ease when they are try'd.

Keeper. My Lord, we have no Instruments here to do it just now.

Cl. of Ar. You may send to the Gate-House, and borrow Instruments.

Mr. J. Powell. It should be done indeed; they ought to plead at Ease.

L. C. J. Well go on Sir *Bartholomew Shower*.

Mr. Att. Gen. My Lord, before Sir *Bartholomew Shower* enter upon his Exceptions, unless those Exceptions of his are some of the Particulars mention'd in this Act he must not do it now, after Plea pleaded, before the Trial; but he must do it in Arrest of Judgment.

L. C. J. Treby. It is true, regularly; but let him use his own Judgment.

L. C. J. It is very true; the Course has not been to allow them to move to quash an Indictment for Treason, or Felony; but it may be done.

Mr. Att. Gen. Sure it must be only for such Things as they cannot take Advantage of in Arrest of Judgment after the Verdict.

L. C. J. It has not been the Course, but it may be done.

Mr. Att. Gen. Not where there is an Issue join'd, and a Jury return'd to try that Issue; I believe that never was done, nor attempted.

L. C. J. Treby. If there were any Prejudice to the King by it, it were not fit for us to alter the Course; but let us hear what his Exceptions are.

Sir B. Shower. I have several Exceptions; five at least; one of them is within the very Words of the Act, that is, improper *Latin*; I am sure some of it is so.

L. C. J. Well let's hear what that is.

Sir B. Shower. It says, *Anno Regni dicti Domini Regis nunc Septimo*, and *Lewis* is the last King mentioned before; and so here is no Year of the King of *England* mention'd. It is a certain Rule, that Relatives must refer to the last Antecedent, and that Rule holds always, unless there be Words that accompany the Relative, which undeniably shew to what it refers.

L. C. J. Ay; but do we call the *French King Dominus Rex*?

L. C. J. Treby. He would have been so, if he had succeeded in his Invasion, and this Assassination.

Sir B. Shower. In every Indictment, if there be Occasion to mention a former King, it is always

*nuper*



*nuper Rex*, and such a one, naming the Name of the King, where the present King's Name does intervene, to prevent Confusion; and so in civil Actions it is the same; and so it should have been here.

L. C. J. Ay; but I tell you, it is *Dominus Rex nunc*, which is our King.

Mr. Phipps. It is not said *Angliæ*.

L. C. J. But wherever it is *Dominus Rex*, we understand it of the King of *England*, and no Body else. Read the Indictment.

Cl. of Arr. *Necnon eundem Dominum Regem ad Mortem & finalem Destructionem ponere & adducere, ac subditos suos fideles, & Liberos Homines Hujus Regni Angliæ in servitutem intolerabilem, & miseriam Ludovico Regi Gallico subjugare, & mancipare, Decimo Die Februarii, Anno Regni dicti Domini nunc Regis, septimo, & diversis aliis Diebus, &c.*

L. C. J. Can any Man imagine this to be the *French King*?

Sir B. Shower. My Lord, your Lordship is not to imagine one Way or other.

Mr. Cowper. In the strictest Sense and Grammar in the World, it must mean King *William*, and no other. We do not need any Imagination, when in the strictest Construction, it is plain who it refers to.

Sir B. Shower. I am sure no Grammar can make it good; nothing but a Supposition can help it.

Mr. Cowper. When it is said *Dictus Dominus Rex*, if Sir *Bartholomew Shower* can find out another *Dominus Rex* in the Indictment, than he may make something of his Objection; but the *Dominus* is only apply'd to our own King throughout.

L. C. J. Treby. Besides, as to the Rule that Sir *Bartholomew Shower* mentions, it is that *ad proximum Antecedens fiat Relatio nisi impediatur Sententia*. That's the Restriction of the Rule, it must relate to the next Antecedent, unless the Sense would be prejudiced; but here if this Construction should be, it would make this Clause to be no better than Nonsense, *viz.* That the Subjects and Freemen of this Realm were to be brought into intolerable Slavery to *Lewis the French King*, such a Day in the Seventh Year of the Reign of our Lord the *French King*.

Sir B. Shower. We say it is little better than Nonsense, I am sure it is loose, and uncertain, and not Grammar, but carries a new Form with it.

L. C. J. No, it is as well as it can be.

Sir B. Shower. Then, my Lord, there is another Exception; it is said, *Diversis Diebus & Vicibus tam antea quam postea*; and then afterwards it says, *postea scilicet eodem Decimo Die Februarii*; that is repugnant; it is as much as to say, That upon the Tenth of *February*, and two Days afterwards (to wit) the said Tenth Day of *February*; that is, after two Days after the Tenth of *February*, *viz.* upon the same Tenth Day.

Mr. Att. Gen. That *Postea* is another Sentence, and relates to other Matters.

Sir B. Shower. It can't in Propriety of Speech be said to be afterwards the same Day.

Sir John Hawley. Mr. Soll. Gen. If Sir *Bartholomew Shower* remembers the Evidence that we have given this Day, he will find it was in Fact so; they met on the *Saturday Morning*, and afterwards met again the Night of the same Day.

L. C. J. There is nothing in that Objection

sure, it is a common Form, when they tell of different Matters.

Sir B. Shower. Well then, if you will hear the rest which are not of the same Nature, we shall come to what we think a fatal Exception; we say this Indictment of High-Treason being against a Subject born, ought to have had the Words in it, *Contra supremum naturalem Ligeum Dominum suum*; according to *Calvin's Case* in the 7th Report, *Fel. Septimo*.

L. C. J. It is *Contra Ligeantia sua Debitum*, is it not?

Sir B. Shower. That won't help it, my Lord, for all that is applicable to an Alien born: And so is the Case in my Lord *Dyer*, 144. where it is said, That if an Indictment of Treason be against an Alien, you must not put in the Word *naturalem*, if you do, it will be faulty, because he owes but a local Allegiance to the King of *England*; and not a natural one. Now we say, there are none of these Prisoners but are Subjects born, and the constant Form in Queen *Elizabeth's* Time, and Queen *Mary's*, was to put in the Words *Naturalem Dominum*, and they cannot shew me any of those Precedents without it. There was Occasion in *Tucker's Case* to look into this Matter, and search all the Precedents. I have look'd into my Lord *Coke's* Entries, and all the Precedents; I have seen my Lord of *Essex's* Indictment, and all the others in Queen *Elizabeth's* Time, and those of the Traitors in the Powder-Plot, and those of the *Regicides*, and *Tucker's* own Indictment it self; all along it is *Naturalem Dominum suum*; and the Reason for it is, he that is Alien born, you never put in *Naturalem Dominum suum*, because he owes a double Allegiance; one Natural, to his own King under whose Dominion he was born, and the other Local, to the King in whose Dominions he resides, for he is bound to observe the Laws of the Place where he lives: And if he violate them, he does break the Allegiance that he owes to the Government where he lives, upon Account of the Protection he enjoys under it. But if he be born a Subject of the King of *England*, he has but one natural Liege-Lord; and he being an *Englishman* born, the King stands in that Relation to him, as he does to all his native Subjects, but not to Foreigners; and therefore it was thought requisite to be, and has always been inserted into Indictments of Treason against Subjects born. And, my Lord, we think the very Resolution of the Court, afterwards affirm'd in the House of Lords that revers'd *Tucker's* Attainder, went upon this Opinion, That the Law required *naturalem Ligeum Dominum* to be put in. There the Exception was, that *Contra Debitum Ligeantia sua* was omitted; To which it was objected, that there was *Dominum Supremum Naturalem*, which was equivalent: No, it was answered, both were requisite, because every Act charg'd in the Indictment ought to be laid against the Duty of his Allegiance. Now in Indictments of Treason, there are certain Words that are essential, because of their Relation between the King and his People. There are certain Forms of Words, which if the constant Practice has been to make Use of them, the Omission is an Error. Those usual Forms ought to be observ'd, and the Want of them will be a fatal Exception; so we think it would be in this Case, as much as if the Word *Proditorie* had been left out; or as if in a Case of Felony and Burglary, the Words *Felonice*, and *Burglariter* had been left out.

Mr.



Mr. *Phipps*. My Lord, we take the Practice, and Precedents to be the Rule of Law in the Case; and I have look'd over a great many Precedents, besides those that Sir *Bartholomew Shower* has cited; and I never saw any one Precedent of an Indictment of Treason against a Subject born without the Word *naturalem*; and all the Cases cited by Sir *Bartholomew Shower* are full in the Point. *Counter's Case* in my Lord *Hobart*, 271. where 'tis said, that if there be an Indictment against a Subject born, it must be *Contra naturalem Dominum*; if against an Alien, *naturalem* must be left out. To say *Contra Ligeantia sua Debitum* will not do, it is not enough, for that may be said against an Alien, because he owes a local Allegiance, tho' not a Natural one. And I take it, upon this Difference, this Indictment is not good.

Mr. *Att. Gen.* My Lord, I do not know how far you will think it proper to enter into this Matter before the Trial.

L. C. J. Mr. *Attorney*, I think you had as good speak to it now as at another Time; tho' I must confess it is not so proper in Point of Practice.

Mr. *Att. Gen.* Well, my Lord, then we will speak to it now. The Objection is, That the Words *naturalem Dominum* is not in the Indictment; which they say is contrary to the usual Form: As to the Precedents, there are a great many where it has been, and I am sure a great many where it has not been; and I am sure for this Six, Seven, or Eight Years last past, it has always been omitted: And, with Submission to your Lordship, it is not at all necessary, if there be Words in the Indictment which shew, that what he did was against the Duty of his Allegiance to his Lawful and Undoubted Lord (which are the Words in this Indictment.) It is true, if he be not a Subject born, *naturalem* cannot be in, because that is contradictory to the Obedience which he owes, for it is not a natural Obedience that he owes, but a Local; but if a Man be a Subject born, and commits Treason against the Allegiance that he owes, that is against his natural Allegiance; for whatsoever he does against his Allegiance, he does against his natural Allegiance, and so there's no need to put in the Word *naturalem*; because he owes no other Allegiance but that; it is sufficient if that be put in which shews its being against his Allegiance. If they could shew that a Subject born has two Allegiances, one that is natural, and the other that is not natural; then if you would prosecute him, you must shew, whether it was against his natural, or against his other Allegiance. But when he has none but a natural Allegiance, certainly against his Allegiance, without putting in natural, will be well enough. It is true, where there is no natural Allegiance, it must be wrong if you put it in, because you put in that Allegiance which he does not owe; but where he is a Subject born, to put in natural Liege-Lord there is no Ground at all for it; there are Words enow that shew it was against his Allegiance to his Lawful and Undoubted Lord.

L. C. J. Look you, Sir *Bartholomew Shower*, how does 'it appear, that these Men are Subjects born? The Matter you go upon does not appear upon the Indictment, and you are not to go off from that.

Sir *B. Shower*. Every Man is presum'd to be so, unless the contrary appears.

L. C. J. You quote *Calvin's Case*, and the other Cases that are there put; those are all Cases of Aliens; there is Dr. *Lopez's Case*; He being an Alien comes into *England*, and commits High-Treason: Why, say they, how shall we indict this Man? We cannot say it is *Contra Naturalem Dominum suum*; for he owes no natural Allegiance to the Queen of *England*; How shall we do to frame a good Indictment against this Man? They considered of this; and they said it will be a good Indictment, to charge him with High-Treason, or any one else, leaving out the Word *Naturalem*: For if it appear he has committed an Offence against the Laws of the Kingdom, and against the Duty of his Allegiance, which is High-Treason, that's enough. Now as to *Tucker's Case*, it was reversed for want of the Conclusion, *contra Debitum Ligeantia sua*. Those Words are material; for let the Offence be never so much against the Person of the King, as to assassinate him, or levy War against him, yet still if it be not against the Duty of his Allegiance, as it cannot be if he owes him none, it is not High-Treason. And therefore if it be against his Allegiance, whether that Allegiance be natural or local, it is all one, it's enough to make it High-Treason.

Mr. *Soll. Gen.* In that Case in *Dyer*, they shew where it was a Fault to put the Word in, but they can shew no Case where it has been adjudged to be a Fault to leave the Word out.

L. C. J. No Doubt it would be a Fault to have that in, *Contra Naturalem Dominum suum*, where there is only a local Allegiance due.

Mr. *Phipps*. How does it appear whether it is the one or the other that is due?

L. C. J. It is no Matter whether the one or the other do appear, it is High-Treason be it the one or the other, if it be against the Duty of his Allegiance.

Mr. *Phipps*. Suppose an Indictment against an Alien were, *Contra Naturalem Dominum*.

L. C. J. That would be ill, because then you had laid it more specially, and otherwise than really it is, and restrained it where you ought not to do it.

Mr. *Phipps*. How then, my Lord, shall it appear that he only ow'd a local Obedience?

L. C. J. It may be given in Evidence, That he is an Alien born.

Mr. *Soll. Gen.* He may plead it in Abatement to the Indictment.

L. C. J. He ought to be acquitted, for you have indicted him of a Crime against his natural Allegiance, when he owes no such. But Allegiance generally comprehends all Sorts of Allegiance, Natural, and Local.

Sir *B. Shower*. How then, my Lord, come all the Lawyers of all Ages to put in those Words in Indictments of High-Treason against Subjects born?

L. C. J. No, I have seen Abundance of Precedents, that have only *Contra Ligeantia sua Debitum* generally, and so the most part are; for Allegiance is the *Genus*, and if that be suggested, all the *Species* are contain'd under that.

Mr. *Att. Gen.* Well, have they any more?

Sir *B. Shower*. Yes, we have more.

L. C. J. Well, you shall have them all in time.

Sir *B. Shower*. My Lord, here is another Objection, and that's this; Here is one Fact that they have laid, and that's the 2d Overt-Act in this Indictment,



dictment, that they consented and agreed that Forty Men, (whereof these Four were to be Four) but do not lay it to be done traiterously. They say *Consenserunt Agreeverunt & Assenserunt*, but not *proditorie*; and I never saw an Indictment that laid an express Overt-Act, without repeating the Word again. If your Lordship pleases, the Words in the Indictment are thus; as to the first Overt-Act, it is laid in this manner; *Et ad execrabilem Assassinationem illam exequend.* at such a Time and such a Place *proditorie tractaverunt proposuerunt & Consultaverunt de viis modis & mediis, &c.* and then comes this which we except against; *& Consenserunt Agreeverunt & Assenserunt quod Quadraginta Homines, &c.* Now this is a plain distinct Act, and there is no *proditorie* to it; and if ever they can shew me any Indictment, in which an Overt-Act was laid, of which they gave any Evidence, and it had not the Word *proditorie* in it, I am very much mistaken. I am sure, I never saw any such. And it is not enough to say, that the Nature of the Thing is such, as that it cannot but be a Treasonable Act; but they must alledge it to be so, by the express Use of that Word, which the Law has appointed to express this Crime by. In the Case of an Indictment for Felony, if it be not said Felony, it is not good. They are not to describe that by Circumlocution, which is a particular Crime fixt by Law, they must use the *Verba Artis*, the Terms of Art, and no other: If your Lordship pleases it may be read.

Mr. Sol. Gen. Let it be read if you please; but take it in *English*, and it is no more than this, they did traiterously compass the Death of the King, and for that purpose they did traiterously meet, and consult about the Ways and Means, and did consent and agree that forty Men, &c.

Cl. of Arr. Reads, *Et ad Execrabilem Horrendam & Detestabilem Assassinationem Anglice Assassinationem & Interfectionem illam Citius exequendum & anno ac Diversis aliis Diebus & vicibus apud parochiam predictam in Comitatu predicto proditorie tractaverunt, proposuerunt & Consultaverunt de viis modis & mediis ac Tempore & Loco ubi quando qualiter & quomodo Dictum Dominum Regem sic ex Infidiis facilius Interficerent.*

Sir B. Shower. There is an End of that, now go on.

Mr. Att. Gen. No, Sir Bartholomew, you mistake, there is no End of it, that's done at the same time with that which follows.

Sir B. Shower. No it is not the same Overt-Act; but let him go on.

Cl. of Arr. *Et Consenserunt Agreeverunt & Assenserunt quod quadraginta Homines Equestres.*

Sir B. Shower, Well you need read no further for our Objection. We say, there wants the Word *Proditorie*: For there are two Overt-Acts, the One is, that they traiterously did consult of the Ways and Means, how to kill the King, and that Overt-Act we agree to be well laid: But then it says they consented, and agreed that there should be Forty Men, whereof these Four should be Four, but does not say they traiterously agreed; are not these distinct Acts?

Mr. Phipps. Surely, My Lord, they are distinct Acts; for this Part of the Indictment upon which Sir Bartholomew grounds his Objection, is that Overt-Act of which the List in Mr. Rookwood's Case was urged by the King's Council, and agreed by the Court to be an Evidence.

Then the Jury against Mr. Rookwood came in, and delivered in their Verdict, as it is in his Trial, then afterwards the Court went on thus.

Mr. Att. Gen. My Lord, the Objection is, that *Proditorie* is not inserted into that particular Clause of the Indictment, which shews their particular Agreement that there should be forty Men, whereof the Four named in the Indictment were to be Four. Now your Lordship observes how the Indictment runs, it is for Compassing and Imagining the Death and Destruction of the King; and it sets forth for this Purpose, that to effect this Compassing and Imagining, they *Proditorie tractaverunt & Consultaverunt de viis modis & Modis*, how they should kill the King. Now that which immediately follows after is, the particular Method and Means that were agreed upon, that is; that there should be forty Men. Now this is the strangest Suggestion that ever was, when we have set forth, that traiterously they did so agree of the Ways and Means, and then set forth the particular Means, that here must be *proditorie* again to that. This is such a Construction as I cannot but admire how it could come into any one's Head. It is Part of the Sentence; for the other Part, as we have laid it, is not compleat before: It may be it might be sufficient without setting forth the particular Ways and Means; but when it is set forth, it is Part of the Sentence, and refers to the first Beginning.

L. C. J. Aye sure it does.

Mr. Att. Gen. I cannot tell what they would have, unless they would have us repeat the Word *proditorie* in every Line.

Mr. Sol. Gen. Or before every Verb.

Sir B. Shower. No, but I think it ought to be repeated at every Overt-Act.

Mr. Conyers. If your Lordship pleases, after that they have set forth that this was the particular Method and Way agreed upon at their Consultation, that forty Horsemen or thereabouts should go about it, of which the Persons indicted were to be Four, it goes on, *Et Quilibet eorum proditorie super se Suscepit esse unum*, there it is put in, and it appears to be as particular as possible can be.

Mr. Cowper. Sir Bartholomew Shower says, that when we have alledg'd that they did traiterously treat, propose and consult of the Means and Ways of killing the King, there we have done the Sentence and made that one Overt-Act. Now how is the Sentence done? The next Word is a Conjunction Copulative, *& Consenserunt, &c.* And what is the Use of a Conjunction Copulative? But to convey the Force of the Words in a former Sentence to the Sentence following, and to prevent the Repetition of every Word in the subsequent Sentence that was in the Precedent: But it is plain, they are both one and the same Overt-Act, and these subsequent Words are only an Explanation, more particularly of the Overt-Act set forth in the precedent Words.

Sir B. Shower. In Answer to that, that has been said, if they shew me any Precedent, where an Indictment has been for High-Treason, setting forth several Overt-Acts, and not the Word *proditorie* set to every Overt-Act, then they answer my Objection: If the Word *Quod* had come in, that would have made them distinct to be sure; and I think they are as distinct Acts now; suppose they had concluded at the End of the Word *Interficerent*, that had been a good Overt-Act; I



am sure they will agree that: And if it be so, then the other is a good Overt-Act too. For it is a distinct Thing from that which was a perfect Sentence before; and it either requires a *Likewise*, or the Word *Proditorie* must be repeated. They have not so much as said *similiter Conenserunt* or *simili modo*; there is an (Et) indeed, but that does not so couple the Sentences together, as not to make them distinct Acts. There are several *Ets* thorough the whole Indictment, but that does not, as Mr. *Cowper* would have it, couple all together to make one Overt-Act.

Mr. *Phipps*. My Lord, if what Mr. *Cowper* says be allow'd, (*viz.*) that the (Et) makes it one intire Sentence, then there is no Overt-Act at all; for after the Treason alledg'd, the Clauses are coupled to one another by an *Et*, and consequently by Mr. *Cowper's* Way of arguing the whole Indictment is but one intire Sentence.

L. C. J. I do not understand your Meaning as to that; they tell you *Proditorie* is alledged to the Consulting, Contriving and Agreeing, then they tell you what was the subject Matter of that Contrivance and Agreement to assassinate the King, and in order to that they agreed there should be 40 Men, is not that good enough, without *Proditorie* to every Line.

Sir B. *Showers*. No, it is not said in *Ordine ad*, there is no such Thing; but only they did consult of the Ways and Means, and did agree that 40 Horsemen should do it, and afterwards did agree to provide Horses and Instruments of War. Now that being with a *Quodque*, they say makes a new Overt-Act; but I cannot understand why *Quodque* is not as much a *Copulative* as *Et*, and the one should not have the same effect as the other.

L. C. J. First it tells you there was a Consult and Agreement to assassinate the King, and for the Accomplishment of the said Assassination, afterwards *eisdem die Et Anno Proditorie Tractaverunt Et Consultaverunt de viis Et modis*, how they should kill the King.

Sir B. *Showers*. That is one Overt-Act, say we, and there you should stop.

L. C. J. *Et Conenserunt Et Agreeverunt quod quadraginta Homines, &c.* it is all at the same time, and must be intended the same Consult and Contrivance; that they consulted of the Ways and Means, and then agreed so many Men should be provided.

Mr. *Phipps*. No, My Lord, we say that is another Overt-Act.

L. C. J. *Treby*. It seems to me to be a specifying and particularising the Ways and Means, that they had consulted of, and concluded on.

Sir B. *Showers*. If it had been a specifying, it had been much better to put in either then and there, or that this was the Result of the Consultation.

L. C. J. *Treby*. It does seem to me so, that it was the Result of the Consultation, and it is well enough.

L. C. J. You had better have sav'd these kind of Exceptions till the Trial was over.

Sir B. *Showers*. But, my Lord, if there be one Overt-Act ill laid, I submit it whether they can give any Evidence of that Overt-Act.

L. C. J. *Treby*. No doubt of that they cannot; but we think it is as well laid as it could be laid.

L. C. J. Truly I am not well satisfied, that it is necessary after you have laid the *Proditorie*, as

to the particular Treason, to lay it again to the Overt-Act. For the Overt-Act is but Evidence of the Treason: The Treason it self lies in the Compassing, which is an Act of the Mind.

L. C. J. *Treby*. You cannot Indict a Man of Treason for Assassinating or killing the King, but you must in every such Case frame the Indictment upon the Article for Compassing and Imagining the Death of the King; which must be laid to be done traiterously. Then when afterwards you say the Person accused did wound him, or imprison him, or consult and agree to assassinate him, or did actually assassinate him, these are but so many Overt-Acts of compassing the Death, and you having first said that he did *Proditorie* compass and imagine the King's Death, you have thereby shewn that you charge him with a greater Offence than Felony (which my Lord *Coke* says is the Use of the Word *Proditorie*;) and that being thus done, I do not apprehend it to be necessary that you should add *Proditorie* to all the rest of the following Particulars; for they are only external Discoveries of the inward Treason; and more properly deemed to be Evidence of the Treason, than to be the Treason it self.

L. C. J. The Treason is consummate in the Intention, besides the Words of the Statute make that the Treason, not the Overt-Act, that is but Evidence, and so it was held, (not upon this Exception, but upon the Reason that my Lord speaks of) in the Case of the Regicides of King *Charles* the First, That the Indictment should not be for killing the King, but for compassing and imagining his Death, and the Killing was alledg'd as an Overt-Act.

Sir B. *Showers*. It must be so if it were for levying of War.

L. C. J. Most true; for levying the War is the Treason, but in this Case we think it is no Exception.

Mr. *At. Gen.* Then let us have the Fifth.

Sir B. *Showers*. Then, my Lord, here is another Thing. It is a Question whether there be any Overt-Act presented by the Jury at all. The Indictment says, *Juratores pro Domino Rege presentant*, that they as false Traytors did compass the Death of the King, and the Slaughter of his Subjects, and they did meet, and consult, and agree how to do it, *Et iidem Christophorus Knightly* and the rest, to fulfil their said traiterous Intentions and Imaginations did, afterwards, the tenth of *February*, buy Arms and Horses. Now our Objection is, That it does not appear, that any one of these Overt-Acts are the Presentment of the Jury; with Submission they ought to have begun it again, either with a *Quodque*, or something that should have referred it to the first, *Juratores presentant*, or else they must have begun quite again, with a *Juratores Ulterius presentant*, and not have coupled them as this is with an *Et*. The most Forms begin with an *ulterius presentant*, but here we find no Overt-Act is so introduced. They might present Part, and not present the other Part, for any Thing that does appear. Every Thing ought to be laid positively, as the Jury's *Dictum*; it may be only the Clerk's Saying, and not the Jury's, for any Thing that does appear. Your Lordship remembers the Case of the King and *Trobridge* upon a Writ of Error to reverse a Judgment for erecting and continuing a Cottage against the Form of the Statute; now *Contra formam Statuti* was in the Beginning of the Indictment,



ment, but not in the Conclusion; to the erecting but not the continuing. And though there was there *Juratores ulterius dicunt*, it was not *super Sacramentum suum*, and they did not say, he did continue it against the Statute; and there being no formal Presentment, that he maintain'd the Cottage notwithstanding the Act, *Et* did not so couple it to the first Part, as to make it a good Presentment. So we say in this Case, this is a Fault, and different from all the common Forms; there ought to be a direct Presentment of each Overt-Act, and not coupled by an *Et*. For *Et* will not do it; for it is a distinct Overt-Act every one, and should have been *Et quod Consultaverunt, quodque Agreeverunt*, that a certain Number should do so and so; and to be sure, it should have been so at the last Overt-Act, which is only, *Et eidem Christophorus Knightly, &c.* did buy Arms and Horses. Now this last *Et*, being a loose Conjunction Copulative, in common Sense ought to refer to that which they had agreed upon, for that is last mention'd there, and the natural Sense leads thither, and not to the Beginning of the Bill *Juratores presentant quod*.

Mr. Phipps. I shall not trouble your Lordship further, they ought to have put in a *Quodque*, or an *Uterius presentant*.

Mr. Att. Gen. Where would you have the *Quodque*, or the *Uterius presentant*?

Mr. Phipps. Either to every Overt-Act, or at least to that last.

Mr. Att. Gen. The Indictment sets forth, that they committed such, and such a Treason; Their Objection is, that *Quodque* is not put into every Overt-Act; and our Answer is, that the first *Quod* governs all that relates to that Treason. It may be if there were two distinct Treasons in the Indictment, when you come to set forth the Second Treason, you should say *Juratores ulterius presentant* the Second Treason; but the Overt-Acts to prove the same Treason, are all Parts of that Treason, and make but one Species of Treason, which is the Imagining the Death of the King. There's the Treason; and to bring it to pass, they did so, and so: This, my Lord, must be Part of the Finding of the Jury as well as the Treason it self, of which these are the Overt-Acts. But then if you will lay the levying of War in the same Indictment, then it may be you must say *Juratores ulterius presentant quod, &c.* But it had been a strange Absurdity to say, *Juratores ulterius presentant*, such and such Overt-Acts: For the Overt-Act is not a further Indictment, but only a setting forth that which is Evidence, upon which they found the Indictment for Treason.

Mr. Sol. Gen. What the Indictment says, is as direct Affirmation as can be all along of the Presentment of the Jury, that the Prisoner and others did compass and imagine the Death of the King; and to bring it about, they did consult together, and did agree to make use of such and such Means, and were to have a Party of 40 Men, and they bought Arms and Horses. Now it does not repeat *quodque*, or *ulterius presentant quod*, to every one of those Sentences, that they did so and so, and that they did so and so. Now I would fain know the Difference between Saying, and they did such a Thing, and Saying, and that they did such a Thing. That's all the Difference that they think to overturn this Indictment for. The omitting of a *Juratores ulterius presentant*, certainly is nothing; for the first Presentment runs

through the whole Indictment, and there does not need an *Uterius*.

Sir B. Shower. Certainly there should have been a *Quodque* at least.

L. C. J. No indeed, I think it is better as it is, than as you would have had it; because the first *Quod* goes through the whole, That in order thereunto he did so and so; would you have it said *Et quod* in order thereunto he did so and so; but tho' that may be good Sense, I think it is not so good as the other. This Indictment is for one Sort of Treason, and that is, for Compassing the Death of the King; and it is, I think, more proper to have but one *Quod*, than to have more; for it makes the whole Indictment more entire. As to the *Juratores ulterius presentant*, that is never proper, where the *Species* of Treason is the same: For indeed if there had been two distinct Treasons, the one for compassing the Death of the King, and the other for levying of War, in that Case you must bring it in by *ulterius presentant*: Because they are two several Offences, though compris'd in one Bill, and they are in Law as two Indictments. And so it is in the Case that you mentioned of Cottages: It is one Offence to erect a Cottage, and another Offence to continue a Cottage, and they are to have several Punishments; and because they there jumbled them both together in one Indictment, that Indictment was held to be nought: For by Law, the Indictment for erecting a Cottage, ought to conclude *contra formam Statuti*, and then the Jury must begin again, *Et ulterius presentant quod* the Cottage was continu'd against the Form of the Statute; because they are several Offences. But here the High-Treason is but one and the same Offence, and the other Things are but Overt-Acts to manifest this Treason, the Compassing the Death of the King; and truly I think it is better as it is.

Mr. Phipps. I have seen several Precedents of Indictments, where the several Overt-Acts were to the same High-Treason, but still they had each an *ulterius presentant*.

Mr. At. Gen. I believe it is hard to find many Indictments in the same Words: I am sure all are not.

L. C. Baron. Is it not as great an *Sir Edward Ward*. Affirmation to say, and they did such a Thing, as to say, and that they did such a Thing.

L. C. J. I cannot reconcile it to my Reason, but it should be as good Sense without *that* as with it.

L. C. J. Treby. In a long Deed it begins, *This Indenture witnesseth*, that the Party granted so and so, and the Party covenants thus and thus; and so it goes on commonly, without renewing the Word *That* to the subsequent Clauses: But yet the first Expression (*This Indenture witnesseth that*) governs the whole Deed, though it be many Skins of Parchment.

L. C. J. If you begin with an Indenture, you begin, That it witnesseth so, and so; without renewing, unless it be a very distinct Thing.

Sir B. Shower. My Lord, we think that Similitude makes for us. *A. B.* covenants so and so in a Conveyance, and then further, that so and so.

L. C. J. But there you restrain that in the Beginning of the Covenant to every particular in that Covenant.

Mr. At. Gen. Will your Lordship please to call the Jury now?



L. C. J. Have you a Mind to go on with the Trial, or to go to Dinner?

Mr. At. Gen. I believe your Lordship can try but one more to Night, and that may be as well after Dinner as before.

L. C. J. Well then, adjourn till 5 a-Clock, and in the mean time, you Keeper, knock off the Prisoners Fetters.

Keeper. They shall, my Lord.

Then the Court adjourned till 5 a-Clock in the Afternoon, it being then about 3.

Post Meridiem, the 21st of April,-96.

The Court returned, and was resum'd about 6 in the Evening.

Cl. of Ar. Keeper of Newgate, bring Charles Cranburne to the Bar, (which was done.) Charles Cranburne, hold up thy Hand (which he did.) Those good Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; and therefore if you will challenge them or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Cranburne, My Lord, I humbly desire I may have Pen, Ink, and Paper.

Court. Aye, Aye. (He had them.)

Cl. of Ar. Where is George Ford?

Cryer. Vous Avez.

Cranburne. I challenge him.

Cl. of Ar. William Underhil.

Cranburne. I challenge him.

Cl. of Ar. William Withers.

Cranburne. I challenge him.

Mr. Phipps. If your Lordship pleases, those that were of the last Jury I hope shall not be call'd of this Jury: This Prisoner being tried upon the same Indictment the last was.

L. C. J. If they be not, it shall be in Ease to them, but it is not in Favour of you.

Mr. Phipps. We humbly conceive, having given their Verdict upon the same Indictment, they are not such indifferent Persons, as the Law intends they should be, and think it is good Reason they should not serve upon this Jury.

L. C. J. What though it be upon the same Indictment? the Evidence is not the same; for they are distinct Offences.

Mr. Phipps. I do not know whether it be a good Cause of Challenge, but submit it to your Lordship.

L. C. J. Well, you may doubt of it if you please, and try the Exception.

Cl. of Ar. Thomas Trench.

Cranburne. I challenge him.

Cl. of Ar. John Wolfe.

Cranburne. I challenge him.

Cl. of Ar. James Bodington.

Cranburne. I challenge him.

Cl. of Ar. Jonathan Andrews, (He did not appear.) John Raymond.

Cranburne. I challenge him.

Cl. of Ar. George Hawes.

Cranburne. I challenge him.

Cl. of Ar. Francis Barry.

Cranburne. I challenge him.

Cl. of Ar. Arthur Bailey.

Cranburne. I challenge him; he was upon the last Jury.

L. C. J. That is no Reason; Will you challenge him peremptorily?

Cranburne. I do challenge him.

Cl. of Ar. John Caine.

Cranburne. I do not except against him.

Cl. of Ar. Hold Mr. Caine the Book, Cryer.

Cryer. Look upon the Prisoner, Sir. You shall well and truly try, and true Deliverance make between our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give, according to your Evidence, so help you God.

Cl. of Ar. Thomas Glower.

Cranburne. I challenge him.

Cl. of Ar. Dormer Sheppard. (He did not appear.) George Tredway. (He did not appear.) Matthew Bateman. (He did not appear.) Timothy Thorubury.

Cranburne. I challenge him.

Cl. of Ar. James Partherich.

Cranburne. I challenge him.

Cl. of Ar. Thomas Freeman. (He did not appear.) Robert Bredon.

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. Joseph Blisset.

Cranburne. I challenge him.

Cl. of Ar. Timothy Lanno. (He did not appear.) John Harris. (He did not appear.) John Billiers.

Cranburne. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Richard Bourn.

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. George Carter. (He did not appear.) Francis Chapman.

Cranburne. I challenge him.

Cl. of Ar. Alexander Forth.

Cranburne. I challenge him.

Cl. of Ar. Nicholas Roberts.

Cranburne. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Thomas Playstead.

Cranburne. I challenge him.

Cl. of Ar. William Atlee.

Cranburne. I challenge him.

Cl. of Ar. John Maish. (He did not appear.) Andrew Cook.

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. John Hall.

Cranburne. I challenge him.

Cl. of Ar. William Partridge.

Cranburne. I challenge him.

Cl. of Ar. Peter Levigne.

Cranburne. I challenge him.

Cl. of Ar. Thomas Moody.

Cranburne. I challenge him.

Cl. of Ar. Richard Belinge.

Cranburne. I challenge him.

Cl. of Ar. Thomas Evans.

Cranburne. I do not except against him. (He was sworn.)

Cl. of Ar. Thomas Ramage.

Cranburne. I have nothing to say against him. (He was sworn.)

Cl. of Ar. Edward Townsend.

Cranburne. I challenge him.

Cl. of Ar. William Gunson.

Cranburne. I challenge him.

Cl. of Ar. Philip Wightman.

Cranburne. I say nothing against him. (He was sworn.)

Cl. of Ar.



Cl. of Ar. *John Wybourne.*

Sir *B. Shower.* I hope you take an Account of the Challenges, Mr. *Hardistey.*

*L. C. J.* Nay, you should take care of the Challenges, who are his Council: if he had no Council; we wou'd take care of him.

*Cryer.* Here is Mr. *Wyborne*, What say you to him?

*Cranburne.* I have nothing to say. (*He was sworn.*)

Sir *B. Shower.* I hope your Lordship will also be of Council for him.

*L. C. J.* We are to be equal and indifferent between the King and the Prisoner: But you that are now his Council by Law, ought to take care that he lose no Advantage.

Cl. of Ar. *William Strode.*

*Cranburne.* I have nothing to say against him. (*He was sworn.*)

Cl. of Ar. *Daniel Byfeld.* (*He did not appear.*)

*Benjamin Noble.* (*He did not appear.*) *Thomas White.*

*Cranburne.* I do not except against him. (*He was sworn.*)

Cl. of Ar. *Cryer* Countez. *John Caine.*

*Cryer.* One, &c.

Cl. of Ar. *Thomas White.*

*Cryer.* Twelve good Men and true, stand together, and hear your Evidence.

*The Names of the Twelve Sworn were these,*

<i>John Caine, Esq.</i>	}	<i>Thomas Evans, Gent.</i>
<i>Robert Bredon, Esq.</i>		<i>Thomas Ravage, Gent.</i>
<i>John Billers, Esq.</i>		<i>Philip Wightman, Gent.</i>
<i>Richard Bourn, Esq.</i>		<i>John Wyborne, Gent.</i>
<i>Nich. Roberts, Gent.</i>		<i>William Strode, Gent. and</i>
<i>Andrew Cook, Gent.</i>		<i>Thomas White, Gent.</i>

Cl. of Ar. *Cryer*, make Proclamation.

*Cryer.* Oyez. If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, or the King's Attorney General, before this Inquest be taken of the High-Treason, whereof the Prisoner at the Bar stands Indicted, let them come forth and they shall be heard; for now the Prisoner stands at the Bar upon his Deliverance: And all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

*L. C. J.* Mr. Attorney, Do you think we shall be able to try the other to Night.

Mr. At. Gen. That is according as this holds, my Lord.

*L. C. J.* I speak it for the Ease of the Jury, that they might be dispatched, and not attend another Day.

Mr. At. Gen. I doubt we cannot try any more than this to Night.

*L. C. J.* Well it is no great Matter, it will be but a Morning's Work; it may be too great a Stress and a Hurry to do any more to Night; and therefore we will discharge the Jury for to Night, those of them that are not sworn; but we will be here to Morrow Morning by Seven a Clock; and therefore pray Gentlemen attend early.

Cl. of Ar. *C. Cranburne* Hold up thy Hand. (*which he did.*) You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Charles Cranburne*, late of the Parish of *St. Paul Covent Garden*, in the

County of *Middlesex*, Yeoman, for that he, with *Christopher Knightley*, late of the same Parish and County, Gentleman, *Robert Lowick*, late of the same Parish and County, Gentleman, and *Ambrose Rookwood*, late of the same Parish and County, Gentleman, the Fear of God in their Hearts not having, nor weighing the Duty of their Allegiance, but being mov'd and seduced by the Instigation of the Devil, against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord, *William* the Third, by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. their Supreme, True, Rightful, Lawful, and undoubted Lord, the Cordial Love, and the true and due Obedience, Fidelity and Allegiance which every Faithful Subject of our said Lord the King that now is, towards him our said Lord the King shou'd bear, and of Right ought to bear, withdrawing, and wholly to extinguish, intending and contriving, and with all their Strength, purposing, designing and conspiring the Government of this Kingdom of *England*, under him our said Lord the King that now is, of Right, duly, happily, and very well established, altogether to subvert, change and alter; as also our said Lord the King to Death and final Destruction to put and bring, and his Faithful Subjects, and the Freemen of this Kingdom of *England* into intolerable and most miserable Slavery to *Lewis* the *French* King to subjugate and enthrall, the 10th Day of *Feb.* in the 7th Year of the Reign of our said Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of *St. Paul Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine and contrive, purpose, design and intend our said Lord the King that now is, to Slay, Kill, and Murder, and a miserable Slaughter among the faithful Subjects of him our said Lord the King, throughout this whole Kingdom of *England* to make and cause; and their said most wicked, impious, and devilish Treasons, and traiterous Compassings, Contrivances and Purposes, aforesaid, to fulfil, perfect, and bring to Effect, they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, and very many other false Traitors, to the Jurors unknown; afterwards, to wit, the same Tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, secretly, traiterously, and with Force and Arms, did meet, propose, treat, consult, consent, and agree, him our said Lord the King that now is, by lying in wait and wile, to Assassinate, Kill and Murder: And that execrable, horrid, and detestable Assassination and Killing the sooner to execute and perpetrate; afterwards, to wit, the same Day and Year, and diverse other Days and Times, at the Parish aforesaid, in the County aforesaid, traiterously did treat, propose, and consult of the Ways, Manner, and Means, and the Time and Place where, when, how, and in what manner our said Lord the King so by lying in wait the more easily they might Kill: And did consent, agree, and assent, that Forty Horsemen, or thereabout (of whom they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, should be four; and



and every one of them traiterously took upon himself to be one) with Guns, Muskets, and Pistols, charged with Gun-powder and Leaden Bullets, and with Swords, Rapiers, and other Weapons, Armed, should lie in wait, and be in Ambush our said Lord the King, in his Coach being, when he should go abroad, to set upon; and that a certain and competent Number of those Men so armed, upon the Guards of our said Lord the King, then attending him, and being with him, should set upon, and them should fight with and overcome; whilst others of the same Men so armed, him our said Lord the King should Assassinate, Slay, Kill, and Murder. And they the said *Christopher Knightly, Robert Lowick, Ambrose Rookwood,* and *Charles Cranburne,* the Treasons, and all their treasonable Intentions, Purposes and Contrivances aforesaid to execute, perform, fulfil, and bring to effect, afterwards, (to wit) the aforesaid Tenth Day of *February,* in the Seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords and Rapiers, and other Weapons, Ammunition, and Warlike Things, and Military Instruments, falsely, maliciously, secretly and traiterously did obtain, buy, gather together, and procure; and to be bought, obtained, gathered together, and procured, did cause, with that Intent them in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid, to be us'd, employ'd, and bestow'd: And the same Premises the more safely and certainly to execute, do, and perpetrate, the aforesaid *Christopher Knightley,* with one *Edward King* (late of High-Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted) by the Consent and Assent of divers of the Traitors and Conspirators aforesaid, the aforesaid Tenth Day of *February,* in the Seventh Year aforesaid, traiterously did go, and came unto the Place proposed, where such intended Assassination, Killing, and Murdering of our said Lord the King, by lying in wait, should be done, perpetrated and committed, to view, see, and observe the Convenience and Fitness of the same Place for such lying in wait, Assassination, and Killing, there to be done, perpetrated and committed; and that Place so being seen and observed, afterwards, to wit, the same Day and Year, his Observations thereof to several of the said Traitors and Conspirators did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid; and the said *Charles Cranburne* the same Day and Year there, in order to the same execrable, horrid, and detestable Assassination and Killing of our said Lord the King, by the Traitors and Conspirators aforesaid, the more readily and boldly to execute, perpetrate, and commit, advisedly, knowingly, and traiterously did bear and carry among divers of these Traitors and Conspirators forward and backward from some to others of them, a List of the Names of divers Men of them who were designed and appointed our said Lord the King, so as aforesaid, by lying in wait, to Kill and Murder against the Duty of his Allegiance, and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraigned, and thereunto hath pleaded not guilty, and for his

Trial hath put himself upon God and his Country, which Country you are; your Charge is to inquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty: if you find him Guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty: if you find him not guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr. *Montague.* May it please your Lordship, and you Gentlemen of the Jury; this is an Indictment of High-Treason that is found against four Persons; but the particular Treason against the Prisoner at the Bar, is for Compassing and Imagining the Death of the King, and endeavouring to subvert the Government, and enslave the Nation to *Lewis the French King*: And the Indictment sets forth, that the Prisoner at the Bar did for this purpose meet and consult with several false Traitors to the King and Government, of the Ways, Manner, and Means how, and the Time and Place when and where to Assassinate the King; and at length they agreed that forty Horsemen should go together, and set upon the King in his Coach, as he returned from Hunting; some to attack the Coach, while others set upon the Guards. The Indictment does further charge him with getting Horses and Arms, and particularly with carrying a List of the Assassimators from one to another. These are the particular Things charged in the Indictment, and to this Indictment he has pleaded not guilty; if we prove the Fact, Gentlemen, we don't doubt your Justice.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury; the Prisoner at the Bar, *Charles Cranburne,* is Indicted for High-Treason, in compassing and imagining the Death of the King. Gentlemen, the Over-Acts laid in the Indictment to prove the Prisoner guilty are, That he was at several Meetings and Consultations about the Manner of putting this Design in Execution; at which Meetings it was agreed, that there should be about forty Horsemen in Number prepar'd, and arm'd for that Purpose, and they did provide Horses and Arms for that very Thing, and did agree to put it in Execution.

Gentlemen, the Evidence that you will hear produced against the Prisoner at the Bar will be of this Nature. You will hear from the Witnesses, that about *Christmas* last, or the Beginning of *January,* Sir *George Barclay,* did come over from *France* from the late King *James,* to whom he was an Officer in his Guards, with a Commission for attacking the Prince of *Orange,* or levying War upon his Person. He came over about that Time, and several Troopers of the late King *James's* Guards, to assist him in that barbarous Conspiracy. When Sir *George Barclay* came over, he did acquaint with this Design several Persons in *England,* that he thought proper to be Accomplices with him in it; particularly *Capt. Porter,* Mr. *Charnock,* Sir *William Perkins,* and several others whose Names you will hear of, and they had several Meetings about it the Beginning



ginning of *February*, at Capt. *Porter's* Lodgings, at the *Nagg's-Head* in *Covent-Garden*, at the *Sun Tavern* in the *Strand*, at the *Globe Tavern* in *Hatton-Garden*, and several other Places where they consulted in what manner they might attempt and accomplish this bloody Design.

Gentlemen, you will hear, that at these Meetings it was propos'd, that they should do it by Ambuscade as the King came from *Richmond* a Hunting, whither he used to go upon *Saturdays*: Others were for doing it on this Side the Water. And so their Opinions being divided, it was thought necessary to find out and settle which was the best Place; and in Order thereunto they employ'd Capt. *Porter*, Mr. *Knightley*, and Mr. *King* (who was executed) to view the Ground, and accordingly they went, and pitch'd upon the Lane between *Brentford* and *Turnham-Green* for this Purpose, as the most convenient Place: And having so done, they came back, and gave an Account to those that had appointed to meet 'em, to hear the Success of their Expedition, at the *Nagg's-Head* in *Covent-Garden*, and in that Place, you will find by the Evidence, that those Persons, who were the Heads of the Conspiracy, undertook to find their several Proportions of Men, for whom they would undertake, that would go with them, and be concern'd in this Design. Sir *George Barclay* was to furnish about twenty. He had the Command of the Troopers that came from *France*, and those other Officers that came thence, were under him. Capt. *Porter* was to furnish seven, *Charnock* was to furnish eight, Sir *William Perkins* was to furnish five Horses and three Men, and, I think, *Lowick* was to furnish some more: In the whole Number they reckon'd there should be about forty.

It will appear, Gentlemen, that the Prisoner at the Bar, Mr. *Cranburne*, was one of the Men that Capt. *Porter* undertook to get, and engage in this Design; and accordingly Capt. *Porter* did acquaint Mr. *Cranburne* with it; and he did undertake to be one, and to be ready to go with him, and be concerned in this Assassination. You will find he was acquainted with it about the 14th of *February*, the Day before the first Time that they intended to assault the King: Then he did undertake and agree to prepare himself against the next Day. The next Day, which was the 15th of *February*, they had several Meetings, and they were making Preparation in Order to go out. It happen'd, by great Providence, his Majesty did not go abroad that Day, and thereupon they dispers'd themselves; but they had Meetings afterwards, at which Meetings the Prisoner was present, with Capt. *Porter*, Mr. *Pendergrafs*, *La Rue*, and several others that were concerned in the Conspiracy, particularly the 21st of *February*, the Day before the second Time they were to have put this in Execution. Capt. *Porter* being at the *Sun-Tavern*, with several other Gentlemen, and they resolving to have it executed the next Day, if the King went abroad; Capt. *Porter* sent for *Cranburne*, and *Keyes* that was executed, and *Kendrick* and *Sherborn*, four of those that he had undertaken for, (of whom, I say, *Cranburne*, the Prisoner at the Bar, was one) and then he acquainted 'em that they were resolv'd to go on with it the next Day. And then they agreed to be in a Readiness accordingly. The next Day the Prisoner, with some others, met at Mr. *Porter's*, where they were preparing to go out and attack

the King, and they had several Discourses about the Ways and Means of doing it; and particularly Capt. *Porter* at that Time said, that he had a very good Gun that held about six or eight Bullets, and that Mr. *Pendergrafs* was to have, who was to attack the Coach, and shoot into the Coach: Mr. *Cranburne* was there present at that Time, and Mr. *Cranburne* was employ'd particularly by Capt. *Porter* to carry a List that *Porter* writ of the Names of several Men that were to act in it under him, and this he was to carry to *Charnock*; *Porter* writ it and gave it him, and he carry'd it with Directions to bring it back with the List of the Names of Mr. *Charnock's* Men. *Cranburne* did accordingly at that Time carry the List of the Names to Capt. *Charnock*, and brought it back with an additional List, from Capt. *Charnock*, of his Men.

At that Time, you will hear further, when *Cranburne* brought the List, he brought an Account that he heard the King did certainly go abroad: For Mr. *Charnock* had Intelligence so from *Chambers*, who lay at *Kensington* to get Intelligence: At which there was very great Rejoycing among all that were present at that Time, hoping they should have an Opportunity to put this execrable Design in Execution; and so they prepar'd all of 'em to go out. There were several Inns in *Turnham-Green* and *Brentford*, and thereabouts, and they were to be placed two or three in an Inn, that they might be ready to get together when Time should serve. It happen'd the King did not go abroad that Day neither, there being some Discovery of this Design, and so they did disperse themselves, as apprehending it was discovered.

Gentlemen, it will appear by several Witnesses, that the Prisoner at the Bar was engaged in this horrid treasonable Design, and was to have acted a Part in it. We will call our Witnesses that will make the Particulars out to you, and we do not question but you'll do what is right. First, call Capt. *Porter*; (who was sworn.)

Mr. *Sol. Gen. Pray*, if you please, Capt. *Porter*, give the Court and the Jury an Account what you know of this wicked intended Assassination, and what Share the Prisoner at the Bar had in it.

Capt. *Porter*. My Lord, before this wicked Assassination was on Foot, the Prisoner at the Bar, Mr. *Cranburne*, was employ'd by me to buy Arms, I used to give him Money to go to the Brokers to buy Arms at second-hand, and he brought a Sword-Cutler to me, of whom I bought about twenty Swords. And when Sir *George Barclay* came into *England*, and this Business was resolv'd upon, I acquainted him with the Design, and promis'd to mount him. He never was at any of the Meetings with Capt. *Charnock*, Sir *George Barclay*, or Sir *William Perkins*; but he went to look for a Horse, and was ready both *Saturdays* to go along with me. On *Saturday* the 22d I sent him with a Message to Sir *William Perkins*, for the Note for the two Horses, which he had promis'd me to furnish me with, out of his five that he was to furnish; he came back again, and told me that there was a Messenger came and said that the King did go out, and he knew where to have the two Horses; that Mr. *Charnock* was afraid we should not have the full Number of Men, and desired me to send him the Names of my Men; I did write a List of the Names of my Men, and I went afterwards to the *Blue-Posts* in *Spring-Garden*,



*Garden*, whither he was to come to me; he did so, and he brought back the List of my Men, with the List of Mr. *Charnock's* Men written underneath it, and at the same Time News was brought that the King did not go abroad that Day.

*L. C. J.* You say, that before the Assassination was set on foot, you employed him to buy Arms and Horses.

*Capt. Porter.* My Lord, I acquainted him with it the *Friday* before the first *Saturday*.

*L. C. J.* You said before the Assassination you employed him to buy Arms: When was that?

*Capt. Porter.* I said before the Assassination was on foot I employed him to buy Arms. I told him I was to be a Captain in Colonel *Parker's* Regiment, and promised to make him my Quarter-Master.

*L. C. J.* How long ago was this? Was it a Week before the Assassination was on foot?

*Capt. Porter.* He has known of my being a Captain in Colonel *Parker's* Regiment this two Years.

*Mr. Att. Gen.* I do doubt my Lord, he does not distinguish the Times when he bought the Arms, and when the Assassination was.

*L. C. J.* Yes, yes, he does now; I misapprehended him at first, and thought he said he had employed him to buy Arms a Week before the Assassination was on foot; but he says it was a longer Time.

*Mr. Att. Gen.* I desire my Lord, he may be ask'd what Time he bought Arms before this Assassination: When was the last Time he bought Arms?

*Capt. Porter.* It was several Months before the Assassination.

*Mr. Att. Gen.* Was it within a Year before it.

*Capt. Porter.* Yes I believe it was within a Year. I gave him several Times Money for that purpose, in all above ten Pounds, and he told me, one with another, he had bought ten Case of Pistols, and kept them in the House till there were Occasion.

*Mr. Att. Gen.* How long ago is it?

*Capt. Porter.* I believe about a Year; within a Year.

*Mr. Att. Gen.* When did you first acquaint him with the Assassination?

*Capt. Porter.* Presently after Sir *George Barclay* acquainted me with it, I sent to him, to desire him to get the Pistols clean and ready.

*Mr. Att. Gen.* Did you tell him of the Design?

*Capt. Porter.* I told him there was a Design on foot, and I would tell him more when I saw him next; and I desir'd him to get the Swords from the Sword-Cutlers, and the Pistols clean and ready. And I met him afterwards, and told him of the Design, and that we intended to do it on *Saturday* the fifteenth; and he engaged to be ready and make one. On the *Friday* before the twenty-second he went with me to the Cock-pit, and there we met with one Mr. *Gum*, and I ask'd him if he knew where any good Hackney-Horses might be had? He said he believed he did; and I sent *Cranburne* with him, and he came back, and told me he had found two or three out in *Bloomsbury*.

*L. C. J.* Look ye, *Capt. Porter*, you must not speak so fast, it is impossible to understand so much Matter as you deliver without distinguishing of Times. You said, that some long Time before the Assassination was on foot you sent him to buy Arms, for what Purpose were those Arms?

*Mr. At. Gen.* My Lord, he has told you —

*L. C. J.* Pray let me hear it from him again.

*Capt. Porter.* I say my Lord, he knew of my being a Captain in Colonel *Parker's* Regiment this two Years.

*L. C. J.* But what were those Arms for that he bought?

*Capt. Porter.* To be ready against King *James* landed, which was designed several Times.

*L. C. J.* Why, now you make the Matter clear to me.

*Mr. At. Gen.* My Lord, that is not the Thing we go upon, that is but introductory to the Business that we are now a Trying. Therefore we desire to know of him: Captain *Porter*, when did you first acquaint *Cranburne* of the Assassination of the King?

*Capt. Porter.* As soon as Sir *George Barclay* acquainted me with it, and desired me to get what Men I could to effect it, I sent for *Cranburne* to my Lodgings in *Norfolk-Street*, and he came to me one Morning; and I told him there was a Design on foot, and I would tell him more of it afterwards.

*Mr. Sol. Gen.* When was it that Sir *George Barclay* acquainted you with it?

*Capt. Porter.* About the latter End of *January*.

*Mr. At. Gen.* And what said he to it when you acquainted him with it?

*Capt. Porter.* He did agree to go with me, and I promised to furnish him with Horse and Arms; and on *Friday* before the fifteenth I sent him with three Case of Pistols to Sir *William Perkins*, to furnish the three Men he was to mount with his own Horses.

*L. C. J.* Who was to have those three Case of Pistols.

*Capt. Porter.* Sir *William Perkins* was, and he carried them to Sir *William Perkins's*.

*Mr. At. Gen.* How long was this do you say, before the Assassination was to have been?

*Capt. Porter.* It was *Friday* before the fifteenth.

*Mr. At. Gen.* That was before the first Time that it was to have been done.

*Capt. Porter.* Yes; and *Friday* before the last, I sent him to look after the Horses that *Gum* said he believed he could help me to, and he came to me to the Sun-Tavern in the *Strand*, and told me he and *Jeffery Gum* had found three Horses in *Bloomsbury*, and I came out of the Room where I was with Sir *George Barclay* and others, and there was *Kendrick*, and *Keyes*, and *Cranburne*, and I told them we were resolved to put it in Execution the next Day.

*Mr. At. Gen.* Well, pray what Discourse had you with him the next Day?

*Capt. Porter.* The next Day, the 22d, he came to my Lodging at *Maiden-Lane*, and I sent him to Sir *William Perkins* for a Note for the two Horses, that I was to mount of his: He came back and told me he knew where to have them, and that *Capt. Charnock* was afraid we should not have our Compliment of Men, and desired me to send him an Account what Men I could bring, which I did by Mr. *Cranburne*, and being to go to the *Blue-Posts*, ordered him to bring it to me thither, and he did bring it back to me to the *Blue-Posts* with Captain *Charnock's* List underneath.

*Mr. Sol. Gen.* Pray Captain *Porter*, was there any Body present when you sent the List, and the Prisoner brought it back to you?

*Capt.*



Capt. *Porter*. Yes, there was Mr. *De la Rue*, and Captain *Pendergrafs*, and Mr. *King*, I know of none else.

Mr. *At. Gen.* Pray do you remember what Healths were drunk after you heard the King was not to go abroad?

Capt. *Porter*. I don't remember what Healths were drunk that Day particularly, but whether it were *Thursday* or *Friday*, (I cannot tell particularly the Day) We drank a Health to the Squeezing of the *Rottez Orange* upon the next *Saturday*.

Mr. *At. Gen.* Who was present that Day when that Health was drunk?

Capt. *Porter*. Mr. *Cranburne* was there present at that Time, and did drink the Health.

Mr. *Cooper*. Pray, Sir, did he meet you by Appointment on *Saturday* the 15th, or was it by Accident?

Capt. *Porter*. By Appointment, as all the rest did, to get ready as all the rest did, to go upon the Design; and so it was both Days.

Sir *B. Shower*. If they have done with Mr. *Porter*, we would ask him a Question or two for the Prisoner: We desire to know when it was that those Arms were bought that he talks of: For we must acknowledge that Mr. *Cranburne* heretofore went upon several Messages for Capt. *Porter*; When was that buying of Arms?

Capt. *Porter*. I tell you I cannot exactly tell the Month.

Mr. *Cranburne*. Do you remember the Year?

Capt. *Porter*. I believe it was less than a Year before the Assassination was on Foot.

Mr. *Cranburne*. If you remember, Sir, it was a Month before Col. *Parker* was put in the Tower.

Capt. *Porter*. It was several Times, I cannot tell the particular Times.

Sir *B. Shower*. My Lord, I desire to know when he first communicated this Design to Mr. *Cranburne*, and who was by, and where it was.

Capt. *Porter*. I told you I sent for Mr. *Cranburne* one Day in the Week before the 15th, and he came to me at my Lodging in *Norfolk-street*, and I acquainted him that Sir *George Barclay* was come, and there was such a Design on Foot; and I desired him to get those Pistols that he had of mine ready, and cleaned; that they might be ready for the Execution.

Sir *B. Shower*. What Day was that?

Capt. *Porter*. One Day in the Week before the 15th.

Mr. *Cranburne*. Did you ever name Sir *George Barclay* to me in your Life?

Capt. *Porter*. Yes I did, I told you he was come from *France*.

Mr. *Cranburne*. Where was that, at Mr.—

Capt. *Porter*. In *Norfolk-street*, where I lay?

Mr. *Cranburne*. Who was by?

Capt. *Porter*. No Body but my self.

Sir *B. Shower*. Upon what Occasion did you meet there?

Capt. *Porter*. I sent for him to my Lodging.

Sir *B. Shower*. How long had Sir *George Barclay* been in Town, before that Time?

Capt. *Porter*. I cannot tell the Time when he came to Town.

Sir *B. Shower*. How long was it after he came to Town before you saw him? Had you seen him a Week or a Fortnight before? Pray recollect yourself.

Capt. *Porter*. I told you that the first Time I heard of him, was the latter End of *January*;

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Capt. *Charnock* told me he was come, but I was then sick of the Gout.

Sir *B. Shower*. Now then I would desire to know, who was by, upon the *Friday* before the 22d, at the *Sun-Tavern* in the *Strand*, when you and Mr. *Cranburne* were there?

Capt. *Porter*. I did tell you, Sir.

Sir *B. Shower*. I desire to know, whether there was any Body besides Mr. *Cranburne*, *Kendrick*, and *Keys*?

Capt. *Porter*. Sir, I will tell you all I can remember; I was in one Room with Sir *George Barclay*, and there was Sir *William Perkins*, Capt. *Charnock*, and myself; and afterwards I went into another Room, where there was *Kendrick*, and *Cranburne*, and *Keys*; and *Jeffrey Gunn* came in afterwards; I remember no Body else.

Mr. *Phipps*. Was not *Gunn* there when you first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards.

Sir *B. Shower*. My Lord, this may be a very material Part of our Defence, and therefore we must enquire a little the more into it. Mr. *Porter* is pleased to say, that he was in a Room with Sir *George Barclay*, and *Charnock*, and Sir *William Perkins*; and he came out into another Room where was Mr. *Cranburne*, *Kendrick*, and *Keys*; and there he says, after he had been there some Time, *Gunn* came in; I desire to know whether *Gunn* was there when he first came in?

Capt. *Porter*. To the best of my Remembrance, he came in afterwards; but I cannot positively tell, for I was in and out several Times.

Mr. *Phipps*. At the Time that you communicated this Design to Mr. *Cranburne*, what said he to you?

Capt. *Porter*. When I first communicated the Thing to him, I told him there was a Thing on Foot for the Service of King *James*, and desired him to go along with me.

L. C. J. What Kind of Service did you tell him it was?

Capt. *Porter*. He asked me, what kind of Service it was? I told him Sir *George Barclay* was come over, and I told the whole Design of the Assassination of the Prince of *Orange*, that it was intended to take him off, as he came from *Richmond* from Hunting.

Mr. *Phipps*. And pray what did Mr. *Cranburne* say to you?

Capt. *Porter*. He said he would be ready to go along with me.

Mr. *Phipps*. You say, you sent by him three Case of Pistols to Sir *William Perkins*, at that Time did you tell him for what Design those Pistols were?

Capt. *Porter*. I told him, they were for the three Men that Sir *William Perkins* was to mount upon three of his five Horses.

Mr. *Cranburne*. Did you speak to me to carry those Pistols to Sir *William Perkins*?

Capt. *Porter*. I think so, to the best of my Remembrance I ordered you my self to carry them.

Sir *B. Shower*. Captain *Porter*, I desire you to recollect your self, and tell us plainly, whether the Design was communicated to Mr. *Cranburne* before the 15th.

Capt. *Porter*. Certainly, Sir.

Sir *B. Shower*. Are you sure of it?

Capt. *Porter*. Yes, Sir; I am sure of it.



Sir *B. Shower*. I ask you, because you know what has been said upon this Occasion in other Trials.

*Cranburne*. Where did you write the Note, that you say you sent to Sir *William Perkins*? Was that Note sealed or was it not?

Capt. *Porter*. I did not tell you that I writ a Note.

*Cranburne*. You swore that you wrote a Note, and sent it by me to Sir *William Perkins* for two Horfes.

Capt. *Porter*. I said no such Thing, Sir.

Mr. *Sol. Gen.* Look you, Capt. *Porter*, let him ask you any Questions, and if they be proper answer them, and let not his Affirmations or Mistakes provoke you to be angry.

Capt. *Porter*. I said, I sent him to Sir *William Perkins*, for a Note to have the Horfes from Mr. *Lewis*.

Mr. *Phipps*. Did you send him with a Letter, or was it a Message by Word of Mouth?

Capt. *Porter*. I did send him by Word of Mouth, for a Note.

L. C. J. Pray Gentlemen, observe the Evidence, Sir *William Perkins* was to give a Note for two Horfes, and Capt. *Porter* sent *Cranburne* for the Note.

Mr. *Phipps*. The Question therefore that I ask, is, Whether he sent a Letter for the Note, or whether by Word of Mouth?

Capt. *Porter*. I sent by Word of Mouth.

Mr. *Cranburne*. Pray will you tell the Court what you said upon the 22d to Mr. *Pendergrafs* and me, after you came down from the *Blue-Posts* leaning upon the Rail.

Capt. *Porter*. I don't remember a Word of it, for I cannot remember every Word that I have spoken.

Sir *B. Shower*. If you can remember one Particular, sure you can remember another. If you can't remember this, how came you to remember any Part of the Discourse that happen'd at the *Blue-Posts*?

Capt. *Porter*. Because that was material to this Business, for I had very soon after a particular Occasion to recollect it upon the breaking out of the Plot.

Mr. *Cranburne*. Pray what Hour was it this *Saturday* the 15th that you communicated this Design to me?

Capt. *Porter*. I cannot tell what Hour, but I say you met me at the *Blue-Posts Saturday* the 15th.

Mr. *Cranburne*. You say, you communicated it to me the 15th.

Mr. *At. Gen.* He says he communicated it to you, before the 15th.

Mr. *Cranburne*. I desire to know where he was the 14th.

Capt. *Porter*. I say, one Day before the 15th; in that Week I sent for you to come to my Lodgings, and you did come, and there I communicated it to you.

*Cranburne*. Sir, I was not at your Lodgings that Week.

Mr. *Phipps*. What Day of the Week?

Capt. *Porter*. I cannot be positive whether it was *Thursday*, or *Friday*, or what Day; but one Day that Week it was.

Mr. *Phipps*. You ought to be positive when it was.

Capt. *Porter*. I do tell you as near as I can.

Mr. *Phipps*. With Submission, my Lord, he ought to be positive one Way or other.

L. C. J. Nay, I don't see that he ought to be positive to a Day; he may be so if he can.

*Cranburne*. Pray what Day did you say you sent me to Sir *George Barclay*?

Capt. *Porter*. I do not say that I ever sent you to Sir *George Barclay*?

Mr. *Phipps*. Can you take upon you to say, That he was at your Lodgings that Week before the 15th?

Capt. *Porter*. To the best of my Knowledge it was one Day that Week.

Mr. *Phipps*. To the best of your Knowledge: Are you sure of it?

L. C. J. Speak as certainly as you can.

Capt. *Porter*. Indeed, I believe so, it was before the 15th. I am sure, I think, it was within three or four Days after Sir *George Barclay* had acquainted me with it, I sent to the Prisoner to come to me to my Lodgings, at Mrs.—— in *Norfolk-street*, and acquainted him with it.

L. C. J. And when you acquainted him with it, What did you tell him? What Part was he to act in it?

Capt. *Porter*. I told him, I would have him go along with me, and that I had set him down for one of my Party, and would provide him Horse and Arms; and he did agree to go along with me.

Sir *B. Shower*. Mr. *Webber*, Pray let me see *Charnock's* Trial.

Mr. *Sb. Buckingham*. Why, Sir *Bartholomew*, is the Trial any Evidence?

Sir *B. Shower*. Mr. *Sheriff*, I know what Use I can make of it.

Mr. *Sol. Gen.* Will you ask him any more Questions?

Sir *B. Shower*. No, Sir.

Mr. *Sol. Gen.* Then swear Mr. *De la Rue*. (*which was done*.)

Pray, Sir, give the Court, and the Jury, an Account what you know of the intended Assassination, and what Share the Prisoner had in it.

Mr. *De la Rue*. It is too long a Story to tell you all that I know of this Matter; but, if you please, I will tell you what concerns the Prisoner at the Bar. I am heartily sorry that I have Occasion to appear against him, as I would be truly against any Body: But since I am here upon my Oath, I must declare the Truth, and nothing but the Truth; and I hope I shall not declare any Thing but what is Truth. Upon *Saturday* the 15th of *February*, the Day that the Design was to have been put in Execution against his Majesty, and all that were in the Coach with him, and against his Guards, I went to Mr. *Charnock's* Lodgings in *Norfolk-street*, to inform my self whether they resolved on that Day to go out upon the Design; and I found by Mr. *Charnock* that they did resolve it, and I stayed there a while, till such Time as Mr. *Chambers* came in; I did not know whence he came then, but, as I was informed afterwards, he came from *Kensington*, to Mr. *Charnock*, and his Boots were dirty; and Mr. *Charnock* told me he had sent a Messenger to Mr. *Porter*; And, says he, if you will stay a little Time, I shall have an Answer. The Messenger came back, and told him, That Capt. *Porter* din'd at the *Blue-Posts* in *Spring-Garden*. I did not go to dine with him, but went Home, where I saw Mr. *King* at my Lodging, who told me, that the King did not go out



out that Day. I told him, I heard he did not : I found by Mr. *Chambers's* coming back, and that we had no notice from Mr. *Charnock*, that it was concluded the King did not go out as it was supposed he should have gone. When I had dined at my Lodging, I went to the *Blue-Posts* in *Spring-Garden*, to Mr. *Porter*, and there were four, or five, or six People with him; there was one Mr. *Sherborn*, and Mr. *Kendrick*, and two People that I never saw before, and another Person, but I can't tell now who he was. When we had been there a little while, comes in this unfortunate Man at the Bar, Mr. *Cranburne*; I don't know where he had been; but by his coming in so late, I suppose he had not dined, and he ordered the Drawer to get him some Costelets. This is all I can say as to that Day. I had seen Captain *Porter* twice or thrice between that and the 22d, and he desired me to be at home on *Friday* Night between Eight and Nine, and he would send to me: He did send, and I was from home. But when I came I was informed his Servant had been to speak with me; and in the Morning, about Eight or Nine o'clock, *Saturday* the 22d, he sent his Servant to me to tell me his Master would speak with me at his Lodgings. I went to his Lodgings, and he then lay in *Maiden-Lane*, at one *Brown's* a Surgeon: When I came in, he was in Bed; and he told me in *French*, *Touts Parties sont prests*, All Parties are ready. I understood all along that there were three Parties to be engaged; one to attack the King's Coach, and the two others the Guards: Sir *George Barclay* was to head the first, and *Porter*, and *Rookwood*, the rest. Mr. *Porter* arose and dressed himself, and in came Mr. *Cranburne*; and Mr. *Porter* went out to him in the Dining-Room, and what he said I can't tell: But soon after came in *Pendergrafs*, Mr. *Keys*, and Mr. *King*, and then he takes Pen, Ink, and Paper.

*Sir B. Shower*. Who took that?

*Mr. De la Rue* Captain *Porter* took Pen, Ink, and Paper, and writes down a List of his Party, and puts me down first. Mr. *Pendergrafs* asked me if I was the Captain, and I made him some Answer, but what in particular I cannot tell; I think I told him I knew of the Thing before the most did. But I can remember particularly that List was given to Mr. *Cranburne*, to carry to Mr. *Charnock*; upon what Account it was, I cannot tell; but I concluded, that Mr. *Charnock* was to be acquainted with those Persons that Mr. *Porter* was sure of: And Mr. *Porter* at that time told me that he was disappointed of some People, and desired me to get him some other Men in their Rooms; and he sent particularly to one that Mr. *King* proposed; and I did go, and brought him to the *Blue-Posts*, where Captain *Porter* told me he was to dine; and the Gentleman I went to, told me he would meet me at the *Blue-Posts* in *Spring-Garden*. When I came back to Mr. *Porter's* Lodgings, Mr. *Porter* and Mr. *Pendergrafs*, and Mr. *Odsfield*, and I, went in a Coach to the *Blue-Posts* in *Spring-Garden*; and when we had been there a little while, Mr. *Cranburne* came back to give an Account of the Errand Mr. *Porter* had sent him upon, and he brings this List.

*Mr. Att. Gen.* Who brought it?

*Mr. De la Rue*. Mr. *Cranburne*.

*Cranburne*. Whither did I bring it?

*Mr. De la Rue*. To the *Blue-Posts* in *Spring-Garden*.

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*L. C. J.* You must not ask any Questions till they have done with him. But Mr. *De la Rue*, let me ask you what Day was this?

*Mr. De la Rue*. This was *Saturday* the 22d of *February*; and he told Mr. *Porter* there was a List of Mr. *Charnock's* Men at the bottom of that List; and I took the List in my Hand, and there was Mr. *Charnock's* List of Six or Seven, or thereabouts, of his Party, and at the bottom of it was *R. C.* I think, for *Robert Charnock*. Mr. *Porter* takes Mr. *Cranburne* from the Company into another Room, and I went after them, and he told Captain *Porter*, in my hearing, that the King did not go out that Day. There is one Thing I forgot which now I recollect, and I am upon my Oath to tell the Truth, and the whole Truth. When I was at Mr. *Porter's* Lodging, he told me the King was to go out; and that Mr. *Chambers*, the orderly Man, had sent word, That the King resolved to go out between Ten and Eleven.

*L. C. J.* Who said so?

*Mr. De la Rue*. Mr. *Cranburne* told me so at Mr. *Porter's* Lodgings, I say I had forgot it, but it occurs to my Memory now, that he told me there before he went to the *Blue-Posts*, that the King did go out that Day between Ten and Eleven; for Mr. *Chambers*, the orderly Man, had been with Mr. *Charnock* or Sir *William Perkins*, to let them know so much. And afterwards when he came back with the List of Captain *Porter's* Men, to Captain *Porter* at the *Blue-Posts* in the *Spring-Garden*; there was at the Foot of that List, a List of Mr. *Charnock's* Men in another Hand, I suppose writ by himself, but that I cannot swear whose Hand it was; and Mr. *Porter* took him into another Room, and then Mr. *Cranburne* told him the King did not go out, and I believe it was then between 11 and 12 o'clock; and he also told Mr. *Porter*, that Mr. *Charnock* was apprehensive the Thing was discovered, and therefore desired him to have a care of himself, for he himself was resolved not to lie at home that Night; I think, my Lord, Mr. *Porter* did send back Mr. *Cranburne* to Mr. *Charnock*, I cannot be positive whether he did or not, but I believe he did; because I am sure Mr. *Cranburne* did tell Mr. *Porter*, Sir *George Barclay* would speak with him; and Mr. *Porter* made Answer, why should he desire me to go to him, when he knows I am under some ill Circumstances, and he can better come to me? and I believe Mr. *Porter* did send Mr. *Cranburne* once again to Mr. *Charnock*.

*L. C. J.* Well, pray do not say any thing of any Matter, but what you can be positive in.

*Mr. De la Rue*. But Mr. *Porter* did not go to Mr. *Charnock*, nor did Mr. *Charnock* come to him, therefore they stay'd there and dined; and after Dinner, or a little before Dinner, *Keys* the Trumpeter came up and told us, that my Lord of *Oxford's* Regiment of Guards was returned from *Richmond*, foaming; *Keys* went down Stairs again to learn Intelligence, as I thought, and came up and told us he saw the King's Coaches newly returned to the *Meuse*, and Mr. *Cranburne* was by all the Time; I think this was before Dinner, and then we went to Dinner.

*L. C. J.* I tell you again, don't speak any thing that is material, but what you can be positive in.

*Mr. De la Rue*. I am positive as to the Thing, and that it was the 22d of *February*, but I cannot be positive as to all the Circumstances. After Dinner there was the usual Healths, the Jacobite



Healths to King *James*, and the Prince of *Wales*, and the Restoration, and the like; and after that I think it was Mr. *Porter* took an Orange in his Hand, and squeez'd it, I am sure one in the Company did, and drank something to the Rotten Orange, I cannot very well remember just now what it was; but I would be cautious of saying any thing but what is Truth; but if your Lordship will give me leave to recollect my self, I will tell you what it was—Oh! it was to the squeezing of the Rotten Orange, and the Health went round, and Mr. *Cranburne* was in the Company, and drank the Health. But being disappointed and frustrated of the Design by the King's not going abroad that Day, and Mr. *Porter* being cautioned by Mr. *Charnock* to take care of himself, and being told that Mr. *Charnock* would not lie at home that Night, and the Guards returning in that manner, they were all apprehensive that the thing had taken Air, and the Design of Assassinating the King was discovered, and therefore Mr. *Porter* concluded of going out of Town; several Healths were drunk round, and I think about Two o'clock he went out of Town, and then the Company broke up. This is what I can say as to the Prisoner, and I hope I have said nothing but what is Truth.

*Mr. Sol. Gen.* Then, my Lord, we desire to know whether they will ask him any Questions?

*Mr. Phipps.* At the time you say this List was given by Captain *Porter*, to Mr. *Cranburne*, did Mr. *Porter* declare to what purpose the List was sent?

*Mr. De la Rue.* No, Sir, not a Word of any such thing. Mr. *King* was by, and Mr. *Pendergrafs* was by, and I think Mr. *Keys* was by, and he writ a List of his Party, putting me down first; and Mr. *Pendergrafs* said to me, you are Captain, and he gave it to Mr. *Cranburne* to carry it to Mr. *Charnock*; what the particular Message was, I cannot be positive: Indeed I don't very well remember the Message, but the List was carried to Mr. *Charnock*, and to the best of my memory it was to give Mr. *Charnock* an Account what Men he was sure of; for Mr. *Porter* told me of several Disappointments he had had, of Persons that had promised him, and failed.

*Mr. Phipps.* Can you remember what Mr. *Cranburne* said upon that?

*Mr. De la Rue.* No, I do not.

*Cranburne.* What Message was that, you say, I brought from Sir *George Barclay*?

*Mr. De la Rue.* I do not say that you brought any Message from Sir *George Barclay*.

*Cranburne.* You said that I brought a Message that Sir *George Barclay* would see him.

*Mr. De la Rue.* I do not say so; but I say that you told Mr. *Porter* that Mr. *Charnock* sent you with a Message to let him know that Sir *George Barclay* was desirous to see Mr. *Porter*, to confer about taking care of themselves.

*Cranburne.* Did you hear me name Sir *George Barclay's* Name?

*Mr. De la Rue.* Yes, I say you told Mr. *Porter* that Mr. *Charnock* bid you caution him to take care of himself, and that he would go that way, for Sir *George Barclay*, and he, desired to see him; and Mr. *Porter* said it was an unreasonable thing for Mr. *Charnock* to desire it, because they knew he was under Circumstances that it was not proper for him to go, and he wondered they would not rather come to him.

*L. C. J.* What time a Day was this?

*Mr. De la Rue.* It was about Twelve o'clock, I think.

*L. C. J.* Was it after such time as the News was brought that the King did not go abroad that Day?

*Mr. De la Rue.* Yes, my Lord, it was after that time.

*Mr. Phipps.* Were you with Sir *George Barclay* when he was here in *England*? Did you see him here?

*Mr. De la Rue.* I did not see him on this side of the Water. I knew him abroad, and a great many other unfortunate Persons, that were concerned in this Affair; I knew some of them here, and that they were concerned in the Design, but I did not converse with many, indeed with but a very few about it; for to shew that I was not a Man that designed to trepan or ensnare any Man, I did never exchange two Words about this Matter with any Persons that I knew were concerned in it, but Sir *William Perkins*, (and that but in a small measure) and Mr. *Charnock* and Mr. *Porter*, and Mr. *King*, and Col. *Parker*; except what passed upon the 22d, between Mr. *Porter*, and Mr. *Charnock*, when Mr. *Porter* sent Mr. *Cranburne* to Mr. *Charnock*. Mr. *Cranburne* was one who Mr. *Porter* called his Quarter-Master: I know this Gentleman was commonly depending upon Mr. *Porter*, but I think I never was much in his Company, I did not know what Design he had upon him, but I was told by Mr. *Porter*, that he intended to make him his Quarter-Master, and I understood Mr. *Porter* was to have a Troop of Horse in Col. *Parker's* Regiment.

*Mr. Phipps.* You say you knew a great many of them that were concerned, but you discoursed and conversed but with a few?

*Mr. De la Rue.* I do so, Sir.

*Mr. Phipps.* How do you know that they were concerned, when you did not discourse with them?

*Mr. De la Rue.* By Information from Mr. *Charnock* and Mr. *Porter*.

*Mr. Phipps.* Do you know any thing more of Mr. *Cranburne*, than the List, and what you have said already?

*Mr. De la Rue.* I give you an Account of all that I do know.

*L. C. J.* Answer that particular Question. Do you know nothing more than what you have said?

*Mr. De la Rue.* No, my Lord, I do not remember nor know any more as to Mr. *Cranburne* than what I have declared, and I am sorry I had occasion to declare so much.

*Mr. Att. Gen.* Then call Mr. *Pendergrafs*, (who was sworn.)

*Mr. Sol. Gen.* Pray will you give my Lord and the Jury an Account of what you know of the Intended Assassination, and how far Mr. *Cranburne*, the Prisoner at the Bar, was concerned in it.

*Captain Pendergrafs.* My Lord, the 13th of *February* last, I came out of *Hampshire*, Mr. *Porter* sent for me to come to Town, and I met him that Day at the *Blue-Posts* in *Spring-Garden*, and there he told me of the Assassination that was to be done on *Saturday* following: The next Day we dined at the *Rose-Tavern*, where the Prisoner dined with us, and we talk'd of the Business, that was *Friday* the 14th, and we were to be in readiness the next Day to assassinate the King,



King, as he was coming from *Richmond*; but some Company coming in afterwards, we left off the Discourse, and talk'd no more that Night. The next Day that we were to do the Business, we met at the *Blue-Posts* in *Spring-Garden*, and finding the King did not go abroad that *Saturday*, we dined there at the *Blue-Posts*, and talk'd over again of Assassinating the King, and the Prisoner was by at the same time; they were all mightily concerned the King did not go that *Saturday*; but when we had dined there, we had no further Discourse about the Assassination that Day, but every body was to prepare against the next *Saturday*.

*L. C. J.* Was that agreed upon then?

*Capt. Pendergrafs.* Yes, it was, by all the Company; so we parted that Day. Some time the next Week I met Mr. *Porter*, and Mr. *Porter* ask'd me if I had a Horseman's Sword; I told him, No: Says he to Mr. *Cranburne*, let Captain *Pendergrafs* have one of the Horsemen's Swords that you have got. Says Mr. *Cranburne* to me, if you will come to my House you shall make choice of one yourself, for I have several at home. Said I, Mr. *Cranburne*, I cannot go that Way, but I'll take one of your choosing, if so be you'll leave it at my Lodgings: He said he would do it, and did; he left it at my Lodgings in *Suffolk-Street*, which Sword I have still. The Day following I met him, and he ask'd me if I had received the Sword; I said I had it; and he said, it was very well. After this I did not see Mr. *Cranburne* till *Saturday* the 22d, at which Time I came to Mr. *Porter's* Lodgings between Nine and Ten o'clock in the Morning, and the Prisoner at the Bar was there, and I heard Mr. *Porter* give him a Message to go to Sir *William Perkins* for some Horses, I know not how many. The Prisoner went, and in some time after, came back again, and brought an Account that the King went out that *Saturday* the 22d to *Richmond*; so every body was to get ready: And Mr. *Cranburne* said, that Mr. *Charnock* desired that Mr. *Porter* would send a List of his Men; upon which Mr. *Porter* wrote a List of his Men, and gave it to the Prisoner to carry it to Mr. *Charnock*, and bid him meet him at the *Blue-Posts*; and Mr. *Porter*, and Mr. *De la Rue*, and I, took Coach, and went down to *Spring-Garden*, and when we came to the *Blue-Posts*, there were some Persons that I think Mr. *De la Rue* had appointed to come there; the Prisoner comes thither, and brought the List back, with a List of Mr. *Charnock's* Men underneath. I know not who the Men were, for I saw it only on the one Side of the Table, in Mr. *Porter's* Hand; at the same Time the Prisoner brought an Account, that the King did not go Abroad that Day, and presently after we had the same Account from other Hands; and Captain *Porter* and I went out of Town, and we heard no more of it.

*L. C. J.* Are you sure that he did agree to this Matter before the 15th?

*Capt. Pendergrafs.* Yes, I am sure of it, he agreed to it *Friday* the 14th, at the *Rose-Tavern* in *Covent-Garden*.

*L. C. J.* On the 15th, it seems they were disappointed; are you sure there was an Agreement to pursue it the 22d?

*Capt. Pendergrafs.* Yes, I am sure there was, my Lord.

*L. C. J.* Was the Prisoner there?

*Capt. Pendergrafs.* Yes, my Lord, I am sure that the Prisoner at the Bar was there.

*Cranburne.* Pray, Mr. *Pendergrafs*, was there any Discourse about this Thing when I was there?

*Capt. Pendergrafs.* Yes, Mr. *Cranburne*, you cannot but remember there was.

*Cranburne.* What Hour did I come there, pray Sir?

*Capt. Pendergrafs.* Truly, I cannot be positive to an Hour; but you were there while the Discourse was.

*Cranburne.* Whether I did stay there all the while, and who was in the Company?

*Capt. Pendergrafs.* All the Company broke up about six o'clock, there was Mr. *King*, Captain *Porter*, Mr. *Kendrick*, Mr. *Cranburne*, Mr. *Keys*, and myself.

*Cranburne.* Was *Kendrick* there when I was there?

*Capt. Pendergrafs.* Yes, I am sure of it; I will do you all the Justice in the World that I can.

*Sir B. Shower.* You say, Sir, he did agree upon the 14th to this Design; pray what Words did he use?

*Capt. Pendergrafs.* He did agree that we should attack the King the next Day.

*Sir B. Shower.* Pray, Sir, if you can recollect yourself; what did the Prisoner say, or whether you took him to agree by being silent?

*Capt. Pendergrafs.* He said, he hop'd we should execute our Business the next Day.

*L. C. J.* What Day was that?

*Capt. Pendergrafs.* That was the 14th of *February*, and the same Night I gave Account of the Matter to my Lord *Portland*.

*Mr. Phipps.* Did he agree to be one in the Execution of the Design?

*Capt. Pendergrafs.* Yes, he did; he discoursed the Matter to me himself.

*Mr. Att. Gen.* My Lord, we have done with our Evidence.

*L. C. J.* Well, then what say you to it for the Prisoner?

*Sir B. Shower.* My Lord, what we have to say on behalf of the Prisoner in this Respect is this: Here are but three Witnesses produced, and as to one of them, *De la Rue*, there is no Evidence that he gives your Lordship and the Jury, that affects this Matter, but only that there was a List given by Captain *Porter*, and carried by the Prisoner to Mr. *Charnock*, and so brought back again. But he does not recollect, nor swear to any Message that was sent from *Porter* by the Prisoner to Mr. *Charnock*: Now, my Lord, the bare Carrying of a Note of Names will be no Evidence of Treason. Mr. *De la Rue* does not swear to any Privity of the Prisoner, what the List was for, nor to the Delivery of the List, which is the Overt-Act in the Indictment; nor upon what Account this List was written, or sent, or brought back again, or any Word that proceeded from Captain *Porter* to him upon giving the List, or any Word when it was brought back again. So that as to *De la Rue's* Testimony, we must submit it to the Memories and Recollection of your Lordship and the Jury; we think he only proves a Plot in general, of which there is no peradventure, every body is satisfied, that there was such a horrible Conspiracy: Those that have been condemned and executed for it, have own'd it, and so it can never be doubted, but he does not say any Thing to affect the Prisoner at the Bar; for as to the Drinking of Healths, and being present when those Healths were drunk, tho'



tho' it be an Evidence of Disaffection to the Government, or too much good Manners and Complaisance to the Company a Man is in; yet that Disaffection, or civil Temper, or Complaisance, we hope are no Evidences of Treason. It is plain the Prisoner did depend very much upon Captain *Porter*; he was in Truth his Servant to go of his Errands, and expected an Office from him, God knows when; but it does not appear by any particular Action, that he did any thing that can be Treason, upon Mr. *De la Rue's* Evidence. Then as to what Mr. *Pendergrafs* says, I must confess his Evidence comes Home: For he says there was a Design of the Assassination, and some Agreement of the Prisoner to it; but I must beg your Lordship's Favour to observe, upon Mr. *Pendergrafs's* Evidence, if that stand alone, it will be but one Witness, and then we are safe by the Purview of this Act of Parliament.

*L. C. J.* Ay, and by the Law, before the making of that Act.

*Sir B. Shower.* Then, as to Captain *Porter*, I must beg leave to say, If our Witnesses are come that were absent at the other Trial, and they prove what is in my Instructions, it will be very much questionable, whether there be any Credibility due to his Testimony: Then if you take off his Testimony, there is only the Evidence of Mr. *Pendergrafs*; and if he be to be believed, to which I have nothing to say at present, in the Case of a Man's Life, upon an Indictment of Treason, where the Law requires two credible Witnesses, his single Testimony is not sufficient to convict the Prisoner. We beg Leave to call our Witnesses, and then we shall leave it to your Lordship, and the Jury.

*Mr. Phipps.* As to the particular Overt-Act said in the Indictment, the carrying about the List, only Mr. *De la Rue* speaks to it, and Sir *Bartholomew Shower* has given it an Answer, and I shall not repeat it.

*L. C. J.* Look ye, for that, if any one Overt-Act is prov'd by two Witnesses, it's well enough.

*Mr. Sol. Gen.* Besides, they mistake, my Lord, extremely; for Captain *Porter*, and Mr. *Pendergrafs*, speak both of them to that Particular, as to the List.

*Sir B. Shower.* We do not deny it; the Question is, Whether you have two credible Witnesses?

*Cranburne.* Pray, Mr. *Pendergrafs*, do you remember what Captain *Porter* said to you, and I, when we came down to the *Blue-Posts*, leaning upon the Rail?

*Capt. Pendergrafs.* Indeed, Sir, I do not.

*Cranburne.* I would have you recollect yourself; as we stood against the Rails in *Spring-Garden*, when we came down from the *Blue-Posts*, after the Design miscarry'd, Mr. *Porter* said, Mr. *Charnock*, and they, might thank themselves if it were discovered; For, says he, *I never communicated a Word of this Thing to any of my Party.*

*Capt. Pendergrafs.* Indeed I don't remember a Word of it, Sir.

*Mr. Phipps.* My Lord, we have one Piece of Evidence to offer against the Testimony of Captain *Porter*: He says, That he sent *Cranburne* with *Gunn* from the Cock-pit to see for Hackney-Horses, and that *Cranburne* came to him to the *Sun-Tavern*, and there they had some Discourse about executing the Design the next Day; and being ask'd, Who was by, when he communicated the

Design to *Cranburne*, and particularly, Whether Mr. *Gunn* was by? He says he came in afterwards, but was not there at the Time of the Communication about the Design. Now we shall prove that *Gunn* came in with the Prisoner, and was with him all the Time, and there was no such Discourse happen'd.

*Sir B. Shower.* Call *Jeffery Gunn*, and *Mary Gerrard.* [They appeared.]

Your Lordship will observe, what Captain *Porter* swore, That he went into the Room to *Cranburne*, and *Gunn* was not there: Now, if we falsify him in that Particular, we shall submit to your Lordship how far he is to be believed in the rest.

*Mr. Att. Gen.* Pray, Sir *Bartholomew*, ask your Witnesses what you will, but make no Descants upon their Evidence till you have heard them.

*Then the two Witnesses were sworn.*

*L. C. J.* Well, look ye, you are both upon your Oaths, Consider what you say, speak the Truth, and tell all that you know, and nothing but the Truth. Which do you begin with?

*Mr. Phipps.* *Jeffery Gunn*: Pray, Mr. *Gunn*, did you go to the *Sun-Tavern* at any Time with Mr. *Cranburne*?

*Gunn.* Yes, I did.

*Mr. Phipps.* What Day of the Month was it?

*Gunn.* I cannot positively tell the Day, it was of a *Friday*.

*Sir B. Shower.* Was it of a *Friday*, in *February*, or *January*?

*Gunn.* It was in *February*.

*Mr. Phipps.* Was it before the Plot broke out?

*Gunn.* Yes, It was.

*Mr. Phipps.* How long was it before the Plot broke out?

*Gunn.* I cannot tell that, truly.

*Mr. Phipps.* Whence did you go?

*Gunn.* I was at the Cock-pit, and I went from thence to the *Sun-Tavern*.

*Sir B. Shower.* Whom did you meet there?

*Gunn.* I saw Captain *Porter* there.

*Sir B. Shower.* What Room were you in?

*Gunn.* We went into a Room next the Street.

*Sir B. Shower.* Who was there with you?

*Gunn.* There was Mr. *Cranburne*, and I, and Mr. *Keys*.

*Sir B. Shower.* How long was it before Mr. *Porter* came in to you?

*Gunn.* He came in about half a quarter of an Hour after I was there.

*Sir B. Shower.* Were you there from the Beginning till Mr. *Cranburne* went away.

*Gunn.* Mr. *Cranburne*, and I, went from the Cock-pit together.

*Sir B. Shower.* How long did you stay there?

*Gunn.* I was there about an Hour and a half.

*Sir B. Shower.* Were you out of the Room at all in that Time?

*Gunn.* Yes, I was out of the Room once.

*Sir B. Shower.* How long were you out of the Room?

*Gunn.* I went Home to my Lodging.

*Sir B. Shower.* Were you ever with Mr. *Cranburne* at the *Sun-Tavern* at any Time besides this?

*Gunn.* Never in my Life.

*Sir B. Shower.* Whom did you leave with him when you went out?

*Gunn.* Capt. *Porter*, and Mr. *Keys*, as I remember.



Sir B. Shower. Were you there before Captain Porter came to him?

Gunn. I was with Mr. Cranburne, and Captain Porter came in about a Quarter of an Hour after; we came from the Cock-Pit together.

Sir B. Shower. Pray recollect your self, and tell us upon your Oath, were you there when Capt. Porter came in?

Gunn. Yes, I think I was there when Capt. Porter came in.

Sir B. Shower. Did you go and leave him there?

Gunn. We went all out together. I was there about an Hour and half.

L. C. J. Nay, but you said you were absent some Time.

Gunn. I went Home, and came back again.

Sir B. Shower. When you went Home, did you leave Mr. Cranburne behind you?

Gunn. Yes, I think so.

Mr. Phipps. Did you leave Captain Porter with him?

Gunn. I think Capt. Porter was with him then.

Mr. Phipps. But upon your Oath, was you in Company with Mr. Cranburne at the Sun-Tavern, when Capt. Porter came first in?

Gunn. Capt. Porter went in and out several Times.

Sir B. Shower. Did you see Capt. Porter before you went to your own House?

Gunn. Yes, sure.

Mr. Phipps. Then it cannot be true what Mr. Porter says, that Gunn did not come in till afterwards.

Mr. At. Gen. Now, Mr. Gunn, I would ask you a Question or two first, Were you there all the while that Mr. Cranburne was there, or did you go Home?

Gunn. I went Home.

Mr. At. Gen. Did you come back again?

Gunn. Yes, I went home and eat some Victuals.

Mr. At. Gen. How long were you absent?

Gunn. I came back in half a quarter of an Hour.

Mr. At. Gen. How far is it to your House?

Gunn. 'Tis not above 100 Yards.

Sir B. Shower. Did Mr. Porter come in to you before you went Home, when you first came in with Cranburne?

Gunn. He came in after we were in the Room.

Mr. Phipps. Capt. Porter said, when he came into the Room Gunn was not there.

L. C. J. He did not say positively, but as he remember'd; now I would ask you a Question or two.

Sir B. Shower. Pray my Lord, our Inference from this Evidence is this: Capt. Porter says, that upon Friday the 21st of February he was with Cranburne at the Sun-Tavern, and out of one Room into another he came to Mr. Cranburne, and talk'd with him of this Design, and after that Gunn came in to the Room, after the Communication was over: Now this Man swears he went from the Cock-Pit with Mr. Cranburne, he was with him in the Room at first when Capt. Porter came; some Time afterwards he went to his own House, and left Captain Porter with Mr. Cranburne, and came back again, and they came away together: Now we say, these two are inconsistent; for Capt. Porter swears that Gunn was not there till after the Communication was over.

L. C. J. As he remembers.

Mr. Phipps. Nay, I think he was positive he came in afterwards.

L. C. J. As I remember he was not positive, but call Capt. Porter again.

Mr. Phipps. When you came back from your House, who were in the Room?

Gunn. The same Company as I left, as far as I remember.

Mr. Mountague. Was Capt. Porter in the Room when you came back?

Gunn. Indeed I can't directly tell, I believe he was.

L. C. J. Pray observe what your Witness says: He says, Capt. Porter came in and out, and was there several Times before he went away.

Gunn. Yes, my Lord, he was so.

L. C. J. And you were absent some Time, but were you there some Time before Porter came in?

Gunn. Yes, I believe I was.

Then Capt. Porter came in.

Mr. At. Gen. Look ye, Capt. Porter, you see that Man there?

Capt. Porter. Yes.

Mr. At. Gen. Pray give an Account of what you know of that Man's coming in to you at the Sun-Tavern.

Capt. Porter. I came several Times out of Sir George Barclay's Room into theirs, and to the best of my Remembrance, Mr. Cranburne was there before Gunn came in.

Sir B. Shower. Do you remember whether the first Time that you went out of Sir George Barclay's Room to speak with Mr. Cranburne, Mr. Gunn was there?

Capt. Porter. To the best of my Remembrance he was not; to the best of my Remembrance, Mr. Gunn, I saw Mr. Cranburne in the Room before you was there.

Sir B. Shower. Did not you order Gunn to come with him to the Sun-Tavern?

Capt. Porter. Yes, Sir, I did.

Sir B. Shower. Cannot you tell whether they came together?

Capt. Porter. I was not in the Room when they came in first, but to the best of my Remembrance he was not there when I came in the first Time.

L. C. J. Now, Gunn, you hear what Capt. Porter says, before you went away to your own House did Mr. Porter come into the Room to you?

Gunn. Indeed, my Lord, I am not positive, I think he did.

Mr. At. Gen. Neither of them is positive, and it is a Circumstance not very material; for it seems he was absent, and then the Discourse might be.

L. C. J. No, it is not material, but you see upon a strict Examination what it comes to?

Sir B. Shower. They are agreed upon it I perceive, to be positive on neither Side.

Mr. Phipps. Mr. Cranburne, pray ask Mrs. Gerrard what you have a mind.

Cranburne. Pray what do you know of Capt. Porter's going out in Disguise, and wearing false Hair and Vizards, and going upon the Highway, and such things?

Gerrard. I know not what Mr. Cranburne means. [At which the People laugh'd.]

Sir B. Shower. It is no laughing Matter, when a Man is upon his Life.

L. C. J. No, no, let him have fair Play; Answer the Question.

Cranburne:



*Cranburne.* Do you know any thing of your Master's going abroad in Disguises?

*Gerrard.* I do not know any thing of my Master's going upon the Highway.

*L. C. J.* Did he go out with Vizards, or any such Things?

*Gerrard.* I never saw him wear a Vizard or false Beard in my Life, but he had once a Patch on when he was forced to keep out of the way, upon the Account of the Dog-Tavern Business in *Drury-Lane*.

*Mr. Phipps.* See if *Mr. Edward Boucher* is here.

[*He was call'd, but did not appear.*]

*Sir B. Shower.* Call *Mrs. Burton*. [*Which was done, but she did not appear.*]

*Mr. Phipps.* Is *William Hardyman* here? [*He was call'd, but did not appear.*]

*Sir. Shower.* Then call *Simon Dawson*, and we have done. [*Which was done.*]

*Crier.* They are all call'd, but they do not appear.

*Sir B. Shower.* My Lord, we must submit it to your Lordship's Directions, upon the Evidence that has been given, as to the Credibility of these Witnesses, and whether what *Capt. Porter* says, and what *Gunn* says be consistent; so that you can be satisfied there are Two Lawful Credible Witnesses to prove any Overt-Act.

*L. C. J.* Yes sure, but I would have you debate it, if you believe there be any thing in it.

*Sir B. Shower.* I submit it to your Lordship's Directions.

*L. C. J.* The Question is, Whether I should give any Directions at all or no, or whether there be any Occasion for it?

*Cranburne.* I declare this openly before this Honourable Court, and so many Noblemen as are here, that *Mr. Porter* never made me acquainted with this Design, till what he swore here.

*L. C. J.* I can't tell, 'tis sworn by two Witnesses.

*Cranburne.* I do declare, tho' *Capt Pendergrafs* says he does not remember it, that *Capt Porter* did declare in *Spring-Garden* the 22d, when he came out of the *Blue-Posts* by the Rails, if this Design miscarry, says he, *Mr. Charnock*, may thank himself; for I never communicated this Secret to any of my Friends.

*L. C. J.* But hark ye, do you consider what you say, if this Design miscarry: Pray what Design was that?

*Cranburne.* He never named any thing but the Design, he did not say what it was.

*L. C. J.* But why were you employ'd to carry a List from *Capt. Porter* to *Mr. Charnock* and to bring a List back again from him to *Capt. Porter*?

*Cranburne.* I did carry the Note, but there was nothing mention'd what the List was for.

*L. C. J.* Then you were there on *Friday*, the 14th, and there the Design was proposed to Assassinate the King the next Day, and you engag'd in it.

*Cranburne.* Not a Word of it true, my Lord.

*L. C. J.* Ay but *Mr. Pendergrafs* swears it, and that you were hearty in the Matter, and hop'd you should do your Business the next Day.

*Cranburne.* I can't help it if he does swear it.

*L. C. J.* Then you were at the Meeting at the *Sun-Tavern* the 21st.

*Cranburne.* My Lord, you hear what *Gunn* says.

*L. C. J.* As to that they are neither of them positive, but you did there promise and undertake

the Matter, that *Capt. Porter* is positive in, that it was agreed by you all to do it the 22d; and *Mr. Pendergrafs* says, when you were disappointed the 15th, you all agreed to pursue the same Design the *Saturday* following.

*Cranburne.* My Lord, I did not dine at the *Blue-Posts* that Day.

*L. C. J.* But you were there; I think indeed *Mr. Pendergrafs* says you came in after Dinner, and had some Steaks.

*Cranburne.* I never heard directly nor indirectly of this Design, till what I heard them swear here.

*L. C. J.* Gentlemen of the Jury, you do understand for what Crime this Prisoner at the Bar is Indicted: It is for High-Treason, in Designing and Compassing the Death of the King, which was to be effected by an Assassination, in the most barbarous and wicked Manner, that any Attempt of that Nature can possibly be made, being to surprise the King, and murder him in his Coach.

The Question Gentlemen is, whether this Prisoner be Guilty of this Crime or no; there have been three Witnesses produced that have given Evidence against him, *Capt. Porter*, *Mr. De la Rue*, and *Mr. Pendergrafs*; and they do all tell you, that there was such a Design on foot to Assassinate the King, as he came from Hunting at *Richmond*, after he came on this Side the Water, in the Lane between *Brentford* and *Turnbam-Green*. There were diverse Persons engaged in this Design, which *Sir George Barclay* was come from *France* to promote and manage: *Capt. Porter*, as it does appear upon his Evidence, was a Person that was principally engag'd, and at that Time was hearty in the Prosecution of it.

As to *Mr. Cranburne*, *Capt. Porter* tells you he was a Man that he had had a long Acquaintance with, and had employed him and designed to employ him as an Officer under him, in case a Revolution happened, which it seems about that Time, and some time before it, was expected. *Captain Porter* was to have been a Captain and I think he designed to promote *Cranburne* to be his Quartermaster; and he sent him to buy Arms; and Preparations were made for that Business; but that is not the Thing that we are now upon, the Matter that now properly falls under our Consideration, is this; The Coming over of *Sir George Barclay*, the latter End of *January*, or the Beginning of *February* last, upon which, as it seems, *Mr. Porter* was engaged; and having an Interest in this *Cranburne*, and there being Horses to be furnish'd to attack the King and his Guards about *Turnbam-Green*, this Man, *Cranburne*, was a Person that was engaged to be one of the Horsemen that were to make the Attack, and he tells you that he did employ him to provide Horses and Swords, and to prepare the Pistols, and that he did engage in it, and particularly that the Design was to be executed on *Saturday* the 15th of *February*, and that he was then ready to go with *Capt. Porter*; but on that *Saturday* the King did not go abroad, whereby the Design was disappointed for that Time: Afterwards there was a Meeting at the *Sun-Tavern* in the *Strand*, where he met with *Sir George Barclay* and others of them, and there comes to that Tavern *Mr. Cranburne* and others, and they were in another Room, and *Capt. Porter* says he came to them, and did discourse about pursuing the Design the very next Day, which was agreed, and *Cranburne* was ready to go the next Day.

Then



Then he tells you further, that the next Day being *Saturday* the 22d, the second Time that this Assassination was to have been executed, upon the Desire of Mr. *Charnock*, who was a Person also that was engaged in this Design, Captain *Porter* writes a List of the Men he could bring, and sent it by *Cranburne* to *Charnock*; *Cranburne* carries the List to Mr. *Charnock*, and brings it back again with an Addition of the Names of Mr. *Charnock's* Men underneath.

Mr. *De la Rue* is called, and he swears to that very Circumstance, that Mr. *Cranburne* was sent by Captain *Porter* with a List to Mr. *Charnock*, and brought it back again from Mr. *Charnock*, with an Addition of other Names.

Then Mr. *Pendergrafs* tells you, that he was with this Mr. *Cranburne*, the Prisoner at the Bar, the fourteenth of *February*, and there was a Discourse of going in pursuance of this Design the next Day, and the Prisoner agreed to it, which he is positive in: He tells you, that when they were disappointed the 15th, being at the *Blue-Posts*, they then agreed to pursue it the next *Saturday*; *Cranburne* was one of them that agreed.

Captain *Porter* and *De la Rue* inform you that Healths were drank to the late King, and the late Queen, and the Prince of *Wales*, as they called him, and then at length, as the concluding Health, Captain *Porter*, or some of them in the Company, having an Orange in his Hand, squeez'd it, and drank a Health to the Squeezing of the Rotten Orange, which was pledged by all, and particularly by Mr. *Cranburne*, as is proved by both Captain *Porter* and *De la Rue*.

So that now, Gentlemen, I must leave it to you, whether this is not Evidence sufficient to prove this Man guilty of the Treason whereof he is indicted, that is, of Designing and Intending the Assassination of the King, and being engaged as a Party to execute this Design, whenever there was an Opportunity.

The Counsel insist upon it, on the Behalf of the Prisoner, that what Captain *Porter* says is not Evidence: In the first Place they urge that he is not a Man of Credit, for they have mentioned that he used to be disguised, and wear a Vizard Mask, and go abroad under odd Circumstances, and therefore his Reputation they hope is not good enough to make him a credible Witness against the Prisoner: Now the Prisoner's Witness being produced, says he never knew him go in Disguise, or wear a Vizard Mask, but once he wore a Patch, because he was under some ill Circumstances about a Riot in *Drury-Lane*; every Body understands what the Meaning of that was, his Drinking of Healths at a riotous Assembly, upon the 10th of *June*, and he being under some Prosecution for that, occasioned him to wear that Disguise, but it was not done to hinder any Person, or do any Mischief.

But then, say they, he is mistaken in his Evidence, of the Meeting at the *Sun-Tavern* the 21st of *February*, the Day before the last, that this Design was to have been executed, for whereas he says, that *Gunn* was not there when he came to them, yet *Gunn* was in the Company at that Time, and whereas he swears positively that they discoursed of going upon the same Design to assassinate the King the next Day, as was agreed the *Saturday* before; *Gunn* heard no such Discourse. *Gunn* is called, and he tells you he did come to the *Sun-Tavern* at that Time, with *Cran-*

*burne* and Captain *Porter*, he came into the Room, and he heard no such Discourse. They did open it indeed that *Gunn* had been there all the while, and if so, then if there had been such a Discourse, he must have heard it. *Gunn* has been examined, and does tell you he was not there all the while, but went out and was absent for some Time, about half a quarter of an Hour.

They have made a Question whether Captain *Porter* came in when *Gunn* was there, he says truly he thinks that Captain *Porter* did come into the Room while he was there, before he went out, but he cannot tell certainly, he was there some Time, while he was there. Then Captain *Porter* was called again, and Captain *Porter* does say he knows *Gunn* was there, but whether he was there at that Time he came in, he cannot say positively; but *Gunn* says Captain *Porter* was going in and out several Times, as *Porter* says himself; and *Gunn* was absent for some part of the Time. So that I cannot see any sort of Contradiction between the Evidence that *Porter* gives, and the Evidence that *Gunn* gives; the one is uncertain, and so is the other as to that Circumstance.

But, Gentlemen, they would infer, that if there was any such Discourse while *Gunn* was there, it must be of necessity that *Gunn* must have heard it; but it is not necessary the Discourse should be when *Gunn* was there: Captain *Porter* swears positively, that there was such a Discourse of going the next Day to pursue the Design, and he says he thinks *Gunn* was not present at that Time when the Discourse was, and *Gunn* says he was absent some part of the Time.

And so I must leave it to you; upon the whole Matter, if Mr. *Cranburne* the Prisoner at the Bar, did consent and agree to act in this bloody and wicked Design, then you are to find him Guilty; if you are not satisfied of that upon the Evidence you have heard, or you think there is any Inconsistency, or Incoherence in the Testimony on the one side, and the other; and that there is good Reason to disbelieve the Evidence against the Prisoner, then you are to acquit him. You have heard your Evidence, and you had best consider of it.

*Cl. of the Crown.* Who keeps the Jury?  
*Crier.* There is an Officer sworn.

*Then the Jury withdrew to consider of their Verdict, and about a Quarter of an Hour after returned.*

*Cl. of Arr.* Gentlemen, answer to your Names,  
*John Caine.*

*Mr. Caine.* Here. [And so of the Rest.]

*Cl. of Arr.* Are you all agreed of your Verdict?

*Jury.* Yes.

*Cl. of Arr.* Who shall say for you?

*Jury.* Foreman.

*Cl. of Arr.* *Charles Cranburne*, hold up thy Hand. [Which he did] Look upon the Prisoner; how say you, is he guilty of the High-Treason whereof he stands indicted, or Not Guilty?

*Foreman.* Guilty.

*Cl. of Arr.* What Goods or Chattels, Lands or Tenements, had he at the Time of the Treason committed, or at any Time since?

*Foreman.* None to our Knowledge.

*Cl. of Arr.* Then hearken to your Verdict as the Court has recorded it. You say that *Charles Cranburne* is guilty of the High-Treason whereof he



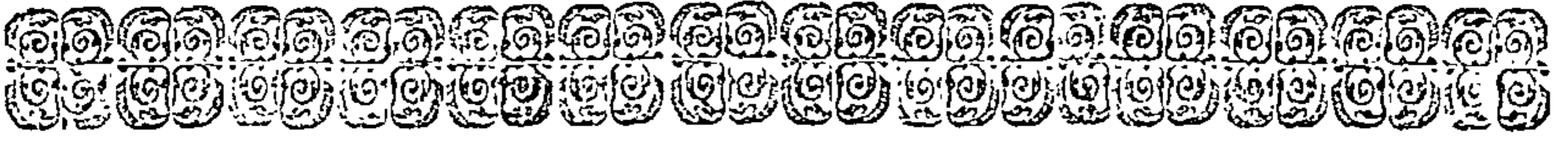
he stands indicted, but that he had no Goods, Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all.

*Jury.* Yes.

*Mr. Caine.* My Lord, the Jury humbly desires they may be discharged from their Attendance tomorrow.

*L. C. J.* We cannot do it, unless the Jury be full without them; if you come early, we shall dispatch you presently.

*Then the Prisoner was taken from the Bar, and the Court adjourned till Seven o'clock the next Morning.*



## CLVIII. *The Trial of ROBERT LOWICK, for High-Treason, April 22, 1696. 8 Will. III.*

**T**HIS Day the Justice of Oyer and Terminer holden for the County of *Middlesex*, met, and the Court was resum'd by Proclamation in usual Form. *Clerk of the Arraignments.* Keeper of *Newgate*, set *Robert Lowick* to the Bar, (which was done.) You the Prisoner at the Bar, *Robert Lowick*, those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them, as they come to the Book to be sworn, and before they be sworn.

*Mr. Mompesson.* If your Lordship pleases to favour me with one Word for the Prisoner at the Bar, I shall not trouble your Lordship with any thing that was urged by the Gentlemen that were of Counsel Yesterday, but I shall rely upon something that has not yet been spoken to. My Lord, they have not laid any Time or Place where the Consent or Agreement was, for the forty Men that were to set upon the King and his Guards: There is a Time laid before where they met and discoursed of the Ways and Means how to assassinate and kill the King; but when it comes to the *Assenserunt*, *Consenserunt*, & *Agreaverunt*, with submission, this being another Act, there ought to be another Time and Place laid, and for that I shall cite your Lordship two or three Cases; for Men may meet and propose, and discourse, and consult of such Things, tho' they be very ill Things, and yet that may not be Treason. It's the Agreement that is the Treason, and so it was held in *Captain Blague's Case* about taking the *Tower*. They may meet at one Time and Place, and at another Time and Place they may agree, in *Dyer*, 68 B. and 69 Pl. 28. A Man was indicted for Murder, That he at such a Place in and upon the Person that was murdered, *insultum fecit*, & *ipsum*, the Person that was murdered, *cum quodam cultello*, of such a Price, *percussit*; and he does not shew the Place where he struck him, nor had the Indictment the Words, *ad tunc & ibidem*, and therefore the Court held it void: So it is likewise ruled in *Goodrick's Case*, *Hell*, 35 & 119. and therefore in Indictments for Murder, since they generally set forth not only the Time and Place of the Assault, but likewise of the Blow; so likewise in Things of a more inferior Nature, as Rescues returned by the Sheriff, that the *Capias* was served, but does not shew where the Rescue was; or though he shews where the Arrest was, and an & coupled the Rescue to it, yet it

was adjudged an ill Return, *Dyer* 69. Pl. 29. 10. *Edw.* 4. 15 *Fitz. Ret. Vice.* 32 *Bro. Ket. Det. Bre.* 97. and *Error* 193. *Palm* 564. and in *Noy* 114. there are these Words, *Note*, It was moved in Discharge of Rescue, the Return was, that they, *viz.* A. B. aforesaid, the Bailiffs, *ad tunc & ibidem vulneraverunt*, &c. And the aforesaid *George*, &c. *Rescuserunt* without *ad tunc & ibidem*, referred only to the *Vulneraverunt*, and not to the *Rescuserunt*, and therefore the Return was adjudged insufficient; for, my Lord, although in Conveyances, a Clause or Word in the Beginning or End may refer to the Whole, yet in Indictments, every Sentence must be certain, plain, and express, and have its own Time and Place: Therefore in *Noy's Rep.* 122. *Raymond* was indicted for stopping a Cross-Way leading from a certain Ville called *Stoake*, into a Ville called *Melton*, in the County of *Dorset*, and the Indictment was quash'd, because in the County of *Dorset* shall refer only to *Melton*, and not to both: So an Indictment of forceable Entry into a Messuage *existens Liberum Tenementum* of *J. S.* is not good for want of the Words *ad tunc*, though the Participle *existens* does strongly imply that it was his House at that Time, 3 *Cro.* 754. *Het.* 73. *Noy* 131. *Palm.* 426, *Bridg.* 68. 2 *Cro.* 214, & 610. *Sid.* 102. *Lat.* 109. &c. And my Lord *Coke* tells us in *Calvin's Case* 5 B. that Indictments of Treason, of all others, are the most curiously and certainly indited and penned; and all those that I have seen and observed, have contained more Certainty than the Indictment now before your Lordship: In *Reginald Tucker's Case*, the Indictment was, That he and *Thomas Place* apud *Bridgewater*, in *Com. Somerset.* *prædict.* *Compasserunt*, to kill and depose the King, &c. and to bring their treasonable Purposes to effect, they the said *Reginald Tucker* and *Thomas Place*, the same Day and Year, at *Bridgewater* aforesaid, in the County aforesaid, against the King, with a great Multitude of People, array'd in a warlike manner, *viz.* with Swords, &c. *seipfos illicite & proditorie insimul ad tunc & ibidem congregaverunt & assemblaverunt & guerram publicam contra dictum Dominum Regem apud Bridgewater prædict. in Com. prædict. dicto vicesimo Die Junii Anno primo suprascripto proditorie paraverunt, ordinaverunt & levaverunt.* So in the Indictment of *Gate*, as it is set forth at large in a Plea in Bar of *Dorset*, brought by his Wife, he with Force and Arms, apud *Villam de Ware*, &c. assembled with a great many Persons, & *Bellum crudele contra dictam Dominam Reginam apud Ware, prædict. ad tunc falso & proditorie publicavit*



*carvit & levavit, ac insuper ad tunc & ibidem falso & proditorie*, proclaimed the Duke of Northumberland, to be Lieutenant-General of their Forces; *& etiam falso & proditorie apud Ware prædict.* ad tunc, proclaimed the Lady Jean Dudley Queen. This is in *Bendlowe's Reports*, published by Sergeant Rowe, fol. 55. placito 91. So in the Earl of Leicester's Case, *Plowd. Com.* 385, the Indictment is laid much after the same manner, and many other Indictments, which at present I am unwilling to trouble your Lordship with; and this being one of a new Form and of the first Impression, I hope your Lordship will hold it insufficient. And, my Lord, when they go farther, and say, *Et quilibet, eorum proditorie super se suscepit esse unum*, there is no Place or Time alledged where that was done, which of Necessity should be mentioned: For it is a constant Rule in our Books, that what is issuable, ought to have a Place where it may be tried. Now, this is issuable, and the most material Thing in the Indictment is, for compassing the King's Death. The Overt-Acts are, That *Christopher Knightley* the Prisoner, and two others, did consult to kill the King; and afterwards did agree how to do it, *viz.* by forty Horsemen *Quorum*, these should be four, and every one of them did agree to be one; then comes the other Overt-Act of providing Arms for them. Now suppose they should not prove the last, *viz.* the providing Arms; then, my Lord, they must resort to one of the other Overt-Acts, that these four did consult and agree to kill the King; or that these four did agree, the manner how to do it, as is laid in the Indictment; and 'tis plain they must fail of Proof of either of these; for by the not prosecuting any one of the Name of *Christopher Knightley*, but preferring a new Indictment against one *Alexander Knightley*, it appears that *Christopher Knightley* was not there; and the proving these three others making a Consult and Agreement, is not a Proof of the same Overt-Act, that is laid in the Indictment, as it ought to be by the late Act; unless they can prove that a Consult of Three is a Consult of Four: And if it be answered, that it is alledged, that *Quilibet eorum super se suscepit*, then will that come to be issuable, and the most material Part of the Indictment; and consequently a Place ought to have been laid where it should be tried; this, my Lord, is a distinct Sentence of it self, it is in a *Parentesis*, and though you take it away, the Sense of what remains is perfect and intire; and consequently this Sentence is or should be intire of it self, and therefore ought certainly to be expressed. Besides, if your Lordship pleases, it is not positively laid, what these Persons severally undertook to be, there is indeed mention made before of Forty Horsemen, agreed upon to set upon the King, then comes the *Parentesis*, *Quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent Quatuor, & quilibet eorum proditorie super se suscepit esse unum*: It is perhaps expressed fully enough by the Word *Quorum*, that it was agreed these should be four of the forty Horsemen; but there wants the Repetition of the Word *Quorum*, to express what they severally engaged to be; and the Word *&* cannot join and connect the Sentences: For *forent* and *suscepit* differ not only in Number, but also in Mood and Tense, and the Sense is not necessarily coherent; for it might be true, that the Majority of the Company might agree, these should be four, and yet they themselves might

not severally engage therein, and one or some of them might undertake it, and yet the Company not agree to it; and it cannot be mended by Intendment. There was *Vaux's Case*, in the 4 *Rep.* 44. he was indicted for Murder, for persuading a Man to take *Cantharides*; it was laid, That he *persuadebat eundem Nicholaum recipere & bibere quendam potum mixtum cum quodam veneno vocat. Cantharides*; and the Indictment says, *Quod prædictus Nicholaus nesciens prædictum potum cum Veneno prædicto fore intoxicatum, sed fidem adhibens Dicitæ persuasioni Willielmi Recepit & Bibit*; but does not say, *venenum prædictum*, but yet it adds, *Per quod prædictus Nicholaus immediate post receptionem veneni prædicti*, languished and died; here, one would think, was a sufficient Implication, that he took and drank the Poison; but it was ruled, that none of these Words were sufficient to maintain the Indictment; for the Matter of the Indictment ought to be plain, express, and certain, and shall not be maintained by Argument or Implication, and therefore for Want of those Words the Indictment was held insufficient, and the Man again indicted for that Offence, and there seems much more Incertainty in this Indictment, and therefore I humbly pray your Lordship that it may be quash'd.

*Sir B. Shower.* My Lord, we think the Objection is fully put, and therefore we desire to have their Answer to it.

*Sir Thomas Trevor.* *Mr. At. Gen.* We think, my Lord, this Objection will receive a very plain Answer. The Indictment sets forth, That at such a Place the Prisoner at the Bar did imagine and compass the Death of the King: There is a particular Case where the Imagining was, and that they, to accomplish that Treason, in compassing and imagining the Death of the King, did, among others, *postea eisdem die & anno apud parochiam prædictam*, meet and consult, *&c.* so there's the same Place set forth again, wherein they did meet and consult of the Ways and Means, and Time and Place, when, where, and how to assassinate the King: And immediately it follows, *& consenserunt & agreaverunt, &c.* that forty Men, whereof they were to be four, and every one of them undertook to be one, should do so and so: Now, my Lord, say they, It is not said that the Agreement that there should be forty Men to do it, was at the same Time and Place where they did meet and consult about the Ways and Means: But, my Lord, with submission, it is very plain, that the Agreement for forty Men, and the particular Agreement for them to be of the Number, is but the Effect of the Consultation that is mention'd just before: For it is said, they consulted how they should do it, and they agreed to do it in this manner; the particular manner is set forth immediately after that, it is said they did consult of the manner; so that, my Lord, it is Part of the former Sentence; a Particularizing of what they did agree upon at that Consultation; but it is no distinct Overt-Act: If it had been a distinct Overt-Act, then the Cases that have been cited by the Council, do shew, that there should be a particular Time and Place mentioned for every Overt-Act; but this is only a Part of that Overt-Act that was mentioned generally before: This tells you particularly what the Means were they did agree upon, and the Sentence is not compleat till you have gone over this; so that, my Lord, with submission, it had been very improper when they agreed at such a Time and Place, of the Means



and Ways how it should be effected, then to set forth that it was at the same Time and Place where they did consult of the Ways and Means, that cannot be proper; for it is not laid at first, that there was any particular Way proposed, but only in general, they consulted of the Ways and Means; therefore, my Lord, all this that Mr. *Mompesson* has said, will not be pertinent to this Case, it is impossible to have been otherwise; it is but a Part of the Sentence; and it is not compleat till you have gone over the several Particulars: As to the Case of a *Rescous*, that is, the Offence upon which the Matter is to be grounded; the *Verberavit* and *Vulneravit* are not the Rescuing; but where there is not one Sentence compleat, till you come to the End of these Words, there it must be all taken together; so it is here, they consulted of the Way, and agreed this to be the Way, which they set forth in particular: It is joined to the former Part of the Sentence, and the whole is not compleat without it.

*Sir John Hawles.* *Mr. Sol. Gen.* With submission, my Lord, it cannot be otherwise, nor can they make it Sense otherwise.

*Sir John Holt.* *L. C. J.* They say you might and should have put in, *ad tunc & ibidem.*

*Mr. Sol. Gen.* With submission, my Lord, I say it cannot be repeated again: Indeed if you would make it like the Case, as Mr. *Mompesson* would have it, that forty Men did agree to it, and forty Men did it, it were necessary to name Time and Place, as it is in the Case of Murder: That he did agree to murder him, and afterwards knock'd him on the Head, there you shall lay Time and Place where he agreed, and where he did the Act, for there is an Act done; but in this Case there is no Act done, but only an Agreement that forty should do it, whereof these four were to be part of the Number. Now, they cry, you do not say what these four were to be for. Yes, we do: The Forty were to do such an Act, and these were to be four of that forty, and every one of them undertook to be one; so that it cannot be express'd otherwise than it is; for what they say of the Indictment's being not in the same Form that other Indictments are, that will be no Argument at all; for it does not follow, that there must be one express'd Form of Indictment; of Right there are divers Forms of Indictments, and all of them good, because Indictments are to be framed according to the particular Case, and they cannot put me an Instance of such a particular Case as this. As to that of the Mistake of the Name of *Knighthley*, that unquestionably can be no Objection at all: For how does it appear to the Court, that this is against the same Person that was before indicted by the Name of *Christopher*? there may be another *Christopher*, for ought they know: But I will suppose, that the Consult was proved not, as it is laid, that there were to be four; but only that they were to be three of them, it would be well enough against the Prisoner at the Bar, if he be proved to be one.

*Mr. Conyers.* First, we have here laid a Time and Place for the Treason alledged in the Indictment, and also for the two Overt-Acts, how, when, and where it was to be done, and the providing of Arms for it; and for this Particular of the forty Men, that they would have us put the *ad tunc & ibidem* to that, is but Part of the Overt-Act, which was before alledged; for the first Overt-Act men-

tioned, is the Meeting and Consulting, and there we lay both Time and Place; that on such a Day, and at such a Place, they did meet and consult of the Way and Manner how to do such an Act: And then we continue on the Sentence, by particularizing how it was to be effected; that they did agree there should be forty Horsemen to do it, whereof they were to be four: This is but a Part of the Overt-Act, which is the Consulting and Agreeing upon the Ways and Means; this particular Means agreed upon, being but the Result and Effect of the Consultation before: So that we conceive there is no Want of Time or Place upon which to take Issue in this Case.

*Mr. Cooper.* My Lord, I think, with submission, there is nothing in their Objection, and I take it to have received a full Answer already: Yet I would ask one Thing of the Gentlemen of the other Side, had the Sentence run without the Words *de iis modis & mediis, &c.* which follow after the Word *consultavit*, and before the Words *& aggregavit*; in this manner, That they did then and there traiterously treat, propose, consult, and agree, that forty Horsemen, or thereabouts, with Guns, and so forth. If then there had been any Colour to think it necessary, that it should be laid in this manner, That they did then and there traiterously treat, and then and there traiterously propose, and then and there traiterously consult, and did then and there traiterbully agree: And if not, then I would desire them to tell me why *then and there* is more necessary to one Verb *did agree*, than it is to all the Rest, in Sense and common Speaking. The only Use of a Conjunction copulative, is to derive the Force of some Words, in a Sentence foregoing, down to a Sentence following, to avoid Repetition: And here, though after the Consultation be put many Words that relate to that Matter, by Way of Parenthesis; yet the *ad tunc & ibidem* still does refer to all the Verbs following, being joined by the Conjunction copulative; it does not vary the Case at all, the putting in that Parenthesis; it is notwithstanding but as one Sentence: And the supposing that the Parenthesis stood out, makes it very plain, there can be no Colour to say there wanted a Repetition of the *ad tunc & ibidem* to every Verb.

*Sir B. Shower.* With submission to your Lordship's Judgment, there is no Answer made to this Objection. I do agree, if there had been several Verbs, and no other Words had intervened, that an *&* would have coupled all together, and you need not have repeated *ad tunc & ibidem* to every one: But here is a Fact after the Verbs, that makes one compleat entire Sentence; and if this of the forty Men were left out, it had been a good Sentence, that they did propose and treat how, where and when; that's a Sentence of it self, the Consulting and the Treating of the Ways and Means; But then they say, and they did agree and assent that forty should do it: Now there is no Necessity for the interpreting of these Words, That they should consult and agree at the same Place and Time; there is no necessity to conjoin this Agreement for the forty Men with the Consultation; they might propose and consult at one Time and Place, and not agree, and afterwards agree at another Time and Place: It is not a Specification, or, as they call it, a specifick Account of the Consultation, nor a necessary Effect of it, so as to make it necessary to join them together; they might meet and consult at one Time and Place,



Place, and at another Time and Place they might agree that forty should do it; and therefore when you say at one Time and Place they did consult and propose, and afterwards they did agree; it is not necessarily implied, that it must be at the same Time and Place; and when it is not necessarily implied, we think it necessary in Indictments, for Certainty-sake, to have *ad tunc & ibidem* inserted again.

*Mr. Mompeffon.* My Lord, *Mr. Solicitor* says, That as to other Precedents, that does not make it necessary that this should be like them; and that it is no Argument that it ought to be so here. My Lord *Coke*, in *Calvin's Case* tells us, That by Precedents the Law is known, and that Indictments of Treason are of all Things the most curiously penn'd; and it is common to infer the Law is so, because usually it is so in the Precedents of Indictments. *Mr. Solicitor* says likewise, That there may be a *Christopher Knightley* besides an *Alexander*; but I cannot take that for an Answer to the Exception I urge, which is the Want of *ad tunc & ibidem* at the *Quorum*, and the *Quilibet*; for the *Quilibet* may come to be in Question as the most material Part of the Indictment, because the Agreement of the Four upon the Meeting of the Four is alledg'd as an Overt-Act. Now, with submission, they must prove the Assembly of the whole Four, or they do not prove the Overt-Act expressly laid: Then as to the *Quilibet suscepit*, which is the most material Part, it has no Time nor Place.

*Mr. Att. Gen.* No sure: We do not need to prove all four, for it is a distinct Offence in each, and if any one undertook, it is well enough against him: and for the Time and Place, we tell you, it is Part of the former Sentence, and makes but an intire One.

*Mr. Mompeffon.* As for the Residue of the Verbs, if they had been omitted, it had been good Sense; but this is a perfect intire Sentence of itself, when it tells you what they consulted and treated of, as in the Case of the *Rescue* that I put; if it had stopp'd there, it had been a good Sentence without the *Vulnerunt*.

*Mr. Att. Gen.* The *Rescous* is the Offence in that Case, the other is distinct: But here, in this Case, nothing can be plainer than that all is one Act, as we have laid it, That at such a Time and Place they did consult and treat of the Ways and Means; but then there is no Agreement mentioned till after we have said they did consult of the Ways and Means, and did agree that this should be the Way: This is certainly one intire Sentence that shews what the Agreement was upon the Consultation as the Result of it.

*Mr. Cowper.* As to what *Sir Bartholomew Shower* says, That we ought to repeat the *ad tunc & ibidem*, unless the Sense of the Words implies a Necessity that the Consultation and the Agreement should be at one Time and Place. My Lord, there can be nothing in that, for it does not arise from the Necessity of the Thing one Way or t'other; but we take it as an intire Sentence, and that the whole Matter is sufficiently connected and laid to one Time and Place, though it might be divided, it must be taken, as alledged, to be one intire Fact, or else it recurs to the same Objection, that *ad tunc & ibidem* must as well be put to every Verb; for 'tis possible they might propose at one Time and Place, and consult at another, and debate at another, as well as agree at another: So that no-

thing is to be argued from the Necessity of the Thing more in one Case than the other; for one Man might propose it in one Place, and the Rest might then shake their Heads at it, and then they might again meet and consult at another Place, and afterwards agree at a Third: But when it is said *then and there* they did meet, consult, and agree, it cannot be understood but that the Agreement was at the same Time and Place with the Meeting and Consult.

*Sir B. Shower.* But this can be no Answer that *Mr. Cowper* gives now, for proposing, and consulting, and treating, and debating, are all of the same Signification, for one Man's proposing to another; and the other's proposing to him, is consulting, treating, and debating; but now consulting and agreeing are different Things.

*Mr. Cowper.* So is proposing and consulting: One may propose, but there must be at least Two to consult: There is that nice Difference between them.

*Sir B. Shower.* Every one must agree for himself, and that must be certainly laid with Time and Place, let the Proposal and Consultation be what it will.

*L. C. J.* *Mr. Mompeffon* puts that Case in *Dyer* upon an Indictment of Murder, That on such a Day, and at such a Place, the Party made an Assault upon the Persons slain, & *percussit*; but does not say, *Et ad tunc & ibidem percussit*, and for not alledging that the Indictment was held nought.

*Mr. Att. Gen.* My Lord, That is a different Case from this, because *insultum fecit*, and the *percussit*, are different Crimes; there is a great Difference between an Assault and a Stroke: But here it is, That they did propose and consult of the Ways and Means, and agreed upon this particular Way; that is the same Thing; it is not an intire Sentence till you come to the End of it, then it is compleat when you shew what was the Effect of the Consultation; what they were agreed upon, and not till then.

*Mr. Mompeffon.* A Man's holding up his Hand is an Assault, but he must actually Strike, to be guilty of Murder: So a Man may debate, and yet not agree: It is the Agreement that is the Treason.

*L. C. J.* Read the Indictment.

Cl. of Arr: **D**ecimo die Februarii anno Regni dicti Domini Regis nunc septimo, & diversis aliis diebus & vicibus, tam antea quam postea, apud Parochiam Sancti Pauli Covent-Garden, prædictæ, in Comitatu prædicto falsè; malitiosè, diabolicè, proditoricè, compassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intendebant dictum Dominum Regem nunc occidere, interficere, & murdrare, & stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regnum Angliæ passere, & causare & ad easdem nefandissimas, nequissimas & diabolicas prodiones & proditorias compassationes, machinationes, & proposita sua prædicta perimplend' perficiend' & ad effectum redigend' ipsi iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne, & quam plurimi alii falsi proditores (Jurator' prædictis ignoti) postea scilicet eodem decimo die Februarii anno supradicto apud Parochiam prædictam in Com' prædicto, ac diversis aliis diebus & vicibus, tam antea quam postea, ibidem & alibi in eodem com' falsè, malitiosè, advosatè, clandestinè, proditoricè, ac vi & armis conveniebant, proposuer' tractaver' consulta-



*Sultaver' consenser' & aggregaver' ad ipsum Dominum Regem nunc ex insidiis & dolo percutiend', Anglicè to assassinate, interficiend' & murdrand' & ad execrabilem, horrendam & detestabilem Assassination' Anglicè Assassination, & Interfectionem ill' citius exequend' & perpetranda' postea, scilicet eisdem die & anno ac diversis aliis diebus & vicibus apud Paroch' præd' in Com' prædicto proditoriè tractaver' proposuer' & consultaver' de viis, modis & mediis ac tempore & loco ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenser' aggregaverunt & assenser' quod quadragint' homines Equestres aut eo circiter (quor' iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent quatuor, & quilibet eor' proditoriè super se suscepit esse unum) cum Bombardis, sclopis & sclopetis, pulvere bombardico, & globulis plumbeis onerat' & cum gladiis, ensibus & aliis Armis armat' insidiati forent & essent in subseffu, Anglicè in Ambush, ad eundem Dominum Regem in Rheda sua, Anglicè his Coach, existen' quando foris iret invadend'. Quodque quidem & competens numerus de hominibus illis sic armat' in satellites, Anglicè the Guards, issus Domini Regis cum tunc attendend' & secum existen' aggressi forent & eos expugnarent & devincerent, dum alii eorundem hominum sic armat' ipsum Dominum Regem percuterent, interficerent, occiderent & murdrarent.*

*Mr. Mompesson.* The Consult is like the Assault, and the Agreement is like the Stroke.

*L. C. J. Treby.* It is a nice Case as you would have it, but I think it is very natural as the King's Counsel put it at first; they lay the Consultation of the Ways and Means how it should be done, and then they conclude that thus it shall be done: All which makes but one intire Thing.

*L. C. J.* They say they met that Day at St. Paul Covent-Garden, that's in the Beginning, and did consult how to kill the King; and they consented and agreed among themselves, that it should be done in this manner: Does not this refer to both Time and Place in the Beginning? It is a continuing on of the same Sentence, and makes all but one and the same Act; it is the Result of the Consultation at that Time and Place.

*Sir B. Shower.* But, my Lord, it might be at another Place: They might consult at one Place, and conclude at another.

*Mr. Conyers.* But it is laid to be at the same Place, for no other Place does appear, and it is one continued Sentence.

*L. C. J. Treby.* You would make the Repetition so frequent and reiterated, that it would become absurd.

*Mr. Att. Gen.* Indeed I do not know what these Gentlemen would have.

*Sir B. Shower.* We would have this Indictment as all others are, the Precedents are as we say, and we hope this shall pursue 'em, or else be quash'd.

*L. C. J.* Look ye here, *Sir Bartholomew Shower*; suppose this Part should not be right, that will not vitiate the whole Indictment.

*Mr. Mompesson.* But your Lordship won't suffer them to give Evidence of that Part that is vicious.

*L. C. J.* Yes, yes; it comes within the first Words of the Time and Place laid; they may give Evidence of it, because this is but a setting forth for the Manner agreed upon for the Execution of the Design that was before consulted and treated of; it is comprehended in the former Words; and if they had omitted this out of the

Indictment, the Indictment had been never the worse; there had been a sufficient Overt-Act alledged to prove the Compassing and Imagining the Death of the King; for if People at such a Place and Time meet, and propose the Way and Means how to effect it, do you think the Indictment would not be good enough without laying the particular Means agreed upon? Certainly it had been well enough if this had been omitted. Do you think they cannot give in Evidence this as a Proof of the Overt-Act? Certainly they may.

*Sir B. Shower.* The Question will be, my Lord, then upon the Whole, Whether the Conclusion of the Indictment, *contra legiantie sue Debitum*, shall be taken distributively to every Fact, and if so, then there ought to be Time and Place alledg'd to every Fact.

*L. C. J.* Suppose you lay several Overt-Acts, and prove but one, yet he is to be found guilty of the High-Treason, which is the Imagination, and Compassing the Death of the King, which is the Crime laid in the Indictment; then suppose this was left out of the Indictment, they might give it in Evidence, as a Proof of the Overt-Act, that it is well laid for Time and Place; and therefore though it be express'd, and not so fully and particularly laid, we cannot quash the Indictment for it, because the Indictment would have been good, though that had been omitted.

*L. C. J. Treby.* That is certainly true, it is no Cause for quashing the Indictment.

*Mr. Soll. Gen.* The Indictments against the Regicides were for Compassing the Death of the King, and they gave in Evidence that he was put to Death, though they charged in the Indictment only the Compassing and Imagining the Death of the King.

*L. C. J.* Ay sure, that is an Overt-Act with a Witness, the Indictment was not laid for Murdering the King, but for Compassing his Death, which is the Treason according to the Act of Parliament of 25th, Ed. the 3d, and as an Overt-Act they gave the Cutting off his Head in Evidence.

*Mr. Att. Gen.* The Indictment says, they compassed and imagined the King's Death, and they agreed to do it in this manner; if this be not all one intire Sentence I know not what is.

*L. C. J.* As to your Case, *Mr. Mompesson*, which you quote out of *Dyer*, it is possible a Man may make an Assault at one Time, and at another Time make an Assault and give a Stroke, but this is all one Act, it does but specify what was generally consulted of and proposed.

*L. C. J. Treby.* Pray, do you think a Man may demur upon a common Action of Battery, where 'tis said first, at such a Time and Place, *Insultum fecit & verberavit, vulneravit*, because there is not a Place set to every Word.

*Mr. Mompesson.* Indictments ought to be very curiously penn'd, and what is good in an Action will not be good in an Indictment, with Submission.

*L. C. J. Treby.* But suppose you shew'd it for Cause upon special Demur.

*Mr. Mompesson.* My Lord, I cannot tell what it would amount unto.

*L. C. J.* You cannot quash the Indictment at this Time, that is not possible, because the Indictment is good as to the rest, supposing this was not so well as it might be.

*Mr. Mompesson.* Then, my Lord, I am in your Lordship's Judgment, whether they shall be admitted to give in Evidence this particular Thing.



*L. C. J.* They may certainly give in Evidence, the Agreement to have Forty Men to kill the King, as a Proof of the Consultation, Agreement, and Consent to kill the King; and the Consenting to have Forty Horsemen is an Evidence of their treating, proposing, and consulting to kill the King. Then for your Objection of *Quilibet suscepit* to be one, that is well enough, it is all still but one Sentence.

*Sir B. Shower.* One of which is it? for they have not laid in the Indictment what it is, whether it be one of the Four, or one of the Forty.

*L. C. J.* Whether it be one of the Four, or the Forty, is not material, for cannot one be found guilty, and the rest acquitted? the one is not charged with the Act of the other, but they are several Offences, and each must answer for himself. In all Indictments, Offences are several: Suppose an Indictment of Conspiracy, and it is laid in the Indictment that Four did conspire, can't you prove that two conspired? no Question you may. It is not certainly necessary that every one should be proved to have conspired. Suppose it were alledged that Four did beat a Man, and does not say *Quilibet eorum* beat him, you may give in Evidence that one did beat him.

*Sir B. Shower.* No Question of that in Case of a Battery, but in the Case of a Conspiracy there must be more than one.

*L. C. J.* Nay, I will ask you even in an Action of Conspiracy, where the very Gift of the Action is Conspiring together, cannot two be found guilty, and the rest acquitted? In Riots there must be Three or more. It may be you'll lay Ten, but it is sufficient, I hope, if you prove it upon any Three of them.

*Mr. Att. Gen.* The Difference is betwixt Contracts and Crimes, for Contracts they are joint, but Crimes they are in their own Nature several.

*Mr. Sol. Gen.* Besides, my Lord, though they be out of Time, yet this is not to the Abatement of the Indictment, but to the Evidence; how do they know, but we will give it in Evidence that *Christopher Knightley* was one.

*L. C. J. Treby* Mr *Mompesson* moves it as a *Caveat* against your giving it in Evidence.

*Sir B. Shower.* If in an Outlawry against diverse, they leave out these Words, *Nec eorum aliquis comparuit*, that is every Day held to be nought, and for that Reason we say, the *Quilibet eorum suscepit* is necessary too, and without being laid cannot be given in Evidence, and if it be laid, it ought to have Time and Place.

*L. C. J. Treby.* The Default of Appearance must be a several Thing, and when he lays it jointly *non comparuerunt*, it may be true that all did not appear, if any one made Default; but when you charge Men with a Fact done, though in the plural Number, yet it is a distinct separate Charge upon every one.

*Cl. of Arr. Robert Lowick*, those Man that thou shalt hear call'd, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

*George Ford.*

*Lowick.* I do not except against him.

*Cl. of Arr.* Hold the Book to Mr. *Ford.*

*Crier.* Look upon the Prisoner; you shall well and truly try, and true Deliverance make, be-

tween our Sovereign Lord the King and the Prisoner at the Bar, whom you shall have in Charge, and a true Verdict give according to your Evidence: So help you God.

*Cl. of Arr. Thomas Trench.*

*Lowick.* I have nothing to say against him: (He was sworn.)

*Cl. of Arr. John Wolfe.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. James Bodington.*

*Lowick.* I challenge him.

*Cl. of Arr. John Raymond.*

*Lowick.* I say nothing against him. (He was sworn.)

*Cl. of Arr. George Hawes.*

*Lowick.* I do not except against him: (He was sworn.)

*Cl. of Arr. Thomas Glover.*

*Lowick.* I challenge him:

*Cl. of Arr. Matthew Bateman.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. James Partherith.*

*Lowick.* I challenge him.

*Cl. of Arr. Joseph Blisset.*

*Lowick.* I challenge him.

*Cl. of Arr. Alexander Forth.*

*Lowick.* I challenge him.

*Cl. of Arr. Francis Chapman.*

*Lowick.* I challenge him.

*Cl. of Arr. Nicholas Roberts.*

*Lowick.* I challenge him.

*Cl. of Arr. Thomas Playstead.*

*Lowick.* I challenge him.

*Cl. of Arr. John Hall.*

*Lowick.* I challenge him.

*Cl. of Arr. William Partridge.*

*Lowick.* I challenge him.

*Cl. of Arr. Peter Levigne.*

*Lowick.* I challenge him:

*Cl. of Arr. Thomas Moody.*

*Lowick.* I challenge him.

*Cl. of Arr. Thomas Ramage.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. Edward Townesend.*

*Lowick.* I challenge him.

*Cl. of Arr. William Gunson.*

*Lowick.* I challenge him.

*Cl. of Arr. John Wyborne*, he did not appear. *William Strode.*

*Lowick.* I challenge him.

*Cl. of Arr. William Wild.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. William Pitts.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. William Smith.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. Moses Cook.*

*Lowick.* I challenge him;

*Cl. of Arr. Benjamin Bolthby.*

*Lowick.* I do not except against him. (He was sworn.)

*Cl. of Arr. Elias Fletcher.*

*Lowick.* I have nothing to say against him: (He was sworn.)

*Cl. of Arr. Crier countez. George Ford.*

*Crier.* One, &c.



*Cl. of Arr. Elias Fletcher.*

*Crier.* Twelve Good Men and true, stand together and hear your Evidence.

*L. C. J.* Now the rest of the Jury that have appeared are discharged.

*Cl. of Arr. Crier,* make Proclamation.

*Crier.* Oyez, If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, or the King's Attorney-General, before this inquest be taken of the High-Treason, whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard, for now the Prisoner stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth and give their Evidence, or else they forfeit their Recognizance.

The Names of the Twelve sworn are these;

George Ford, Esq;	}	Thomas Ramage, Gent.
Thomas Trench, Esq;		William Wild, Gent.
John Wolfe, Esq;		William Pitts, Gent.
John Raymond, Esq;		William Smith, Gent.
George Hawes, Esq;		Benjamin Boltby, Gent.
Matthew Bateman, Esq;		Elias Fletcher, Gent.

*Cl. of Arr. Robert Lowick,* hold up thy Hand. [*Which he did.*] You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Robert Lowick*, late of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Gentleman; for that he, together with *Christopher Knightley*, late of the same Parish and County, Gentleman; *Ambrose Rookwood*, late of the same Parish and County, Gentleman; and *Charles Cranburne*, late of the same Parish and County, Yeoman; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Instigation of the Devil, as false Traitors against the most Serene, most Illustrious, most Mild, and most Excellent Prince, our Sovereign Lord, WILLIAM the Third, by the Grace of God, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. their Supreme, True and Rightful, Lawful and Undoubted Lord; the Cordial Love, and True and Due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King, that now is, towards him our said Lord the King, should, and of Right, ought to bear, withdrawing, and utterly to extinguish, Intending and Contriving, and with all their Strength Purposing, Designing and Conspiring the Government of this Kingdom of *England*, under him our said Lord the King that now is, our Right, duly, happily, and very well established, altogether to subvert, change, and alter; as also the same our Lord the King to Death and final Destruction to put, and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Slavery to *Lewis the French King*, to subjugate and enthrall, the 10th Day of *February*, in the Seventh Year of the Reign of our Sovereign Lord the King that now is, and divers other Days and Times, as well before, as after, at the Parish of *St. Paul Covent-Garden* aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, and contrive, purpose, design, intend, our said Lord the King that now is, to kill, slay, and murder; and

miserable Slaughter among the faithful Subjects of our said Lord the King throughout this whole Kingdom of *England*, to make, and cause, and the same their most wicked, impious, and devilish Treasons, and traiterous Compassings, Contrivances, and Purposes aforesaid, to fulfil, perfect, and bring to Effect, they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, and very many other false Traitors to the Jurors unknown; afterwards, to wit, the same 10th Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and diverse other Days and Times, as well before as after; there, and elsewhere, in the some County, falsely, maliciously, advisedly, secretly, and traiterously; and with Force and Arms did meet together, propose, treat, consult, consent, and agree, him our said Sovereign Lord the King, that now is, by lying in Wait and Wild, to assassinate, kill, and murder, and that execrable, horrid, and detestable Assassination and Killing, the sooner to execute and perpetrate; afterwards, to wit, the same Day and Year, and diverse other Days and Times, at the Parish aforesaid, in the County aforesaid; traiterously did treat, propose, and consult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what manner, our said Lord the King, so by lying in wait, the more easily they might kill, and did consent, agree, and assent, that Forty Horsemen, or thereabouts; of whom the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, would be four; and every one of them traiterously took upon himself to be one, with Guns, Muskets, and Pistols, loaden with Gun-powder, and Leaden Bullets; and, with Swords, Rapiers, and other Arms, armed, should lie in Wait, and be in Ambush, the same our Lord the King in his Coach being, when he should go abroad to set upon, and that a certain and competent Number of those Men so armed should set upon the Guards of him our said Lord the King then attending on him, and being with him, and should fight with them, and overcome them, whilst others of the same Men so armed, him, our said Lord the King, to assassinate, kill, slay, and murder: And they the said *Christopher Knightley, Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, their Treasons, and all their Traiterous Intentions, Designs, and Contrivances aforesaid, to execute, perpetrate, fulfil, and bring to Effect afterwards, to wit, the aforesaid 10th Day of *February*, in the Seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Rapiers, and Swords, and other Weapons; Ammunition, and Warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously did obtain, buy, gather together, and procure; and did cause to be bought, obtain'd, gather'd together, and procured with that Intent, them, in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King, that now is, as aforesaid, to use, employ, and bestow; and the same Premises the more safely, and certainly to execute, do, and perpetrate, he the aforesaid *Christopher Knightley*, with one *Edward King*, lately of High-Treason, in Contriving and Conspiring the Death of our said Lord the King that now is duly convicted and attainted, by the Consent and Assent of divers of the Traitors and Conspirators



tors aforesaid, the said tenth Day of *February*, in the seventh Year aforesaid, traiterously did go and come to the Place proposed, where such intended Assassination, Killing and Murder, of our said Lord the King, by lying in Wait, should be done, perpetrated and committed, to view, see, and observe the Conveniency and Fitness of the same Place, for such lying in Wait, Assassination and Killing, there to be done, perpetrated, and committed; and that Place being so viewed and observed afterwards, to wit, the same Day and Year, his Observations thereof to several of the said Traitors and Conspirators, did relate and impart, to wit, at the Parish aforesaid, in the County aforesaid, and the aforesaid *Charles Cranburne*, the same Day and Year there in order, the same execrable, horrid, and detestable Assassination, and killing of our said Lord the King, by the Traitors and Conspirators aforesaid, the more readily and boldly to execute, perpetrate, and commit, advisedly, knowingly, and traiterously, did bear and carry among divers of those Traitors and Conspirators forwards and backwards, from some to others of them, a List of the Names of diverse Men of those who were designed and appointed, our said Lord the King, so as aforesaid, by lying in Wait to kill and murder, against the Duty of the Allegiance of them the said *Christopher Knightley*, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*; and against the Peace of our said Sovereign Lord the King that now is, his Crown and Dignity, as also against the Form of the Statute in such Case made and provided: Upon this Indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are: Your Charge is to inquire, whether he be guilty of the High-Treason whereof he stands indicted, or not guilty; if you find him guilty, you are to inquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since, to your Knowledge. If you find him Not Guilty, you are to inquire whether he fled for it, if you find he fled for it, you are to inquire of his Goods and Chattels, as if you had found him Guilty; if you find him Not Guilty, and that he did not fly for it, you are to say so, and no more; and hear your Evidence.

*Mr. Mountague*. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment of High-Treason against *Robert Lowick*, Prisoner at the Bar, and the Indictment does charge him with compassing and imagining the Death of the King, and endeavouring to subvert the Government, and inslave this Kingdom of *England*, and bring it under *French* Tyranny and Slavery, and the Indictment sets forth that *Robert Lowick*, the Prisoner at the Bar, the Tenth of *February*, met several false Traitors, and there consulted and treated how to assassinate his Majesty; and agreed, that forty Horsemen to get together, some to attack the Guards, while others were to assassinate the King in his Coach; and the Indictment charges him likewise with getting together Horses and Arms for this purpose, to this he hath pleaded Not Guilty. We will call our Evidence, and prove the Fact against him, and we do not doubt but you will do your Duty.

*Mr. Att. Gen.* May it please your Lordship, and you Gentlemen that are sworn, this is an Indictment of High-Treason, in conspiring and compassing

the Death and Destruction of the King, the Nature of our Evidence against the Prisoner at the Bar is this.

You will hear, Gentlemen, by the Witnesses, that about *Christmas* last a Conspiracy and Design was set on foot to assassinate the King, and accordingly to accomplish it, there were several Persons sent over from *France* by the late King *James*, who were Part of his Guards, and particularly *Sir George Barclay* was to be the Head of them; he was a Lieutenant of the Guards there, and he was sent over in *January* last, and there were a great many Troopers sent over, who were to be under his Direction, particularly *Mr. Harris*, who will give you an Account, that he was sent over by Order of King *James*, and he was told particularly King *James* had a Service for him to do in *England*, and he hoped it might be an Opportunity to advance him. He was to observe the Orders of *Sir George Barclay*, and by what Token he should know him; he was to meet him in *Covent-Garden*, and he was told he might find him there twice a Week in the Square, about six o'clock, after it was dark; and that he might know him, he told him, he would have his white Handkerchief hanging out of his Pocket; accordingly *Mr. Harris* came over, and *Mr. Hare* came with him, and they came and did meet with *Sir George Barclay*, and they, together with *Sir George Barclay*, and several others here in *England*, *Mr. Porter*, *Mr. Charnock*, and *Sir William Perkins*, did enter into Consultation how to effect it: There were several Meetings about it, and you will find the Prisoner at the Bar was at several Meetings to that Purpose, and they did undertake among them, to provide so many Men as might make about the Number of Forty, which they thought sufficient for the Execution of this Design.

Gentlemen, you will hear that the Prisoner at the Bar did treat with several Persons to be engaged in it; particularly about the 5th of *February*, he sent to one *Bertram*, and asked him if he would be engaged in a Design for *King James's* Service that was quickly to be executed, without asking of Questions, and afterwards, I think, he undertook he would: So about the 14th of *February* he met him again, and that was the Day before the first Time they intended to attack the King, and then being so near the Time when it was to be executed, he thought it proper to acquaint him with the Thing he had engaged him in; and he did acquaint him, That the next Morning they were to be ready to attack the King and his Guards, and bid him be sure to get his Boots and other Things ready for that purpose, and he gave him a Guinea in order to it. *Bertram*, it seems, on the 15th of *February* did not come, and the King it seems did not go abroad that Day, so they were disappointed at that Time; but the *Sunday* after *Bertram* met him, and *Mr. Lowick* complained that he had not come upon the *Saturday* according as he had undertaken; and he told him it would have been the same Thing, he would have disappointed them if the King had been in the Field.

Gentlemen, you shall find, That as he thus engaged *Mr. Bertram*, so he was to provide several others; and did declare, That at his own Charge he had got two or three, he complained of it as a Hardship put upon him, That whereas *Mr. Harris* had 6 s. a Day Subsistence, and was only to take care of himself, he, *Mr. Lowick*, had at his own Charges engaged and provided several.



You will find, Gentlemen, that Mr. *Rookwood*, who was tried Yesterday, had several Meetings about it, with Mr. *Lowick* and Mr. *Harris*; they did think it to be a barbarous Thing: But however, they were resolved to obey Orders, and the Prisoner in particular said he would obey Orders, tho' he thought it a very wicked Thing.

Gentlemen, you will find by the Evidence how the Matter was carried on; the Prisoner was to be engaged in it, and did not only embark himself in Person, but engaged others, and did treat with them about it. We shall call our Witnesses, who will give you a full Account of it, and then we shall leave it with you, who we question not will do Justice. First call *George Harris*; who appeared and was sworn.

*Mr. Sol. Gen.* Pray will you give an Account to my Lord and the Jury, what you know of the intended Assassination, and what Part the Prisoner at the Bar had in it.

*Mr. Conyers.* Begin from the first, and tell your whole Knowledge as you did Yesterday.

*Mr. Harris.* On the 14th of *January*, New Style, I was ordered to wait on King *James* at Dinner; after Dinner was over, I was called in, where was Col. *Parker* and Mr. *Hare* at the same Time, and King *James* told me he was very sensible of the good Service I had done him; and now he had an Opportunity of doing something for me: I was to go into *England*, and there to be subsisted, and I was to follow the Orders of Sir *George Barclay*; the King told me I should find Sir *George Barclay* in *Covent-Garden*, with a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thursdays* between the Hours of six and seven in the Evening, and that was the Sign I was to know him by, and he ordered me to go to Mr. *Carroll*, that is Secretary to the late Queen, and Col. *Parker* went along with me, and he ordered me ten *Leuidres*, and Mr. *Hare* as much, which Mr. *Carroll* gave us; and if that were not sufficient, or if we were Wind-bound at *Calais*, we had Orders to apply to the President of *Calais* to be furnished with what we wanted: accordingly we went, and the Wind not serving when we come to *Calais*, we were forced to stay there, and our Charges were paid to our Landlady by the President of *Calais*, according to the Order we received at *St. Germain*; when the Wind served fair we went on board, and came to *Rumney-marsh*, to one Mr. *Hunt's* House, and from thence he furnished us with a Couple of Horses, and we came the Sandy-way to one Mr. *Tucker's*, and from thence to Mr. *Cross's*, and from thence to *Gravesend*, and from thence to *London*: We came up in the Night-tide, and being late when we came to Town, *Sunday-night*, we lay at an Inn at the lower-end of *Gracechurch-street*; the next Day we went to look for Sir *George Barclay*, but not finding him in *Covent-Garden*, according to what King *James* told us, I admired at it; but one Mr. *Birkenhead* meeting my Comrade the next Day, said, Sir *George Barclay* desired to see us, and appointed us to meet him, which we did that Night, where Sir *George Barclay* ask'd us how the King and Queen, Prince and Princess did; he told us at that Time he had no Money for us, but in a few Days we should have Money; and accordingly he sent us Money. We had five Guineas, but it was at twice; two Guineas at one Time, and three at another, and this was for a Month's Subsistence at five Shillings a Day, Guineas going then at thirty Shillings. And afterwards when

Major *Holmes* delivered the Horse, upon *Saturday* the 15th, we had another Guinea, that made up what we had to be six Shillings a Day when we had Horses, and five Shillings a Day when we had none: And as for Mr. *Lowick*, the first *Saturday* which was designed for the Assassination, I happened to be at Mr. *Counter's* Lodgings in *Holborn*, a Confectioner's; and there I see Mr. *Lowick* come in.

*Mr. Conyers.* Who lodged there, pray Sir?

*Harris.* Sir *George Barclay* and Mr. *Counter* had Lodgings there; and Mr. *Lowick* came in there, but I cannot say he stay'd there any Time, I think he went out presently afterwards. The next Week I met Mr. *Lowick* in *Red-lyon Fields*, and discoursed with him there about this Matter, and I told him what a barbarous and inhumane Thing it was that we should be the Murderers of the Prince of *Orange*, and that it would render us odious to the World, and that we should be a continual Reproach to our selves; he did agree it was so: But in conclusion Mr. *Lowick* said he would obey Orders, and he said Sir *George Barclay* he was sure would not do it without Orders: That Day when we were walking out, we met Sir *George Barclay* and Major *Holmes* riding in the High-way up towards *Islington*, and we spoke to him, for Mr. *Lowick* told me the Thing was discovered, and his Name was given up, and other Gentlemen, and I think another; and so he told me that one *Harrison* told him of it, and forewarned him that Night from lying in his Lodging; and he told him that he believed it would not be safe for the Rest to lie in their Lodgings, or to that effect.

*Mr. Att. Gen.* When he said he would obey Orders, What was the Discourse about?

*Harris.* We were talking of murdering the Prince of *Orange*: And not only that, but I do believe that Mr. *Lowick* is so sensible that what I say is true, and he is a Man of so much Conscience and Honour, that he will not contradict any thing that I affirm or have said here. On *Saturday* the *Two* and *Twentieth* we dined at the *Castle*, a Tavern or a Cook's Shop, at the End of *Red-lyon Street*. I was much in a Sweat, and he asked me what made me so? I told him I had been getting Captain *Rookwood's* Party ready; and I told him (laughing) that Captain *Rookwood* said I should be his *Aid du Camp*, and so I was getting the Men together: Says he to me, you may very well do it, for you have Six Shillings a Day, and I have nothing. Mr. *Lowick*, you know what I say to be true; I know not why you lift up your Hands; but you did tell me I might very well do it, having six Shillings a Day, and you had nothing, and yet brought a Couple of Men at your own Charge, and that their Horses could not be discharged unless you went. These were his Words, my Lord, or to this effect.

*Mr. Att. Gen.* What do you mean by being discharged?

*Harris.* I mean this, that I believe he paid for them; and they were waiting at a House till he came.

*Mr. Conyers.* Why were they to be discharged that Day?

*Harris.* The Reason why they were to be discharged that Day, was, because Captain *Rookwood* had told him before, that the Prince of *Orange* did not go out that Day; and therefore we went together to walk towards *Islington*.

*L. C. J.* What Day was that?

*Harris.*



*Harris.* The second *Saturday* that it was to have been executed. I was not a Spy upon any Man's Actions: I cannot tell what they did any more than I tell you: I do not wrong you any Way in the World, Sir, I am sure on it.

*L. C. J.* When was it that you spoke with Mr. *Lowick* about murdering the King?

*Harris.* It was *Monday, Tuesday, Wednesday, or Thursday*, I cannot be exact to the Day, but it was one of these Days, after the first *Saturday*; I cannot be positive what the Day was.

*L. C. J.* Well, it was between the two Days?

*Harris.* Yes, it was.

*L. C. J.* How did you know of that Design of murdering the King?

*Harris.* I was inform'd of it by Captain *Rookwood* the first *Saturday*, and I met Mr. *Lowick* and had this Discourse about it: and afterwards they informed me that Mr. *De la Rue* did not lie at his Lodgings, and the Thing was discovered, and they believed that *Rue* had discovered it: And I desire you'll call Mr. *De la Rue* as to this Matter; for I believe he will own it.

*Mr. Sol. Gen.* How came you to trust him with such a Discourse?

*Harris.* Because we met there at *Counter's* Lodgings, and we had several times Discourses of it; there was Major *Bernard* and Capt. *Rookwood* besides, and I always declared against it as a barbarous and inhuman Thing, not to be answer'd before God or Man, and that we should be odious to all the World if the Thing were effected, as I believ'd it would not be. I wou'd never shew my Head after such a Thing.

*Mr. Sol. Gen.* Do you remember who began the Discourse of this Matter?

*Harris.* I cannot tell that. I can't come to every Particular.

*Sir B. Shower.* You said just now, you apprehended Mr. *Lowick* to be a Man of Conscience and Honour; Pray what were his Sentiments about it?

*Harris.* His Sentiment was, That he would obey Sir *George Barclay's* Orders; and he was sure Sir *George Barclay* would not do it without Orders.

*Sir B. Shower.* Did not he declare it to be a barbarous Design?

*Harris.* I can't remember every particular Thing that he said; for I am not a Spy upon any Man's Actions.

*Lowick.* When you were talking of that Design that you speak of, pray did I consent to any such Thing?

*Harris.* I tell you how far you consented; you said you wou'd obey Sir *George Barclay's* Orders, and you was sure he would not do it without Orders.

*Mr. Mompeffon.* Did you see any of Sir *George Barclay's* Orders?

*Harris.* No, I did not, I was to follow his Orders; but what Orders he had I cannot tell.

*Mr. Sol. Gen.* What did Sir *George Barclay* tell you you were to do?

*Harris.* Sir *George Barclay* declared, on the first *Saturday*, that we were his Janizaries, and talk'd of attacking and bringing away the Garter: I cannot say this Gentleman was by then; and afterwards Sir *George Barclay* went out and returned, and came in again into the Room, and declared that we were Men of Honour, and that we were to attack the Prince of *Orange*.

*Mr. Mompeffon.* Did Sir *George Barclay* give the Prisoner at the Bar any Orders?

*Harris.* I don't tell you he did.

*Mr. Mompeffon.* You say you met Sir *George Barclay* and Major *Holmes* upon the Road going to *Islington*: How do you know the Prisoner was there?

*Harris.* Why, was not I with him? I am very sorry to come upon this Account; but you know it is Truth all that I say; and I am sure you are sensible I do you no Wrong: He met Sir *George Barclay* and Major *Holmes*, and he went down and said something to Sir *George Barclay* in the Highway; what it was I don't know; but I stood, and Captain *Rookwood* and Mr. *Bernard* said something to him, which you very well know.

*Mr. Att. Gen.* What was it?

*Harris.* I can't tell, Sir.

*Mr. Att. Gen.* We do not desire you to tell what you can't tell: Is this all you know?

*Harris.* It is all at present that I recollect.

*Mr. Sol. Gen.* Then pray swear Mr. *Bertram*.  
[Which wa. done.]

*Mr. Conyers.* Pray will you give an Account to my Lord and the Jury what you know of this intended Assassination, and how far the Prisoner was concerned in it.

*Bertram.* My Lord, about the Beginning of *February* last, Major *Lowick* came to me, and ask'd me if I would espouse a Thing with him that might be for my Advantage; I told him that I thought I might espouse any Thing that he thought fit to engage in.

*Mr. Mompeffon.* Whom did you tell so?

*Bertram.* Major *Lowick*: And he told me it was well, and desired me to ask no more Questions: I did not; but it went on to the 14th of *February*, when he desired me to be at his Lodgings at twelve o'clock. I was so about that Time, but he was not within, and I stay'd till he came in, and he took me up into his Chamber, and told me he believed they should ride out in some little Time; and he told me he believed the King was to be seiz'd in his Coach, and he gave me a Guinea to buy me Necessaries.

*L. C. J.* What Necessaries?

*Bertram.* I can't say he nam'd any.

*Mr. Att. Gen.* But for what Purpose were those Necessaries?

*Bertram.* I don't know that he nam'd any Thing, indeed.

*Mr. Att. Gen.* Well; did he tell you when you were to be ready?

*Bertram.* If you please to give me leave, I'll tell you: He desired me not to be out of the Way; and the next Morning I was to meet him at the Purl-House in *Hart-street*. I did not meet him; and the next Time I saw him, I am not positive whether it was the next Day after the Fifteenth when I was to meet him at *Hart-street*, but did not so; but the next Time I saw him, he ask'd me why I did not meet him according to his Appointment? I told him, I had some Reason for it; and he answer'd me again, That he believed, if the King had been in the Field, I would have done the same; but I have not seen him since, till I saw him at the Bar.

*Mr. Att. Gen.* Had you no Discourse of Horses that you were to provide?

*Bertram.* I do not remember any particular Thing more than I have told you.



*Mr. Att. Gen.* Did he not tell you what the Design was you were to go about?

*Bertram.* He did not tell me of any other Design than as I tell you, for he believed I knew of it; I thought so at least: The first time I knew of it was from *Mr. Charnock.*

*L. C. J.* What did he tell you was the Design that you should engage in for your Advantage upon *Friday* the 14th, when he gave you the Guinea?

*Bertram.* He told me, he believed they should ride out very suddenly, and that the King was to be seized in his Coach.

*L. C. J.* Did he tell you when the King was to be seized?

*Bertram.* No, he did not tell me when, but this was the 14th, the next Morning I was to meet him at *Hart-street*, but did not.

*Mr. Sol. Gen.* Who did he tell you the King was to be seiz'd by?

*Bertram.* He did not nominate any one else, for he obliged me not to ask him Questions, nor I did not.

*Mr. Sol. Gen.* Did he name himself to be concerned?

*Bertram.* He named himself so far, as that he believed he should ride out very suddenly.

*Mr. Sol. Gen.* Was it the next Morning, or the next Day?

*Bertram.* I cannot say that he named any particular Time.

*Mr. Att. Gen.* Will they ask him any Questions?

*Sir B. Shower.* No, I think we shall not.

*Mr. Mountague.* Pray, *Mr. Bertram*, will you answer me one Question, What did he say to you when he check'd you for not coming according to his Appointment?

*Bertram.* I took it as a Kind of a Check: He told me, that if the King had been in the Field, he believed I would have done the same.

*Sir B. Shower.* There is one Thing we must a little examine this Gentleman to: Were not you under a Necessity before that Time that he gave you the Guinea? Pray what Condition were you in?

*Bertram.* Under Necessity, Sir! I was never very plentiful of Money of late.

*Sir B. Shower.* Did he never give you a Guinea or two before in Charity, and out of Compassion to your Necessities?

*Bertram.* He has given me Money several Times before; and I believe if I would have ask'd him for any Money, he would have given it me.

*Mr. Att. Gen.* Was this Money given you for Charity, or for any other, and what Purpose?

*Bertram.* I did not ask him for any thing, but he gave it me, and said, There's a Guinea to buy you Necessaries.

*Mr. Att. Gen.* What was the Discourse before that?

*Bertram.* I told you, he said, he believed they were to ride out very suddenly, and he believed the King was to be seized in his Coach, and he desired me not to be out of the Way.

*Mr. Cowper.* And when he gave you the Guinea to buy you Necessaries, was it immediately after this Discourse?

*Bertram.* Sir, it was at the same Time.

*Lowick.* Did not I give your Wife a Guinea two Months before this?

*Bertram.* Yes, Sir; I acknowledge I was informed you did, I was not in Town then.

*Lowick.* Pray let the Court know that.

*L. C. J.* Did he tell you the King was to be seized in his Coach, before he told you they were to ride out very suddenly?

*Bertram.* No, afterwards; and then he gave me the Guinea.

*Sir B. Shower.* His Words are not coupled together, they have no Relation to one another.

*L. C. J.* No; but he told him they were to ride out very suddenly, and the King was to be seized in his Coach, and gave him a Guinea to buy him Necessaries at the same Time.

*L. C. J. Treby.* There's no doubt he was engaged in the Design with those other Persons.

*Mr. Conyers.* And afterwards he rebuked him because he had not met him; and he said, it would have been the same Thing if the King had been in the Field.

*Mr. Montague.* What Day in the Week was it that you failed him?

*Bertram.* It was on a *Saturday.*

*Juryman.* Pray, my Lord, we desire to know, who he did understand by the King that was to be seized.

*L. C. J.* What did he call the King?

*Bertram.* He said nothing but the King.

*L. C. J.* Who did you understand by that?

*Bertram.* I leave it to the Court, I am not to interpret Things.

*L. C. J. Treby.* Did he name the Prince of Orange, or King James? Did you think King James was to be seized?

*Bertram.* My Lord, I tell you what he said, I am not to interpret his Words.

*Mr. Att. Gen.* Do you believe he meant King James, or this King, that was to be seized?

*Bertram.* I believed it might be the King here.

*L. C. J.* Take the Words as they are; he ask'd him before, Whether he would engage in a Design that might be for his Advantage? On *Friday* the 14th of *February* he meets him at his Lodging, and tells him, he was to ride out suddenly, and that the King was to be seized in his Coach, and appointed him to meet him the next Morning, and gave him a Guinea to buy him Necessaries.

*Mr. Mompesson.* Pray, has not *Mr. Lowick* given you Clothes, Linen and other Things at any other Time?

*Bertram.* Sir, you have been always ready to serve me, I must acknowledge, and you have been very kind to me.

*Lowick.* If you please to give an Account of my Character, whether ever I was guilty of any bloody Thing.

*Bertram.* No, Sir.

*Sir B. Shower.* How long have you known *Mr. Lowick*?

*Bertram.* I believe I have known him this 20 Years.

*Sir B. Shower.* What Behaviour has he been of?

*Bertram.* He has always had very good Behaviour, and the best; he has had the best Character of all Mankind.

*Sir B. Shower.* Did you ever know him inclin'd to do a rash Action?

*Bertram.* Never in my Life.

*Sir B. Shower.* Did you ever know him do a malicious Action?

*Bertram.* No, but he had always the Character of a good Man, and was always ready to serve any Man in his Necessities, and to do Good; he has that general Character abroad.

*L. C. J.*



*L. C. J.* Where does he live?

*Bertram.* He lived last at *Brownlow-street*, but he has no Wife nor Family, and so has no fix'd Being.

*L. C. J.* What was his Way of Living?

*Bertram.* He was bred a Soldier, and has been abroad.

*L. C. J.* Where.

*Bertram.* In *Ireland*.

*L. C. J.* In whose Service?

*Bertram.* In the Service of King *James*.

*Lowick.* He knows particularly, that once I was upon a Party and saved five Officers from being killed in cold Blood.

*L. C. J.* What Countryman is he?

*Bertram.* *Yorkshire*.

*Mr. Mompesson.* Was he accounted of a cruel or a bloody Nature?

*Bertram.* No, of a quite contrary.

*Juryman.* My Lord, I desire to know for what Cause he gave him or his Wife a Guinea.

*Bertram.* I know not what that Guinea was for that he gave me the fourteenth of *February*, any otherwise than as I have told you.

*Mr. Mompesson.* What was the Guinea given to your Wife for?

*Bertram.* For that Guinea given to my Wife, it was out of his own Kindness and Goodness to my Family and me.

*Mr. At. Gen.* What was the other Guinea for? You are upon your Oath.

*Bertram.* Indeed, Sir, I cannot tell; he gave it me to buy me Necessaries.

*Mr. At. Gen.* Was there nothing else mentioned what Necessaries those were to be?

*Bertram.* No, Sir; upon my Oath there was not any particular mentioned.

*Mr. At. Gen.* What made him so kind to you, pray?

*Bertram.* We were both born in a Town, and I believe we are near related.

*Sir B. Shower.* You say you are Towns-People, and have been long acquainted, and you knew him in *Ireland*, pray did you ever know that he saved any People's Lives?

*Bertram.* I was not in that Action my self, but all that were in it gave that Relation, that he was very favourable, and did save Peoples Lives, particularly one Captain *Harlow*, and brought him and other Prisoners, and I remember the Thing; it was about a Fortnight before the Business of the *Boyne*, upon a *Sunday* Morning, that they took those Prisoners, and he did persuade several Parties that he commanded, to decline killing, as much as they could: I was not in this Action, but this I heard of all that were in it, and from the Prisoner.

*Mr. Sol. Gen.* When he gave you that Guinea, did not he speak any Thing of a Horse that was to be provided for you?

*Bertram.* Not a Word: I never did see a Horse upon that Account, nor was I Master of a Horse, nor was I told I should have a Horse in any respect whatsoever.

*Juryman.* How could you ride out, as you say they were to do, without a Horse, or without knowing any Thing of a Horse to be provided for you?

*Bertram.* I did not know of a Horse.

*L. C. J.* But he said you were to ride out speedily.

*Bertram.* No: he said in general, we should ride out suddenly.

*Mr. At. Gen.* Who was there besides your self?

*Bertram.* No Body.

*Mr. At. Gen.* Then that *we* must mean you and him. And how were you to ride out without a Horse? Pray mind what you swear?

*Bertram.* I was to meet him the next Morning, but did not.

*Mr. At. Gen.* Pray what cou'd you understand by that, that you were to ride out suddenly, and had no Horse?

*Bertram.* That was understood, that if I did ride out, I must have a Horse.

*Mr. At. Gen.* Who should you have it from? had you a Horse of your own?

*Bertram.* No, I had not.

*Mr. At. Gen.* Did you intend to hire a Horse?

*Bertram.* No, I did not.

*Mr. At. Gen.* Did not you ask where you were to have a Horse?

*Bertram.* No, I did not ask nor inquire, nor was it promis'd me I should have a Horse.

*Mr. At. Gen.* Did he tell you where you were to ride?

*Bertram.* The next Morning I was to meet him.

*Mr. At. Gen.* For what? to ride out was it?

*Bertram.* I can't really tell whether it was upon that Account or not.

*Mr. At. Gen.* Whether did he tell you where he was to ride?

*Bertram.* Indeed he did not.

*Juryman.* It is very strange that you did not ask him where he was to go, nor ask him for a Horse.

*Bertram.* I was so senseless, that I neither did ask him about a Horse, nor ever knew of any that was to be provided for me.

*Juryman.* Did you understand what was meant by the Riding out suddenly?

*Bertram.* I did take it to be about the Business, the seizing of the King.

*Juryman.* Did he compare it to attacking him in the Field?

*Bertram.* No, he did not; but he said he believed the King would be seized in his Coach; he made no Comparisons.

*Mr. Mountague.* Pray *Mr. Bertram*, why did you not meet him? What Reasons had you for not doing it?

*Bertram.* I thought it not requisite to meet him.

*Mr. Mountague.* What, had you no Mind to the Thing?

*Bertram.* No, I had not; because I thought the Thing very unlawful.

*Mr. At. Gen.* Pray what was that Thing you speak of, that you thought was unlawful?

*Bertram.* I thought it was about seizing and killing the King.

*L. C. J.* Pray mind; there is no Body desires you should speak more than the Truth; but on the other side, being upon your Oath, you are to speak the whole Truth; for if you conceal any Part of the Truth, though you have a Kindness for your Countryman *Mr. Lowick*, who has been kind to you, you will forswear your self, for you make a different Representation of the Matter, and make it appear quite otherwise than it is; pray do not strain one Tittle, but let us have all the Truth.

*Bertram.* I don't believe I strain ore Bit.

*Mr. Mountague.* Then tell my Lord why you did not meet him.

*Bertram.*



*Bertram.* I did believe it was about seizing and killing the King, and I did think it to be illegal.

*Mr. Montague.* Why did you think it was about that?

*Bertram.* Because *Mr. Charnock* had told me of it before:

*Mr. At. Gen.* How did you know that was what *Lowick* spoke to you about?

*Bertram.* I did suppose it to be the same, because he desired me at first to ask no Questions, no more did I; but I took it always to be the same Thing.

*Mr. At. Gen.* What did he say to you?

*Bertram.* He told me he had a Business to propose to me, if I would engage in, that would be for my Advantage, but I must ask no Questions; talk'd of Riding out suddenly, and that the King was to be seized in his Coach, and having heard of it from *Charnock*, I thought it was the same Business.

*Mr. At. Gen.* Then, my Lord, we have one Witness more, call Captain *Fisher*. [*He did not appear.*] If he does not appear, we shall let them go on, and when he comes in, we can examine him afterwards.

*L. C. J.* Is he a material Witness?

*Mr. Sol. Gen.* We do apprehend he is a very material Witness.

*L. C. J.* If you think him a material Witness, it will not be proper for them to enter upon their Defence, till they have heard the whole Accusation.

*The Court staid for Mr. Fisher's coming for near an Hour, and at last he came in and was sworn.*

*L. C. J.* Who is this?

*Mr. At. Gen.* This is one Captain *Fisher*.

*Mr. Sol. Gen.* Pray Captain *Fisher*, do you know *Mr. Lowick*, the Prisoner at the Bar?

*Capt. Fisher.* I have not talked with *Mr. Lowick* since the 8th of *February*, and then he talked that he would be ready to serve his Master to the uttermost of his Power.

*Mr. At. Gen.* What Master?

*Capt. Fisher.* King *James*.

*Mr. At. Gen.* What particular Service?

*Capt. Fisher.* He named no particular Service, but only that he would be ready to serve his Master to the uttermost of his Power.

*Mr. At. Gen.* Where was this?

*Capt. Fisher.* At the *Cock* in *Bow-street*.

*Mr. At. Gen.* Who was in Company?

*Capt. Fisher.* There was *Mr. Harrison*.

*Mr. At. Gen.* Pray give an Account of what you know of this barbarous bloody Design.

*Capt. Fisher.* I believe there was a Design to seize the Prince of *Orange*.

*Mr. At. Gen.* What do you know of it? you say you believe it.

*Capt. Fisher.* I believe it by my Knowledge, because I was concerned in it.

*Mr. At. Gen.* By whom was that Design carried on?

*Capt. Fisher.* By *Sir George Barclay* and *Mr. Harrison*.

*L. C. J.* What was the Design?

*Capt. Fisher.* We were to fall upon the Prince of *Orange*.

*L. C. J.* You called him so, the Prince of *Orange*?

*Capt. Fisher.* Yes, my Lord.

*Mr. At. Gen.* Well, tell us what happened.

*Capt. Fisher.* It was to have been done the 15th of *February*, and we met accordingly the 14th, but the King not going Abroad, it was put off.

*L. C. J.* Who met on the 14th?

*Capt. Fisher.* I met only *Mr. Harrison* and *Sir George Barclay*, then it was put off till the 22d; upon the 21st, we met at the *Three-Tuns* in *Holborn*, and from thence we came to the *Sun-Tavern* in the *Strand*, and there was no Body but *Mr. Harrison* and I together, and *Sir George Barclay* came to us; I believe there were about 14 or 16 in the House; there *Sir George Barclay* told me, *Mr. Lowick* was to meet me and two more at an Inn by *St. Giles's Pound*, and that we were to go together to seize the Prince of *Orange* the 22d.

*L. C. J.* Did you meet him?

*Capt. Fisher.* I did not meet him, it being put off by the King's not going abroad.

*L. C. J.* This does not affect *Mr. Lowick* at all.

*Mr. At. Gen.* It does not, we acknowledge; but at that time which you speak of, the 8th of *February*, had you any Knowledge of the Assassination?

*Capt. Fisher.* There was no Assassination at that Time, at least it was not then declared.

*Mr. At. Gen.* What was your Discourse about then?

*Capt. Fisher.* There was Notice of the King's preparing to come for *England*.

*Mr. At. Gen.* You say *Mr. Harrison* was there.

*Capt. Fisher.* Yes, and talked very little about the Matter, but only that there were Preparations for the King's coming.

*Mr. At. Gen.* What did *Lowick* say to you?

*Capt. Fisher.* I have told you all that *Mr. Lowick* said to me.

*Mr. At. Gen.* Repeat it again.

*Capt. Fisher.* He said he would be ready to serve his Master, to the uttermost of his Power.

*Mr. Cowper.* Had you no Discourse about an Act of Parliament?

*Capt. Fisher.* *Mr. Lowick* said it was not convenient to talk with more than one at any Time, for there was an Act of Parliament on Foot, that under two Witnesses nothing should affect a Man's Life in Treason.

*Mr. At. Gen.* The Act of Parliament was then a making.

*L. C. J.* When *Mr. Lowick* said he would serve his Master, what Discourse had you about it?

*Capt. Fisher.* *Mr. Lowick* said not a Word within, but at the Door he said he would serve his Master to his Power.

*Mr. At. Gen.* What was that, that they would not talk with above one at a time?

*Capt. Fisher.* Nothing that was thought treasonable Practices should be discoursed of before above one at a time, so I understood it.

*Mr. Sol. Gen.* Then, my Lord, we have done.

*Sir B. Shower.* May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel in this Case for the Prisoner at the Bar, and we do hope here is not Evidence sufficient to convict him of High-Treason, the Question is not whether there was a Plot or a Conspiracy to Assassinate the King, or to prepare for an Invasion, but



but all that you are to consider, Gentlemen, is, whether the Evidence against Mr. *Lowick*, be sufficient to convince you, that he did design to Seize and Assassinate the King; there are three Witnesses produced, but we think this last Witness, *Fisher*, his Testimony does not hurt him in the least. We know your Lordship will declare and direct the Jury, that the Evidence in a Case of Treason ought to be plain, not only with respect to the Fact, that it was done; but also of such Facts as are the Evidences of a Man's Intentions, and those are not to be construed by Strains and Intendments, or Implications; unless they be such as Evidently, Naturally, and to common Understanding express the Intention, it cannot be good Evidence in Treason: Now we say that Captain *Fisher* has said nothing at all that will affect the Prisoner, for all that he says is, that the Eighth of *February* he said he was ready to serve his Master to the utmost of his Power, and any Words as well as these may be construed to make a Man guilty of Treasonable Intentions; for it might be a Recollection of Favours Received, or it might be a grateful Intent to serve him upon particular Occasions, but that is no Evidence upon this Indictment. Suppose it was to serve him upon the supposed intended Invasion, yet with Submission, that is not Evidence of the Overt-Act laid here; here is no Overt-Act mentioned of preparing Arms, or Encouraging Men, or Seducing the King's Subjects, in order to the better restoring of the late King *James*, or the expected Landing of the *French*, or the like. All that is laid to the Prisoner's Charge, is the Compassing the King's Death, and a Design to Assassinate him in his Coach, and in order to the Assassination, he was to buy Arms and Horses; now all that he says is quite of another Nature, of a quite different Strain, and has no Tendency to this Matter, and nothing he says that *Lowick* should say, but is applicable the other Way, and tends more naturally to the Invasion, than to the Assassination. Your Lordship observes there was some notice taken of what Mr. *Lowick* should say, concerning the Act of Parliament, that he would not talk with above one at a time; how far when Life is concerned such loose Discourse ought to be enforced before a Jury I must leave to your Lordship; though a Man may be innocent, yet he may be cautious, and the more Innocent, perhaps the more cautious; but that is applicable to the Invasion too, and has no Relation to the Treason in this Indictment more than any other. It shews he was more wary than others were, but it is not applicable to the Fact that he now stands charged with. Then the whole of the Evidence depends upon the Testimony of Mr. *Harris* and Mr. *Bertram*, and we think they are not two Witnesses to one Thing, and what they say must be strained, and intended, and presumed, to make Evidence of Treason; for what Mr. *Harris* says about the Discourses between him and the late King *James*, about receiving Orders from Sir *George Barclay*, and his Passage over from *France*, and the several Stages he and Mr. *Hare* travell'd, and the Discourses between Sir *George Barclay* and him; Your Lordship will acquaint the Jury that is no Evidence to affect Mr. *Lowick*, nor what *Berkerhead* and *Hare* agreed upon does any way affect Mr. *Lowick*, for those Things may be all true, and yet Mr. *Lowick* innocent of what he

stands charged with in this Indictment; he says, That upon the first *Saturday* he saw Mr. *Lowick* at the Confectioner's, but he cannot say he staid there at all, there was not a Word spoken by Mr. *Lowick* that he remembers then, but what he says that seems to touch, and the only Thing that touches Mr. *Lowick*, in all this Evidence is, that upon *Monday, Tuesday, Wednesday* or *Thursday*, it is a pretty large Time, between the Fifteenth and the Twenty-second, he was talking with Mr. *Lowick* about the Barbarity of this Business, and that *Lowick* after all, said he would obey Orders; now with Submission, my Lord, to make that to have Relation to the Assassination must be by a forc'd strain'd Intendment, he does not declare what the Orders were, nay, he does not affirm there were any Orders for the Assassination, but only that he would obey Orders; here's no Order by Writing, no Order by Parole that Mr. *Lowick* declared he would obey; as to what *Lowick* declared about his Intention of Riding out and Seizing the King in his Coach; that cannot be intended the Order that he was to obey to Assassinate the King, that Order does not appear, there are no Footsteps of it in all the Evidence, so that there is nothing in that Testimony that will hurt Mr. *Lowick*: Then upon the Two and Twentieth when they dined together, Mr. *Harris* says, that there was a Discourse of two Men, but it does not appear, nor does the Witness give any Account what those two Men were to be for; 'tis true two Men he was to get discharged, but that is not Evidence that these Men were to make a Part of those Forty, neither the Words before nor the Words after can have that Construction; nay, it does not appear it was for any Purpose at all, now in the Case of Life, where a Man stands at the Bar, we hope such an Evidence shall not be Construed to make a Proof of a Treasonable Intention, that these were to Assassinate the King, or to make Part of the Forty that were to do it, when it does not appear they were there, nor who they were, nor any sort of Notice taken or given upon what Account they were provided. And then as to Mr. *Bertram's* Evidence, it is palpable that his Evidence and whatsoever he says cannot amount to make one Witness to prove an Overt-Act within this Statute, and that there must be two Witnesses the Law requires; what does Mr. *Bertram* say to prove any Man guilty of Treason, but only by Intendment, Thought or Suspicion? It is true, Mr. *Bertram's* Evidence would be good enough to commit a Man upon Suspicion of Treason, but to Convict him it cannot be; he says that in the Beginning of *February* he spoke to him, and told him he would employ him in a Business that would be for his Advantage, but he must ask no Questions; this is very dark, for the Meaning of it does not appear what was intended by it; it might be one Thing as well as another, it might be to employ him in his Family, or it might be to send him of a Journey, or it might be the taking of a Farm, but to apply that as an Evidence of a Charge of High-Treason, that we think is very hard, and we hope your Lordship will think so too; but then he comes and tells you further of a Discourse upon the Fourteenth, of his riding out suddenly, and that the King was to be seized in his Coach, but he does not say that he was to seize him, nor that he would be concerned in it,



it, nor that he knew of it, nor did declare at what time it was to be done, nor any thing certain whether it was a Prophecy, or a Dream, or a Story that he related again, or what it was; there is no Connection between the Riding out suddenly, and the other Words of seizing the King in his Coach; then he says he gave him a Guinea to buy him Necessaries, the Man acknowledges Mr. *Lowick* several times had given him in Charity-Money, Clothes and other Things, and gave his Wife a Guinea as you observe, in Charity, but he gave him this Guinea on purpose to buy him Necessaries, and it is hard that a Man's Charity to a Countryman, to a Townsman, to an antient Acquaintance of Twenty Years standing, to a Person that he had been familiar with formerly, and known to have lived well, should be misinterpreted and strain'd, to make it a giving him Money as Subsistence, and a Reward for the doing such a Mischievous Bloody Act; We say his Charity to this Man formerly is inconsistent with the Supposition that he could be privy to such a barbarous Design now, and we hope the Jury will consider the Character that that very Man has given to my Client, for the same Witness gives you an Account of his Behaviour all along, that he was not given to Rash and Barbarous Actions, nor guilty of any malicious Thing, nay, that he prevented Mischiefs, and the killing of People in cold Blood. We must leave it to the Jury's Consideration, and your Lordship's Direction. All these things that they say may be true, and *Lowick* be not guilty, and the acquitting of Mr. *Lowick* will be no Reflection upon the Witnesses, nor any Discredit to the Testimony that has been given of this Conspiracy; but we hope 'tis doing Justice to this Man, the Witnesses not coming up to the Proof of what is laid in the Indictment. We must beg your Lordship's Patience a little longer, and call some Witnesses to give you an Account how long they have known Mr. *Lowick*, and what his real Character is; they will tell you he is a peaceable good Man, and shew you that his Temper and Inclination was rather to a sober quiet Life than to lead him to such Action, and that they cannot think him likely to be tempted to be concerned in such a Design; and then we must leave it to the Jury. Call Mrs. *Yorke*.

*Lowick*. I believe there is no body here that knows me but will give me that Character.

*Mrs. Yorke came in, and was sworn.*

*Sir B. Shower*. Pray Mrs. *Yorke*, how long have you known Mr. *Lowick*?

*Yorke*. About a Dozen or Fourteen Years.

*Sir B. Shower*. What sort of Disposition is he of?

*Yorke*. He is a Civil Honest Man as ever I saw in my Life, or ever knew of; and I never heard otherwise from any one that knew him.

*Sir B. Shower*. What was he in his Actions, was he Malicious, or Good-natur'd?

*Yorke*. As good a natur'd Man as ever I saw.

*Mr. Mompesson*. Has he the Reputation of a Cruel Bloody-minded Man?

*Yorke*. Quite the contrary. He lodged in my House half a Year, it is not quite a Year ago since he lay at my House. He was the most obliging Man that ever lay in my House. He

was so civil to all the Lodgers, that they admired him for his Goodness, and made them in love with him.

*L. C. J.* How came he to lodge at your House?

*Yorke*. He came from his other Landlady, they could not agree, his other Landlady was a sort of a Shrew, and therefore he did not care for staying there; and I desired his Company, because I knew him to be so obliging and civil a Man.

*L. C. J.* Where is your House?

*Yorke*. In *Bloomsbury*.

*L. C. J.* What is his Way of Living? Is he a Man of an Estate?

*Yorke*. I cannot tell, I did not enquire into that.

*L. C. J.* Had he no Employment to get his Living by?

*Yorke*. I do not know any thing of that, I never enquired into it; he paid me very honestly for my Lodging, and he is a very good Man, for any thing I know.

*Sir B. Shower*. Then call Mrs. *Mosely*.

*She came in, and was sworn.*

*L. C. J.* Well, what do you ask this Gentlewoman?

*Sir B. Shower*. Pray, Mrs. *Mosely*, will you tell my Lord and the Jury: Do you know Mr. *Lowick*?

*Mosely*. Yes, Sir, I do.

*Sir B. Shower*. How long have you known him?

*Mosely*. Near twenty Years.

*Sir B. Shower*. Pray give an Account upon your Knowledge what Disposition and Temper he is of, whether he is Rash, Malicious, Bloody, and Ill-natur'd.

*Mosely*. He is a peaceable, virtuous, honest Man, and a Man that I never heard or saw that Creature that could speak any ill Thing of him in my Life; nor I never heard him speak any Thing maliciously of any Creature in my Life to do them a Prejudice: So far from that, that he is a Man has a Character, perhaps, above any Man that I could speak or hear of in my Life. I speak it even above my own Relations, they may have some Passions; but I never see that Gentleman in a Passion in my Life. He has lain in my House several times, and he has had Company come to him, but never any that was Scandalous one Way or other. I never saw him fuddled; nor ever heard him Swear, nor any one accuse him of any of those Things.

*Mr. Mompesson*. Call Dr. *William Mew*. He did not appear.

*Sir B. Shower*. The Prisoner has something to say for himself, my Lord, but we must submit to your Lordship's Consideration, and the Jury's, whether there be any Evidence but what is dark and favours of Suspicion only; suspicious it is, but whether there be any Evidence that is plain and direct as the Law requires in Cases of High-Treason, we must leave it to your Consideration, for we apprehend there is none.

*Lowick*. My Lord, as to this Business, the Thing that I stand accused of, the Assassination, I know nothing in the World of it, nor never did, directly or indirectly; and if I am convicted, and could, to save my Life, be the Death of the poor-  
est



est Child in the World, I would not save my Life to do it.

*L. C. J.* Look you, I would put you to make Answer to some Things; you were at Sir *George Barclay's*, at the Confectioner's in *Holbourn*; and it is sworn he came over upon such a Design. Then you were with Mr. *Harris* at *Red-Lion-Fields*, and there he was speaking to you of the Horridness of the Design that was to be executed upon the King's Person the *Saturday* before, and he told you he did dislike it; and thereupon you answered that you would obey Orders, and that Sir *George Barclay* had Orders for it, otherwise he would not do it.

*Lowick.* Sir *George Barclay* never spoke one Word of it to me.

*L. C. J.* Every Body knows now upon what Design he came over from *France*, and when Mr. *Harris* shewed Dissatisfaction with the Thing, you made that Answer to his Discourse.

*Lowick.* He never said one Syllable to me of it. I trust to your Lordship's Judgment, and the Jury's Mercy.

*L. C. J.* And then I would have you answer to another Thing, when you dined together on the *Saturday* the two and twentieth, what were those two Men that could not be discharged without you?

*Lowick.* My Lord, I know nothing in the World of two Men.

*L. C. J.* You went to discharge them, for the King did not go abroad that Day.

*Lowick.* I know nothing of it.

*L. C. J.* He swears this, and that's as to him; but then as to *Bertram*, what Design was that, that you were to engage *Bertram* in for his Advantage, and he was to ask no Questions?

*Lowick.* My Lord, he is a poor Man, and my Countryman, and I have at all Times, from time to time, for this seven Years, helped to subsist him and his Family, that he will not deny, and I have several Times given him both Clothes and Money.

*L. C. J.* Then I would ask you again, When he came to your Lodging on *Friday* the 14th of *February*, and you told him the King was to be seized in his Coach, and said that we were to ride out very suddenly, and you appointed him to meet the next Morning; and because he did not meet you blamed him, and said, It would have been the same Thing, if the King had been in the Field. Look you, I would have you give Answer to this if you can.

*Lowick.* I remember nothing in the World of it, not a Word I assure you, and to the best of my Remembrance, I did not see him in two Days after.

*Mr. Att. Gen.* My Lord, I must beg leave to answer to the Objection that the Counsel for the Prisoner have made, that there are not two Witnesses to prove the Overt-Act laid in the Indictment, and so the Law is not satisfied. In Answer to that, I desire your Lordship's Favour to observe how the Evidence is, and then we shall see whether there are not plainly two positive Witnesses of the Overt-Act, by agreeing to assassinate the King. The first Witness is Mr. *Harris*, your Lordship observes that Mr. *Harris* gives an Account that Mr. *Lowick* was at Sir *George Barclay's* Lodgings the first Day that it was to have been executed; and that afterwards between the fifteenth and the two and twentieth,

those being the first and second Days that this was to be done, when he and *Rookwood*, and the Prisoner *Lowick*, were walking together in *Red-Lion-Fields*; and there had some Discourse about the intended Assassination, and the Barbarity and Bloodiness of it, and Mr. *Harris* and Mr. *Rookwood* were averse to it. Mr. *Lowick* said he would obey Orders, and he was sure Sir *George Barclay* would not do it unless he had direct Orders for it; that was twice repeated by him, as *Harris* swears: And afterwards Mr. *Harris* tells you, that the two and twentieth he dined with Mr. *Lowick*, and Mr. *Lowick* observed that Mr. *Harris* came in, in a great Sweat, and asked him how it happened; he said he had been about to get ready *Rookwood's* Party that were to seize the King, for he was to have one Party. Says Mr. *Lowick* to him, you need not grudge to do it, you have six Shillings a Day, I have nothing; and yet I, at my own Charge, am to provide two. This is as positive Evidence as well can be of his being privy to the Design; and his engaging People at his own Charge, shews a great deal of Forwardness and Zeal in the Prisoner to the Business. My Lord, I think this is positive and plain Evidence, and not only made out by Inferences and Constructions, as Sir *B. Shower* says, but plain, positive Proof. The first Day he was with several of them, and when they discoursed of the Thing afterwards, he declared he would obey Orders; and what could those Orders be but for what they were discoursing of, and nothing was discoursed of but this Design they were engaged in, and this was to justify the Thing, and take off the Apprehension of the Barbarity of it: This is *Harris's* Testimony. The next Witness is *Bertram*, and he tells you that the fifth of *February* the Prisoner sent for him, and when he came to him, he asked if he would engage in a Business that might be for his Advantage, and ask no Questions; so at that Time he did not acquaint him what the Thing was, but that shews it was a Thing that was to be kept secret at that Time, in regard he did not think fit to acquaint him at the first Instance. But the fourteenth of *February*, when he met him again, the Day before the first Time that it was to be put in Execution; *Bertram* swears he told him that they were to ride out the next Morning, that must be *Lowick* and *Bertram*, for there was no Body else there; and that the Prince of *Orange* was to be seized in his Coach. Was it possible the Prisoner could be ignorant of it? When he engaged him to go upon a Design without asking Questions; sent for him the Day before, acquainted him they were to ride out the next Morning, and that the King was to be seized in his Coach, and bid him be ready against next Morning, and gave him a Guinea at that Time; the Witness says it was for Necessaries, but he does not pretend that it was for Charity, as formerly. And that must be for Necessaries for that Purpose that they were then discoursing of, when he desired him to be ready the next Day, and gives him Money to buy him Necessaries: What can that be, but Necessaries for what he was to be ready for? And then he did not come the next Day, and he tells you why, because he thought it a very wicked and unlawful Thing; and so he disappointed him; and the next Time *Lowick* chid him; and told him he would have served him so if the King had been in the Field. This is plain, though I believe *Bertram* does speak as tenderly as he can, being his Friend and old



Acquaintance, and is willing to say as little as he can of him? so that I believe no Body thinks but what *Bertram* says against the Prisoner is true, and what he swears is plain and positive. To shew, that *Lowick* did engage in the Design, he acquainted him with it the fourteenth, by telling him the King was to be seized, and they were to ride out, and he was to be ready the next Day.

*L. C. J.* He does not say they were to ride out the next Day.

*Sir B. Shower.* No, the Words were, We are to ride out suddenly.

*Mr. Att. Gen.* I think he did say they were to ride out the next Morning.

*L. C. J.* No, Call him in again.

*Mr. Cowper.* The Words were, We shall ride out suddenly, and bid him meet him next Morning; and afterwards chid him for not meeting accordingly, and told him it had been the same Thing if the King had been in the Field.

*L. C. J.* If you cannot agree upon the Evidence, you must call in the Witnesses.

*Mr. Mountague.* My Lord, we are agreed upon the Evidence, it was suddenly.

*L. C. J.* Well then, there is no Occasion, have you done on both Sides?

*Counsel.* Yes, my Lord, we submit it to your Lordship.

*L. C. J.* Gentlemen of the Jury, this Prisoner at the Bar, *Robert Lowick*, is Indicted of High-Treason, for Compassing and Imagining the Death and Destruction of the King by an Assassination; you have heard what Evidence has been given upon this Indictment. And in the first Place, It is proved to you that there was a Design to assassinate the King; which was to be carried on under the Conduct and Management of *Sir George Barclay*. The Question that you are now to consider of, is whether the Prisoner at the Bar was concerned or engaged in the Prosecution of that Design. There have been two Witnesses produced, who have given their Evidence, and have been very strictly examined, and Observations have been made upon the Testimony they have given.

The first Witness is *Mr. Harris*, and he gives you some Account of the Original of this Design. He tells you how he was at *St. Germain's*, and introduced to the late King *James*, who did express a great Kindness for him, and told him that he had an Opportunity of doing something for him that would be for his Advantage: And that he and one *Hare*, who was present at that Time, should go into *England*, (for it seems they were both together introduced by *Colonel Parker*) and should be subsisted in *England*, and thereupon Directions were given them what Course they were to take; which was to go to *Calais*, and to each of them ten *Leuidores* were given for their Charges, and they were acquainted that if it happened that if they should lie there so long for Want of a Wind to bring them over hither that their Money was spent, Provision should be made for their Supply there. They had farther Directions, that when they came into *England*, they should apply themselves to *Sir George Barclay*, and follow his Orders, with Instructions how to find him; being told that *Sir George Barclay* would be walking in *Covent-Garden* every *Monday*, and every *Thursday* Night, about the Hours of six or seven o'Clock, and that they should know him by a white Handkerchief that was to hang out of his Pocket.

*Mr. Harris* further tells you, That they did come to *Calais*, in order to embark for *England*, and there they happened to stay a considerable Time, even so long that their Money would not defray their Expences there, and they found it true as it was promised them; for the President of *Calais* paid the Reckoning for them at the Place where they lodged; and afterwards they came into *England*, and landed in *Kent*, and came to *Rocheſter*, and from thence to *London*. About the latter End of *January*, *Old Stile* (for it should seem it was the 14th *New Stile*, which is the 4th, *Old Stile*, they were at *St. Germain's*) he tells you that he did go the first *Monday*, after their Arrival, into *Covent-Garden*, to look after *Sir George Barclay*, but then mist him. But afterwards his Companion, *Mr. Hare*, met with one *Berkenhead*, and complaining that they had not met with *Sir George Barclay* according to the Directions they had abroad: Whereupon, by the Means of *Berkenhead*, they were brought to the Speech of *Sir George Barclay*, who gave them Reception, and owned that he had Authority to subsist them; but said he had not then Money, but shortly should, and when he had, they should be sure to receive their Subsistence. He tells you, that after this, *Sir George Barclay* gave them Subsistence Money, Paying them at the Rate of five Shillings a Day when they had no Horses, and when they had, six Shillings a Day: So they put themselves altogether under his Command and Conduct. He has given you an Account what Discourse he had with *Mr. Rookwood*, from whom he discover'd what the Design was in which he was to be engaged. And the Design to assassinate the King was first intended to be put in Execution on *Saturday* the 15th of *February*, at which Day *Mr. Harris* and others, being at *Sir George Barclay's* Lodgings; *Sir George* said they were his *Janisaries*, and afterwards cared for them, and said they were Men of Honour, and told them that they were to attack the Prince of *Orange* and his Guards; but it seems the King not going abroad that Day, they lost that Opportunity.

Truly, Then *Mr. Harris* began to be a little troubled, and concerned, when he understood the Meaning of his being under *Sir George Barclay's* Conduct. And he says that after that first *Saturday* the 15th, and before the next *Saturday* the 22d, he met with *Lowick*, *Rookwood*, and *Bernarde*, and he was complaining of his being engaged in such a Design as this was. He called it then the Murder of the Prince of *Orange*, and said it was a barbarous Thing, and he did not like it, nor *Rookwood* neither; but as for *Lowick*, whether he disliked it, or no, I know not, but he made Answer to him, I will obey Orders: Says he, *Sir George Barclay* has Orders for it, or otherwise he would not do it.

Then you are told further, that after this, on *Saturday* the 22d, *Mr. Harris* dined with *Lowick* at a Cook's at the End of *Red-Lion-Street*, and being there together, *Harris* being in a Sweat, and was asked the Reason by *Lowick*, he said he had been giving of Orders for the getting some Men together that were to go under *Rookwood*, and *Lowick* told him he might very well do it, for he had Pay 6 s. a Day; but says he, I am to subsist two Men, and have nothing at all. *Mr. Harris* wished him to go to *Sir George Barclay* and complain of it to him, but he said he would not; but it seems, it being then understood by them that the

King



King did not go abroad that Day, *Lowick* said he must go and discharge the two Men, and went about it. This is the Sum and Substance of Mr. *Harris's* Evidence against Mr. *Lowick*.

The next Witness is *Bertram*, and he tells you that sometime before the fifteenth of *February*, which was, as I told you, the very first Day that they did design to assassinate the King, Mr. *Lowick* sent for him, and told him, that he would put him upon a Business that should be for his Advantage, if he would undertake it without asking any Questions; this was sometime before, but the certain Day *Bertram* does not remember; but he tells you farther, that on *Friday* the fourteenth of *February*, he was with *Lowick* at his Lodgings, and he said unto him, that the King, he did believe, was to be seized in his Coach, and we are to ride out suddenly; and then he gave him a Guinea to buy him Necessaries, and withal bid him meet him at the *Purle-house* in *Hart-street* next Morning; and *Bertram* tells you, he had understood what this Design was, for he had it before from *Charnock*, and did forbear to go the next Morning, because he did dislike it. After this Mr. *Lowick* met him and chid him for disappointing of him, in not meeting him as he directed, for says he, it would have been the same thing if the King had been in the Field. This is the Sum and Substance of the Evidence that *Bertram* has given against him.

Now *Bertram* being cross-examined on the behalf of the Prisoner, says he hath known him a great while, and that he is a Man of a peaceable and fair Disposition, very charitable, and that he has given him Money before, and particularly a Guinea to his Wife in his Absence.

Indeed I might have mentioned the Evidence of *Fisher* to you, but that is but circumstantial, and does not come home to the Case, but being given it may be mention'd, and that is, about the Eighth of *February*, *Fisher* had some Discourse with *Lowick*, and it seems there was Notice taken of the intended Invasion, and *Lowick* said he would serve his Master faithfully; and that the Witness thought was meant of the late King; and he said at another Time, that he would not discourse with above one at a Time, because of the late Act of Parliament that was then a passing, relating to High-Treason, that required two Witnesses. Now, I say, this is not any Proof against the Prisoner, but it is a Circumstance that may shew his Inclination to the late King.

The Counsel for the Prisoner have insisted upon the Insufficiency of the Evidence that has been given on behalf of the King, and have said, that the late Act of Parliament requires two Witnesses, which is true, but not two Witnesses to any one Overt-Act; but if there be two Witnesses, one to one and another to another Overt-Act, that is sufficient; but they say that it is not so in this Case.

In the first Place, they object against the Evidence that is given by *Harris*, they say it is short, that must be left to your Consideration; whether the Evidence that is given by *Harris* concerning Mr. *Lowick*, does prove to your Satisfaction, that he consented and agreed to the Assassination of the King, you are to weigh the Evidence, when it is sworn that when *Harris*, *Rookwood*, and the Prisoner were walking in *Red-Lion-Fields*, and talking of this horrid Design, and *Harris* complained that it was a barbarous Thing to murder the Prince of *Orange*, as they call'd him, you

must consider what Answer *Lowick* did make about obeying of Orders; then his subsisting of Men at his own Charge without Pay, and complaining of his having no Pay, and his discharging them the last Day that the Assassination was intended, that I must leave to you, whether or no this is not an Evidence, if you believe the Witness to satisfy you that he was engaged in this Design.

Then, Gentlemen, he has also been desired to give an Answer to this Question, and to tell upon what Design he was to employ *Bertram* that should be for his Advantage; but he was to ask no Questions, and afterwards whether he did tell him the King was to be seized in his Coach, and they were to ride out suddenly and bid him meet him the next Morning, and when he did not meet him, he said, It would have been the same Thing if the King had been in the Field. If this be an Evidence of Mr. *Lowick's* engaging in and agreeing and consenting to the Design, then there will be another Witness against the Prisoner besides *Harris*.

Gentlemen, you are to judge of this Matter and of the Evidence. It is true, we are not to put in the Case of a Man's Life, any forced and violent Constructions upon any Words or Discourses; but if the Evidence be plain and clear, tho' he did not say in express Words, that he did design to assassinate or kill the King; yet, if upon the whole Discourse that past between them it appears plainly, clearly, and satisfactorily to you that he did consent and agree to this Design, or was engaged in it, here's another Witness, I say, to prove him guilty, besides *Harris*; you are to consider the whole Evidence, the subject matter of Discourse, and if you are satisfied, I say, that he was engaged in such a Design by the Proof of *Bertram*, as well as of *Harris*, then there are two Witnesses, which is as much as the Law requires.

But, indeed, the Counsel have called several Witnesses to prove that the Prisoner has lived very peaceably and quietly; one Woman says, She has known him twelve Years, and that he lodged at her House, and that he was a Man of great Temper and Candour, and not disorderly, but had a general good Esteem and Character: And then there is another, Mrs. *Moseley*, that proves the like, and says, She has known him these twenty Years, and she says no Man has a better Character: And Mr. *Bertram* hath said, that he was not of a rash or bloody Temper.

Now, Gentlemen, I must leave it to you, upon the Evidence that you have heard, there are these Witnesses that have been produced, and there are these Circumstances that appear in the Case; if you are satisfied upon this Evidence that has been given, that the Prisoner Mr. *Lowick* did consent to and engage himself in that Design of Assassinating the King, then you are to find him guilty; if you are not satisfied, you are to find him not guilty; you have heard your Evidence, and had best consider of it.

*Then an Officer was sworn to keep the Jury, who withdrew, and staid out about half an Hour, and then returned.*

*Cl. of Arr.* Gentlemen of the Jury, answer to your Names, *George Ford*.

*Mr. Ford.* Here. [And so of the rest.]

*Cl. of Arr.* Are you all agreed of your Verdict?



*Jury.* Yes.

*Cl. of Arr.* Who shall say for you?

*Jury.* Foreman.

*Cl. of Arr.* *Robert Lowick*, hold up thy Hand, (*which he did*) Look upon the Prisoner; how say you, Is he guilty of the High-Treason whereof he stands indicted, or not guilty?

*Foreman.* Guilty, my Lord.

*Cl. of Arr.* What Goods or Chattels, Lands or Tenements had he at the Time of the Treason committed, or at any Time since?

*Foreman.* None to our Knowledge, we do not find any.

*Cl. of Arr.* Then hearken to your Verdict, as the Court hath recorded it. You say that *Robert Lowick* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods, Chattels, Lands or Tenements, at the Time of the High-Treason committed, or at any Time since to your Knowledge, and so you say all.

*Jury.* Yes.

*L. C. J.* Discharge the Jury.

*Cl. of Arr.* Gentlemen of the Jury, the Court discharges you, and thanks you for your Service.

*L. C. J.* Mr. Attorney, Will you have the Prisoners set to the Bar?

*Mr. Att. Gen.* Yes, if your Lordship please.

*Then the Keeper of Newgate brought Rookwood and Cranburne, and all three were set to the Bar.*

*Mr. Att. Gen.* If your Lordship please to give Judgment against the Prisoners that are convicted.

*L. C. J.* Ask them what they have to say for themselves in Arrest of Judgment.

*Cl. of Arr.* *Robert Lowick*, hold up thy Hand; you stand convicted of High-Treason, in Conspiring the Death of the King by Assassination, what can you say for yourself why the Court should not give Judgment against you, to die according to Law?

[*Then the Keeper bid him kneel.*]

*L. C. J.* No, no, he need not kneel; if you have any thing to say, Mr. *Lowick*, we will hear you.

*Lowick.* I throw myself upon the King's Mercy.

*Cl. of Arr.* *Ambrose Rookwood*, hold up thy Hand, (*which he did*) you stand convicted of the same High-Treason, for Conspiring the Death of the King by Assassination, what can you say for yourself why the Court should not give you Judgment to die according to Law.

*Rookwood.* All that can be said has been said already, and so I shall say no more.

*Cl. of Arr.* *Charles Cranburne*, hold up thy Hand, thou standest convicted of High-Treason, in Conspiring the Death of the King by Assassination, what canst thou say for thyself, why the Court should not give the Judgment to die according to Law?

*Cranburne.* I have nothing to say but what I have said already.

*Cl. of Arr.* Then Crier make Proclamation.

*Crier.* O yes, all Manner of Persons are commanded to keep Silence while Judgment is in giving upon Pain of Imprisonment.

*L. C. J.* You the Prisoners at the Bar, *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, you have been indicted, and upon full and clear Evidence have been convicted of High-Treason; a Treason that was advanced to the highest Degree both of Malice and Mischief against the King and Kingdom; you design'd to assassinate the King with an Intent to subvert the State, and by the introducing of a foreign Power to destroy the ancient Liberty and Constitution of *England*.

Our *French* and Popish Enemies, by whom you were employ'd in this bloody Enterprize, did very well know, that the Wisdom and Courage of his present Majesty has rescued this Kingdom from that Slavery and Oppression which they often threatned to bring upon us; they knew that under his Government we have been protected in the Enjoyment of our Religion, Laws and Liberty for several Years, and that his Majesty is the Head of the Protestant Interest, and the Protector and Preserver of the Liberty of *Europe*, and that upon the Preservation of his Life, and the Safety of his Person, the Good and Happiness of Multitudes of People do depend, which the *French* King's Pride and Ambition has been ready to take hold of any Opportunity to enslave and oppress.

Your being engaged in such a horrid Design against so precious a Life, and to be the bloody Instruments to give that dismal Stroke, which would have brought Misery and Desolation upon so many Men, renders you worthy to undergo a greater and more severe Punishment than by the Law of *England* can be inflicted; but that there is no greater provided for such Criminals, is to be imputed to the ancient Honesty and Integrity of *English* Men, who, when they fram'd this Constitution of Government, never imagined *England* should produce such degenerate Wretches, as would endeavour by Plots and Contrivances to betray their Country to a foreign Yoke, and subject themselves and their Fellow-Subjects to the slavish Dominion of Strangers.

Your Crime being so great, it is now high time for you seriously to reflect upon it; and tho' you deserve to suffer the greatest of Punishments, yet I have that Compassion for your Persons, that I wish heartily you would make use of that Opportunity which is now put into your Hands, to repent. And since you are adjudg'd by the Law unworthy to live here, that you will make Preparation to appear at another Tribunal, where you must have another Trial, and, without an hearty and sincere Repentance, receive a more severe Sentence. I hope this Calamity, and the Judgment that is to fall upon you, will be an Admonition to you to take better Advice in the last part of your Time which is left you, than you have done in the whole Course of your Lives, and that you will be wiser than to follow the Direction of those Guides whose Principles and Doctrines have so far perverted and corrupted you, as to engage you in such a bloody Design. I shall leave you to make that Preparation for another World, which is proper for Men in your Condition, and pronounce the Judgment of the Court, which the Law hath appointed and the Court does award;

*That*



*That all of you be conveyed from hence to the Prison from whence you came, and from thence every one of you is to be drawn upon a Hurdle to the Place of Execution, where you are to be hang'd by your Necks, and to be cut down while you are alive, your Privy-Members are to be cut off, and your Bowels are to be cut out of your Bodies, and burnt in your View, your Heads are to be cut off, and your Bodies to be divided into four Parts, and your Heads and Quarters are to be disposed where his Majesty shall appoint. And I pray God to have Mercy on all your Souls.*

*Cranburne.* I humbly desire the Liberty of my Wife and Relations to come to me, and such Divines as I shall desire may have free Recourse to me.

*L. C. J.* You shall have that Liberty that is allowed to all Persons in your Condition.

*Rookwood.* I must beg the same Favour to have some few Friends and Relations come to see me without a Keeper.

*L. C. J.* You shall have a Warrant for your Friends to come to you.

*Rookwood.* I beg your Lordship that you would please to specify it in the Warrant, because they would not grant it hitherto without a Keeper being by.

*L. C. J.* You mean, you would have your Brother permitted to come to you.

*Rookwood.* Yes, and some few Relations.

*L. C. J.* What is usually done in such Cases, let it be done.

*Lowick.* My Lord, I desire the same Thing, that my Sister may come to me, and that the little time I have I may be in private with my Friends.

*Mr. Att. Gen.* If your Lordship please, they may give the Names of those they would have admitted to them, and then the Keeper will attend your Lordship for your Direction.

*L. C. J.* That the Keeper must take care of, lest they allow such a Liberty as may endanger an Escape; for their being alone may prove a dangerous thing.

*Mr. Att. Gen.* It is reasonable they should tell who they are, before they be admitted.

*L. C. J.* You allow them, I suppose, to have private Discourse in the same Room, if a Keeper be by.

*Cranburne.* No, my Lord, we never had.

*Mr. Att. Gen.* Such as your Lordship thinks proper to be admitted to them may have Discourse with them in private, if the Keeper be in the Room, but no others but such as your Lordship shall allow; for we know what has been the Effect of a Liberty of Access to some Prisoners.

*L. C. J.* Let us have a Note of those Names that you would have come to you, and we will give Directions that shall be proper in it.

*Cl. of Arr.* Sheriff of *Middlesex*, you must take them into your Custody till Execution is done.

*Then the Keeper took away the Prisoners.*

On *Wednesday, April 29.* *Ambrose Rookwood, Robert Lowick, and Charles Cranburne,* were drawn to *Tyburn*, where the two former deliver'd the following Papers to the Sheriffs.

*Major Lowick's Paper.*

**I**N the Name of the Holy Trinity, Father, Son, and Holy Ghost, *Amen.* In the first Place, I die in the Religion I was baptiz'd, *viz. Roman Catholick,* and humbly beg the Prayers of all good People for a happy

Resurrection, and of all Catholicks for the Good of my Soul.

As for being engag'd in this for which I die, it was never so positive that I had a Horse from the Beginning to the very Last, nor never see any allow'd me, or the two Men I was to provide, as was sworn against me at my Trial; nor had I any on that Account; nor was I at any of their Meetings when they settled any such thing. And as for any Order or Commission from King *James*, I never see any since I came last into *England*, which is now about five Years; and I am confident none that knows King *James* will believe he would give any such Order.

Indeed, I must confess, I believe King *James* was a coming to assert his own Right; and I should, if on Shore, have done any thing in my Power to have assisted him; and, in order to that, I should have been very glad to have had a Horse, but never had any.

And as for being concern'd in any bloody Affair, I never was in my Life, but have done my Endeavour to prevent, as much as I could, on all Occasions; and if the killing the most miserable Creature in the World, or greatest Enemy, would now save my Life, restore the King, and make me one of the greatest Men in *England*, I first would choose to die, because against the Law of God.

If any who are now Sufferers on this Account, think I have been too forward, and a Promoter to this Design, I do now declare it was never my Inclination to do any rash thing. However, I beg their Pardons, and of all the World I have offended, either in Thought, Word, or any Action whatsoever, and do freely forgive my Enemies, and hope, thro' the Mercy of my Saviour Jesus Christ, to have Remission of all my Sins. Good God preserve the King, Queen, Prince, and Princess, and all that royal Blood of *Stuarts*; and may *England* never want one of that direct Line to govern them, and make them once more happy. I have had the Honour to serve my royal Master in several Commissions, and the last as Major, and strove ever to serve him to the best of my Power, and ever to be just to those whom I had the Honour to command. Lord Jesus, into thy Hands I recommend my Spirit! O Jesus, receive my Soul!

ROBERT LOWICK.

*Brigadier Rookwood's Paper.*

**H**AVING committed the Justice of my Cause, and recommended my Soul to God, on whose Mercies, thro' the Merits of Jesus Christ, I wholly cast myself, I had once resolv'd to die in Silence; but second Thoughts of my Duty to others, chiefly to my true and liege Sovereign King *James*, moved me to leave this behind me.

I do therefore, with all Truth and Sincerity, declare and avow, that I never knew, saw, or heard of any Order or Commission from King *James* for the assassinating the Prince of *Orange*, and attacking his Guards; but I am certainly inform'd that he, the best of Kings, had often rejected Proposals of that Nature, when made unto him.

Nor do I think he knew the least of the particular Design of the attacking the Guards at his Landing, so much talk'd of, in which I was engaged as a Soldier, by my immediate Commander, much against my Judgment; but his Soldier I was, and as such I was to obey and act according to Command.

These twelve Years I have served my true King and Master, King *James*, and freely now lay down my Life in his Cause. I ever abhor'd Treachery, even to an Enemy; if it be a Guilt to have comply'd with what I thought, and still think, to have been my Duty, I am guilty. No other Guilt do I own.

As I beg all to forgive me, so I forgive all from my Heart, even the Prince of *Orange*, who, as a Soldier, ought to have consider'd my Case before he sign'd the Warrant for my Death. I pray God may open his Eyes, and render him sensible of the much Blood, from all Parts, crying out against him, so to prevent an heavier Execution hanging over his Head, than what he inflicts on me.

AMBROSE ROOKWOOD.

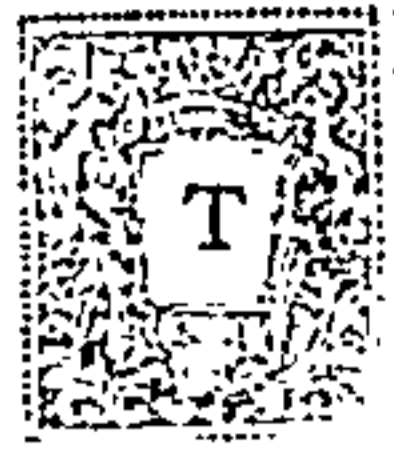
After which they were executed as Traitors, according to their Sentence.

CLVI. *The*



CLIX. *The Trial of PETER COOK, at the Old-Bai-ly, for High-Treason, May 9, 1696. 8 Will. III.*

Saturday May 9, 1696.



HIS Day being appointed for the Trial of Mr. *Peter Cook*, upon an Indictment of High-Treason found against him by the Grand Jury for the City of *London*, upon the Commission of Goal-Delivery of *Newgate*, holden for the said City, upon which Indictment he had been arraigned, and upon pleading not guilty, Issue had been joined, and the Court having been adjourned unto this Day for the Trial by publick Proclamation in usual manner, the Court was resumed, and the Names of the Men returned to serve on the Jury, having been called over according to the Pannel, and the Defaulters recorded; the Court proceeded as follows.

Cl. of Arr. Set *Peter Cook* the Prisoner to the Bar. [*Which was done.*] You Prisoner at the Bar, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and You, upon Trial of your Life and Death; if therefore you will Challenge them, or any of them, your Time is to speak to them as they come to the Book to be sworn, and before they be sworn.

*Cook*. Sir, I desire you would not name them too fast, for my Eyes are very bad.

Cl. of Arr. *John Ewer*.

*Cook*. Who must I apply myself to, Sir? I desire to know whether he is a Freeholder in *London*?

Cl. of Arr. I know nothing to the contrary, Sir, he is returned as such by the Sheriff; you had best ask him himself, he can best tell.

*Cook*. Are you a Freeholder in *London*, Sir?

*Mr. Ewer*. Yes, Sir. I am a Freeholder.

*Cook*. Sir, I challenge you.

Cl. of Arr. *Henry Sherbrook*.

*Cook*. Sir, are you a Freeholder in *London*?

*Mr. Sherbrook*. Yes, Sir, I am.

*Cook*. I challenge you. — No, Sir, I beg your Pardon, I do not challenge you.

Cl. of Arr. Then hold Mr. *Sherbrook* the Book: [*Which was done.*] Look upon the Prisoner: You shall well and truly try and true Deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge, according to your Evidence. So help you God.

Cl. of Arr. *Joseph Billers*.

*Cook*. Are you a Freeholder, Sir, in *London*?

*Mr. Billers*. Yes, I am. [*Challeng'd.*]

Cl. of Arr. *John Brand*.

*Cook*. Pray, Sir, don't go too fast; Are you a Freeholder in *London*, Sir?

*Mr. Brand*, I am no Freeholder in *London*.

L. C. J. *Treby*. What say you, Mr. Attorney?

\**Sir Thomas Trevor*. \**Mr. Att. Gen.* My Lord, I would not have any Body that is not a Freeholder serve; so he was set by.

Cl. of Arr. *William Hull*.

*Mr. Hull*. My Lord, I am no Freeholder in *London*.

L. C. J. *Treby*. Why, what Estate have you?

*Mr. Hull*. What I have, is in Leases.

L. C. J. *Treby*. What, Leases for Years, or Leases for Lives?

*Mr. Hull*. Leases for Years, Sir.

L. C. J. Then he cannot serve upon the Jury.

Cl. of Arr. *Edward Leeds*.

*Cook*. Hold, Sir, let me see; are you a Freeholder in *London*, Sir?

*Mr. Leeds*. Yes, Sir. [*Challeng'd.*]

Cl. of Arr. *Thomas Clark*.

*Cook*. Hold, Sir, I pray let me look upon my Paper. I challenge him.

*A Stander-by*. He does not appear.

Cl. of Arr. *Nathan Green*.

*Cook*. Where is he, Sir? Are you a Freeholder?

*Mr. Green*. Yes, I am, Sir. [*Challeng'd.*]

Cl. of Arr. *Thomas Emes*.

*Cook*. Are you a Freeholder, Sir?

*Mr. Emes*. Yes, I am.

*Cook*. Were you one of Sir *John Friend's* Jury?

*Mr. Emes*. Yes I was.

*Cook*. Then I challenge you for Cause, and I give you my Reason.

*Mr. Serj. Darnall*. I pray, let us hear your Reason; give your Reason for your Challenge.

*Cook*. It is for being of Sir *John Friend's* Jury.

*Mr. Serj. Darnall*. Then you challenge him for Cause.

*Cook*. Yes, that he was of Sir *John Friend's* Jury.

L. C. J. *Treby*. Well, Brother *Darnall*, how is that a Cause of Challenge? You are the Prisoner's Counsel, let us hear what you say to it.

*Mr. Serj. Darnall*. My Lord, what we have to say to it, is this; Here are some Persons returned upon this Pannel, that were formerly Jurors in a Cause that was try'd for the same Species of Treason that this Gentleman, the Prisoner, is charged with in this Indictment; and I think the Witnesses at that Trial did mention in their Evidence my Client, as being present at those very Consults, about which they gave their Evidence; these Gentlemen gave Credit to those Witnesses, and found the Verdict against the Person then accused. We humbly submit it to your Lordship and the Court, whether we may not for this Cause challenge this Person as not indifferent, it being for the same Cause and Consult that the other was try'd for.

*Mr. Att. Gen.* Sure Mr. Serjeant is not in earnest in this Objection.

*Mr. Serj. Darnall*. My Client thinks it a very good Objection, that he is not indifferent, and I desire he should be satisfied in it.

*Mr. Att. Gen.* If he thinks so, he may except against him, but if he insist upon it as a Cause of Challenge, we desire you would put the Case, and my Lords the Judges determine it.

*Mr. Serj. Darnall*. I have told you what the Case is.

L. C. J. *Treby*. But you hear the King's Counsel insist upon it, to have you make it out in Point of Law.

*Mr. Serj. Darnall*. My Lord, I have stated the Case as my Client desired, and we submit it to you.

L. C. J. *Treby*. Well, there is nothing in it.

*Mr. Serj. Darnall*. Then my Client, if he will not have him serve, must challenge him peremptorily; which he did.

Cl. of Arr. *Francis Byer*.

*Cook*.



Cook. Sir, are you a Freeholder?

Mr. Byer. Yes, I am. [Challeng'd.]

Cl. of Arr. James Denew.

Mr. Denew. I am no Freeholder.

Cl. of Arr. Henry Hunter.

Cook. Hold, hold, my Lord, I challenge him as being one of Sir John Friend's Jury.

Mr. Baker. Nay, that was not allow'd in Mr. Emes's Case; but you challenged him peremptorily, and so you must now, if you have a Mind to it.

Cook. I challenge him.

Cl. of Arr. John Hall.

Cook. Are you a Freeholder in London, Sir?

Mr. Hall. Yes, I am, Sir. [Challeng'd.]

Cl. of Arr. John Cullum.

Cook. Sir, are you a Freeholder in London?

Mr. Cullum. Yes, Sir. [Challeng'd.]

Cl. of Arr. John Cox.

Mr. Cox. My Lord, I am no Freeholder in London.

Cl. of Arr. John Hedges.

Cook. Hold, I pray, Sir, let me look upon my Paper; Sir, are you a Freeholder in London?

Mr. Hedges. Yes, Sir, I am. [Challeng'd.]

Cl. of Arr. Thomas James.

Mr. James. My Lord, my Name is not Thomas.

Mr. Sher. Buckingham He is returned, it seems, by a wrong Name; we did not know it.

Mr. Serj. Darnal. Then you cannot swear him.

Cl. of Arr. Thomas Poole.

Cook. Are you a Freeholder in London, Sir?

Mr. Poole. Yes, Sir.

Cook. I challenge him, as being of Sir John Friend's Jury.

Mr. Att. Gen. That has been over-ruled already.

Cook. I challenge him.

Cl. of Arr. Peter Parker.

Cook. Are you a Freeholder in London?

Mr. Parker. Yes, Sir, I am.

Cook. I challenge you, Sir, as being one of Sir John Friend's Jury.

Mr. Baker. Nay, you can't offer it again.

Cook. I challenge him.

Cl. of Arr. George Grove.

Cook. Where is he? Are you a Freeholder in London, Sir?

Mr. Grove. Yes, Sir. [Challeng'd.]

Cl. of Arr. Nathaniel Wyersdell.

Cook. Are you a Freeholder in London?

Mr. Wyersdell. Yes, Sir, I am. [Challeng'd.]

Cl. of Arr. Samuel Blewit.

Cook. Hold, pray, are you a Freeholder, Sir?

Mr. Blewit. Yes, I am. [Challeng'd.]

Cl. of Arr. John Wolfe.

Cl. of Arr. Joseph Wolfe. He did not appear, and was said to be no Freeholder.

Cl. of Arr. William Smith.

Cook. Are you a Freeholder, Sir?

Mr. Smith. Yes, I am. [Challeng'd.]

Cl. of Arr. Edward Fenwick.

Cook. Are you a Freeholder, Sir?

Mr. Fenwick. Yes, Sir, I am.

Cook. I do not challenge him.

Cl. of Arr. Then swear Mr. Fenwick. [Which was done.]

Cl. of Arr. Benjamin Hooper.

Cook. Stay, Sir, pray stay a little, where is he?

Cl. of Arr. There he is, Sir.

Cook. Which is the Gentleman? Are you a Freeholder in London, Sir?

Mr. Hooper. Yes, Sir.

Cook. I challenge you.

Mr. Hooper. I thank you, Sir.

Cl. of Arr. Nathaniel Long.

Cook. Are you a Freeholder, Sir?

Mr. Long. Yes, Sir.

Cook. I challenge him, as being one of Sir John Friend's Jury.

Cl. of Arr. The Court has adjudged that no Cause of Challenge, therefore I take no notice of it, but as to a peremptory Challenge.

Cl. of Arr. Richard Chiswell.

Cook. Are you a Freeholder in London, Sir?

Mr. Chiswell, Yes, Sir. [Challeng'd.]

Cl. of Arr. John Child.

Cook. Hold, pray, a Moment; I have not cross these last in my Paper, but I challenge this Man, being of Sir John Friend's Jury.

Mr. Baker. You have had that answered over and over again, as no Objection; it is nothing but a peremptory Challenge.

Cl. of Arr. William Walker.

Mr. Walker. I was one of Sir John Friend's Jury.

Cook. I challenge him for the same Reason.

Mr. Att. Gen. But that is no Reason at all.

Cook. Then I challenge him.

Cl. of Arr. John Wells.

Cook. Sir, are you a Freeholder?

Mr. Wells. Yes, Sir, I am. [Challeng'd.]

Cl. of Arr. John Hibbert.

Cook. Which is he, Sir?

Cl. of Arr. He stands upon your Left-hand; the Man in the black Peruke.

Cook. Are you a Freeholder, Sir?

Mr. Hibbert. Yes, I am, Sir. [Challeng'd.]

Cl. of Arr. Daniel Wray.

Cook. Stay, Sir, are you Mr. Wray?

Mr. Wray. Yes, Sir, my Name is Wray.

Cook. Are you a Freeholder in London, Sir?

Mr. Wray. Yes, Sir.

Cook. I challenge you.

Mr. Wray. I thank you, Sir.

Cl. of Arr. John Petit.

Cook. Which is he?

Mr. Petit. I am the Man, Sir.

Cook. Are you a Freeholder in London, Sir?

Mr. Petit. Yes, Sir. [Challeng'd.]

Cl. of Arr. John Sherbrook.

Cook. I challenge him, as being one of Sir John Friend's Jury.

Mr. Baker. But you have heard that denied to be an Exception over and over.

Cook. I challenge him.

Cl. of Arr. Stephen Blackwell.

Cook. Are you a Freeholder, Sir?

Mr. Blackwell. Yes, I am. [Challeng'd.]

Cl. of Arr. William Hatch.

Cook. Pray give me time to mark them; pray, who is this Man you now call?

Cl. of Arr. William Hatch.

Cook. Sir, are you a Freeholder?

Mr. Hatch. Yes, I am. [Challeng'd.]

Cl. of Arr. Henry Beadle.

Cook. Are you a Freeholder, Sir?

Mr. Beadle. Yes, I am.

Cook. I do not except against him. [Was sworn.]

Cl. of Arr. John Stredwick.

Mr. Stredwick. My Lord, as I apprehend, I am no Freeholder.

L. C. J. Treby. Why do you apprehend so?

Mr. Stredwick. It is my Wife's Estate, not mine.

Cl. of Arr.



Cl. of Arr. Then your Wife has a Freehold, it seems.

*Mr. Stredwick.* Yes, she has.

*L. C. J. Treby.* That is Freehold enough; for you have an Estate for your Wife's Life.

*Mr. Baker.* And after that too, for it is not given over to any Body else, and she won't give it from him.

*Cook.* Sir, are you a Freeholder in London or no?

*Mr. Stredwick.* I apprehend, Sir, I am not.

*Mr. Baker.* He says he has an Estate for his Wife's Life.

Cl. of Arr. Then he is a Freeholder, what do you say to him?

*Cook.* Are you positive you are a Freeholder in London upon your Word?

*Mr. Stredwick.* I think not.

*Mr. Baker.* Why your Wife's Estate is yours for your Life.

*Cook.* My Lord Chief Justice, if your Lordship pleases, here is a Man that says positively he thinks he is no Freeholder, I desire your Lordship's Judgment, whether he be a Freeholder or not?

*L. C. J. Treby.* Why let him put his Case, if he make a Doubt of it.

*Mr. Stredwick.* I am not posselt of an Estate my self.

*L. C. J. Treby.* But is not your Wife an Inheri-  
trix?

*Mr. Stredwick.* Yes, my Lord, she is.

*L. C. J. Treby.* Then you are seiz'd of a Freehold in her Right; and, *Mr. Cook*, your own Counsel will tell you and satisfy you, that that is a Freehold sufficient for this Service.

*Mr. Baker.* His Wife's Father settled it upon her and her Heirs.

*L. C. J. Treby.* No question, it is a sufficient Freehold if the Wife be living.

*Mr. Baker.* Yes, she is.

*Cook.* I challenge him.

Cl. of Arr. *William Prince.*

*Cook.* I challenge him, as being one of Sir *John Friend's* Jury.

*Mr. Prince.* I thank you, Sir.

Cl. of Arr. *John Simmons.*

*Mr. Att. Gen.* We challenge him for the King.

Cl. of Arr. *Robert White.*

*Cook.* Are you a Freeholder, Sir?

*Mr. White.* Yes, I think so.

*Cook.* Pray tell me whether you are, or not.

*Mr. White.* Indeed I think so, Sir. [Challeng'd.]

Cl. of Arr. *Edward Brewster.*

*Cook.* Where is *Mr. Brewster*? Are you a Freeholder, Sir, in London?

*Mr. Brewster.* Yes, Sir.

*Cook.* I challenge him. Pray, Sir, I desire to know how many I have challenged.

*Mr. Baker.* You have challenged Thirty Three.

*Cook.* How many besides those that are of Sir *John Friend's* Jury?

*Mr. Baker.* You have but two more to challenge, Sir.

*Mr. Serj. Darnal.* I thought you had heard the Opinion of the Court, *Mr. Cook*, that it will not hold as a Cause of Challenge that he was of Sir *John Friend's* Jury; therefore those are all reckon-  
ed among the peremptory Challenges, and you can challenge but two more in all.

*L. C. J. Treby.* Not without Cause, but as many more as you can have good Cause against.

Cl. of Arr. *John Reynolds.*

*Cook.* I except not against him. [Was sworn.]

Cl. of Arr. *Joseph Brookbank.*

*Cook.* I have nothing to say to him. [He was sworn.]

Cl. of Arr. *Adam Bellamy.*

*Mr. Bellamy.* My Lord, I am no Freeholder.

*L. C. J. Treby.* Why, what Estate have you?

*Mr. Baker.* He has Estate enough, I know, for Value.

*Mr. Bellamy.* I have only a Lease.

*L. C. J. Treby.* A Lease for Years?

*Mr. Bellamy.* Yes, my Lord.

Cl. of Arr. *David Grill.*

*Mr. Grill.* I am no Freeholder, my Lord.

Cl. of Arr. *William Rawlins.*

*Cook.* I accept of him. [He was sworn.]

Cl. of Arr. *Samuel Roycroft.*

*Cook.* Are you a Freeholder, Sir?

*Mr. Roycroft.* Yes, Sir. [Challeng'd.]

Cl. of Arr. *Thomas Parker.*

*Cook.* How many have I to challenge, do you say?

Cl. of Arr. But one, Sir; what say you to *Mr. Parker*?

*Cook.* I do not except against him. [He was sworn.]

Cl. of Arr. *James Robinson.*

*Cook.* I have nothing to say to him. [He was sworn.]

Cl. of Arr. *Joseph Morewood.* [Challeng'd.]

*Mr. Baker.* You have challeng'd all your Number now.

Cl. of Arr. My Lord, we have gone through the Pannel, we must now call the Defaulters again. *Thomas Clark.*

*Mr. Clark.* Here.

*Sir B. Shower.* Was he here when he was call'd over?

*Mr. Att. Gen.* That's nothing, he is here now.

*Sir B. Shower.* But if there be a Default of the Jury, and the King's Counsel have challenged any one, they ought to shew their Cause; therefore we desire that they may shew their Cause why they challeng'd *Mr. Simmons*.

*L. C. J. Treby.* The King has Power to challenge without shewing Cause till the Pannel be gone through; but if there be a Default of Jurors when the King challenges, the King's Counsel must shew Cause.

*Sir B. Shower.* Here is a Default of Jurors, my Lord.

*L. C. J. Treby.* No body is recorded absolutely a Defaulter, if he comes in time enough to be sworn.

Cl. of Arr. Swear *Mr. Clark* [Which was done.]

*L. C. J. Treby.* When there is an apparent Default of Jurors, then they must shew their Cause; but here his Appearance, it seems, was recorded, and so he was no Defaulter; and you might have challenged him for Cause still.

Cl. of Ar. *James Dry.*

*Mr. Dry.* My Name is not *James*.

*Serj. Darnal.* Then you cannot swear him: Here are Three mistaken in their Names.

*L. C. J. Treby.* That is in the Copy in your Brief, Brother, it may be.

*Serj. Darnal.* No, my Lord, the Officers admit it.

*Mr. Att. Gen.* My Lord, we desire those Gentlemen, that say they are no Freeholders, may be sworn to that Matter. [Which was accordingly done.] And several of them that had staid, did deny the having of any Freehold upon Oath, and some were gone away.



*L. C. J. Treby.* Pray take care to estreat the Issues, and return greater Issues the next time.

*Mr. J. Rokeby.* Truly, the Court must put some great Penalty upon them for trifling with the Court in respect of their Duty that they owe to the King and Country, in regard of their Estates.

*Cl. of Arr.* Pray, let the Officers be called who summoned this Jury, *Mr. Sheriff.*

[*Which was done.*] And they examined concerning their summoning those who made Default, and the Issues of those who were recorded as Defaulters were ordered to be estreated.

Then the Court not being able to proceed for want of a Jury, they ordered another Pannel to be ready against *Wednesday* next, to which time, at Seven in the Morning, the Court was by Proclamation adjourned.

*Die Mercurii Decimo Tertio Maii,  
Anno Dom. 1696.*

*The Court being met according to the Adjournment, the Pannel was called over, and the Defaulters Recorded, and several excused for Absence upon Sickness, and being out of Town before the Summons. Then Mr. Serjeant Darnall desired before the Jury was called, to move something against the Pannel: And made his Motion thus,*

*Mr. Serj. Darnall.* IF your Lordship pleases, I have somewhat to offer to you before you go upon this new Pannel, and I confess, I think it is my Duty to the Court, as well as to the Prisoner, to state the Case as it is, and submit it upon the Reason of Law, and the Authorities that I shall offer, whether the Proceedings upon this new Pannel will not be erroneous? My Lord, the Question is, whether as this Case is, the Prisoner has had a Copy of the Pannel of his Jury by which he is to be tried, according as the late Law requires? he had a Copy of the former Pannel, and upon that Pannel Nine were sworn, and their Names all entered upon Record, and made Parcel of the Record. Therefore now the Question is, whether he can be tried upon a new Pannel? We are in a Case that rarely happens; and in a Case of Life and Death, I know your Lordship will be careful not to vary from the ancient Practice or to make a new Precedent, because of the Consequences. It must be agreed in this Case, that the old Pannel upon which the Prisoner took his Challenges, and of which Nine were sworn, is Parcel of the Record. Now, my Lord, to add a new Pannel, upon which Twelve more shall be sworn, and all this appear upon Record, and the Prisoner tried upon the last Pannel, will not this be Error? I offer this before the Jury be called and sworn, because we desire to be fairly tried; and we design to rest upon the Fact in this Case. If it should appear, That he is tried upon a Pannel that is unduly made and returned, that will be of Evil Consequence one way or other. And can this be duly made, if another appear upon Record before it? And can any Body say it is quash'd or abated? Or can it be so? My Lord, in *Stamford's Pleas of the Crown*, p. 155. it is said, *If any of*

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*the Pannel die after the Return, and before their Appearance, so that there are not enough left to make the Jury, yet the Pannel shall not be quash'd, nor is it abated, but it is Cause to grant a Tales.* And certainly, my Lord, it is a stronger Case, when by reason of Challenges, which the Law gives the Prisoner Liberty to make, there are not enough left, that there shall not be a new Pannel, but that a *Tales* shall be granted; for if a new Pannel might be made, it cannot appear who were challenged, or who were admitted. And if your Lordship pleases to consider the Intention of the Law in giving the Prisoner Power to challenge, is, that he may have an indifferent Jury; but that would be prevented by such a Practice as this; for when it has been discovered upon the old Pannel whom the Prisoner chose, and whom he challenged upon the new Pannel, the Persons challenged may be set first, and those that were chosen may be omitted, or so, postponed, that none of them whom he thought equal to try him, can serve upon the Jury. And truly, my Lord, if I am rightly informed, that is the Case upon this new Pannel, some of those that were admitted and sworn are left out, and most of them, I think, are put last in the Pannel whom he thought equal Men to try him, and all those whom he challenged peremptorily, are the first Men in the Pannel. This, my Lord, is the Case before you, and if this be admitted, the Use and End of Challenges, which are in benefit and favour of Life would be defeated. And for Authorities in this Case, besides the Reason and Ground of the Law, many cannot be expected, because it is a Fact that rarely happens. I find none of the ancient Practisers ever knew it, but I find that a *Tales* ought to be granted, so it is said in several Books, as in *Stamford*, 155, 156. when ever upon the Principal Pannel, all the Jury does not appear, or so many of them do not, that there are not enough left to make a Jury, which is our very Case; then in such Case the Pannel shall not be quash'd or abated; but a *Tales* granted, so is 14 H. 7. 7. there the Question was, whether there should be a greater Number returned upon the *Tales* than were in the Principal Pannel, and there the Difference was insisted upon, and agreed, That where it is between Party and Party, where Life is not concerned, it shall not, but where Life is concerned, and the Prisoner has Power to challenge 35 peremptorily, there the Judge may award as many upon the *Tales* as he pleases, that there may be enough to remain after the Challenges; so that if this old Pannel be not abated, and could not be quash'd, and a *Tales* might be granted to consist of any Number, I conceive the Prisoner cannot be tried upon this new Pannel, but it will be Erroneous: and I humbly submit to your Lordship's whether you will proceed upon it.

*Sir B. Shower.* If your Lordship pleases to spare me a Word of the same Side, with Submission, We think their ought to have been an *Habeas Corpora*, with a *Tales*, such as had been before Sworn, being to be part of the Jury now, and that is the proper Way to bring the Prisoner to his Trial in this Case; the King's Counsel cannot expect we should produce many Precedents, for I believe this is the Second of the Kind that

5 B ever



ever happened, at least, within Memory, That a Trial in Treason was put off *pro defectu Juratorum*, though I have a Precedent that I think is express in the Case; but we insist in the first Place, That a *Tales* does lie at Common-Law, in the Case of Life; and so the Book that Mr. Serjeant cited in *Stamford*, is express; and then we say, that the Answer which we expect, that we are now before Justices of Goal-Delivery, is not sufficient, because the Justices of Goal-Delivery, though they do not usually award Process by way of Writ, but before their coming, they command the Sheriff to have his County ready there, and so in Fact, it is a Parol Precept; yet when it is returned, then it is entered upon Record, either *Præceptum est Vice Comiti quod venire faceret*; or, *Ideo veniat Jurata*; and the Jury are entered upon Record: So that take it to be before Justices of Goal-Delivery, yet the Sheriff having returned a Pannel, and that being upon the File, as appears before your Eyes, in Obedience to your Command, and that Copy of the Pannel being delivered to us two Days before *Saturday* last, we humbly submit it to your Lordship, whether by Force of the Common-Law, and of the late Act of Parliament, we ought not to be tried by that Pannel, we insist upon it, that the Act intends, and expressly designed, that not only the Prisoner should have a Copy of the Pannel that the Sheriff returned at any time after, but that he should be tried by the Pannel that we had a Copy of at first; for it is not said a Copy, *toties quoties* the Court shall think fit to award a Precept for a new Pannel, but the Words of the Act are a Copy of the Jury duly returned by the Sheriff; now this we had, and your Lordship knows it is not a returned Pannel till it be in Court, and then it becomes part of the Record: My Lord, I do agree, the Justices in some Cases have quash'd and set aside Pannels and Juries, and ordered new ones, and I confess there was an extraordinary Case in the Time of King *Charles* the Second, which was upon the Indictment against *Whitebread*, where after the Jury Charged, and Evidence given, the Jury was discharged, and a new Pannel made the next Sessions, upon which Mr. *Whitebread* was Tried and Convicted; how just or regular that was, I will not insist upon now, but I am sure there were great Complaints of that Practice, and few Precedents can be shewn of the like: But besides, the Parties themselves waved it there, no Objection being taken against it; but we insist upon it in this Case, that this being upon Record, is part of the Record, and so appears to the Court: If the Record indeed were to be made up upon a Writ of Error, perhaps it would be no Error, because it may be they would leave it out; but here it appears there was a Pannel of Record before you, and this must either be quash'd, or altered, or continued on by Process; you have Power to quash it, if it be unduly returned by the Sheriff. If there be any evil Practices for procuring the Pannel, either by the Prosecutor or the Prisoner; if there be no Freeholders return'd, or the same happen in any other respect not to be legally done according to the Command or Precept of the Court; but because there is a Default of Appearance of Jurors, no Pannel was ever quash'd upon that Account. Then say we, if it be not quash'd, this Pannel must continue; for, What shall become of it?

Why should it not continue? It is not within the Act of Parliament that gives the Justices Power to make a new Pannel, as in the Case of a Grand Jury when they are Guilty of Concealments, or refuse to find Bills upon great Evidence, but we have no such Case before you, nor do I know any such Rule as can reach this; so that we take it, there is no Difference between this Case, as before Justices of Goal-Delivery, and other Justices; that Process does lie against the Jury that does not appear even in Treason and Felony, there is no Dispute, and it is very properly so, if it be before Commissioners of Oyer and Terminer; first a *Venire facias*, and then upon Default, a *Habeas Corpora*, that is the proper Way; then take it before Justices of Goal-Delivery, there it is entered upon Record, *Præceptum est Vice Comiti*, &c. and here is a Pannel returned by virtue of this Precept, and some of the Jury do not appear, and so there are not enough to Try the Prisoner after a great many Sworn and Challenged, and this entered upon Record. What shall become of that Pannel, it cannot be quash'd nor abated? My Lord, there is a Case that does warrant that Opinion of a *Tales* in a Case of Felony; and if there may be a *Tales*, then there may be a *Habeas Corpora*, and there are Directions how the Jurors shall be Sworn again, upon their appearance on the *Habeas Corpora*, and that is *Wharton's Case* in *Yelverton* 23.

*Mr. J. Powell, jun.* Do not dispute that, it is plain, that a *Tales* does lie in Felony, upon a Commission of Oyer and Terminer; but can you shew me, Sir *Bartholomew*, any where, that upon a Commission of Goal-Delivery a *Tales* does lie?

*Sir B. Shower.* Sir, I can only shew the Reason of the Law, and I cannot find that does contradict what we now contend for.

*Mr. J. Powell.* I tell you, Sir *Bartholomew*, there is no *Tales* but with a *Habeas Corpora* to bring the in first Jurors, and that cannot be upon a parol Precept on a Commission of Oyer and Terminer, there goes a *Venire facias*, which is a Writ upon which the *Habeas Corpora* may be grounded, but there is no *Venire facias* upon a Commission of Goal-Delivery.

*Sir B. Shower.* Why should there not be a Precept in nature of an *Habeas Corpora* for a Jury return'd, upon a Precept as well as on a Writ?

*Mr. J. Powell.* No, it never was done; the Commission of Goal-Delivery is a general Commission that does Authorize the Sheriff to impanel, and have a Jury ready at the Day appointed, for the Delivery of the Goal, to Try the Prisoners; it doth import in it self a general Precept for that Purpose, before Issue joined, which the Sheriff cannot do in the Case of a Commission of Oyer and Terminer, but must have a Writ of *Venire facias*, after Issue joined.

[*Sir John Hawles.*] *Mr. Sol. Gen.* In all Cases that they cite, there is a Writ of *Venire facias*, upon which the After-process, by Writ, may be grounded; but here is no Foundation for any future Process by Writ, because it is only by Parol-Precept.

*Mr. Att. Gen.* Sure these Gentlemen don't think what they say; the Pannel is not Part of the Record, and there is no Record of it; nothing but the Clerk's Entry in a Paper, or Note, for his own *Memorandum*.

*Mr. J.*



*Mr. J. Rokeby.* Brother *Darnal*, have you any Book that says, Justices of Goal-Delivery must award a *Tales* upon Default of the Jurors.

*Mr. Serj. Darnal.* No, my Lord, I cannot say so.

*L. C. J. Treby.* Suppose all the Jury had been challeng'd, or dy'd.

*Mr. J. Powell.* There could be no quashing of it, but it would fall of it self, for want of a Jury.

*Mr. J. Rokeby.* If, according to your Doctrine, we must keep to the first Pannel, the Consequence wou'd be, there would be no Trial at all.

*Sir B. Shower.* *Stamford* makes no Difference that I can see.

*Mr. Att. Gen.* But these Gentlemen have been told the Difference upon which this Matter is grounded; a *Tales* cannot be without a *Habeas Corpora*, and a *Habeas Corpora* cannot be without a *Venire facias*; but a Commission of Goal-Delivery cannot award a *Venire facias*, because that is not to be awarded till Issue joined.

*Mr. B. Powis.* The Return of this Pannel before Justices of Goal-Delivery, is an Act of the Sheriff, by virtue of the Commission; and nothing appears of Record till the Jury are Sworn.

*Mr. J. Rokeby.* They object that it is upon Record.

*L. C. J. Treby.* By the Record, they mean the Clerk's Note.

*Mr. Att. Gen.* If you please to look upon the Indictment, there is no Entry at all, and that is all the Record before you.

*Mr. J. Powell.* Does it appear upon Record, that Nine were Sworn?

*Mr. Baker.* No, there is nothing upon the Record.

*Cl. of Arr.* It does not appear till the Record is made up, and nothing is entered till Twelve are Sworn.

*Mr. Serj. Darnal.* There will be a great Inconvenience, if a Pannel may be changed at any Time.

*Mr. J. Powell.* This is a Case that never happened before, and may be never may again.

*Sir B. Shower.* The Law will hold the same, in case it does appear upon Record, as well as where it does not: But we say, a Pannel return'd in Court is a Record.

*Mr. J. Powell.* No, it will not; because, when a Jury does appear, and the Twelve are Sworn, then it becomes Parcel of the Record; and therefore *Whitebread's* Case \* was quite another Case, and was indeed held to be an extraordinary Case, but that comes not up to us, for there a full Jury was Sworn, and Evidence given.

*Mr. Serj. Darnal.* It may be the same Jury will not be returned.

*Mr. J. Powell.* But if you have a Copy of the Jury, you are at no Mischief.

*Mr. Serj. Darnal.* Some that were in the former Pannel are quite left out.

*Mr. Sher. Buck.* There are none left out, but what were not Freeholders, that I know of.

*Mr. B. Powis.* He says the Fact is not true, as you have alledged it.

*Mr. Sher. Buck.* And Mr. Serjeant *Darnal* has been pleas'd to reflect upon us, as if we had pack'd this Jury, by altering the Places of the

Names, which, my Lord, we do utterly deny, and we only left out those that were not Freeholders.

*Mr. B. Powis.* The Sheriff says, he has not postponed any of them, and only left out those that were not Freeholders.

*Mr. Serj. Darnal.* If the Law were as plain with us as the Fact in that Case, we should have a very good Case of it.

*Mr. Sher. Buckingham.* Mr. Serjeant, I have both the Pannels here; they may be compared.

*Mr. Serj. Darnal.* I said no harm, Mr. Sheriff, nor meant any Reflection upon you.

*Mr. Sher. Buckingham.* Mr. Serjeant was pleas'd to say, the excepted Men were put in the Front, and those that were Sworn were put last.

*L. C. J. Treby.* There is nothing at all in the Objection.

*Mr. J. Powell.* Really, because it was opened as a Reflection, it will be proper for the Sheriff to clear it.

*Mr. Sher. Buckingham.* My Lord, the Answer I give to it, is, That particularly one that was Sworn last Time, is now at the very Beginning of the Pannel; and in general, they are mix'd promiscuously, without any Design or Study in the least. He says we have left out those that served before: I solemnly protest, I know not one Man returned upon the last Pannel that is left out, unless it appeared that he is no Freeholder; and we had no Reason to put in them, that we knew could not serve.

*Mr. Serj. Darnal.* That can't appear to us, that they are not Freeholders.

*Mr. J. Rokeby.* But it appears to him, and therefore he did well to leave them out.

*Mr. Sher. Buckingham.* What I say, I am ready to give upon my Oath.

*Mr. Serj. Darnal.* I say there is one *Henry Beadle* left out, and he was one that was Sworn.

*Mr. Sher. Buckingham.* I will not say for a particular Man; I protest that I did not know he was left out; if it be so, it was by Mistake; for I know Mr. *Beadle* very well, and I take him to be an honest Man, and very well affected to the Government as any Man.

*Mr. Serj. Darnal.* We desired to be tried by Men that are honest and well-affected to the Government.

*Mr. Sher. Buckingham.* There you have of them, Sir.

*Mr. Serj. Darnal.* Those that were Sworn are put last of all, and there is not above one of them that is within possibility of coming on again.

*Mr. Sher. Buckingham.* It will appear by Mr. *Cook's* Challenges, and the other Pannel, that they stood late before; and *Thomas Clark*, who was Sworn the last Time, stands tenth Man upon the Pannel.

*Mr. Serj. Darnal.* He was Sworn after we had gone through the Pannel, and took all our Challenges, not appearing at first.

*Mr. Sher. Buckingham.* I tell you you they stand for the most part as they did, for ought I know.

*Mr. Serj. Darnal.* There is but one in Threescore and Ten, that can be Sworn now, of them that were Sworn before; and there were Nine of them then Sworn.



*Mr. Att. Gen.* That is a Mistake. Indeed there are a great many added to the Pannel, because there was a Defect the last Time, and therefore now they may perhaps stand later.

*Mr. Serj Darnal.* I do not speak to reflect upon the Sheriffs: I go according to my Instructions.

*Mr. J. Powell.* If it had been so, it had been well enough, for you must be contented, the Court must take it as the Sheriff returns it, and you have a Copy of it.

*Mr. Att. Gen.* Here are four of them that were Sworn before, that stood above sixty off in the old Pannel.

*Mr. Sber. Buckingham.* The first Man that was Sworn, Mr. Sberbrook, stands within the first Twelve now, as well as before.

*Mr. J. Powell.* If they had been all new, there had been nothing in that.

*Mr. J. Rokeby.* Truly, I can't see but that the Sheriff hath done like an equal, just, fair, and honest Officer.

*Mr. Att. Gen.* They may challenge as they will.

*L. C. J. Treby.* You are to consider, that this happens because you run out as far as your utmost Number, that Time you challenged Thirty-five peremptorily, and divers others for Cause, so as not to leave enough for a Jury; and from that alone arose a Necessity of increasing the Number of the Pannel.

*Mr. Serj. Darnal.* It was our Client that challenged them, we do not advise him whom to challenge.

*Mr. J. Rokeby,* But you must take the Consequence of it, which causes this Addition to the Pannel

*L. C. J. Treby.* What do you complain of? they that are returned, are put in the same Order as they were before; they that were Sworn, were (for the most part) late in the Pannel then, and so they are now. I do not find any Thing done to the Prejudice of the Prisoner.

*Mr. Serj. Darnal.* If the Christian Names had not been mistaken, there had been perhaps enough to have been Sworn.

*L. C. J. Treby.* That's a good Argument for a new Pannel, because the Christian Names were mistaken before.

*Mr. J. Powell.* It was by Defect of Jurors, and therefore there was an absolute necessity of a new Pannel.

*L. C. J. Treby.* I am of the same Opinion.

*Wharton's Case* is well known: It was much cited as to another Point in *Bishel's Case*. It was a Trial at the *King's-Bench Bar* at *Westminster* by a Jury of *Kent*, upon an Indictment of a Murder.

And I think you say the Case of *H. 7.* was between Party and Party in Appeal. And I believe *Stamford's Discourse*, in the Place cited, relates chiefly to Appeals.

I shall not deny that a *Tales* may possibly be upon an Indictment before Justices of *Oyer and Terminer*; though 'tis not usual, nor do you shew, or our experienced Clerks know any such Precedent. I agree, that in the mentioned Cases a *Tales* was proper; for in both Cases (*viz.* of *Appeal and Indictment removed into the King's-Bench*) the Process for the Jury was as it ought to be, by Writs of *Venire facias*, &c. upon which a full Jury not appearing, there must be a *Tales*. But in

proceeding to Trial before Justices of *Oyer and Terminer* on such Indictment as is here, though I will not say but they may proceed by Writ of *Venire facias*, yet I do say, that the more known Course is by Precept, in nature of a *Venire facias*: And the Usage is, that after (and never before) the Prisoner hath pleaded not Guilty, there goes a Precept to the Sheriff, under the Seals of the said Justices of *Oyer and Terminer*, returnable at such Day as they shall adjourn to, for returning a Jury to Try it, (as was done lately, upon Advice, in the Case of *Rookwood*, &c.) and upon the Return of that, if, after Challenges, there are not enough left to make a Jury, whether those Justices shall issue a Precept in nature of a *Habeas Corpora*, or *Destringas* with a *Tales*, or another Precept in the same Form as before, and without taking notice of the former, is a Question *not* in Judgment before us. For, we are about proceeding to a Trial on an Indictment in this Court of Goal-Delivery, (which is the Court wherein generally all capital Crimes are tried, as well at this Place as at the Assizes) and, I think, here cannot be a *Tales*; I am sure it is not necessary. For, *First*, Here is never any Writ of *Venire facias*, &c. *Secondly*, Nor ever a Precept for returning a Jury to Try a particular Issue: But this Court takes the Pannels of Juries returned by the Sheriff, without any particular Precept to him.

The Course of proceeding by virtue of a Commission of Goal-Delivery, which is the Law in this Case, is this, *viz.* There is antecedent to the Coming of the Justices, a general Commandment or Precept made, in Writing, to the Sheriff by the said Justices, to return Juries against their Coming, for the Trying of all and singular Prisoners in their Goal, whether they have pleaded before, or shall after. And for that Purpose it requires the Sheriff to summon, out of all Parts of his Country whence the Prisoners come, a great Number of Freeholders not a-kin to the Prisoners, to be at the Time and Place appointed for holding the Court. The Sheriff, by virtue of this general previous Precept, summoneth many for Jurors, and prepares diverse several Pannels of their Names, either at first, or afterwards, as appears necessary, and returneth and delivereth in one or more of these Pannels, from Time to Time, as the Court does need, and call for any: This, we know, in Fact, is frequently done where the Sessions of Goal-Delivery lasts several Days, and there is occasion. Though, in Supposition of Law, all these Pannels are returned, and the Trials thereupon had the first Day of the Sessions; and, in Law, it is intended to be but that one Day only. The Return of this Precept it thus, *viz.* *Executio istius Præcepti patet in quibusdam Panellis huic præcepto annexis*, and the Pannels are annexed, and there are often filed here divers Pannels upon the same general Precept, though sometimes but One. These Pannels are thus delivered into Court, and a Jury taken out of them as there is occasion, only upon a *Parol Award*, that is, barely the Court's calling for the same, without Writ or Precept in Writing, or giving any Day for the Doing it. For this Proceeding is *immediate*, for the speedy Delivery of Prisoners; and the Entry, after setting forth that the Prisoner being arraigned pleads not Guilty, is, *Ideo immediate veniat inde Jurata, or fiat inde Jurata*:



*Jurata*: And this Court's being instituted for the speedy Delivery of Prisoners, and Warnings being given long before, of their Coming, are the Causes why it has been always held without doubt, that Justices of Goal-Delivery might inquire and try the same Day.

If it fall out, that by reason of Defaults, Deaths, or Challenges, there cannot be a full Jury had out of a Pannel, (as here there wanted three) which is an Accident that the Court cannot know, till they have gone through the Pannel; I think in this Case, that Pannel goes for nothing, is utterly lost and void, and to be cast away or cancelled: For it does not answer the Award of the Court, which was to have a Jury to Try the Prisoner presently. It is meant an effectual Pannel that should afford a full Jury of Twelve unexceptionable Men; and every Pannel that comes short in this, is to be laid aside as a void Thing; and then the Court takes and makes use of another immediately, which may not be deficient, whereby the Award is observed, and the present Service dispatched.

*Objection*. It is objected, That the old Pannel is Parcel of the Record in Court, and, upon that, Nine were Sworn, and their Names are all enter'd upon Record; and now to add a new Pannel, upon which Twelve shall be Sworn and Try the Prisoner; all this appearing upon Record, it will be Error.

*Answer*. This Objection stands upon two Mistakes, both arising from not observing the Difference between Precepts and Pannels, in a Court of Goal-Delivery and *Venire facias*, or Precepts and Pannels in other Courts.

1. It supposes that here will be two Pannels, which will appear to relate to the Trial of this Prisoner, Mr. Cook.

2. It supposes that both these will become Records, or Parcel of the Record in Court.

If either of these Suppositions prove to be a Mistake, it will destroy the Objection. I think both are Mistakes.

1. Here is not, nor will be, nay, there ought not to be any Pannel purporting to be returned for the Trying of Mr. Cook, or any particular Prisoner or Prisoners. For the Precept in this Case is (not like a *Venire facias*, which always respects a particular Issue between Parties therein named, but) general, requiring the Sheriff to return Jurors enough to Try all the Prisoners, not naming any. And the Return, which is the Answer to it by a Pannel or Pannels, is as General; the Title of every Pannel being *Nomina Jurator' ad Triandum pro Domino Rege*, and no more; or *Nomina Juratorum ad Triandum inter Dom. Regem & Prisonar. ad Barram*, without naming any of the Prisoners, and it were absurd if it should be otherwise: For the Precept goes to the Sheriff before the Sessions, and his Return is supposed to be made at the Beginning of the Sessions, when it is not known who of the Prisoners will be indicted; or, if indicted, who will plead not Guilty, or Guilty, or a Pardon, or other Plea.

When, for the Trial of a particular Prisoner (or divers Prisoners that are thought fit to be put upon Trial by the same Jury) a Jury is about to be taken out of any Pannel, the Clerk, as he

goes along, may take a Note in Paper of the Name of every one that is sworn; or he may (and usually doth) write *Jur.* on the said Pannel, against the Name of every one Sworn: But this Note or Mark is no Part of the Record; it is not *ex Institutione Legis*, it is but a voluntary *Memorandum*, for the Help of his Memory. If he could safely trust to the Strength of his Memory, he need not write at all on this Occasion; I mean, not till a full Jury is Sworn, who try the Prisoner. But then, indeed, the Clerk must (from his Notes or Memory) write the Name of all the Twelve, entering them on the Record of the Indictment, in this manner, *viz.* just after the *Ideo immediate veniat inde Jurata coram prefatis Justic. &c.* adding, *& Juratores Juratae illius, &c. Scil. A. B. &c. Dicunt, &c.* And it is by this only, that the Names of those that are Sworn, come to be of Record; and it is this Entry upon the Body of the Indictment alone, that is the Record, that shews who were Jurors Sworn, to Try this, or that, or other Prisoner, or Prisoners.

So that if the old Pannel were filed, and were a Record, as the Prisoner's Counsel would suppose, yet it would not thereby be made appear, that the said Pannel was returned, or used for, or in order to the Trial of this Prisoner.

2. The old Pannel is not filed among the Records of the Court, nor ought to be. When such a Pannel does not produce a Jury, the Clerks may and use to throw it by, as a useless Thing. But, however they use it, we cannot allow it to be a Record. It was received *de bene esse*; it is abortive and comes to nothing. And it is not every Thing that passeth in Court in order to a Record, that comes to be so. A frivolous Plea that is rejected, is not recorded. A Presentment or Bill of Indictment, before it is found, is not a Record: And if an *Ignoramus* be returned upon a Bill of Indictment, it never can be a Record; and thereupon, the Clerks do sometimes throw it away, though sometimes they keep it and put it on the File, only taking care to cross it; but if they do forget to cross it, yet it is not a Record.

By all this it is apparent how great the Difference is between a Precept and Pannels in this Court, and a *Venire facias* and a Pannel returned thereupon, which is ever issued after Issue joined, and doth always mention the particular Parties and Matter it relates to, and is a Record, and a Ground for an *Habeas Corpora* with a *Tales*, to be returnable at a certain future Day.

But, in this Case, in this Court, it is quite otherwise.

Sir B. Shower. Then, my Lord, since there is a new Pannel, we hope we stand in the same Condition upon the Act of Parliament, to take Exceptions to the Indictment before this Jury Sworn, as we did before the other Jury Sworn, since all that is quite set aside.

L. C. J. Treby. Yes truly, I think that may be.

Mr. Att. Gen. But these Gentlemen would have done well to have given notice of their Exceptions.

Sir B. Shower. My Lord, I shall not stand upon an Exception which I think I might take to the Word *Turmas* in the Indictment, which whether it be Troops of Men, or Horses, or what it is does not appear; but, I think, we have an Exception



ception to the chief Overt-Act laid in the Indictment, and that we presume, if my Brief be right, will be sufficient to set aside this Indictment: That Mr. Cook did agree with other Traitors to send Mr. Charnock into France to the said late King James, and King James is never mentioned before in all the Indictment, that is one Exception that we have, that there is no late King James mentioned in the Indictment before this, if my Copy be right, if it be otherwise, I suppose they will find it: It is laid, That Mr. Cook did agree to send Charnock as a Messenger into France, *eidem nuper Regi Jacobo*, and no *Rex Jacobus* is mentioned before. Then there is another Exception, and that's this: They come and say, That whereas there was a War with France, which is only in the Indictment by way of Recital or Rehearsal of an History, *Quod cum per magnum Tempus fuit & modo sit*, &c. Mr. Cook the Premises knowing, did compass and imagine the King's Death, and did adhere to the said King's Enemies such a Day. Now, my Lord, I do think that this can never be maintain'd, for that *Cum quoddam Bellum*, &c. being an historical Narrative, is not positive enough: For adhering to the King's Enemies, being one of the Treasons laid in the Charge, there ought to be a War at the Time of the Adhesion, and of Necessity then that ought to be presented by the Jury; for though your Lordships can judicially take notice of War or Peace, yet you cannot take notice of it at such a particular Time, and the Reason is from the Notion that is in my Lord Coke in his third *Institutes*, cap. *Treason*, That Adhesions to Rebels is not Adhesion to the King's Enemies, for a Rebel is not said to be an Enemy; but it must be adhering to such an Enemy, as between whom and the King there was War at that Time, and consequently it ought to be more positively averred in the Indictment, than it here is; but as to the Overt-Act of Mr. Cook's consulting and agreeing to send Charnock over to the said late King James, to give him notice of what was agreed upon between them, when King James is not named before, that can never be got over, with Submission.

Mr. Baker. It is a Mistake of your Copy, Sir Bartholomew Shower.

Mr. Att. Gen. I have looked into the Record, and it is *Jacobo Secundo nuper Regi*, not *Disto*.

Sir B. Shower. Then, with Submission, my Lord, they cannot try us now, for we ought to have a true Copy of the Indictment.

Mr. Baker. Upon demand. But you never demanded it.

Sir B. Shower. Yes, it was demanded.

Mr. Baker. Who demanded it?

Sir B. Shower. Our Solicitor Burleigh.

Mr. Baker. No, he did not; I gave it him officiously.

Mr. Att. Gen. With Submission, my Lord, it is no Objection at all, that their Copy is wrong. That should have been before the Prisoner had pleaded; for the Words of the Act are, That he shall have it so many Days before, to enable him to plead, and he cannot be put to plead unless he have a Copy of the Indictment so long before: And at Rookwood's Trial it was said by the Court it could not be alledged after Plea pleaded.

Mr. Burleigh. The Copy was given to me publicly in Court.

Mr. Sol. Gen. Why did not your Solicitor compare it with the Indictment?

Mr. Att. Gen. They might have compared it by the Clerk's reading it to them; but they will not admit the Prisoner's Solicitor to see the Original, because the Act expressly says they shall not have a Copy of the Witnesses Names.

Sir B. Shower. The Officer is to deliver a true Copy of the Indictment.

Mr. Att. Gen. No; the Party is to demand it by himself or his Agent, and then he is to have it; and if he be denied, he ought to apply himself to the Court, who will order the Delivery of it; but we stand upon it that they cannot take this Exception now after they have pleaded, for the Intent of the Copy is to enable him to plead.

L. C. J. Treby. The Copy, by the Act of Parliament, is to be delivered to the Prisoner, his Attorney, Agent, or Solicitor, if they require the same, and here it seems there was no requiring of it, but it was voluntarily given; and now you have lapsed your Time of making the Exception of wanting a Copy, by having pleaded to the Indictment, whereby you have in effect admitted and declared, either that you had a true Copy of it, or that you did not think fit to require one; for the Use of the Copy is to better enable the Prisoner to plead. But when you did plead, you took upon yourself to be well able to plead without the Help of a Copy, which you might have had upon the asking for.

Sir B. Shower. Then, my Lord, there is another Thing in the Indictment, That in this Overt-Act there is a new Time, and a new Place, and a new Verb, and a new Fact alledged, and no nominative Case: It is alledged, That *Peter Cook*, at first, with others, did so and so: and then the first of July to bring the Treasons aforesaid to effect, there *& alibi*, &c. (which is very loose, for I know not whence the *Venue* must come) did traiterously with Charnock, Friend, &c. consult to procure *Diversas Turmas & Legiones*, &c. to join with them in England, and then it comes *& ulterius* such a Day, Year, and Place, did traiterously agree so and so, and not say who: Now this is neither by express Words, nor Rule of Grammar to be referred to the Prisoner at the Bar, it does not say *ipse idem Petrus Cook*; now, my Lord, that the King's Counsel thought it necessary in every Overt-Act is plain, because those Words are put in every other Clause of the Indictment, in those Clauses that go before, and those Clauses that come after; then if they will take it, that this Clause must refer to the next Antecedent, that will not do, for the next precedent nominative Case is either *Friend* or *Charnock*: So that this is without a nominative Case, and the Precedents in my Lord Coke's *Entries* 361, and all the other Books have the nominative Case repeated, where there is a new Time, and a new Place, and a new Fact alledged: Now it might be true, that the Prisoner at the Bar might be present, and this same Treason might be discoursed of and agitated, and there might be a Consult about this Business, and yet it is not necessarily implied that he must consent and agree to send Charnock into France, upon which the great Stress of the Indictment lies: Therefore we say, these Words having no nominative Case, the Indictment cannot hold.



*Mr. Att. Gen.* My Lord, as to this Objection it will receive a very plain Answer. Our Indictment begins and sets forth, that *Peter Cook*, the Prisoner at the Bar, did imagine and compass the King's Death, and did adhere to the King's Enemies, and these are the Treasons: And then it sets forth the Overt-Act, that in Execution of the traitorous Compassings, Imaginations, and Adhesions aforesaid, *Ipse idem Petrus Cook*, together with *Sir William Perkins*, *Mr. Charnock*, *Sir John Friend* and others, did propose and consult to procure from the *French King*, Forces to invade this Land; & *ulterius*, he and they did agree to send *Charnock* to the late King *James*.

*Mr. J. Rokeby.* There's the first naming of *James* the Second, late King of *England*, and there is no *eidem Jacobo* I promise you.

*L. C. J. Treby.* Well, that Mistake is over. Pray go on, Mr. Attorney General.

*Mr. Att. Gen.* My Lord, as to this Objection of *Sir Bartholomew Shower*, he would have *ipse idem Petrus* repeated over again; and he says that we lay a distinct Overt-Act with a different Time and Place: Now that is a Mistake too; it is not a different Time and Place, but the same Time and Place: And it mentions that *cum R. Charnock, J. Friend, &c. & cum aliis Proditoribus conveniebat, consultabat, &c.* which he says may refer to *Sir John Friend* or *Charnock*: But if you look into the Frame of the Sentence, that can never be.

*Mr. J. Rokeby.* *Petrus Cook* is the nominative Case that governs all the Verbs.

*Mr. Att. Gen.* And there is no other nominative Case in all the Indictment, but *Petrus Cook*, except it be in a Parenthesis, and that saves the Rule of Grammar, if there were any Thing in it, that it must refer to the last Antecedent.

*Sir B. Shower.* When it comes to the Clause that he did procure Horse and Arms, there the nominative Case is repeated.

*L. C. J. Treby.* It would not have made it worse, if they had made it so here; but the Question is, Whether it be necessary?

*Sir B. Shower.* Indictments ought to be precise-ly certain; but this we say is not so.

*Mr. Att. Gen.* But here is as much Certainty as to the Person, as can be, that he did consult with such and such about such Things; and further, the same Day did agree with the same Traitors to do so and so.

*Mr. J. Powell.* Indictments, it is true, ought to be plain and clear; but I do not see but here is as much Certainty as can be, that he did such a Day consult, and further the same Day did agree with the same Persons.

*Sir B. Shower.* Who did agree, my Lord?

*Mr. J. Powell.* He that did consult with them before, and that is *Peter Cook*.

*Mr. Att. Gen.* You'd have had us to have put it to every Verb, I believe.

*Sir B. Shower.* In Indictments no Presumption ought to be used, but the Facts ought to be directly and positively alledged.

*Mr. J. Powell.* It's true, there should be no Presumption, and there is none here, for certainly this is a plain Assertion of Fact.

*L. C. J. Treby.* Here are two Things that are set forth: *First*, That *Peter Cook* did meet with *Sir John Friend*, *Sir William Perkins*, and others, and then and there did consult with them, and

consent to procure an Invasion, and join an Insurrection thereto. And, *Secondly*, Further with the said Traitors did agree to send *Charnock* into *France*. Now, what is the nominative Case to this Agreement? Is it *Sir John Friend*, and *Sir William Perkins*? That's impossible: For they could not be said properly to meet and consult with themselves, every one of them with his own self and the rest. And then the Number, if it had refer'd to them, should have been plural; but here it is singular, [*agrevit*] and the Sense is no more than this; That then and there *Mr. Cook* did meet with such Persons, and did consult with them about such and such Matters, and further, did agree with them to do thus.

*Sir B. Shower.* The Meaning is not to be forced and strained by Inference or Presumption, but it ought to be express and plain.

*L. C. J. Treby.* Nay, you cannot express it better; you may make a Tautology of it if you will.

*Sir B. Shower.* The Paragraph is long, my Lord, and therefore requires the more Care to have those Repetitions that are necessary.

*L. C. J. Treby.* Your Objection to this Paragraph is, that it is too long; but repeating the same nominative Case to every Verb, would make it much longer.

*Sir B. Shower.* It cannot be understood to mean *Peter Cook* without Presumption, which ought not to be in an Indictment.

*Mr. Att. Gen.* And as to *Sir Bartholomew Shower's* first Objection, his Copy is right too, and he mistook the Place.

*Sir B. Shower.* You shou'd have given me that for an Answer.

*Mr. Att. Gen.* Nay, you should have taken more Care, and not have made the Objection.

*L. C. J. Treby.* Truly, I think it is hardly possible to have made this better if it had been otherwise than it is.

*Mr. Scrj. Darnel.* My Lord, we think we have a good Fact of it, which we rely upon, and therefore do not so much insist upon these Exceptions, tho', in Duty to our Client, we mention that which we think is necessary, and we submit to your Lordship.

*Cl. of Arr.* Set *Peter Cook* to the Bar. [*Which was done.*] You, the Prisoner at the Bar, these good Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you would challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

*Crier.* Call *Sir John Sweetapple*.

*Sir John Sweetapple.* Here.

*Cook.* My Lord Chief Justice, if your Lordship please, I am advised —

*L. C. J. Treby.* Pray, Sir, speak out, that we may hear what you say: And let the Crier make Proclamation for Silence. [*Which was done.*]

*Cook.* My Lord, before the Jury is called, I am advised, that if any of the Jury have said already that I am guilty, or they will find me guilty, or I shall suffer, or be hanged, or the like, they are not fit or proper Men to be of the Jury.

*L. C. J. Treby.* You say right, Sir, it is a good Cause of Challenge.

*Mr.*