

Mr. *Maccaffee*. Yes.

Mr. *Darnell*. Were they up Stairs?

Mr. *Maccaffee*. No, my Lord.

Lord Mayor. At what time a Night did they come in?

Mr. *Maccaffee*. Betwixt Nine and Ten a Clock, my Lord.

L. C. J. What made you take Notice of the Day of the Month, and Hour of the Day?

Mr. *Maccaffee*. My Lord, I heard that Doctor *Clenche* was murder'd, and that Mr. *Harrison* was taxed with it? and that made me take Notice of the Day.

L. C. J. Call Mrs. *Maccaffee*, *Who stood up*.

L. C. J. Mistress, what time did Mr. *Harrison* come to your House on the 4th of *January* last at Night?

Mrs. *Maccaffee*. My Lord, it was near Nine a Clock as any thing can be, when he came in first.

L. C. J. How long did he stay there?

Mrs. *Maccaffee*. I cannot tell how long he stay'd, but there were two Accidents happen'd; one was, our playing at Cards; and the other was, that there was a Pick-Pocket carried by to be pump'd at *Lincolns-Inn*; it was from Nine to Eleven before he went away, and there were Mrs. *White*, Mr. *Baker*, and one Mrs. *Fairelesse*.

L. C. J. Did any one come with the Prisoner to your House? in what Humour did he seem to be?

Mrs. *Maccaffee*. No, my Lord, there was no one came with him, and he never stirr'd out, neither did he seem to be disorder'd; he was neither too merry, nor too melancholy.

L. C. J. Where did he say he had been?

Mrs. *Maccaffee*. He said that he had been in the City.

L. C. J. Did he use to frequent your House?

Mrs. *Maccaffee*. Formerly he did; but I had not seen him in half a Year before.

Mr. *Darnell*. How many were there, do you say?

Mrs. *Maccaffee*. There was one Mrs. *Fairelesse*, and one Mrs. *White*, and myself, and my Husband was upon the Bed, and Mr. *White* came for his Wife about Ten a Clock, to come home.

Mr. *Darnell*. Do you remember that Mr. *Baker* was there?

Mrs. *Maccaffee*. Yes, he was there.

L. C. J. Pray, Mistress, did Mr. *Harrison* come in, and find them at Cards?

Mrs. *Maccaffee*. No, we went to Cards afterwards.

L. C. J. Where was your Husband?

Mr. *Maccaffee*. He was upon the Bed in the Kitchen.

L. C. J. Call Mr. *Baker*. [*Who stood up.*]

Mr. *Baker*. This Gentleman, the Prisoner, is a Stranger to me; but here is a Letter that he sent me two or three Days afterwards. I came into Mrs. *Maccaffee*'s House about half an Hour after Nine a Clock, with two Women more: Mrs. *Maccaffee* owed me Money, and I had been in *Lincolns-Inn*, for I do some Work there for Sir *Thomas Cook*, and the Women ask'd me to play at Cards; and I said, that I did not care to play, because I had been abroad, and could not get any Money, which made me out of Humour. My Lord, I never saw the Man in my Life before.

L. C. J. Who were they that play'd at Cards?

Mr. *Baker*. It was one Mrs. *Fairelesse*, the Woman of the House, and Mr. *Harrison*, and myself.

L. C. J. Who were together?

Mr. *Baker*. Mrs. *Fairelesse* and I, and the Woman of the House and Mr. *Harrison* the Prisoner, and we play'd for Penny a Corner. I cannot say any more to it, my Lord.

L. C. J. How long did he stay?

Mr. *Baker*. I left him after Ten a Clock, and, as I hope for Mercy, I never saw him but once before, and I had not known him again, but by a particular Token.

Mr. *Harrison*. Were there not some Accidents happen'd at that Time?

Mr. *Baker*. Yes, there came a Vintner's Boy to ask for a Woman, one Mrs. *Frances*, and he was in great Haste, and a Pick-pocket was carried up the Lane to be Pump'd at *Lincolns-Inn* Pump.

Mr. *Harrison*. Call Mrs. *Fairelesse*, call Mrs. *Whipple*. [*neither of which appeared.*]

Call Mr. *Sutton*. [*Who appeared.*]

L. C. J. Where do you live, and what is your Name?

Mr. *Sutton*. My Lord, my Name is *Sutton*, and I live in *Stone-cutter-street*.

Mr. *Harrison*. Mr. *Sutton*, what time was it that I was coming by, when one Mr. *Russell* and you were drinking?

Mr. *Sutton*. My Lord, it was about Eleven a Clock at Night, at the *King's Head Tavern* at *Chancery-Lane* End.

Mr. *Harrison*. What had I on, a Cloak and a Muff?

Mr. *Sutton*. Yes, I think you had a Cloak on.

Mr. *Darnell*. What time was it? before or after Eleven a Clock?

Mr. *Sutton*. It was about a quarter before Eleven.

Lord Mayor. What Day of the Month was it?

Sutton. It was the fourth of *January*.

L. C. J. Where was he going? which way went he?

Mr. *Sutton*. He was going towards *Fleet-Bridge*, my Lord, and I called after him, but could not make him hear at first; but afterwards he came to us.

Mr. *Harrison*. Pray call Mr. *Russell*.

[*Who appeared.*]

Mr. *Russell*. I can't hear, my Lord, but if you please to permit Mr. *Sutton* to speak to me, I can hear his Voice better than any Man's.

L. C. J. Speak as loud as you can, Sir, and we will let you hear us; Mr. *Sutton* must not speak for you.

Mr. *Harrison*. Pray, Mr. *Russell*, what time of Night was that you saw me go by you, when you were drinking at the *King's Head Tavern*?

Mr. *Russell*. I can't tell, my Lord, I have not heard a Clock these three Years.

L. C. J. Where were you going at that time of Night?

Mr. *Russell*. I was going to *Wild-street*, to the *Chyrurgeon's-Arms*, to receive some Money.

L. C. J. How came Mr. *Sutton* to go with you?

Mr. *Russell*. He had been with me all that Day, and I desired him to go with me; and, my Lord, I did expect that the Money would have been brought to me, but it was not, so I went for it.

L. C. J. Well, and what then?

Mr. *Russell*. While we stay'd at the *King's-Head Tavern* Door to drink Wine, Mr. *Sutton* sent the Drawer to call Mr. *Harrison*.

L. C. J. What had you been doing before that time?

Mr. Russell. We had (I suppose) been drinking together.

L. C. J. Where had you been before you came to the King's Head Tavern?

Mr. Russell. We had been at the *Horseshoe Tavern* in *Chancery-lane*.

L. C. J. Did you request Mr. Sutton to go with you?

Russell. Yes, I did, my Lord.

L. C. J. You say your Business was to go to *Wild-street*, to receive some Money?

Mr. Russell. Yes, it was, my Lord, and I did receive it.

L. C. J. When was it that you met Mr. Harrison, the Prisoner?

Mr. Russell. My Lord, I can't positively say, but by Computation of the Night, I believe it was about Eleven a Clock.

L. C. J. Did you meet Mr. Harrison before you went to the *Horseshoe Tavern*, or after?

Mr. Russell. Afterwards, my Lord, I saw Mr. Harrison turn at the Corner of *Fleet-street*, towards *Fleet-Bridge*.

L. C. J. At the Time when Mr. Sutton and you went first out, did you agree of your going to the *Horseshoe Tavern*?

Mr. Russell. We went thither to send for the Gentleman out of *Wild-street*.

L. C. J. When you had been drinking all the Afternoon, how came you to stop your Coach at the King's Head?

Mr. Russell. We stopt there, whilst Mr. Sutton sent for some-body to come to him.

L. C. J. You said just now, That Mr. Sutton sent for Mr. Harrison.

Mr. Russell. No, my Lord, I do not remember that; but Mr. Sutton said, *Harry*, or *Harrison*; where art thou going, when he went by us.

Mr. Harrison. My Lord, this Man is a Stranger to me. Call *John Allen*, Drawer at the King's Head Tavern. [*Who appeared.*]

Mr. Harrison. *John Allen*, what time of Night was it that Mr. Sutton and Mr. Russell came to your House in a Coach?

J. Allen. I believe it was about Eleven a Clock.

L. C. J. How much Wine had they?

J. Allen. Two Half Pints of Canary.

L. C. J. What Night was it? what Day of the Month was it?

J. Allen. My Lord, I can't remember what Day of the Month, but it was that Night that Doctor *Clenche* was murder'd.

L. C. J. Did you see Mr. Harrison there?

J. Allen. I can't tell that, I never saw him, till I saw him at Prison.

Mr. Harrison. Did not you go to Mr. *Maccaffee's* House?

J. Allen. Yes, I did.

Mr. Harrison. Did not one strike you with a Muff?

J. Allen. Yes, but I can't remember who it was.

Lord Mayor. Look upon that Man, do you know him to be the Person?

J. Allen. No, my Lord, I do not know him to be the Person.

Mr. Darnell. Who sent you to *Crown-Court*?

J. Allen. Mr. Russell.

Mr. Darnell. For what?

J. Allen. For a Servant Maid, and he bid me tell her, that he had a Desire to speak with her.

Mr. Darnell. How long did you tarry at the House?

J. Allen. I did not stay at all.

Mr. Harrison. Call Mr. *Carden*, Drawer at the *King's Head Tavern* [*Who appeared.*]

Mr. Harrison. What time did Mr. Sutton come to your House? did you see any one stand at the Coach Side? and what Cloaths had he on?

Carden. I saw one stand at the Coach Side, and he had a Hanging Coat, or a Cloak on; it was about the Hour of Eleven, to the best of my Knowledge, and I saw a Man go into the Coach, and come out again.

Mr. Coroner. What time of Night do you shut your Doors, especially on *Monday* Nights? and were they shut when Mr. Sutton called in the Coach?

Carden. We shut them commonly about Eleven a Clock at Night, but on *Monday* Nights usually later; they were shut when Mr. Sutton called, and I opened them for him.

L. C. J. Can you say that the Prisoner was the Man that drank with Mr. Sutton?

Carden. To the best of my Knowledge (*looking on the Prisoner*) that is the Man, I can't be positive, my Lord.

L. C. J. Well, have you any more Witnesses?

Mr. Harrison. No, my Lord, unless Mr. *Effington* be here, he promised to be here to give an Account of me. My Lord, there is a Gentleman that is in the *Press Yard*, one Mr. ——— *Butler*, I desire he may be sent for, if your Lordship please.

L. C. J. Let him be fetch'd down.

[*Which was done.*]

L. C. J. But in the mean time, it behoves you to give an Account of these Things. First, Why did you say that you were a Parliament Man? Secondly, Why did you leave your Lodgings, and take other Lodgings in *Paul's-Church-Yard*? Thirdly, Why did you say that you had extraordinary Business? Give some Account what your Business was, and who that Gentleman was, that staid for you in the Street, when Mr. *Humston* desired you to stay and sup with him; what hinder'd you from accepting his Invitation? Now we would have you to consider of these Things, and give an Answer to them, for it much concerns you so to do.

Mr. Harrison. My Lord, first, as to the first, I do declare, That I never went for a Parliament Man, nor never said so: Secondly, That Night I was to go out of Town, I had left Word at several Coffee Houses, that I was going out of Town upon earnest Business, and with above twenty People besides, that I was going out of Town, and I was about to go to *Basing-Stoke*, to a Gentleman that owed me Money, one Mr. *Bulling*, but I could not get Money to go.

L. C. J. Prove that you were to go into the Country.

Mr. Harrison. My Lord, I can't prove that now, except I could have sent to *Basing-Stoke*.

L. C. J. That you should have done before now; why did you not stay with Mr. *Humston*, when he invited you to sup with him? You might have been better entertained there, than by going among Strangers to play at Cards for a Penny a Corner, at an Ale-house.

Mr. Harrison. My Lord, I was unwilling to stay, because he had Stangers with him.

L. C. J. What if he had? you are not such a bashful Man that you could not sup with Strangers.

Mr. Harrison.

Mr. *Harrifon*. My Lord, Mr. *Rowe* was accused with me.

L. C. J. What if he was? he was under some Suspicion, and he hath made it appear where he was at the Time the Fact was committed, and now he is discharged.

Then Mr. *Butler* was brought into Court from Newgate, attended by a Keeper.

Mr. *Harrifon*. Mr. *Butler*, Pray tell the Court what Mr. *Fairbeard* said to you about me?

Mr. *Butler*. My Lord, Mr. *Fairbeard* asked me, what I could say about what Mr. *Harrifon* had said to me concerning the Murder of Doctor *Clenche*? I told him, I could not tell what to make of his broken and rambling Speeches and Discourses, they being most of them spoken when he was in his Drink. This is all that I know, my Lord.

L. C. J. This is not a Witness for your Turn.

Mr. *Darnell*. Call Mrs. *Anwell*.

Who was sent for from her Lodgings in Brownlow-Street in Holborn, and appeared, and was sworn.

Mr. *Darnell*. Madam, pray give an Account what Mrs. *Affbolt* told you concerning any Man's being in a Coach at *Brownlow-street* End.

Mrs. *Anwell*. I know nothing of my own Knowledge, but the Night that Doctor *Clenche* was murdered, I sent Mrs. *Affbolt* of an Errand; and at her Return, I blam'd her for staying so long; and she told me, That as she was returning home, a Coach stopt at *Brownlow-street* End, with two Men, with Cloaks on, in it, and that one of them bad the Coachman go for Doctor *Clenche*, and desire him to come to them; and in his going several times look'd back, as if he suspected the Men would leave the Coach, and so she stay'd until Doctor *Clenche* came and went into the Coach, and that one of the Men gave the Doctor his Place; and that one of them had a fair Perriwig, and a sanguine Complexion.

Mr. *Darnell*. What Discourse had you with her when you heard that those Men had murdered Dr. *Clenche*?

Mrs. *Anwell*. She told me, That one of those Men had a fair Perriwig, and a sanguine Complexion, and that one of them had a Cloak on.

L. C. J. Did she say, that she observed either of their Faces?

Mrs. *Anwell*. Yes, my Lord, she said that one of them had a round Face, and a big Voice.

L. C. J. Did she say, she could know him again?

Mrs. *Anwell*. No, my Lord, she did not say so, but she said, that she could know his Voice again. And after the last Sessions, I told Mrs. *Clenche* of it, and that if she would send for the young Woman, she would inform her further of it.

L. C. J. Madam, pray what was the Reason that she did not discover it sooner to Mrs. *Clenche*?

Mrs. *Anwell*. Why truly because Mrs. *Affbolt*, her Mother, was unwilling she should concern herself in such a Matter.

Mr. *Darnell*. Call another Witness, Mr. *Jones*, Coach-maker. (Who was sworn.)

Mr. *Harrifon*. Pray, my Lord, take Notice, that now she says, that those Gentlemen had Cloaks on, that came in the Coach to *Brownlow-street* End.

L. C. J. Yes, we heard her what she said.

Mr. *Darnell*. My Lord, I will ask this Witness, Mr. *Jones*, a Question.

Mr. *Darnell*. Pray Sir, tell my Lord and the Jury, what Mrs. *Affbolt* did at *Newgate*?

Mr. *Jones*. My Lord, I went with her to *Newgate*, together with Doctor *Clenche* his Coachman, and when she came to *Newgate*, before she saw Mr. *Harrifon* (only stood at the Chamber Door, and heard him speak) she said, That, to the best of her Thoughts, he was the Man that put his Head out of the Coach to look after the Coachman, and swore at him, for she knew his Voice. And when she came to see him, she said, that she knew his Face, and declared that was the Man that put his Head out of the Coach.

L. C. J. Did he look out of the Coach, Mrs. *Affbolt*?

Mrs. *Affbolt*. Yes, my Lord, he put his Head out of the Coach, and look'd after the Coachman, to see if he went right to Doctor *Clenche*'s Door, and did swear at him, because he went no faster.

L. C. J. How could you discern his Face?

Mrs. *Affbolt*. By the Light of two Lamps that were near, which did shine into the Coach.

L. C. J. Can you take it upon your Oath that the Prisoner is the same Person?

Mrs. *Affbolt*. Yes, my Lord, I can, both by his Voice and Face.

Mr. *Darnell*. Now, my Lord, we shall shew your Lordship somewhat in Relation to the Credit of those Witnesses, that the Prisoner hath brought here; particularly, as to Mr. *Baker*, we shall prove that he hath been convicted for a Cheat. And as for *Maccaffee*, he keeps a very disorderly House, where ill People commonly resort.

Mr. *Darnell*. Cryer, call Mrs. *Martha Wheelstead*, and Mr. *Thomas Cole*.

L. C. J. Mrs. *Jones*, what time did Mr. *Harrifon* come to your House, to his Lodging, that Night that the Murder was committed?

Mrs. *Jones*. I think it was about Eleven a Clock, or a little before Eleven.

L. C. J. What time on the *Monday* did he hire the Lodging of you?

Mrs. *Jones*. It was some time after Dinner.

L. C. J. It was before Night, was it not?

Mrs. *Jones*. Yes, my Lord, it was before Night.

Mr. *Darnell*. My Lord, I desire that Mr. *Tanner* may read the Record against Mr. *Baker*, whereby it will appear, that he was indicted and convicted at *Hicks's-Hall* for cheating the Parish of *St. Giles* in *Middlesex*, when he was Scavenger there, by altering the Figures in the Book, and rating the Sums of Money higher upon divers of the Parishioners, than they were in the Parish Book, and then collecting and extorting the Money, so by him increased, from them.

Mr. *Tanner* reads the Indictment aforesaid, by which it did appear to the Court, and to the Jury, that the said Mr. *Baker* was indicted for the Offence aforesaid, and confessed the Indictment, and was fined for it twenty Shillings.

Mr. *Baker*. My Lord, I was wrongfully indicted, and traversed the Indictment, and was acquitted.

L. C. J. Mr. *Tanner*, give me the Record.

Lord Chief Justice peruses the Record.

Mr. *Baker*, I have read the material Parts of the Record, and do find that you were indicted for

for that Offence, and that you confessed the Indictment, and was fined for it.

Mr. Baker. My Lord, I was acquitted of it, and can prove it by Captain Cannon, who knows me, and my Reputation, and he is in Court.

L. C. J. Mr. Baker, the Record testifieth the Truth, and cannot err, therefore you have great Confidence to aver against it; yet I will hear what Captain Cannon saith.

Mr. Baker. Call Captain Cannon.
(Who appeared.)

L. C. J. Captain Cannon, do you know this Mr. Baker?

Captain Cannon. Yes, my Lord, very well.

Mr. Darnell. My Lord, I desire that Captain Cannon may be sworn.

L. C. J. Mr. Tanner, swear Captain Cannon.
(Who was sworn.)

L. C. J. Sir, do you know that Mr. Baker was indicted for falsifying of the Scavenger's Book, when he was Scavenger, and acquitted, or convicted, and what do you know about it?

Captain Cannon. My Lord, I am an Inhabitant of the Parish of St. Giles's in the Fields, and so I was when Mr. Baker was Scavenger, and do well remember, that some of the Inhabitants of that Division where he was Scavenger, were troubled, and complained, that they were charged more than usually they had been to the Scavenger's Rate; and it was discover'd that several Figures of the Book by which Mr. Baker collected the Money to the Scavenger's Rate, were blotted and altered, and did not agree with the Parish Leidger-Book, but the Sums in his Book so blotted and altered were razed; whereupon it was ordered, that he should be indicted for it, and it was done accordingly, and he was fined for it, and, to the best of my Remembrance, he confessed that Indictment.

L. C. J. Captain Cannon, Pray tell the Court and the Jury, of what Reputation Mr. Baker is now.

Captain Cannon. My Lord, he is now of none of the clearest Reputations.

Captain James Patrich, of the same Parish, being in Court, offered himself, and gave the same Account of Mr. Baker that Captain Cannon did.

Mr. Darnell. Cryer, Call Mr. Francis Bramton, Mrs. Martha Whelstead, and Mr. Thomas Cole.

(And Mrs. Whelstead and Mr. Cole appeared, and were sworn.)

Mr. Darnell. Mrs. Whelstead, pray give the Court and Jury an Account what disorderly House Mr. Maccaffee keeps?

Mrs. Whelstead. My Lord, I dwell in Crown-Court in Chancery-lane, over against Mr. Maccaffee's House; and he and she are very ill People; and keep a very evil and scandalous House; and such as are reputed to be House-breakers, Pick-Pockets, and lewd Women, do use and frequent the House; and there is commonly at late Hours in the Night, Persons calling out Murder, and Whore and Rogue, and such sort of Language, disturbing their Neighbours; and their House hath been several times searched by several Constables for stolen Goods, and for the Persons that have stolen them; and upon such Searches, there have been stolen Goods found there: And I have seen great Lewdness there between Men and Women; and the Neighbours do account it

a House of an ill Fame, and do avoid going thither.

Mr. Tho. Cole. My Lord, I do know Mr. Maccaffee and his Wife; I do dwell over against his House, and they are reputed to keep an ill House, and most Persons that frequent it, are reputed to be Persons of lewd and evil Lives and Conversations; and it is amongst the Neighbourhood noted for a scandalous House, and several Constables have several times searched there for stolen Goods.

L. C. J. What have you more to say, Mr. Harrison?

Mr. Harrison. I cannot say any thing more; you may deal with me according to my Deserts in this Matter.

L. C. J. You may assure your self, that we will do you no Wrong; have you any more to say?
(He made no reply.)

Mr. Darnell. My Lord, we have another Witness come now, who was not here before. Cryer, call Mr. Charles Whitfield.

(Who was sworn.)

Mr. Darnell. My Lord, this Gentleman can give your Lordship an Account what the Prisoner said of his being just come out of the Country, upon the fifth Day of January last. Pray tell my Lord what you know, Sir.

Mr. Charles Whitfield. My Lord, upon the fifth Day of January last, being the Day after Dr. Clenche was murdered, I went to Joe's Coffee-house in Salisbury-court, and there was Mr. Harrison sitting by the Fire-side, says I to Mr. Harrison, Where have you been for a long time that I have not seen you? Says he, I have been in the Country: Where says I? Says he, about twenty Miles of, in Kent; and I want a Laundress, and a Lodging. Says I, do you hear the News, Sir? What News, says he? Why, said I, of Dr. Clenche's being murdered: I cannot tell the Occasion, said I, but he was found dead in a Coach last Night in Leadenhall-street. Then says he, I did love him very well once, but of late he hath been a barbarous Rogue to a Gentlewoman, a Friend of mine, and she is in the Compter now: And Mr. Harrison said it was a just Judgment of God upon the Doctor for being so great a Villain to the Gentlewoman; therefore I will write to her presently, and give her an Account of his Death. And, my Lord, the Contents of his Letter were these, as near as I can remember.

Madam,

I Am just now going to Lambeth; but hearing of Dr. Clenche's Murder, I do hereby give you an Account of it, and can impute it to no less than a just Judgment of God upon him for his Baseness shewed to you. And if you think fit to send to Madam Clenche, it may be, she may send somewhat towards your Relief, she now being a Widow as well as you.

M A D A M,

I am yours to command,

Henry Harrison.

My Lord, after this, came into the same Coffee-house another Person, one Mr. Ravenscroft, of whom Mr. Harrison asked some Question about Dr. Clenche; who reply'd, That he heard that Dr. Clenche was murdered, and that it was committed

mitted by a Bully of the Town that belonged to a Gentlewoman in the Compter, who was laid in there upon Dr. *Clenche's* Account; at which he was much startled: Says he again, There is no Person familiar with that Gentlewoman but myself; for I know and am concerned in all her Affairs: Perhaps then I may be taken up about it: Or, my Lord, he used Words to that Effect.

Mr. *Harrison*. My Lord, this Woman was not in the Compter upon Dr. *Clenche's* Account.

L. C. J. No, the Witness don't say so; but that it was the Discourse of the Town that she was, and the Town did suppose her so to be. What did he say further, Sir?

Mr. *Whitfield*. My Lord, he said, That he had been in *Kent* about twenty Miles off; and he said, That he wanted a Landress, because he had some foul Linen to wash; which he produced. This was on the *Tuesday*, and the Murder was committed on the *Monday* Night before: And, my Lord, there were two more Gentlemen that heard him as well as I, that he said, That he had been about twenty Miles off in *Kent*, and that he was newly come to Town. Now, my Lord, I could not imagine for what Reason this Man should say, That he had been out of Town about a Fortnight or three Weeks, when he was in that House but the *Monday* Night before; that is, the Night the Murder was committed.

Mr. *Darnell*. Cryer, call Mr. *Bishop*.

(Who appeared and was sworn.)

Mr. *Bishop*. About three Years ago the Prisoner came to my Master's Shop to cheapen some Linen, and when —

L. C. J. Hold, what are you doing now? Are you going to arraign his whole Life? Away, away, that ought not to be; that is nothing to the Matter. Have you done, Prisoner?

Mr. *Harrison*. Yes, my Lord, I have done, I refer my Cause to your Lordship.

L. C. J. Gentlemen of the Jury; The Prisoner at the Bar, *Henry Harrison*, stands indicted for the wilful Murder of Dr. *Andrew Clenche*, who was barbarously murdered on the fourth day of *January* last: You have heard the Witnesses that have been sworn; and upon their Testimony, it doth appear, that two Persons came to *Brownlow-street* End in a Coach, after Nine a Clock at Night, and sent the Coachman to the Doctor's House, under Pretence to get him to a Patient, a Friend of theirs, that was sick. By this Contrivance, they got him into their Coach, which they had brought for that Purpose, and then they ordered the Coachman to drive to *Leadenball-street*; and when they came about *Holborn-Bars*, one of them ask'd the Coachman, why he drove so slow, and bad him drive faster. When they came to *Leadenball-street*, then they bad him drive to the *Pye-Tavern* without *Aldgate*; where one of them bad the Coachman ask for one *Hunt*; but he not being there, one of them bad the Coachman return back, and gave Sixpence to the Watch to come through the Gate, which was shut in the mean time; and when they came to *Leadenball-Market*, one of them gave the Coachman three Shillings and Sixpence, and sent him to buy a Couple of Fowls; which the Coachman did buy, and brought them to the Coach; but when he came back, he found the Doctor in the Body of the Coach, leaning against the fore Seat of the Coach, a Handkerchief being tied about his Neck, with a Coal in

it, placed upon his Wind-pipe; which Handkerchief and Coal have been produced in Court.

The Question is, Gentlemen, Whether the Prisoner at the Bar be guilty of this base and barbarous Murder? To prove which, there hath been a very long Evidence given, some Positive, some Circumstantial. It has been proved that Dr. *Clenche* had some Dealings with a Woman named *Vanwicke*, and had lent her one hundred and twenty Pounds, and had taken a Mortgage for it. This Prisoner, Mr. *Harrison*, was a great Acquaintance, and very intimate with this Woman; and did concern himself in the Management of her Affairs: and because Dr. *Clenche* did refuse to lend the Woman more Money, therefore he had an Animosity against Dr. *Clenche*. The Money not being paid to the Doctor as he did expect, he did call it in; and therefore this Gentlewoman did oftentimes repair to Dr. *Clenche* to desire farther Time of Forbearance, because she could not raise or procure the Money elsewhere. That about *Michaelmas* last, it seems she came to a Coffee-house near *Warwick-house* in *Holborn*, and there was Mr. *Harrison*; where they consulted what to do. And it was agreed, that the Mistress of the House, and Mrs. *Vanwicke*, should go to Dr. *Clenche's*; but Mr. *Harrison* should stay behind, for it was not thought convenient that he should go, lest he should provoke the Doctor. When they came to the Doctor, Mrs. *Vanwicke* was very importunate to have more Money; but the Doctor would lend her no more. And when they returned to the Coffee-house again, Mr. *Harrison* enquired what passed between the Doctor and Mrs. *Vanwicke*. She told him that the Doctor would not furnish her with any more Money, although she had pressed him to do it, and urged her great Necessities, but advised her to go to Service; Damn him, says *Harrison*, does he say that a Woman of your Quality should go to Service? He is a great Rogue, and deserves to have his Throat cut, but let me alone, I will manage him.

At another Place there was a Discourse betwixt Mr. *Harrison* and one Mr. *Johnson*; and that the Prisoner did then speak very hard and ill Words of Dr. *Clenche*: And that Mr. *Harrison* came frequently to him; and one time laid his Hand upon his Sword, using some menacing Words, but what they were he cannot tell: But he likewise says, That at several times he did expostulate with him, and told him, That he would not do any good with such Discourses as these are, &c. That the Mortgage Money not being paid, it was thought fit, that there should be a Prosecution made to get Possession of the mortgaged Estate, and that the Tenants should be forbid to pay their Rents. And Mr. *Harrison* went to Mrs. *West* the Tenant, some few Days before St. *Thomas's* Day last, and demanded the Rent of her. To which she made Answer, That Dr. *Clenche* had forbid the Payment of the Rent to Mrs. *Vanwicke*. Thereupon Mr. *Harrison* grew very angry, and answered, That Dr. *Clenche* was a Rogue and a Villain, and bid her that she should not pay him any Rent. And the Witness saith further, That the Doctor being prest to let her have some more Money, refused to do it, because she would spend it all upon *Harrison*.

Then the Council for the King called some Witnesses, who gave you an Account of the Prisoner's

soner's shifting his Lodgings the Day before the Murder was done. He takes a Lodging at Mr. *Garway's* in *Threadneedle-street*, on the twenty-third Day of *December*, and there he continued till about the first of *January*. The second of *January* he was at *Garway's* Shop; and on the *Sunday* Night he came and fetch'd away his Things. The *Monday* after, being the Day that this barbarous Fact was committed, he sent a Letter to Mrs. *Garway*, to acquaint her that he was gone out of Town; but he left three Half Crowns with her Maid to pay for his Lodging. But as to his going out of Town, it was false, for he never went into the Country; but took a Lodging at Mr. *Jones's* in *St. Paul's Church-Yard*. It's observable also, that he went for a Parliament-man when he lodged at Mr. *Garway's*, and had his Footman to attend upon him, &c. There it was that he was seen to have an ordinary Handkerchief, and to hold it to the Fire; which was taken Notice of by Mrs. *Jackson*, the Daughter of Mrs. *Garway*, which was not suitable, as she thought, to a Parliament-man's Quality, but rather fit for a Seaman; for it was like the Apron of the Maid in the House: which hath been shewed in Court, and compared with the Handkerchief that was tied about Dr. *Clenche's* Neck. She saith it is the same, or very like that which she did see Mr. *Harrison* hold in his Hand.

Cartwright, the Officer at the Compter, he tells you, that the *Sunday* Night, the Day before the Murder, Mr. *Harrison* came to *Woodstreet* Compter, and enquired for Mrs. *Vanwicke*, and that he only was in her Chamber, and no other Body on that Side of the House but Mrs. *Vanwicke*, the Prisoner, and this *Cartwright* the Keeper, who stood at the Door, and heard *Harrison* say, That he would have the Blood of that Rogue, and named *Clenche*, or *Wench*.

Mr. *Harrison*. My Lord, he was not in the Room.

L. C. J. No, he was not; but there were none on that Side the House but you, *Cartwright*, and Mrs. *Vanwicke*.

Now, on the *Monday* on which this Fact was committed, he having taken a Lodging at *Jones* his House, he came thither with a Porter, who brought his Portmantua-Trunk about eight a Clock at Night; and after he had been there a little while, he went away.

And you are told, by a Gentleman that lodges at the *Golden-Key* against *Fetter-lane* End; That he had some Acquaintance with the Prisoner, that he had lent him a Morning-Gown; and that about nine a Clock that very Night, he came to his Lodging in a Cloak; and then the Gentleman asked him for his Gown; and he told him, That he had brought it with him. Thereupon the Gentleman invites Mr. *Harrison* to stay and sup with him. Mr. *Harrison* said, He could not stay, for he was engaged; he must be gone, for that a Gentleman staid in the Street for him to go about extraordinary Business.

The Coachman tells you, That near about that Time two Men in *Fleet-street*, near *Fetter-lane* End, hired his Coach of him to go to *Brownlow-street* to Dr. *Clenche's*; but he can't positively say, that the Prisoner at the Bar was one of them, but he swears, he does verily believe that he was one of them.

Mr. *Harrison*. He said before your Lordship, That he could not remember what I had on.

L. C. J. Well, well, he doth not remember it now; but being hired to go to Dr. *Clenche's*, he drove to the Street End, and no further, because the Gate at the lower End was shut up, and he could not turn his Coach in the Street; but he was sent by them to the Doctor's, to desire the Doctor to come out to them, and they sat in the Coach in the mean time. The Doctor made haste, and went to them immediately, and they drove away to *Leadenball*, and then to *Aldgate*, and they called at the *Pye-Tavern*, and enquired for one Mr. *Hunt* a Chyrurgeon, as I mentioned to you before: He not being there, they returned to drive through *Aldgate*, gave the Watch Sixpence, and passed through the Gate without any Manner of Notice taken; but if the Watch had done their Duty, it might have been better discovered. But further, the Coachman tells you, that when he came to *Leadenball-street*, they called to him, and directed him to buy one Fowl; and after that he had been gone a little way from the Coach, they called him back, and bad him take some more Money and buy two Fowls. So he went and bought the Fowls; but when he came back, the two Gentlemen were gone, and he found the Doctor still in the Coach; and he not stirring, he thought he had been in Drink; but upon further Examination, and calling the Watchman with his Candle, it appeared that the Doctor was strangled with a Handkerchief and a Coal.

There is one Mrs. *Eleanor Ashbolt*, who lives in *Brownlow-street* with her Mother, and had been sent of an Errand; and between nine and ten of the Clock at Night, she saw the Coachman in *Brownlow-street*, and thought that those Men in the Coach might have put a Trick upon him, by going away without paying him his Fare. And she says further, That by the Help of the Lamps she did discern the Face of this *Harrison* in the Coach; he had a Cloak on, with a light Perriwig, and looked out of the Coach, and did swear at the Coachman; and by this means she knew him when she saw him again, to be the same Man, both by his Face and Voice. This Woman indeed was not before the Coroner, and she gives you this Reason for it, Because her Mother was not willing she should be concerned in such a Matter as this was; and what she could say, was not known to Mrs. *Clenche* until after the second Sessions; And when he was in *Newgate*, she saw him there, and declared he was the same Man.

There was another Piece of Evidence; viz. That of the Boy's, who does not appear; he was examined before the Coroner. There has been Evidence given of ill Practice to take him out of the way, and therefore his Affidavit is read for Evidence: He swears he saw two Gentlemen come out of the Coach when it stood in *Leadenball-street*, and that having seen the Prisoner in *Newgate* since, doth believe him to be one. This, Gentlemen, is the Sum and Substance of the Evidence for the King, to prove that the Prisoner was one of those that committed the Murder.

You have heard likewise what the Prisoner says for himself; he does undertake to prove that he was in another Place; (that is) that he should come into *Maccaffee's* House in *Crown-court*, over against *Serjeants-Inn* in *Chancery-lane*: and *Maccaffee*, he tells you, That there were some other

other Company there, and that *Harrison* came in very cold, and that they went to Cards, and plaid for one Penny a Corner at Whisk; and that he did continue there from Nine till Eleven a Clock; and if he was there then, it is impossible he should be guilty of this Fact, for the Fact was done between the same Hours.

Maccaffee's Wife tells you the same, and they both tell you who were there besides, and who plaid together, and are positive that the Prisoner was there.

Baker says, That he went away about half an Hour after Ten at Night, and left *Harrison* behind him. To confirm this Evidence, they have called two other Witnesses, besides the Drawers at the *King's-Head-Tavern*, viz. *Mr. Sutton*, the Chyrurgeon, who lives in *Stone-Cutter's Street*, and *Mr. Russell*. *Mr. Sutton* says, They had been at the *Horse-Shoe Tavern* in *Chancery-lane*, and called for half a Pint of Sack at the *King's-Head Tavern* when they came by; and as they sat in the Coach, *Mr. Harrison* came by accidentally, and one of them looking out of the Coach, cries *Harry* or *Harrison*; and he went to them, and they drank together another half Pint of Sack.

As to their meeting with *Harrison*, and as to other Passages there, *Russell* says the same: but as to the Time of Night he is not positive. And they sent one of the Drawers to a House in *Crown-Court* to enquire for some body there.

The Drawers at the *King's-Head-Tavern*, say, That *Mr. Sutton* and *Mr. Russell* did call there about that time; and that they drank two half Pints of Wine: and that when they were drinking, a Man came by with a hanging-Coat or Cloak on, and drank with them. And one of the Drawers went to call some body in *Crown-Court*; and one of the Company up with his Muff, and gave him a Slap in the Face.

Now this is the Sum and Substance of the Evidence that you have heard on the Behalf of the Prisoner, to induce you to believe that he was not the Person that was concerned in the Murder of Doctor *Clenche*.

To which Evidence, an Answer hath been offered;

First, as to those Witnesses, *Maccaffee* and his Wife, divers Witnesses have been produced to prove, that they are People of doubtful Credit; it seems they keep an House of ill Fame.

Mr. Harrison. I am glad, my Lord, that I was there.

L. C. J. Well, well. Gentlemen, the People of the House are not of very good Reputation; they keep a naughty and disorderly House, (if you believe the Witnesses) you may consider of their Credit.

And as to *Mr. Baker*; about nine Years since, he was convicted of an arrant Cheat, which is no less than Forgery, for altering the Scavenger's Rate for *St. Giles's* Parish, and therefore the less Credit is to be given to his Evidence; for now it appears, that he is a Knave upon Record: and the very Record itself was produced against him, which is true without doubt, notwithstanding his Pretence of Innocency. What is said by *Mr. Russell* and *Mr. Sutton*, I must leave to your Consideration; they had been a drinking, and the Drawer says, they were at the *King's-Head Tavern* at Eleven of the Clock at Night. *Mr. Harrison*, the next Day after the Murder, met a Gentleman at *Joe's* Coffee-House in *Salisbury-*

Court; and though he had taken a Lodging in *Paul's* Church-Yard, yet he said, that he was newly come to Town, and had been in *Kent*, and had remained there about three Weeks; and that he wanted a Laundress and a Lodging, although he had not been out of Town, and had taken a Lodging but the Day before: And then he told the Witness, who discoursed with him about the Death of *Dr. Clenche*, That he had formerly loved him, but he said he had been of late a barbarous Rogue to a poor Gentlewoman, a Friend of his; and that the just Judgment of God had fallen upon him for so doing, and that he would write to her to give her an Account of it; and advise her to write to *Mrs. Clenche*, and to tell her, That she was a Widow now as well as *Mrs. Vanwicke*; and he thought by that Means to move *Mrs. Clenche* to pity her, being a Widow as well as herself: And that whilst they were talking thus, one *Mr. Ravenscroft* tells him, That *Dr. Clenche* was murdered, and that a Bully of the Town, that belonged to a Gentlewoman in the Compter, one *Mrs. Vanwicke*, was suspected. At which *Mr. Harrison* was much startled, and said, That no one was concerned with that Gentlewoman but himself; and for ought he knew, he might be taken up for it. This is that which he said.

Now what said *Mr. Harrison* further for himself? Why, says he, this Gentlewoman is not in Prison at the Prosecution of *Dr. Clenche*, and was not so affirmed, but so reported; and whether it were so or no, is no great matter. Gentlemen, you ought to consider of the Evidence that you have heard against him, and also to weigh well the Evidence he hath brought for himself.

It is most plain, if you believe the Witnesses, that *Mr. Harrison* was concerned for this Woman *Vanwicke*, and hath threatned *Dr. Clenche*, called him Rogue and Rascal, and said, That he deserved to have his Throat cut; that *Harrison* went under a Disguise for some time before the Murder. You have had an Account of the Handkerchief, what kind of Handkerchief *Harrison* had, and what Handkerchief was taken about *Dr. Clenche's* Neck, you have seen: And you heard what Evidence was given by *Mr. Humston*; how the Prisoner was with him about Nine a Clock that Night; and how he refused to stay and sup with *Mr. Humston*. If *Mr. Harrison* had no earnest Business, one would have thought he might have staid with *Mr. Humston*, better than to have gone to an Alehouse in *Crown-Court*, and plaid at Cards at one Penny apiece a Corner; he might have had better Fare no doubt.

The Witnesses for the Prisoner say for him, That he came to *Maccaffee's* House about Nine a Clock at Night, and staid till Eleven: That is contrary to that Evidence given for the King, viz. That he was in the Coach at *Brownlow-street* End; for if he was at *Maccaffee's* House all the time they mention, it is impossible he should be guilty. All these Things are under your serious Consideration. You had best go together, and if you are not satisfied upon the Evidence you have heard, that he is guilty, then you ought to acquit him; but if you are satisfied that he did commit this Murder, then you ought to find him guilty.

Then the Jury withdrew, and the Court adjourned for half an Hour; and when they were returned, the Jury came to give their Verdict; and

and being called over, answered to their Names; and Mr. *Harrison* was brought to the Bar.

Cl. of Arraign. Gentlemen, Are you all agreed of your Verdict?

Jury. Yes.

Cl. of Arraign. Who shall say for you?

Jury. Our Foreman.

Cl. of Arraign. *Henry Harrison*, hold up thy Hand. (*Which he did.*)

Look upon the Prisoner. How say you? Is he guilty of the Felony and Murder, whereof he stands indicted, or not guilty.

Foreman. Guilty, of wilful Murder.

Cl. of Arraign. What Goods or Chattels, &c?

Foreman. None that we know of.

Major Richardson. Look to him he is found guilty of wilful Murder.

Cl. of Arraign. Then hearken to your Verdict, as the Court hath recorded it.

You say that *Henry Harrison* is Guilty of the Felony and Murder whereof he stands indicted; but that he had no Lands or Tenements, Goods nor Chattels, at the Time of the Felony and Murder committed, nor at any Time since, to your Knowledge: And so you say all?

Jury. Yes.

Then the Prisoner was remanded to *Newgate*, until the last Day of the Sessions; and then he was brought to the Bar, to receive Sentence of Death.

Clerk of Arraign. *Henry Harrison*, Hold up thy Hand. *Which he did.*

Henry Harrison, You stand convicted of Felony and Murder, for the Murder of Dr. *Andrew Clenche*: What can you say for yourself, why Judgment should not be given against you, to die according to Law?

Mr. D. Recorder. *Mr. Harrison*, You have been Indicted, Arraigned, and Convicted, of Felony and Murder, for the Murder of Dr. *Andrew Clenche*: You have had as long, and fair, and favourable a Trial, as any Person that ever hath been tried at this Bar.

The Jury that has passed upon your Life and Death hath convicted you, and the Court are now ready to do their last Act, which is to pronounce that Sentence that the Law does inflict upon such Crimes as you stand convicted of.

Mr. Harrison. I expect no Mercy here, therefore I humbly desire you would interceed to the Queen, that I may have twelve Days allowed me, in order to my better Preparation for Death.

Mr. D. Recorder. Well.

Mr. Harrison. I must needs acknowledge, that I was tried before the best of Judges, my Lord Chief Justice *Holt*; but one Thing I think strange, that my Witnesses should be examin'd singly, and not the King's.

Mr. D. Recorder. That is no more than what

is usual; the Council for the King and Queen requested it, and you did not.

Mr. Harrison. I begg'd that I might have timely Notice of my Trial, and I had not: There were seven People in my Company at that Time when this black and bloody Murder was done, and I could not get them to be here.

Mr. D. Recorder. You have had a long Time to get them ready, and you pressed on your own Trial, which you should not have done if you had not been ready.

Mr. Harrison. I humbly submit.

Then the usual Sentence of Death was pronounc'd against him, and he was remanded to *Newgate*.

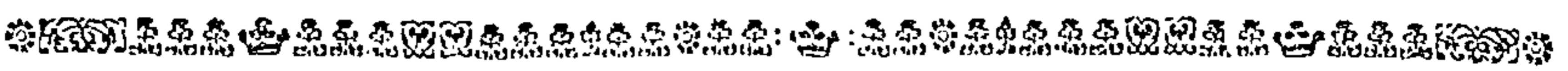
The Examination of *Henry Harrison*, this 6th Day of January, 1691.

THIS Examinant being asked where his Lodgings are, answereth, That he lodgeth at the *Golden-Ball* in *Paul's Church-Yard*, and came to lodge there on *Monday* Night, about Eleven of the Clock, or half an Hour after, but took the Lodgings in the Morning, the Master of the House being one *Mr. Jones*, a Cane-Chair Seller; and before that Time this Examinant lodged at the *Hand and Apple* near the *Exchange*, which said Lodgings he left on *Saturday* last in the Morning, and paid for them on *Sunday* Afternoon: And this Examinant saith, that on *Saturday* Night last he lodged at the *White Balcony* in *Old Southampton-Buildings*, the Mistress of the House being one *Mrs. Pitts*, and this Examinant lodged there on *Sunday* Night also. And this Examinant saith, That he was at the *King's-Head* in *Crown-Court* in *Chancery-Lane* upon *Monday* last, from between Seven and Eight of the Clock at Night, and stayed there until Eleven, playing at Cards with the Man and Woman of the House, and other Persons unknown. And being asked where he dined on *Monday*, and how he spent his Time on *Monday* in the Afternoon, he saith, he cannot give an Account. And this Examinant saith, That on *Tuesday* last *Mr. Hartly* of *Old Southampton-Buildings*, discoursing concerning the Murder of Dr. *Clenche*, said, That this Examinant was suspected to be guilty of that Murder. And this Examinant further saith, That he wore the same Cloaths he hath now on upon *Monday* last; and hath worn them a great while, having no other Cloaths to wear.

Capt. & Cognit. 6 Die
Jan. 1691, Coram
J. Holt.

Hen. Harrison.


He was afterwards Executed, pursuant to the Sentence, and died asserting his Innocence to the last. See State Trials, Vol. 8. p. 465, 466.



CL. *The Trial of JOHN COLE, at the Old-Bailey, for the Murder of Andrew Clenche, Doctor of Physick, Sept. 2. 1692. 4 W. & M.*

Judges present $\left\{ \begin{array}{l} \text{Mr. Justice Dolben, and} \\ \text{Mr. Justice Powerl.} \end{array} \right.$

THE Keeper of *Newgate* did, according to Order of the Court, on *Friday* the 2d Day of *September*, bring up the Body of *John Cole* to the Sessions-House in the *Old-Baily, London*; who, being at the Bar, was Arraigned upon an Indictment of Felony and Murther, found against him by the Grand Jury for the City of *London*, for the Murther of *Dr. Andrew Clenche*.

Cl. of Arr.  JOHN COLE, hold up thy Hand. (*Which he did.*) You stand Indicted by the Name of *John Cole*, of *London*, Labourer, for the Murther of *Dr. Andrew Clenche, &c.* and the Indictment is in such Manner as that against *Mr. Henry Harrison*.

How say you, *John Cole*, are you guilty of the Felony and Murther whereof you stand indicted, or not guilty?

John Cole. Not Guilty.

Cl. of Arr. Culprist, how will you be tried?

John Cole. By God and my Country.

Cl. of Arr. God send you a good Deliverance.

And afterwards the said John Cole was brought to the Bar upon his Trial: And those Persons who were returned upon the Jury were called over twice, and their Appearances recorded.

Cl. of Arr. You, *John Cole*, These Men that you shall hear called, and personally do appear, are to pass between our Sovereign Lord and Lady the King and Queen and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Then the Jury were call'd, and sworn, and then were counted, and the Twelve sworn were these whose Names follow:

<i>John Clay</i>	<i>Cuthbert Lee</i>
<i>Edward Sherlock</i>	<i>Thomas Watson</i>
<i>John Ruddyer</i>	<i>Thomas Milburne.</i>
<i>Benj. Evans</i>	<i>Thomas Applebury</i>
<i>George Bestow</i>	<i>Nicholas Harris</i>
<i>Archibald Wilson</i>	<i>Ralph Cates</i>

Then Proclamation for Information and Evidence was made as is usual.

Cl. of Arr. *John Cole*, Hold up your Hand. (*Which he did.*)

Gentlemen, You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *John Cole*, late of *London*, Labourer, &c. as in the Indictment. 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 this Felony and Murder whereof he stands indicted, or Not Guilty. If you find that he is Guilty, you are to inquire what Goods or Chattels, Lands or Tenements he had at any Time of the Felony and Murder committed, or at any time since. If you find him Not Guilty, you are to inquire whether he fled for it. If you find that he fled for it, you are to inquire of his Goods and Chattels, as if you 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.

Cl. of Arr. Cryer, Call *Mary Milward, Joseph Dudley, John Dudley, Jane Warren, Sarah Duchy, Anne Gunn, Anne Gesson, Anne Warren, Elizabeth Harper, Mary Edwards, John Gamble, John Sykes, Robert Rebone, Richard Eades, Richard Marryot, Samuel Revet, Henry Milward, Squire Dalley, William Brown, Francis Hobbs.* Who were all sworn.

Cl. of Arr. Set *Mary Milward* up.

Mr. Justice *Dolben*. What have you to say, Woman, against *Cole* the Prisoner, concerning the Murther of *Dr. Clenche*?

Mrs. *Milward*. My Lord, my Husband declared to me, that he and *Mr. Cole* were in the Coach with *Dr. Clenche*, and that they Two kill'd *Dr. Clenche*.

Mr. Justice *Dolben*. That's no Evidence at all, what your Husband told you; that won't be good Evidence, if you don't know somewhat of your own Knowledge.

Mrs. *Milward*. My Lord, I have a great deal more that my Husband told me to declare.

Mr. Justice *Dolben*. That won't do; what if your Husband had told you that I kill'd *Dr. Clenche*, what then? that will stand for no Evidence in Law: We ought by the Law to have no Man call'd in question, but upon very good Grounds, and good Evidence, upon Oath, and that upon the Verdict of Twelve good Men. Have you any Body that can prove any Thing against *Cole*, or does it all arise barely from your Husband's Report?

Mrs. *Milward*. My Husband declared that he and *Mr. Cole* were to go under a Pretence to rob the Doctor, and so take their Opportunity to kill him; and the first Time they call'd at *Doctor Clenche's* he was not within, but the second Time they went he was within, and then they did the Murther.

Mr. Justice *Powerl*. When dy'd your Husband, Mistress?

Mrs. *Milward*. The 23d of *May* last, Sir.

Mr. Justice *Dolben*. Here hath been two or three Sessions since that Time, why did not you take up *Cole* about it before now?

Mrs. *Milward*. I did not know where to find him.

Mr. Justice *Dolben*. Why, then you should have gone to a Magistrate, and told him of it, and taken some Advice about it.

Mrs. *Milward*. I did, as soon as I had found *Mr. Cole*.

Mr. Just. *Dolben*. Your Business had been to have discovered this to Mrs. *Clenche*, and she should have looked after *Cole*. Is Mrs. *Clenche* here?

Sir *Will. Ashurst*. Here is her Brother-in-law.

Mr. Just. *Dolben*. Do you prosecute *Cole* upon this Indictment?

Mr. *Wife*. No, my Lord, I do not. Mrs. *Milward* is the Prosecutor, and she charged Mr. *Cole* with the Murder of my Brother, Dr. *Clenche*; and she told my Sister *Clenche*, that Mr. *Milward*, her Husband, confessed and said some Time before his Death, that he and Mr. *Cole* murdered Dr. *Clenche* in a Coach: and Mrs. *Milward* said, that she had sufficient Evidence against Mr. *Cole* for it. And my Sister *Clenche* told Mrs. *Milward*, that Mr. *Harrison* murdered Dr. *Clenche* in a Coach, together with another Person, which my Sister *Clenche* said she believed was the said Mr. *Milward*, Husband of the said Mrs. *Milward*; and that she had a Warrant against him, the said Mr. *Milward*, upon Suspicion for it, but could not take him; and that she suspected that there were other Persons Contrivers or concerned in it, who were set down at the *Blue Boar's-Head* Ale-house near *Clement's-Inn*, by Mr. *Gamble*, a Coachman, out of his Coach, together with the said Mr. *Milward*, in their Return from Dr. *Clenche's* House, that Night he was murdered. And, my Lord, by my Sister *Clenche's* Order, I went with Mrs. *Milward* to all her Witnesses, and took Notes of their Evidence; and I went with several of them to my Lord Chief Justice *Holt's* Chamber, before whom they gave in their Informations upon Oath about it: And when I had done it, I told Mrs. *Milward* I could find no Evidence that she had against Mr. *Cole*, more than that he was at Dr. *Clenche's* House, and at the said *Blue Boar's-Head* Alehouse, with Mr. *Milward*, and another Person, that Night Dr. *Clenche* was murdered, and so he might be concerned in the Contrivance of it; whereupon Mrs. *Milward* was dissatisfied, and said, she was not able to prosecute him for it: so my Sister said to Mrs. *Milward*, that she might if she would prefer an Indictment against him for it, and that she would pay for it, and other Charges about it, which she did. And Mrs. *Milward* hath a Note of the Names of all her Witnesses, and may call them.

Sir *Rob. Clayton*. Did you not lie at *Cole's* House, Mistress?

Mrs. *Milward*. Yes, Sir, I did.

Mr. Just. *Dolben*. Why did you not take him then?

Mrs. *Milward*. Because he absconded himself, and gave out that he was gone to Sea.

Mr. Just. *Dolben*. Was there no Quarrel between *Cole* and you about your Goods?

Mrs. *Milward*. No, my Lord, I had no Quarrel with him.

Mr. J. *Dolben*. Because you did not do it sooner, have you not been troubled with your Husband's Ghost? Tell the Jury the Story; we have heard on't; but I am afraid they will laugh at you.

Mrs. *Milward*. That was very true, my Lord.

Mr. Just. *Dolben*. Well, if you have any thing else to say, that is material, speak; otherwise, my Brother and I are of Opinion, that what you have already offered is no Evidence.

Mrs. *Milward*. My Lord, Here is a Coachman or two that can acquaint your Lordship of the Matter of Fact better than I can.

Cl. of Ar. Cryer, call *John Gamble*, the Coachman. (Who stood up.)

Mr. Just. *Dolben*. You, Coachman, Do you know the Prisoner?

Mr. *Gamble*. No, my Lord, I do not know him.

Mr. Just. *Dolben*. Look upon him, do you know him or no?

Mr. *Gamble*. No truly, my Lord, I do not know him.

Mr. Just. *Dolben*. Why, look you, Woman, he does not know him! You, Coachman, the Story is well known; therefore I ask you again, upon your Oath, if that Prisoner at the Bar be one of the three Persons that you carried to the *Blue Boar's-Head* on the Back-side of *St. Clements*, that Night Dr. *Clenche* was murdered?

Mr. *Gamble*. Indeed, my Lord, I cannot be positive whether he be one of them or no: I took up in *Cheapside* three Men into my Coach, and set one of them down at *Grays-Inn*, and drove the other two to Dr. *Clenche's* House, that Night he was murdered, and he was not at home; and afterwards the Man I had set down came in again, and I set them all down at the *Blue Boar's-Head* Ale-House near *Clement's-Inn-Gate*, about Eight a-Clock at Night.

Cl. of Ar. Set up *William Brown*, Servant at the *Blue Boar's-Head*.

Mr. J. *Dolben*. Hark you, Is this one of the three Men that the Coachman set down at your Master's House, that Night Dr. *Clenche* was murder'd?

Will. Brown. Yes, my Lord, it is.

Mr. Just. *Dolben*. What Time did they come to your House?

Will. Brown. They came about Eight a-Clock at Night, and this Man and the other stayed till after Eleven a-Clock: Only *Milward* went out, and returned presently; and then immediately he went out again, which was before Nine a-Clock, and return'd not until Eleven a-Clock after.

Mr. Just. *Dolben*. What Time was Dr. *Clenche* kill'd?

Will. Brown. About Ten a-Clock, or betwixt Ten and Eleven, as I think.

Mr. Just. *Dolben*. Who went out first, only *Milward*?

Will. Brown. Only Mr. *Milward*, my Lord: But this Man stayed all the Time, till Eleven a-Clock at Night; and another, who went by the Name of *Harper*, as I am since informed.

Mr. J. *Dolben*. Why then this Man could not be in the Coach when Dr. *Clenche* was murdered, so *Harrison* and *Milward* kill'd the Doctor in all Probability; for he says, this Man at the Bar, and another, stay'd at his Master's House till after Eleven a-Clock.

Will. Brown. My Lord, When *Milward* came back, he brought a Couple of Men with him, in Soldiers Habit, about Eleven of the Clock at Night.

Mrs. *Milward*. My Husband told me, that Mr. *Cole* and he went out of the House, and left Mr. *Harper* behind.

Mr. J. *Dolben*. But this Man swears, that the Prisoner did not go out of the House till Eleven a-Clock at Night, and they were set down about Eight of the Clock, and Dr. *Clenche* was found kill'd a little after Ten at Night; and that *Milward* went out, and then came in again about Eleven a-Clock, and brought two Men with him

him: 'Tis to be feared he had been killing Dr. *Clenche* in that Time; Have you any more to say? If this Man says true, nothing can be said more.

Mrs. *Milward*. Speak what was done when they came to drink the Pot of Ale, Mr. *Brown*.

Mr. *J. Dolbin*. I would fain know, Mistress, who set you upon this Business? Is there not some Money promised you? It was not the Fear of your Husband's Ghost that put you upon it, I am afraid.

Mrs. *Milward*. I am much wronged, my Lord, I know nothing of any Money offered me.

Mr. *J. Dolbin*. What say you more?

Will. *Brown*. My Lord, Mr. *Milward* being at my Master's House that Night Dr. *Clenche* was killed, desired me to make a Fire in the same Room the next Morning, and that he would come again then; and I made a Fire accordingly, but he came not then, nor afterwards at any time to my Knowledge; but on a Sunday Night about a Fortnight after, came the two Persons that came with Mr. *Milward* in the Coach to my Master's House that Night Dr. *Clenche* was murdered, and my Master being above Stairs, I sent him Word, that the two Men were there who were there that Night that the Doctor was murdered, and they inquired for Mr. *Milward*, saying he promised to meet them there, and he not being there, before my Master could come down, they paid for the Pot of Drink, and went away.

Mr. *J. Dolbin*. When they came together to the *Blue Boar's-Head*, they had some evil Design, no doubt, but if it be true that those two Men staid from eight a Clock till eleven, then it could not be this Man that murdered Dr. *Clenche*; but hark ye, Fellow, you say, there were three Persons, whereof *Cole* was one, and *Milward* the other, who was the Third?

Will. *Brown*. I do not know his Name, my Lord, otherwise than as I have since heard.

Mrs. *Mil*. The other Man's Name was *Harper*.

Mr. *J. Dolbin*. You know nothing but what your Husband told you, and 'tis most probable that *Harrison* and he did the Murder, for that it appears that the Prisoner at the Bar is not the Man that kill'd the Doctor, that's plain. Have you any more?

Mrs. *Milward*. About a Fortnight after the Murder was done, they came to inquire for my Husband at the *Blue Boar's-Head*, and whilst the Tapster went to tell his Master, they left their Money for the Drink and went away, and would not be seen.

Mr. *J. Dolbin*. What if they had run away, what then? If they were at the *Blue Boar* when Dr. *Clenche* was kill'd, they could not kill him.

Mrs. *Milward*. His Master says, that they were in the House, and out of the House, very often. Call Mr. *Dalley* the Master. Who appear'd, and stood up.

Mr. *Dalley*. My Lord, Two of them were not out of the House all the Night, I am not positive that this is the Man that came in with *Milward*, but those two Men that came in with him, never went out at all until after Eleven a Clock at Night, but only *Milward* went out between Eight and Nine, and returned about Eleven a Clock.

Mr. *J. Dolbin*. What do you say to this, Woman? your Husband told you that the Prisoner was one of the Two, this Witness cannot say he was one, but says positively those two Men never went out till Eleven a Clock, and from

St. *Clement Danes* to *Leadenball-Street* is not to go in and out, they must take a great deal of time to go thither and back again. Hark you, Mr. *Dalley*, you say that those two Men that *Milward* left, never went out of your House till after Eleven a Clock; you are sure on't?

Mr. *Dalley*. No, my Lord, they did not go out.

Mr. *Wife*. Mrs. *Milward* hath two Witnesses that can tell somewhat more of the Matter concerning her Husband's being concerned in the Murder.

Mrs. *Milward*. My Husband told me, that the Coachman took them up not far from *Chancery Lane* End, and that Mr. *Cole* laid Hands upon the Doctor in the middle of *Holbourn*.

Cl. of Arr. Cryer, Call *John Sikes* the Coachman; who stood up.

Mr. *Sikes*. My Lord, I took up two Men in *Fleet-Street*, about *Fetter-Lane* End.

Mr. *J. Dolbin*. What manner of Men were they? What Cloaths had they on?

Mr. *Sikes*. My Lord, one of them had a light-coloured Perriwig on, and the other was in sad-coloured Cloaths, and lank Hair, but I cannot be positive that this is one of them: They asked me if I knew Dr. *Clenche* of *Brownlow-Street*? I told them, that I did not know the Doctor, but I knew the Street; and they bid me drive thither; and when I came to the Street's End, they sent me to the Doctor's House, and bid me tell him, that two Gentlemen were at the Street's End in a Coach, who desired him to go with them to one that was not well; so the Doctor came presently after me, and when he was in the Coach, they bid me drive to *Leadenball-Street*; and when I came about *Holbourn-Bars* they bid me drive faster; and when I came to *Leadenball-Market*, they bid me drive to *Aldgate*, and I drove thro' the Gate to the *Pye Tavern*, and when I had turned my Coach, they bid me ask for one *Hunt* a Chyrurgeon, but he was not there; and then I told them the Gate was shut, and one of them put his Hand out of the Coach, and gave the Watchman Six-pence to open the Gate, and then I drove back again to *Leadenball-Market*, and there they bid me stop again, and one of them gave me half a Crown to buy a Fowl, and I went a little way from the Coach, and one of them called me back again, and gave me a Shilling more, and bid me bring a Couple; and he bid me ask for one *Hunt* a Poulterer; I went all over the Market, but I could find no such Man, so at length I bought the Fowls of another Man, and would have had the Man gone with me to my Coach, but he would not; then I came to my Coach-side, and found the Door open; and I found the Doctor sitting at the Bottom of the Coach, with his Head against the Cushion, and the two Men gone, and one of them seemed to be in Drink when I took them up, and I thought him to be that Man fallen asleep, and that the Doctor and the sober Man were gone to the Person that was not well; so then I called the Watch, and found the Doctor dead, and then it was about half an Hour after Ten a Clock at Night.

Mr. *J. Dolbin*. Then I ask you, was that one of the Men?

Mr. *Sikes*. I cannot say it, my Lord; I don't know him.

Mr. *J. Dolbin*. What time of Night was it that you took them up at *Fetter-Lane* End?

Mr. *Sikes*.

Mr. Sykes. It was about Nine a Clock, somewhat after.

Mr. J. Dolben. Why then, they say, that this Man never stirr'd out of the House from Eight a Clock till Eleven; this Man can't be concern'd.

Cl. of Arr. Set up *John Dudley: Which was done.*

Mrs. Milward. Mr. Dudley, What did my Husband say concerning the Doctor to you in the Country?

Mr. Dudley. He came into the Country presently after the Death of the Doctor, and he sent for me, and was very much concerned; I ask'd him what was the Matter with him, and he told me, that he was come out of Town about the Murder of Dr. Clenche; I told him, that I hoped he was not concerned in it; he told me, No, but there was a Warrant out against him upon account that he quarrell'd with the Coachman that Night that he carried him to Dr. Clenche's; and he said, that Mr. Harrison had sent to him from *Newgate*, and told him, that he would give him Twenty Pounds if he could make his Trial easy.

Mr. J. Dolben. Mistress, this makes it out, that he told you one Story, and to this Witness another, which contradicts your Story fully; he told him, that he came away for Fear, and that he was innocent of the Murder; and since that he told you, that he was guilty. Well, what else did he say to you, Mr. Dudley?

Mr. Dudley. He was much concerned to enquire after the *Gazettes*, and Letters, if he were in them, about the Doctor's Murder, and to enquire if Mr. Cole and Mr. Harper were taken up about it.

Mr. J. Dolben. You hear what is said against you; what do you say to it, Mr. Cole?

Mr. Cole. My Lord, I know nothing of it.

Mr. J. Dolben. No, I doubt you do, you were one of the Three that was set down on the Backside of St. Clement's Church, at the *Blue-Boar's-Head*, where all Things were consulted.

Mr. Cole. My Lord, there was not one Word spoke about killing of Dr. Clenche in my Company.

Mr. J. Dolben. Were not you acquainted with *Milward*?

Mr. Cole. Yes, my Lord.

Mr. J. Dolben. Were you not with *Harrison*?

Mr. Cole. No, my Lord, I never saw him with my Eyes.

Mr. J. Dolben. Well, have you any more to say?

Mrs. Milw. Call Mr. Hobbs. Who stood up.

Mr. Hobbs. I met Mr. *Milward* in *York-Buildings*, and he ask'd me how I did, and he went from me a little way, and then came to me again, and ask'd me if I would drink: So we went to the *George* in *York-Buildings*, and there we drank a Pot or two; and he ask'd me if I heard that he was accused about the Murder of Dr. Clenche; I told him No, but he never told me any thing of this Man at the Bar.

Mr. J. Dolben. What was *Milward*?

Mr. Hobbs. I do not know how he got his Living.

Mr. J. Dolben. Have you any Body else, Mistress?

Mrs. Milw. No, my Lord, I know no more.

Mr. J. Dolben. Gentlemen of the Jury, *Cole* the Prisoner at the Bar stands indicted for murdering Dr. Clenche, who, as it now appears, was murder'd in a Coach by two Persons that were

therein together with the Doctor. The Question now before you is, whether *Cole* was one of these two?

Gamble the Coachman swears, That the Night Dr. Clenche was killed, he took up three Men in *Cheapside*, set one of them down at *Gray's-Inn*, and drove on to Dr. Clenche's House; the Doctor was not at Home, then the third Man came in again to the Coach, and he drove to the *Blue-Boar's-Head*, an Alehouse by *Clement's-Inn*, and set those three Men down there, and 'twas then about Eight of the Clock.

Sikes the Coachman swears, He took up two Men at *Fetter-Lane* End in *Fleet-Street*, and by their Directions drove to *Brownlow-Street*, where the Doctor lived, whom they got into the Coach, and he drove as far as *Aldgate*, and through the Gate, and then came back to *Leadenball*; was sent by the two Men in the Coach to buy a Fowl; when he returned they were gone, but the Doctor found dead in the Coach; and 'twas now half an Hour past Ten.

The Question now, as I said before, is, Whether *Cole* the Prisoner at the Bar, was one of these two Men?

The Woman tells you, *Milward* her Husband told her, that he and *Cole* were in the Coach with Dr. Clenche, and that they two kill'd Dr. Clenche.

She likewise tells you, her Husband told her, that *Cole* and her Husband went out from the *Blue-Boar's-Head* near *Clement's-Inn*, and left only *Harper* behind.

The Court hath already declar'd to you, That her Evidence, being only what her Husband told her, is no Evidence in Law to take away a Man's Life, especially when it is single, without any Circumstance to confirm it, as here 'tis. But that is not all, there is a very great Evidence, that what she says her Husband told her, is false.

He told her, she says, that he and *Cole* went from the *Blue-Boar's-Head* and kill'd the Doctor, leaving only *Harper* behind.

The Master of the House, and his Servant (Witnesses which she produceth) both swear, That her Husband went out alone, and left two Men behind, who both staid in the House till *Milward* return'd, which was about Eleven of the Clock. The Master, 'tis true, cannot say that *Cole* is one of the two, but the Servant is very positive he is, and both are positive, that two Men that *Milward* left behind, continued in the House till *Milward* return'd at Eleven of the Clock. These two Mens Depositions do plainly contradict her Story, and if they swear true, *Cole* the Prisoner was not one of the Persons that kill'd the Doctor.

You have all heard, I am sure, that one *Harrison* hath been convicted by a Jury in this Place for the Murder of Dr. Clenche: If he was one of the two, then *Milward*, by his own Confession (if his Wife swear true) was the other; but this you cannot take notice of, the Record is not produced, neither hath the Prisoner taken notice of it. The Question is only, Whether *Cole* be guilty of the Murder? which I leave to you upon the Evidence you have heard.

The Jury having considered the Verdict, return'd, That the Prisoner was Not Guilty.

CLII. *The Trial of CHARLES Lord MOHUN, before the LORDS at Westminster, for the Murder of William Mountford, Jan. 31. 1692. 4 W. & M.*

Tuesday, Jan. 31. 1692.



IN the Court erected in *Westminster-Hall*, for the Trial of the Lord *Mohun* for the Murder of *William Mountford*;

About 12 a Clock this Day, the Lords came from their own House in their Robes, in Procession in this manner into the Court.

First, the Lord High Steward's Gentlemen-Attendants, two and two.

Then the Clerks of the House of Lords, with the two Clerks of the Crown in the *King's-Bench* and *Chancery*, two and two.

Then the Masters in *Chancery*, two and two.

Then the Judges, eight of them, two and two.

Then the Peers eldest Sons, and Peers Minors, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then the Yeoman Usher of the House.

Then the Peers according to their Seniority, beginning with the youngest Baron, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then *Garret* King at Arms, and the Gentleman Usher of the Black-Rod: *Garret* on the Right-Hand, and Black-Rod on the Left, carrying the White Staff before the Lord High Steward.

Then his Grace the Marquis of *Carmarthen*, Lord High Steward, alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Wool-Pack, the two Clerks of the Crown standing before the Clerks Table, and the Clerk of the Crown in *Chancery*, having their Majesties Commission to his Grace the Lord High Steward in his Hand, they both made three Reverences to his Grace, and at the third coming up before the Wool-Pack, they did both kneel down, and the Clerk of the Crown in *Chancery*, on his Knee, presented the Commission to his Grace, who deliver'd it to the Clerk of the Crown in the *King's-Bench*; and then with three Reverences, they return'd to the Clerks Table, where the Clerk of the Crown in the *King's-Bench* opening the Commission, commanded Proclamation of Silence to be made in this manner.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. Again.

Serjeant. Oyez.

Clerk of the Crown. My Lord High Steward of *England*, his Grace, does straitly charge and command all manner of Persons to keep Silence, and to hear the King and Queen's Majesties Commission to his Grace my Lord High Steward

of *England* directed, openly read, upon pain of Imprisonment.

Which Words the Serjeant at Arms repeated aloud.

Lord High Steward. My Lords, pray be pleased to stand up and be uncovered whilst their Majesties Commission is reading.

Which his Grace himself did, and all the Peers.

Clerk of the Crown reads.

WILLIAM R.

Guilielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Chrissimo Consanguineo & Consiliario nostro Thome Marchioni Carmarthen Presidenti Consilii nostri, Salutem. Sciatis quod cum Carolus Dominus Mohun nuper de Paroch' S. Clement Dacor. in Comitatu nostro Middlesex coram dilectis & fidelibus nostris Lanceloto Johnson, Arm' Carolo Lee, Milit. Samuele Buck, Andrea Lawrence, Willielmo Alhystrey, Thoma Harriott, Theophilo Eyton, Nich. Grice, Arm's, & aliis Sociis suis Justiciariis nostris ad inquirend. per Sacrament' probor' & legalium hominum de Comitatu nostro Middlesex predict. ac aliis viis modis & mediis quibus melius sciverint aut poterint tam infra Libertates quam extra per quos rei Veritas melius sciri poterit & inquire de quibuscunque Proditionibus Misprisonibus Proditionum Insurrectionibus Rebellionibus Contrafacturis Tonsuris loturis falsis fabricationibus & aliis falsitat. Monetæ hujus Regni nostr. Angl. & aliorum Regnorum sive Dominiorum quorumcunque ac de quibuscunque Murdris Feloniis Homicid' Intersessionibus Burglariis Raptibus Mulierum Congregationibus & Conventiculis illicitis verborum Prolationibus Coadunationibus Misprisonibus Confederationibus falsis Alleganciis Transgressionibus Riotis Routis Retentionibus Escapiis Contempt. falsitat. negligentis Concelamentis manutinent. Oppressionibus Cambiparciis Deceptionibus & aliis Malefactis Offensis & Injuriis quibuscunque. Necnon accessariis eorundem infra Comitatu predict. (tam infra Libertates quam extra) per quoscunque & qualitercunque habit. fact. perpetr. sive Commiss. & per quos vel per quem cui vel quibus quand. qualiter & quomodo & de aliis Articulis & Circumstantiis premiss. seu eorum aliquod vel aliquem qualitercunque concernend. plenius veritat. & ad easdem Proditiones & al' premiss. audiend. & terminand. secundum Legem & Consuetudinem Regni nostri Angl. nuper assignat. de Felonia & Murdro per ipsum Carolum Dominum Mohun Commiss. & perpetrat. per sacrum proborum & legalium hominum Comitatu nostri Middlesex predict. indictat. existit. Nos Considerantes quod Justitia est Virtus excellens & Altissimo complacens Volentesque quod predict. Carolus Dominus Mohun de & pro Felonia & Murdro unde ipsa ut presertur indictat. existi coram Nobis in presenti Parlamento nostro secundum Leges & Consuetudines hujus Regni nostri Angl. Audiatur, Examinetur Sententietur & Adjudicetur, ceteraque omnia que in hæc parte pertinent debito modo exercentur & exequantur.

tur. Ac pro eo quod Officium Seneschall. Angl. (cujus presentia in hac parte requiritur) ut accepimus jam vacat. Nos de Fidelitate Prudentia provida Circumspectione & Industria vobis plurimum Confidentes, Ordinavimus & Constituimus vos ex hac Causa Seneschall. Angl. ad Officium illud cum omnibus eidem Officio in hac parte debet & pertinent' (hac vice) gerend. occupand. & exercend. & ideo vobis Mandamus quod circa premissa diligenter intendatis & omnia que in hac parte ad Officium Seneschall. Angl. pertinent & requiruntur (hac vice) faciatis Exerceatis & Exequamini cum effectu. In cuius rei Testimonium has Literas nostras fieri fecimus Patentes. Testibus Nobis ipsis apud Westm. tricesimo primo die Januarii Anno Regni nostr. Quarto.

Per ipsum Regem propria Manu Signat.

C H U T E.

G O D Save King William and Queen Mary.

Then Proclamation was made for all Persons but the Peers to be uncovered.

After which, their Majesties Writ of Certiorari, directed to the Commissioners of Oyer and Terminer for the County of Middlesex, to remove the Indictment found before them against the Lord Mobun, with the Return thereof, and the Record of the Indictment, were read by the Clerk of the Crown in the King's-Bench: Thus,

Clerk of the **G**ulielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Dilectis & Fidelibus nostris Lanceloto Johnson, Armigero, Carolo Lee, Militi, Samueli Buck, Andrea Lawrence, Willielmo Allestree, Thomae Harriott, Theophilo Eyton & Nicholao Grice, Armigeris, Salutem. Vobis Mandamus quod Indictamentum de Felonia & Muro de Carolus Dominus Mobun nuper de Parochia Sancti Clementis Dacorum in Comitatu nostro Middlesex coram Vobis in Comitatu nostro Middlesex predicto. & pones vos jam ramanen. indictatus existit ut dicitur, cum omnibus illud tangentibus nobis in presenti Parlamento nostro sub sigillis vestris vel unius vestrum deliberetis indilate una cum hoc brevi. Testibus nobis ipsis apud Westmonasterium vicesimo octavo die Januarii Anno Regni nostri Quarto.

C H U T E.

Virtute istius brevis mibi & aliis directi Indictamentum in eodem brevi mentionatum cum omnibus ea tangentibus Domino Regi & Domine Regine in presenti Parlamento sub sigillo meo in isto brevi contenta in quadam Scheda huic brevi annexa mitto prout interim mibi precipitur.

Responf.

Lanceloti Johnson, Armigeri, unius Justiciariorum dictorum Domini Regis & Domine Regine ad inquirendum, &c. infra scripti.

L. A. JOHNSON.

Middlesex ff. Memorandum quod per quandam Inquisitionem captam pro Domino Rege & Domina Regina apud Hicks-Hall in S. John-Street in Comitatu Middlesex Die Martis (scilicet) decimo septimo die Januarii Anno Regni Domini & Domine nostrorum Gulielmi & Marie Dei Gratia Anglie, Scotie, Francie & Hibernie Regis & Regine Fidei Defensorum, &c. Quarto, coram Lanceloto Johnson, Armigero, Carolo Lee, Milite, Samuele Buck, Andrea Lawrence, Willielmo Allestree, Thoma Harriott, Theophilo Eyton & Nicholao Grice, Armigeris, & aliis Sociis suis Justiciariis dictorum Domine Regis & Domine

Regine ad inquirendum per Sacramentum proborum & legalium Hominum Comitatus Middlesex predicti ac aliis viis modis & mediis quibus melius sciverint aut poterint, tam infra libertates quam extra per quos rei veritas melius sciri poterit & inquire de quibuscunque Proditionibus Misprisonibus Proditionum Insurrectionibus Rebellionibus contrafacturis tonsuris falsis Fabricationibus & aliis falsitatibus monetæ hujus Regni Anglie & aliorum Regnorum sive Dominiorum quorumcunque ac de quibuscunque Murdris Feloniis Homicidiis & Interfectionibus & aliis Articulis & Offensis in Literis patentibus dictorum Domini Regis & Domine Regine eis & quibuscunque quatuor vel pluribus eorum inde directis specificatis, necnon accessariis eorundem infra Comitatum predictum tam infra libertates quam extra per quoscunque & qualitercunque habitis factis perpetratis sive commissis, ac de aliis Articulis & Circumstantiis premissa & eorum aliquod vel aliquem qualitercunque concernentibus plenius veritatem & ad easdem proditiones & alia premissa audiendum & terminandum secundum legem & consuetudinem hujus Regni Anglie assignatis per Sacramentum Samueli Philipps, Thomae Head, Georgii Sparkes, Thomae Lum, Johannis Waterman, Willielmi Keyte, Johannis Usher, Willielmi Pangborne, Arthurii Alliborne, Willielmi Deverell, Jacobi Garrison, Anthonii Hartley, Roberti Rogers, Thomae Knight & Thomae Long proborum & legalium hominum Comitatus predicti ad tunc & ibidem juratorum & oneratorum ad inquirendum pro dicto Domino Rege & Domina Regina & pro corpore Comitatus pr.ed. presentatum existit modo & formâ prout patet in quodam Indictamento huic Schedule annexo.

L. A. JOHNSON.

Middlesex ff. Juratores pro Domino Rege & Domina Regina super Sacramentum suum presentant quod Richardus Hill nuper de Parochia Sancti Clementis Dacorum in Comitatu Middlesex Generosus & Carolus Dominus Mobun nuper de Parochia predicta in Comitatu predicto Deum præ oculis suis non habentes sed instigatione Diabolica moti & seducti nono die Decembris Anno Regni Domini & Domine nostrorum Gulielmi & Marie Dei Gratia Anglie, Scotie, Francie & Hibernie Regis & Regine, Fidei Defensorum, &c. Quarto. vi & armis, &c. apud Parochiam predictam in Comitatu predicto in & super quendam Willielmum Mountford Generosum in pace Die & dictorum Domine Regis & Domine Regine nunc ad tunc & ibidem existentem Felonice voluntarie & ex malitiis suis precogitatis insultum fecerunt. Et quod predictus Richardus Hill cum quodam Gladio (Anglice a Rapier) de ferro & Chalybe confecto valoris quinque Solidorum quem ipse idem Richardus Hill in manu sua dextra ad tunc & ibidem extractum habuit & tenuit præfatum Willielmum Mountford in & super dextram partem corporis (Anglice the Right-side of the Body) ipsius Willielmi Mountford prope dextram Mammillam (Anglice the Right Pap) ejusdem Willielmi ad tunc & ibidem Felonice voluntarie & ex malitia sua precogitata percussit & pupugit (Anglice did strike and thrust) dans eidem Willielmo Mountford ad tunc & ibidem cum Gladio extracto predicto in & super predictam dextram partem corporis ipsius Willielmi Mountford prope dictam dextram Mammillam ejusdem Willielmi unum Vulnus mortale latitudinis unius pollicis & profunditatis viginti pollicum, de quo quidem vulnere mortali predictus Willielmus Mountford à predicto nono die Decembris Anno supradicto usque decimum diem ejusdem Mensis Decembris Anno supra dicto apud Parochiam prædictam in Comitatu predicto languebat & languidus vixit, quo quidem decimo die

Decembris Anno supra dicto predictus Willielmus Mountford de vulnere mortali predicto apud Parochiam predictam in Comitatu predicto obiit. Et quod predictus Carolus Dominus Mohun tempore Felonia & Murdri predicti. per prefatum Richardum Hill modo & formâ predictis Felonice voluntarie & ex malitia sua precogitata factorum & perpetratorum ad tunc & ibidem Felonice voluntarie & ex malitia sua precogitata fuit presens auxilians abettans confortans assistens & manutenens prefatum Richardum Hill ad predictum Willielmum Mountford in formâ predictâ Felonice voluntarie & ex malitia sua precogitata interficiendum & murdrandum. Et sic Juratores predicti super Sacramentum suum predictum dicunt quod predictus Richardus Hill & Carolus Dominus Mohun prefatum Willielmum Mountford modo & formâ predictis Felonice voluntarie & ex malitiis suis precogitatis interfecerunt & murdraverunt contra pacem dictorum Domini Regis & Domine Regine nunc, coronam & dignitates suas, &c.

Then his Grace remov'd from the Wooll-Pack to the Chair, which was placed upon an Ascent just before the uppermost Step of the Throne, and seated himself in the Chair.

Cl. of Cr. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Cl. of Cr. Chief Governor of the Tower of London, return the Precept to you directed, together with the Body of Charles Lord Mohun your Prisoner, forthwith into the Court, upon Pain and Peril will fall thereon.

Then the Deputy-Governor of the Tower brought the Lord Mohun to the Bar, having the Ax carried before him by the Gentleman Gaoler of the Tower, who stood with it at the Bar, on the Right-Hand of the Prisoner, turning the Edge from him.

The Prisoner at his Approach to the Bar, made three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand, and his Grace and all the Peers returned the Salute to him.

Lord High Steward. My Lords, my Voice will not serve to speak at such a Distance, so as to be heard, and therefore I must beg leave of your Lordships to come down to the Wooll-Pack again.

Lords. Ay, Ay.

Then his Grace came down, and seated himself on the Wooll-Pack.

Lord High Steward. My Lord Mohun, I am to let your Lordship know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Council at the Bar likewise know, that both you and the Witnesses, are to direct yourselves to the Court, in the Style of My Lords, speaking to the Court.

Then there was a little Pause, after which his Grace addressed himself to the Prisoner thus.

Lord High Steward. My Lord, you are brought here before this Supreme Court in order to your Trial.

The Charge against you is, for the Murder of one of the King's Subjects, which is a Crime the King will at no time pass over in the meanest Man's Case, without making a strict Inquiry into the Offence, and causing due Punishment to be inflicted on the Offender.

This, my Lord, is charged upon you, not by any slight Information, but by the Grand In-

quest of this County, made up of Gentlemen of good Worth and Consideration. It is true, that this Inquest does not amount to much more than a bare Accusation; and therefore it ought not to be made any use of, so as to prejudice your Lordship's Trial; but it is that which is the Ground of presenting this Black Crime before my Lords your Peers, who cannot receive it without some Trouble, to find any one of their Body suspected to be guilty of an Action so Dishonourable as this is represented to their Lordships.

My Lord, you are a very young Man, and therefore it is to be hoped, you cannot so early have had your Hands in Blood. And the same Reason, because you are so young, may, perhaps, make you conceive, that you are under some greater Disadvantage in making your Defence, than you would be if your Experience had been longer.

But to remove any Misapprehension you can have of that kind, it is very proper to put your Lordship in mind, that you have the good Fortune now, to be tried for this Fact in full Parliament, where no Evidence will be received, but such as must be manifest and plain, beyond all Contradiction; so that you have nothing to fear here, but your own Guilt.

In the next Place, my Lord, you need not be discourag'd for want of Council, for the Honour of this Court is such, as will take care to inform you of any Advantage that the Law can give you. And you may be farther assured, that no Art or Skill in Arguing, can take any Place here, either against your Innocency, or divert my Lords from doing you exact Justice. Nay, I dare presume to say, on the Part of my Lords, that if there be Room for any Abatement of Severity, you may reasonably expect to find it from their Lordships.

These Considerations, my Lord, cannot but give you great Consolation under your unhappy Circumstances, it being most certain, that nothing but your own Crimes can hurt you.

But at the same time I must tell you, that your Lordship is not to flatter yourself with an Expectation or Hope, that any Favour will be shewed you beyond what Honour and Justice can allow: And I hope you have well considered, that it is no less than your Life, your Honour, and your Estate, that you are now to defend, insomuch, that I cannot doubt but your Lordship has recollected and prepared yourself for the Defence of what so very much concerns you.

I will not therefore detain you any longer than to give you some Directions in the Order and Method of your Trial; and those are, that your Lordship do give Attention carefully to the Reading of your Indictment. That you give no Interruption to the Council or Witnesses when they speak against you; and when the proper time shall come for your Witnesses to be examined, and that you are to be heard in your own Defence, I will give you due notice of it.

Your Lordship may also be certain, that when it shall come to your turn to speak, you shall be heard with all the Patience and Favour that the Matter will bear; and at last, when all hath been heard that can be said on both Sides, your Lordship needs not doubt, but that my Lord will give such a Judgment as will be suitable to the Honour, Justice and Equity of this great Court. Clerk, read the Indictment to my Lord.

Clerk

Clerk of the Crown. **C**harles Lord Mobun, You stand indicted by the Name of Charles Lord Mobun, of the Parish of St. Clement Danes, in the County of Middlesex, for that you, together with one Richard Hill of the same Parish and County, Gentleman, who is fled, and withdrawn from Justice, not having the Fear of God before your Eyes, but being moved and seduced by the Instigation of the Devil, the 9th Day of December, in the 4th Year of the Reign of our Sovereign Lord and Lady William and Mary, by the Grace of God of England, Scotland, France, and Ireland, King and Queen, Defenders of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, in and upon one William Mountford, Gent. in the Peace of God, and our said Sovereign Lord and Lady the King and Queen, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault. And that he the said Richard Hill, with a certain Rapier made of Iron and Steel, of the Value of 5 s. which he the said Richard Hill, in his Right-Hand then and there had and held drawn, the said William Mountford, in and upon the Right-side of the Body of him the said William Mountford, near the Right Pap of him the said William, then and there feloniously, wilfully, and of his Malice aforethought, did strike and thrust, giving unto him the said William Mountford then and there, with a Sword drawn aforesaid, in and upon the aforesaid Right-side of the Body of him the said William Mountford, near the said Right Pap of the said William, one Mortal Wound of the Breadth of one Inch, and of the Depth of twenty Inches, of which said Mortal Wound the aforesaid William Mountford, from the aforesaid ninth Day of December, in the Year aforesaid, unto the tenth Day of the same Month of December, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, did languish, and languishing, did live, on which said tenth Day of December in the Year aforesaid, the aforesaid William Mountford of the Mortal Wound aforesaid, at the Parish aforesaid, in the County aforesaid, died. And that you the said Charles Lord Mobun, at the Time of the Felony and Murder aforesaid, by the aforesaid Richard Hill, in Manner and Form aforesaid, feloniously, wilfully, and of his Malice aforethought, done and committed, then and there feloniously, wilfully, and of your Malice aforethought, were present, aiding, abetting, comforting, assisting and maintaining the aforesaid Richard Hill, the said William Mountford in Form aforesaid, feloniously, wilfully, and of his Malice aforethought to kill and murder. And so that you the said Charles Lord Mobun, and the said Richard Hill, the said William Mountford in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our said Sovereign Lord and Lady the King and Queen, their Crown and Dignity.

How say you, Charles Lord Mobun, Are you Guilty of this Felony and Murder, or not Guilty?

L. Mobun. Not Guilty, my Lords.

Clerk of the Crown. How will your Lordship be tried?

L. Mobun. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance.

L. High Steward. Will your Lordships please that the Judges may be covered?

Lords. Ay, Ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant. Oyez.

Clerk of the Crown. If any one will give Evidence on the Behalf of our Sovereign Lord and Lady the King and Queen's Majesties, against Charles Lord Mobun the Prisoner at the Bar, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

L. High Steward. You Gentlemen that are of the King's Council, will you begin?

Mr. Serjeant Thompson. May it please your Lordships, I am of Council for the King and Queen, against my Lord Mobun the Prisoner at the Bar, who stands indicted for the Murder of one William Mountford.

L. Mobun. My Lords.

L. High Steward. My Lord Mobun, what does your Lordship say?

L. Mobun. Do not your Lordships think it proper, that I should have Pen, Ink and Paper?

Lords. Ay, by all means.

L. High Steward. Yes, give my Lord Pen, Ink and Paper.

Which were carried to him by one of the Clerks.

L. High Steward. Go on, Sir, now.

Mr. Serj. Thompson. My Lord Mobun stands indicted here before your Lordships, for the Murder of one William Mountford, and the Indictment sets forth, that one Richard Hill, who is since fled from Justice, did upon the 9th of December last, make an Assault upon this same William Mountford, and that the said Lord Mobun, did likewise make that Assault. This Indictment particularly sets forth, that this Hill, by a Sword or Rapier, which he had in his Hand, did give this William Mountford a Wound on his Right-side, and that Mountford did languish of that Wound till the next Day, which was the 10th of December, when he died; and that at the Time of the giving the Wound, my Lord Mobun was present, and was aiding, abetting, assisting, and comforting of Hill; and thereupon we do say, he is Guilty of this Murder, and for this he stands indicted. It is my Duty to open the Indictment to your Lordships, we shall call our Proofs, and give you the Evidence, and then leave it to your Lordships Judgment.

Mr. Att. Gen. Sir John Somers. My Lords, the Indictment has been opened, and by that your Lordships see, the Noble Lord at the Bar stands charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be tried in this Great and Noble Court; and as my Lord has just Reason to put a high Value upon this Privilege, so on the other Hand, their Majesties, who are making Inquisition for the Blood of one of their Subjects, have a full Assurance, that no Compassion for my Lord's Youth, no Consideration for his Quality, or Regard for one of your own Order, will make your Lordships unmindful of the heinous Nature of the Crime, or cause any Variation in the Steadiness of your Justice.

It is true, my Lords, the Difference between the Trial of a Peer and a Commoner is very great, but

but there is no Difference in the Crime, whether committed by one or the other: It is the same Law by which they must be tried and judged; and that Fact which would be Murder in the meanest Subject, is no less than Murder if committed by the greatest Peer.

My Lords, it is not insisted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; Nor is it so alledged in the Indictment: The Indictment findeth the Wound to have been given by the Hand of *Richard Hill*; but if my Lord the Prisoner was of his Party, if he concurr'd with him in the Thing, if he was present and abetting to the Fact, though he did not strike a Stroke, though he was no more than a Looker-on when the Thing was done, the Law saith, He is a Principal in the Murder.

Whether my Lord's Case will fall within this Rule, is the Point for your Lordships to determine, when the Witnesses are heard.

My Lords, it is my Part to give an Account of the Nature of the Evidence, to the end, that your Lordships may more easily go along with the Witnesses, as they are examined, and more readily make your Observations upon what they say.

This I shall do as shortly, and as exactly as I can, without pretending to aggravate any thing, which I could never think did become any one in my Station; and I am sure, would be to very little purpose before such a Judicature as this; for after all, your Lordships will found your Judgments upon the Fact, not as it is represented by us, but as it appears upon the Oaths of the Witnesses.

The Time when the Fact for which my Lord is to be tried was committed, was the 9th Day of *December* last.

The Occasion of it, was this.

Captain Hill, the Person mentioned in the Indictment, had for some time before made Addresses of Courtship in the Way of Marriage, to one *Mrs. Bracegirdle*, an Actress in the Play-House; But these Proposals were totally rejected. This put *Mr. Hill* in a very great Rage, and he declared, that *Mr. Mountford* (the Person slain) was the only Man that stood in his way, and with many Execrations, expressed his Resolution to be revenged upon him: This he did at several times, and before several Persons.

The same Day the Fact was committed, in the Morning, my Lord, who is now at the Bar, and *Captain Hill*, went together to hire a Coach to go to *Totteridge*, and directed the Coachman to have six Horses ready, but to be waiting for them in *Drury-Lane* near the *Play-House*, with only two Horses in his Coach, about Nine a Clock the same Night. My Lord and *Captain Hill* dined together that Day, at a Tavern in *Covent-Garden*, and here much of their Discourse was about *Mrs. Bracegirdle*; and both of them did freely declare their Opinion, that *Mr. Mountford* lay with her. But the Principal of their Discourse, was in relation to a Design which they had formed for the seizing upon *Mrs. Bracegirdle*, and forcing her into a Coach, and carrying her away somewhere into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that purpose: *Mr. Hill* did acquaint my Lord, that the Soldiers would be ready by the time; and my Lord took Notice, that the carrying her off, would

stand *Mr. Hill* in 50 *l.* at least. Thereupon (as your Lordships will hear from the Evidence) *Mr. Hill* used this Expression, If the Villain resist, I will stab him; and then my Lord was pleased to say, That he would stand by his Friend.

After they had continued there some time, being about to part, *Mr. Hill* told my Lord, That unless he was at the *Play-House* by Six a Clock, the Thing could not be effected, and he should be undone: But my Lord promised to be there at the Time.

Accordingly they both met at the *Play-House*; and after they had been behind the Scenes, and informed themselves that *Mrs. Bracegirdle* would not be there that Night, they left the *Play-House*.

But it seems they had got Intelligence, that she was to sup that Night at one *Mr. Page's* House in *Drury-Lane*; and therefore they planted themselves with their Soldiers near that Place, over against my Lord *Craven's* House.

Lord High Steward. They; who do you mean?

Mr. Attorney General. My Lord, the Prisoner at the Bar and *Mr. Hill*. After they had continued there for a considerable time (I think till towards Nine a Clock) they began to have a Jealousy, that they might be under some Misinformation; and therefore ordered the Coachman to drive them into *Howard-street*, the Place where *Mrs. Bracegirdle* lodged, and observing some Persons walking near her Lodging, they said, they doubted they were deceived, and had been betrayed.

But they soon came back again to *Drury-Lane*, and fixed themselves in their former Station. About Ten a Clock, *Mrs. Bracegirdle*, accompanied with *Mr. Page* (at whose House she had been) and with her Mother, and (I think) her Brother, going Home; when they came to the Place where the Coach stood, with the Door open, and my Lord at the Bar placed in the Coach; and several Cases of Pistols by him, the Soldiers, together with *Captain Hill*, came up to *Mrs. Bracegirdle*, seized upon her, and would have forced her into the Coach: *Mr. Hill* endeavoured with Violence, to force away *Mr. Page*, who was then leading her, and struck him; but *Mrs. Bracegirdle's* Mother holding her about the Middle, they could not readily get her into the Coach, and during this Struggle, there was an Opportunity given to *Mr. Page* to call for Help, and several Persons coming presently from the Houses near, and the People in the Street beginning to rise upon them, they found it impracticable to effect their Design at that Time.

Thereupon the Soldiers were dismissed, but my Lord and *Mr. Hill*, would not be denied the Liberty to wait upon *Mrs. Bracegirdle* to her Lodging, and accordingly, together with *Mr. Page* and her Mother, and other Persons, they went together to *Mrs. Bracegirdle's* Lodging, at one *Mrs. Browne's* House in *Howard-street*. *Mr. Mountford's* House was in *Norfolk-street*, below *Howard-street*. *Howard-street* is a Cross Street, which leads from *Arundel-street*, and through *Norfolk-street* to *Surrey-street*; and so it was not possible for *Mountford* to come to his own House, but whoever should fix themselves in *Howard-street*, must have the Opportunity of seeing him.

As they were going along, *Hill* swore he would be reveng'd; but nam'd no-body.

After that *Mrs. Bracegirdle* and the Company were come to her Lodging, she and her Mother, and *Page* went into the House: My Lord *Mohun*
and

and Mr. Hill staid in *Howard-street*, and there continued for near two Hours together, and for the most part of that Time, with their Swords drawn.

Mr. *Mountford*, as it happen'd, did not come Home till late that Night; so that their Stay being long, my Lord and Mr. Hill thought fit to send for Wine, and had one or two Bottles, which they drank in the Street, near Mrs. *Bracegirdle's* Lodgings.

During this Time, they were heard to say (that is, one of them was; but which of them, by reason of the Darkness, we cannot tell) that if he could not be revenged that Night, he would the next Morning; upon which, a Boy, who was there with them; (but who the Boy was we cannot discover) said, Good my Lord, do not do it, alter your Resolution. I did observe before, that Mrs. *Bracegirdle* supped that Night at Mr. *Page's* House, and Mrs. *Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone home with Mrs. *Bracegirdle*, and being under a great Concern for his Safety, thought fit to follow him thither. As she entred into the House, she saw my Lord *Mobun* and Captain *Hill* near the Door; and presently after, before she could have a full Relation of what had happened in *Drury-lane*, Mrs. *Browne*, the Owner of the House where Mrs. *Bracegirdle* lodged, came into the Room, and told them, That my Lord *Mobun* and *Hill* were waiting for Mr. *Mountford*, and that she was apprehensive it was with no good Intention. Thereupon Mrs. *Page* thought it requisite to go to Mrs. *Mountford's* House to give her Notice of it, and to desire her to find out where her Husband was, and to caution him not to come Home, unless he brought a good Guard with him.

As she went out, she saw them both with their Swords drawn, and she acquainted Mrs. *Mountford* with it, who sent to several Places in Search of her Husband; but she was so unfortunate, that the Messengers could not find him.

Whilst this was doing, the Watch came into *Howard-street*, being alarm'd at the Report that two Gentlemen were drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mobun*, why he had his Sword drawn. My Lord was pleas'd to return them this Answer, That he was a Peer of the Realm, and bid them touch him if they durst. They then asked *Hill*, why his Sword was out, and my Lord made the Excuse for him, That *Hill* had lost his Scabbard.

The Watch observing the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surrey-street*, went to inform themselves, who these Persons should be, that were walking in such a Manner at that time of Night. But they were hardly got into the House before they heard the Cry of Murder.

The Witnesses will inform your Lordships, that as Mr. *Mountford*, about twelve a Clock, was coming home, my Lord *Mobun* met him, and saluted him. Mr. *Mountford* said, My Lord *Mobun*, What does your Lordship do here at this time of Night? and my Lord made Answer, He supposed Mr. *Mountford* had been sent for. No, no, says *Mountford*, I came by Chance. My Lord said to him again, I suppose you have heard about the Lady. Mr. *Mountford* answered, I hope my Wife has given your Lordship no Of-

fence. No, says my Lord *Mobun*; It's Mrs. *Bracegirdle* I mean. To this the Reply of Mr. *Mountford* was, Mrs. *Bracegirdle* is no Concern of mine; but I hope your Lordship does not countenance any ill Action of Mr. *Hill*.

Upon this *Hill* came up to them, and said to my Lord, It was not a Time to discourse of those Matters; and as my Lord continued to talk with *Mountford*, *Hill* struck *Mountford* first, and, in a manner, at the same Instant made a Pass at him, and run him clean through the Body, and this before Mr. *Mountford's* Sword was drawn. Immediately, upon this, there was a Cry of Murder, and the Watch came with what haste they could, and took my Lord *Mobun*, but *Hill* was fled; when my Lord was taken, his Sword was not drawn.

As soon as my Lord *Mobun* was taken, the first Question he asked was, If *Hill* was apprehended; and when he was told, he was not, he said he was glad of it, and he did not care if he were hang'd for him. And he said, adding at the same time, That he was sorry that Mr. *Hill* had so little Money about him; and wish'd him all that he had in his own Pocket; and he did then also own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill's* Coat on him at that time.

My Lords, this is the Substance of the Evidence, and in this Order, with your Lordships Leave, we shall offer the Proofs to your Lordships; I do not doubt, but your Lordships will attend to the Evidence with all Care, and will determine upon it according to Justice and Honour. I will detain your Lordships no longer, but proceed to call the Witnesses to prove what I have opened.

L. H. Steward. Pray call your Witnesses together, and let me know who you begin with.

Mr. *Att. Gen.* My Lords, We do not know what Place is designed for the Witnesses; but if they are to be on the other Side, and this Croud do interpose between us and them, it will be impossible for us, who are the King's Council, to hear what they say, or know how to proceed.

L. H. Steward. There must be Room made there for the Witnesses; where are your Witnesses Mr. *Attorney*?

Clerk of the Crown. If you please to name them, Sir, we will call them.

Mr. *Att. Gen.* Call Mr. *John Hudson*, and Mr. *George Powel*.

Lord High Steward. I know not how this is ordered, but Way must be made there by the Bar, that the Prisoner may see the Witnesses, and they him.

Mr. *Att. Gen.* Yes, my Lord, by all means.

Mr. *Serj. Tremain.* If your Lordships please, the Witnesses will be most conveniently heard, if they come and stand by us.

Mr. *Att. Gen.* If your Lordships please, it will not be possible either for my Lord at the Bar, or for us, to hear what the Witnesses say, unless they be brought into this Place to stand between us.

L. H. Stew. My Lord Great Chamberlain, be pleas'd to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the Bar.

L. Gr. Cham. The Witnesses must be brought to this Place.

And accordingly, Way was made for the Witnesses,

nesses, as called, to stand at the Bar between the Prisoner and the King's Council.

L. H. Stew. Give me the Name of him that you begin with.

Mr. Att. G. We begin, my Lords, with Mr. *John Hudson*. Who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.

Cl. of the Cr. Hearken to your Oath, Sir; The Evidence that you shall give on the Behalf of our Sovereign Lord and Lady the King and Queen's Majesties against *Charles Lord Mohun*, the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God. *(Then he kissed the Book.)*

Mr. Att. Gen. Mr. *Hudson*, Do you give my Lords an Account what you know of any Applications of Courtship made to Mrs. *Bracegirdle* by Mr. *Hill*, and what became of it; and what you heard *Hill* say about her, or about any one else relating to that Matter.

Hudson. My Lord, I had the Honour to be invited to Supper with my Lord *Mohun*, at the *Rose-Tavern* in *Covent-Garden*, where I found Captain *Hill* with his Lordship.

Mr. Att. Gen. When was this, Sir? tell the time.

Hud. This was three Nights before this unfortunate Accident happen'd, there I found Captain *Hill*, and we supped together; and after Supper, Captain *Hill* rais'd a Discourse of Mrs. *Bracegirdle* and Mr. *Mountford*; says he, I should not doubt the Success of my Amour with Mrs. *Bracegirdle*, if I were not obstructed by *Mountford*, whom I design to be the Death of: This is Truth upon my Oath. My Lord *Mohun* was in the Company; but I cannot say that my Lord made any Reply to the Thing, or took any Notice of it: But this Captain *Hill* did say, not only then, but several times before.

Mr. Att. Gen. Did he say it at any other time in your Hearing?

Hud. Yes, several times before.

Mr. Att. Gen. Do you know any thing more of this matter?

Hud. No more, than that my Lord *Mohun*, that very Night that Mr. *Mountford* was killed, and Capt. *Hill*, came into the Scene Room of the Play-House, and my Lord *Mohun* had Capt. *Hill's* Coat on, and Capt. *Hill* had my Lord *Mohun's* Coat on, and they changed their Cloaths in the Play-House. I saw them change their Cloaths; but what their Design was, I cannot tell.

Mr. Att. Gen. When was that, Sir?

Hud. That very Night that the Gentleman that is dead, Mr. *Mountford*, was killed.

Mr. Att. Gen. You say, That my Lord *Mohun* was present when that Discourse of *Hill* was, about *Mountford* at the Tavern.

Hud. Yes, but I cannot say my Lord took any Notice of it, for he made no Reply that I heard.

L. H. Stew. Have you done with this Witness?

Mr. Att. Gen. Yes, my Lord.

Hud. This is all that I know of the Matter.

L. H. Stew. My Lord *Mohun*, have you any thing to say to this Witness?

L. Moh. No, my Lord.

Mr. Att. G. Then our next Witness's Name is *George Powell*. *(Who was sworn in like manner.)*

Mr. Att. G. Mr. *Powell*, You have heard the Questions that have been ask'd Mr. *Hudson*. Pray will you make Answers to them; and give my Lords an Account what you know of this Matter.

Powell. May it please your Lordships, about

5 or 6 Days before Mr. *Mountford* was wounded, I was in Company with Captain *Hill*, and he began Mrs. *Bracegirdle's* Health. I told him I would pledge it. Says he, I am sure there is no Bar between me and Mrs. *Bracegirdle*, but *Mountford*; and I am resolv'd to be revenged on him, one way or another. About 3 Days afterwards I was at Supper with my Lord *Mohun* and Captain *Hill*, and another Gentleman, and the same Discourse arose again, and Captain *Hill* whisper'd me in the Ear, says he, I am resolv'd to have the Blood of *Mountford*. I told him I did not think it fit for him to speak so behind a Gentleman's Back, and to me, who was his Friend. I said, I would acquaint Mr. *Mountford* what he said, and I did not doubt but he would give him the Satisfaction of a Gentleman for any Injury he did him. I heard no further Discourse at that time, nor do I know more of that Matter, till the Night that Mr. *Mountford* was wounded, when I saw him lying upon the Parlour Floor, and afterward saw him laid to Bed, and sat up all Night with him, and about four a Clock in the Morning, I asked Mr. *Mountford* how the Thing happened. He told me Captain *Hill* killed him basely; I asked him if his Sword was drawn; Yes, says he, but it was after I had received my Wound, for whilst my Lord *Mohun* talked to me, *Hill* run me thro'.

Mr. Att. G. At that time, when those Words were spoke at Supper, That he design'd to be the Death of *Mountford*, was my Lord present?

Powell. Yes, my Lord *Mohun* was present, but he was talking to Colonel *Tredenham*.

Mr. Att. G. Did my Lord *Mohun* say any thing to what *Hill* said?

Powell. I did not hear him make any Answer to it at all.

Mr. Att. G. Do you know any thing else in relation to this Fact?

Powell. Nothing else, but that Captain *Hill* did give a Letter to be delivered to Mrs. *Bracegirdle*, but I know not whether it was delivered or not, and he often told me, he would marry her with all his Heart.

Mr. Att. G. You say you had that Discourse with *Mountford*, when he lay a dying?

Powell. It was about four a Clock, and he died about One.

Mr. Att. G. Was there any thing said about my Lord *Mohun* at that time?

Powell. Nothing, but that my Lord *Mohun* was talking to him, whilst the other run him thro'.

L. H. Stew. If I understand you aright, you say nothing against my Lord *Mohun*, but his being by one time at Supper when *Hill* said some Words about *Mountford*; and then the other thing you say is, what *Mountford* told you after he was wounded, That my Lord was talking to him, when *Hill* gave him the Wound?

Powell. Yes, my Lord, That is all that I heard.

L. H. Stew. Has your Lordship any thing to say to this Witness?

L. Mohun. No, my Lord.

Mr. Att. G. The next Witness that we shall desire to call is Mrs. *Knight*. *(Who was sworn.)*

Mrs. Knight. I have nothing to say to my Lord *Mohun*; but what I have to say, is to Mr. *Hill*. About 4 Days before Mr. *Mountford* was killed, Mr. *Hill* came to me, and spoke to me about Mrs. *Bracegirdle*: He told me he was satisfied she hated him. I told him I did not believe she hated any Body, or loved any Body? Yes, he

he said, she did love some Body, but he had thought of a Way to be even with that Body. Upon the *Wednesday* Night before Mr. *Mountford* was killed, he came to me as I was coming out of the dressing Room; saith he, Mrs. *Knight*, let me speak a Word with you; says he, You are very great with Mrs. *Bracegirdle*, and I desire you to be so kind, as to speak to her for me, and I would beg of you, if you would give me leave, to give her this Letter from me: No, said I, Mr. *Hill*, I beg your Pardon; you say she hateth you, and if she hateth you, she will not love any Body that speaketh for you; and I am not fond of creating myself Enemies in the House, knowing I have some already. What Enemies, saith Mr. *Hill*, *Mountford* do you mean? And then repeating a great Oath, I shall find a Way with him speedily.

L. H. Stew. A Way, with what?

Mrs. *Knight*. A Way with him speedily; *Hill* said it of Mr. *Mountford*.

L. H. Stew. What do you call this Witness for, Mr. *Attorney*? what Use do you make of her Evidence against my Lord *Mobun*?

Mr. *Att. Gen.* My Lord, the Use that we would make of these Witnesses, is to give an Account of the whole Fact from the Beginning to the End, *Hill's* Malice, and what was the Occasion of it, his Design in coming there that Night, and what he did, and to leave it to your Lordships, to judge what Influence this will have, how far it will affect my Lord *Mobun*. The next Witness is Mrs. *Sandys*.

L. H. Stew. What is this Woman's Name?

Mr. *Att. Gen.* Mrs. *Elizabeth Sandys*.

(*She was sworn.*)

Mr. *Att. G.* Mrs. *Sandys*, give my Lords an Account, whether you were present with my Lord *Mobun* and Mr. *Hill* at the Tavern that Day that Mr. *Mountford* was killed, and what passed there.

Sandys. I dined with my Lord *Mobun* and Captain *Hill*, at the *Three Tuns* in *Shandois-street*, and there arose a Discourse about Mrs. *Bracegirdle* and *Hill*, and my Lord *Mobun* asked me, If I thought *Mountford* had lay with her or no. I said I could not tell; presently after, says my Lord *Mobun*, It will cost *Hill* 50 Guineas this Design. Saith Mr. *Hill*, if the Villain offers to resist, I will stab him; saith my Lord *Mobun*, I will stand by my Friend. When this was done, Mr. *Hill* desired Mr. *Brough* to borrow a Case of Pistols of Captain *Leister*, and he said, he would not borrow them himself, for he doubted, if he knew of the Design, he would not lend them. When that was done, Captain *Hill* told me, he had a Coach and six Horses in *Witch-street*, to seize Mrs. *Bracegirdle*, and carry her away into the Country; and my Lord *Mobun* said he would stand by his Friend: And when my Lord *Mobun* went away, *Hill* said to him, My Lord, if you be not there by six a Clock, I am ruined. Saith my Lord *Mobun*, upon my Word and Honour I will be at the Play-House by Six.

L. H. Stew. My Lord *Mobun*, have you any thing to say to that Witness?

L. Mobun. Yes, my Lord, I desire to have her asked, Whether she is a Maid, or a married Woman?

L. H. Stew. You hear the Question; but I do not know what Use my Lord will make of it.

Mr. *Att. G.* You can easily answer, whether you are married or unmarried.

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L. H. Stew. That Question is very fair; Are you a married Woman or a single Woman?

Sandys. I am a single Woman, my Lord.

Mr. *Att. G.* Pray, Mrs. *Sandys*, repeat the Words that my Lord *Mobun* said, when *Hill* said, if the Villain resisted, he would stab him.

Sandys. My Lord *Mobun* said nothing in the World, but that he would stand by his Friend.

L. H. Stew. Have you any further Questions, Mr. *Attorney*, to ask this Witness?

Mr. *Att. G.* I have nothing more to ask her, my Lord.

L. H. Stew. What say you, my Lord *Mobun*; would you ask her any thing else?

L. Mobun. No, my Lord.

L. H. Stew. Then withdraw. (*Which she did.*)

Mr. *Att. G.* The next Witness we call is Mr. *Rogers*. (*Who was sworn.*)

L. H. Stew. What is this Witness's Name?

Mr. *Att. G.* *Rogers*, my Lord.

L. H. Stew. What is his Christian Name?

Mr. *Att. Gen.* *John*. If your Lordships please to remember, that the last Witness, Mrs. *Sandys*, said, that Mr. *Hill* desired my Lord *Mobun*, not to fail of being at the Play-House by six a Clock, and that he was undone if he did not come; and my Lord promised upon his Word and Honour that he would come: Now we call this Witness to prove, that they met at the Play-House according to the Appointment on the 9th of *December*.

Rogers. My Lord, all that I know of this Matter was, That my Lord *Mobun* and Captain *Hill* were at the Play-House that Night, and that which made me take particular Notice of their being then at the Play-House, though they had been frequently there before together, was, that Captain *Hill* had my Lord *Mobun's* Coat on, and my Lord *Mobun* had Captain *Hill's* Coat on.

Mr. *Att. G.* Did you observe any thing else, when they were at the Play-House?

Rogers. Nothing but only some Words that passed between Captain *Hill* and my Lord *Mobun*, when I went to ask them for the Overplus of the Money for coming in, because they came out of the Pit upon the Stage; he said, he would not give it me, but if I brought any of our Masters, he would slit their Noses, or something to that Effect.

Mr. *Att. G.* What were the Words he said when you asked him for Money?

Rogers. I asked them for Money, that they ought to pay more than the rest that were in the Pit, because they came upon the Stage, and they would not give it me; but he said, if I brought any of our Masters, he would slit their Noses, or cut their Faces, or to that Effect.

L. H. Stew. My Lord, will your Lordship ask him any Questions?

L. Mobun. No, my Lord.

L. H. Stew. Call another Witness then.

Mr. *Att. G.* My Lords, with your Lordships Favour, the next Witness that we shall call, is the Coachman, *William Dixon*. (*Who was sworn.*)

Mr. *Att. Gen.* Mr. *Dixon*, do you remember the Day when Mr. *Mountford* was killed?

Dixon. Yes, Sir.

Mr. *Att. G.* Pray acquaint my Lords, what Persons you carried in your Coach that Day; whether you carried my Lord *Mobun* and Mr. *Hill*, and to what Place, and where you waited for them.

Dixon. If it please your Lordships, Captain *Hill*

U u u

Hill and my Lord *Mohun* came in a Hackney Coach to my Gate, where I live, and I was just a going to set my Coaches into the Street for Hire: They bargain'd with me for six Horses, and I was to have thirty Shillings to set them down at *Totteridge*, on this Side *Barnet*. I ask'd them, Whether they would have me bring all the six Horses with the Coach. No, they said, a Pair would serve to the Play-House, and the other four should stand at the Pound's End. So I went accordingly to the Place appointed, over against the *Horshoe Tavern* in *Drury-lane*, and a Footman came, and Mr. *Hill* and he bid me drive down lower. So I drove to my Lord of *Clare's Door*, or thereabouts; and there was some Soldiers that would have had me go in, and smoke and drink with them: I told them, I did never smoke, and I did not care for drinking any thing at that time. With that, my Lord *Mohun* and Mr. *Hill* came into the Coach, and, as they bid me, I carry'd them into *Norfolk-street*, below the Watch-house that stood there; they bid me turn about, and stand there; and then they went to the *White-Horse Tavern*; so I did turn about, and stay'd as they bid me, and they tarried a pretty while before they came again, and then they bid me drive back to the Place from whence I came, so I drove into *Drury-lane*, and they bid me stop next to my Lord *Craven's House*, this was about ten a Clock, and it being so late, I went Home, and sent a Postillion down, to take care of the Coach, so that what passed afterwards, I cannot tell.

L. H. Stew. What Day or Night, was all this you speak of?

Dixon. Truly my Lord, I cannot tell what Day it was, it was in *December*, as I take it, the 9th, and it was *Friday* I believe, I do not know justly.

L. H. Stew. Did you hear of the Death of Mr. *Mountford*?

Dixon. Yes, I did.

L. H. Stew. Was it the same Day that you heard Mr. *Mountford* was killed?

Dixon. No, I did not hear it till the next Morning.

Mr. Att. Gen. You say, you went with my Lord *Mohun* and Mr. *Hill* into *Norfolk-street*, and there you stayed for them, whilst they went elsewhere?

Dixon. Yes, I did so.

Mr. Att. G. Do you know to what Houses they went?

Dixon. They went to the *White-Horse Tavern*, to the hithermost House on this Side the *Strand*, and they went below to a Door on this Side of a House that is not finished yet.

Mr. Att. Gen. Did you hear them use any Expressions there?

Dixon. I heard *Hill* say to my Lord *Mohun*, I think there is a Man and a Maid talking, it was at the Corner House; saith *Hill*, We are betrayed, Damn me, saith he, my Lord, let us go and threst him.

Mr. Att. Gen. What did they do then?

Dixon. I did see them do nothing.

Mr. Att. G. Whither did you carry them from thence?

Dixon. To the Place from whence they came, in *Drury-lane*.

L. H. Stew. Will your Lordship say any thing to this Man?

E. Mohun. I desire he may be asked, Whether he had not Orders to go out of Town with

us, as soon as Mrs. *Bracegirdle* was put into the Coach.

Dixon. If it please you, Sir, I had Order thus, That when we were to go out of Town, I must drive down into the *Strand*, and then round about any way that was readiest and clearest to get to the Pound; that Order I had, and no other Order I had.

L. H. Stew. Who is your next Witness?

Mr. Att. G. My Lords, the next Witness we shall call, will give you an Account what was done in *Drury-lane*, upon their endeavouring to carry her away, and for that we have here Mrs. *Bracegirdle* herself.

L. H. Stew. What is this Gentlewoman's Name?

Mr. Att. G. Mrs. *Ann Bracegirdle*.

(Then she was sworn.)

Mr. Att. G. Mrs. *Bracegirdle*, Pray give my Lords an Account of the Whole of your Knowledge of the Attempt that was made upon you in *Drury-lane*, and what followed upon it.

Mrs. Bracegirdle. My Lord, I was in *Prince's-street* at Supper at Mr. *Page's*, and at ten a Clock at Night, Mr. *Page* went home with me; and coming down *Drury-lane*, there stood a Coach by my Lord *Craven's Door*, and the Boot of the Coach was down, and a great many Men stood by it; and just as I came to the Place where the Coach stood, two Soldiers came and pulled me from Mr. *Page*, and four or five more came up to them, and they knocked my Mother down almost, for my Mother and my Brother were with me. My Mother recovered, and came and hung about my Neck, so that they could not get me into the Coach, and Mr. *Page* went to call Company to rescue me. Then Mr. *Hill* came with his Sword drawn, and struck at Mr. *Page* and my Mother; and when they could not get me into the Coach, because Company came in, he said, he would see me home, and he led me by one Hand, and my Mother by the other. And when we came home, he pulled Mr. *Page* by the Sleeve, and said, Sir, I would speak with you.

Mr. Att. G. Pray, Mrs. *Bracegirdle*, did you see any body in the Coach, when they pulled you to it?

Mrs. Bracegirdle. Yes, my Lord *Mohun* was in the Coach; when they pulled me to the Coach, I saw my Lord *Mohun* in the Coach. And when we came Home, *Hill* pulled Mr. *Page* by the Sleeve, and he said, He would speak with him. As they led me along *Drury-lane*, my Lord *Mohun* came out of the Coach, and followed us, and all the Soldiers followed them; but they were dismissed, and, as I said, when we came to our Lodging, then *Hill* pulled Mr. *Page* by the Sleeve, and said, He would speak with him. Saith Mr. *Page*, Mr. *Hill*, another time will do, to Morrow will serve; with that, when I was within Doors, Mr. *Page* was pulled into the House, and Mr. *Hill* walked up and down in the Street with his Sword drawn. He had his Sword drawn when he came along with me.

Mr. Att. G. Did you observe him to say any thing whilst he was with you?

Mrs. Bracegirdle. As I was going down the Hill, he said, as he led me, He would be revenged.

Mr. Att. G. Did he say of whom he would be revenged?

Mrs. Bracegirdle. He did not name of whom then, but when I was in the House, several Persons went to the Door, and afterwards Mrs.

Brown went to the Door, and spoke to them, and asked them, What they staid and walked there for? at last, they said, They staid to be revenged of *Mr. Mountford*; and then *Mrs. Brown* came in to me, and told me of it.

L. H. Stew. Who said that?

Mrs. Bracegirdle. *Mr. Hill.*

Mr. Att. G. Were my Lord *Mobun* and *Mr. Hill* both together when that was said, that they staid to be revenged of *Mr. Mountford*?

Mrs. Bracegirdle. Yes, they were. And when *Mrs. Brown* came in, and told me, I sent my Brother and the Maid, and all the People we could, out of the House to *Mrs. Mountford*, to desire her to send, if she knew where her Husband was, to tell him of it, and she did. And when they came in a Doors again, I went to the Door, and the Doors were shut, and I listened to hear if they were there still; and my Lord *Mobun* and *Mr. Hill* were walking up and down the Street; and by and by, the Watch came up to them, and when the Watch came, they said, Gentlemen, Why do you walk with your Swords drawn? Says my Lord *Mobun*, I am a Peer of *England*, touch me if you dare.

L. H. Stew. Repeat that again, for I could not well hear you: Do you speak of what you heard from *Mrs. Browne*, or what you observed yourself?

Mrs. Bracegirdle. My Lord, I was within Doors, but I was listening at the Door, and heard this my self; they came up to them, and said, Gentlemen, Why do you walk with your Swords drawn?

L. H. Stew. Who asked that Question?

Mrs. Bracegirdle. The Watch; and says my Lord *Mobun*, I am a Peer of *England*, touch me if you dare. Then the Watch left them, and they went away, and a little after, there was a Cry of Murder, and that is all that I know, my Lord.

L. Mobun. My Lord, I desire this Witness may be asked, How long after this Passage that she speaketh of, was it that she heard Murder cried in the Street.

L. H. Stew. You hear the Question, *Mrs. Bracegirdle*; What say you to it?

Mrs. Bracegirdle. My Lord, I believe it was about a quarter of an Hour after, to the best of my Memory.

L. H. Stew. What do you mean, a quarter of an Hour after the Watch asked the Question?

Mrs. Bracegirdle. Yes, my Lord.

Then the Earl of Mulgrave stood up.

L. H. Stew. My Lord *Mulgrave*.

E. of Mulgrave. My Lord I desire to ask this Witness a Question. If I heard her aright, I think she said, They threatned to be revenged of *Mr. Mountford*, I desire to know of her, whether my Lord *Mobun* did threaten him?

Mrs. Bracegirdle. I do not know indeed; but when *Mrs. Browne* asked them, What they staid there for? They said, To be revenged of *Mr. Mountford*. I did not hear them my self, but *Mrs. Browne* came in and told me so.

Mr. Att. G. *Mrs. Bracegirdle*, I think, If I did not mistake, you said, When the Watch came up they asked them, Why their Swords were drawn?

Mrs. Bracegirdle. Yes, and my Lord *Mobun* made Answer, He was a Peer of *England*, and bid them touch him if they durst, and they went away.

Mr. Att. G. My Lord, the next Witness

that we call, shall be *Mr. Garwen Page*; at whose House *Mrs. Bracegirdle* supped that Night.

(He was sworn.)

Mr. Att. G. *Mr. Page*, I suppose you remember the Night, when *Mrs. Bracegirdle* supped at your House?

Mr. Page. Yes, my Lord.

Mr. Att. G. I pray give an Account of your whole Knowledge about this Matter, what happen'd that Night.

Mr. Page. About Ten a Clock at Night, on *Friday* the Ninth of *December* last going down *Drury-lane*, with *Mrs. Bracegirdle*, whom I led just against my Lord *Craven's* House —

L. H. Stew. Pray, Sir, speak out, and tell us what time it was.

Mr. Page. About Ten a Clock at Night, on *Friday* the Ninth of *December* last, going down *Drury-lane*, and leading *Mrs. Bracegirdle*, right against my Lord *Craven's* Door, stood a Coach, where two Soldiers pressed in between me and *Mrs. Bracegirdle*, and parted us: I asked what that was for? But they took hold of *Mrs. Bracegirdle*, and immediately they would have forced her into the Coach; *Captain Hill*, whom I saw there with his Sword drawn, made several Blows at me.

L. H. Stew. Who would have forced her into the Coach?

Mr. Page. The Soldiers would.

Mr. Att. G. Pray go on, Sir, what follow'd after that?

Mr. Page. I say, *Captain Hill* made several Blows at me, and cry'd, You Villain, Stand. I received many of them upon my Cane, but there was none that hurt me; then I got Help, and they were prevented of carrying *Mrs. Bracegirdle* away. My Lord *Mobun* was in the Coach; I saw him in the Coach.

Mr. Att. G. Did you see any Arms in the Coach?

Mr. Page. I saw no Arms, but I saw a Bundle in the Coach, tho' I could not tell what it was; and there was one in the Coach, that I saw was my Lord *Mobun*. So when we had got Help, we went down the Lane to convey her Home, and *Captain Hill* was with us, and my Lord *Mobun* followed at a Distance. *Captain Hill* said to the Soldiers, *Be gone, I have nothing more to do with you now.* When we came to the House, and *Mrs. Bracegirdle* was entring in, *Captain Hill* pull'd me by the Sleeve, and said he would speak with me. Said I, To Night is not a fit time, to morrow is better, therefore pray stay till to morrow Morning. But said he, *God damn me, you will not go home to Night.*

L. H. Stew. You speak so low, that I cannot tell what you say; I did not hear that last that you said.

Mr. Page. My Lord, I say, when *Captain Hill* pull'd me by the Sleeve, and said he would speak with me, I told him that Night was not a fit time, to morrow would do better: Well, saith he, *To morrow then; but, God damn me, you will not go out to Night:* I went in a Doors, and there my Lord *Mobun* and he staid for an Hour and a half, as I was told; I saw them not my self: But *Mrs. Browne* came in and said, that they said they waited to be revenged.

Mr. Att. G. Whom did they mean, yourself that they would be revenged of?

Mr. Page. *Mrs. Browne* said, they waited for *Mr. Mountford*.

Mr. *Att. Gen.* Did you continue in that House till after the Murder was committed?

Mr. *Page.* Yes, Sir, I did.

L. H. Stew. How long after you came into the House was the Fact done?

Mr. *Page.* About an Hour and an half.

L. H. Stew. Did you yourself hear or observe any thing to be said or done, from the time you came into the House, to the time the Fact was committed?

Mr. *Page.* No, my Lord, I was in the Back-Room of the House.

Mr. *Att. Gen.* Pray, Mr. *Page*, did you see Mr. *Mountford* after he was wounded?

Mr. *Page.* Yes, I did.

Mr. *Att. Gen.* Then give my Lords an Account of what passed at that Visit.

Mr. *Page.* Upon the Out-cry of Murder, I came into the Street, where I found my Lord *Mohun* just surrendering himself to the Constable; and immediately I went to Mr. *Mountford's* House, and I found him lying all along in his Blood upon the Floor; he seeing me, desired me to lift him up, which I did, and thinking he had been dying, I ask'd him whether he knew me. He said, Yes. Said I to him, Had you time to draw your Sword in your Defence? He said, *He was barbarously run through before he could draw it.*

Mr. *Att. Gen.* Is this all you have to say, Sir?

Mr. *Page.* Yes.

L. H. Stew. Will your Lordship ask this Witness any Questions?

L. Mohun. My Lord, I desire he may be ask'd whether my Sword was drawn when I surrendered myself to the Constable.

Mr. *Page.* No, my Lord, your Sword was in the Scabbard when you surrendered yourself, but I cannot say whether your Sword was drawn before, or not.

Mr. *Att. Gen.* The next Witness that we desire to call, is Mrs. *Page.* (*She was sworn.*)

L. H. Stew. What is the Name of this Witness?

Mr. *Att. Gen.* Mrs. *Mary Page.* Pray Mrs. *Page*, do you remember the Night when Mrs. *Bracegirdle* supped at your House, and Mr. *Mountford* was killed? Acquaint my Lords with all you did observe that Night.

Mrs. *Page.* Mrs. *Bracegirdle* supped at my Lodging, and my Husband went home with her, and staying something longer than ordinary, I sent my Servant to know what was the Reason of it: He brought me Word back, that my Husband had like to have been murdered, and Mrs. *Bracegirdle* carried away. With that I went down myself towards Mrs. *Bracegirdle's* Lodgings, and there I found my Lord *Mohun* and Mr. *Hill* walking, Mr. *Hill* with his Sword drawn, before Mrs. *Bracegirdle's* Door; my Lord *Mohun's* not. So I went in, into the House; and after I had staid a while there, Mrs. *Browne* came out to them, and asked them, Why they staid there? They made Answer, they staid for Mr. *Mountford.*

Mr. *Att. Gen.* Who made that Answer?

Mrs. *Page.* Mr. *Hill.*

Mr. *Att. Gen.* Who was with Mr. *Hill* at that time?

Mrs. *Page.* My Lord *Mohun.*

Mr. *Att. Gen.* Was there any body besides those two that you observ'd?

Mrs. *Page.* No, there was no-body else that I saw.

Mr. *Att. Gen.* Were their Swords drawn?

Mrs. *Page.* Mr. *Hill's* then was, my Lord *Mohun's* at that present was not: But Mrs. *Bracegirdle* hearing that they waited for Mr. *Mountford*, desired me to go over to Mrs. *Mountford's* House, and speak to her to send to her Husband, and desire him to keep where he was, or come home with a good Guard. Whilst I was telling Mrs. *Mountford* what I was desired to tell her -- But I should have told your Lordships, that when I came out to go to Mrs. *Mountford*, my Lord *Mohun* had then his Sword drawn.

Mr. *Att. Gen.* Where they there when you went out of Mrs. *Bracegirdle's* Lodgings?

Mrs. *Page.* Yes, they were.

Mr. *Att. Gen.* And are you sure, that at that time when you went out of Mrs. *Bracegirdle's* House, my Lord *Mohun* had his Sword drawn?

Mrs. *Page.* I am sure of it, that when I went out, my Lord *Mohun* had then his Sword drawn; that was the second time.

L. H. Steward. Out of whose House was that you went?

Mrs. *Page.* Out of Mrs. *Bracegirdle's* Lodgings.

L. H. Stew. Where were they when you saw his Sword drawn?

Mrs. *Page.* They were walking before Mrs. *Bracegirdle's* Door, from one End of the Street to the other.

Mr. *Att. Gen.* What Street is that?

Mrs. *Page.* *Howard-Street.*

Mr. *Att. Gen.* Pray describe to my Lords that Street.

Mrs. *Page.* They that stand in that Street, can see who goeth down to Mr. *Mountford's* House, and who goeth up *Surrey-street.*

Mr. *Att. Gen.* Well, now go on.

Mrs. *Page.* Whilst I was desiring Mrs. *Mountford* to send away to her Husband, I heard Murder cried out; immediately I open'd Mr. *Mountford's* Door, and he came in, and fell with his Arms round about my Neck to support himself, I suppose; and he said, *Hill* had murder'd him. I help'd him as far as the Parlour-Door, and there down he fell. I went up the Street and called out *Murder*, and my Lord *Mohun* came to me, and bid me take notice, he had no Hand in the Murder, for his Sword was not drawn. I told him, I could not tell that, for to my Knowledge he had been in Mr. *Hill's* Company with his naked Sword just before.

Mr. *Att. Gen.* Call Mrs. *Browne.*

L. H. Steward. You have nothing to say to that Witness, my Lord, have you?

L. Mohun. No, my Lord.

Mr. *Att. Gen.* Is this all you have to say, Mrs. *Page*?

Mrs. *Page.* After this, my Lord *Mohun* resign'd himself up to the Constable; the Constable standing by me, I bid him secure my Lord *Mohun*, which he did.

L. Mohun. My Lord, I desire to ask this Witness, whether I surrendered myself, or made Opposition, or offered to run away?

Mrs. *Page.* No, my Lord, the Constable laid hold on you.

L. H. Stew. What Answer do you make to my Lord's Question?

Mrs. *Page.* I say, my Lord, the Constable laid hold upon my Lord *Mohun.*

L. Mohun. I desire to ask her, whether I did not surrender myself?

Mrs. Page. Not till I had desired the Constable to secure your Lordship.

L. Mobun. Did I made any Opposition, or offer to run away?

Mrs. Page. No, for the Constable presently took hold of your Lordship.

L. Mobun. I desire she may be asked whether Hill run away.

Mrs. Page. That I know not; I suppose he was gone away out of the Street before I came forth.

Mr. Att. Gen. Swear Mrs. Browne.
(Which was done.)

Mr. Att. Gen. Mrs. Browne, you are upon your Oath, pray declare to my Lords what you know happen'd upon that Night that Mr. Mountford was kill'd.

Mrs. Browne. If it please your Lordships, when Mrs. Bracegirdle came Home, I found her crying; I asked her what was the Matter? She said, My Lord Mobun and Mr. Hill, had run her into a Coach, with six or seven Soldiers, and lifted her into the Coach, and she said they were at the Door. Upon which, I went to the Door, and saw my Lord Mobun and Mr. Hill walking along. Said I, are you the Gentlemen that have used Mrs. Bracegirdle in this Manner? my Lord Mobun answered; Madam, said he, I protected her; if it had not been for me, the Rabble would have torn her a Pieces; for if we had a mind to carry her away, we had six or seven Pistols charged in the Coach, and could easily have suppressed the Tumult.

L. H. Stew. I do not hear what the Witness saith, she speaketh so low.

Mrs. Browne. My Lord Mobun said, they had six or seven Pistols in the Coach, and could easily have suppressed the Rabble, if they would have carried her away; but he had no Design upon her for his own Part, but only to serve his Friend; and that Mr. Hill's Design was to take her out of Town, and keep her a Week, and see if he could persuade her to marry him; and saith Mr. Hill, I shall light on this Mountford. Why said I to him, What hurt hath Mr. Mountford done you? Saith he, I have been abused, and I will be revenged.

L. H. Stew. That was Hill that said so.

Mrs. Browne. Yes. So I went and told Mrs. Mountford of it.

Mr. Att. Gen. Pray acquaint my Lords what my Lord Mobun said to you about this Matter.

Mrs. Browne. My Lord Mobun said, he protected her, for if it had not been for him, the Mob had torn her in Pieces; but if they had a mind to carry her off, they could easily have suppressed the Mob, for they had six or seven Pistols in the Coach: But, saith my Lord, I had no Design upon her myself, but only to serve my Friend. So saith Mr. Hill, I shall light upon this Mountford. Why, said I, what hurt hath Mr. Mountford done you? Saith he, I have been abused, and I will have my Revenge. So I went and told Mrs. Mountford of it. About half an Hour after, or more, Mr. Mountford came down, and when he came down, I saw him a little before he came to them, and went to him, and would have fain spoke to him, but he would not stay to let me speak what I had to say to him, but going on, presently he met my Lord Mobun. Saith he, Your humble Servant, my Lord. Saith my Lord again, Your Servant, Mr. Mountford. Saith my Lord, I have a great Respect for you, Mr. Mountford, and would

have no Difference between us; but there is a Thing fallen out between Mr. Hill and Mrs. Bracegirdle. Saith Mr. Mountford, My Lord, has my Wife disobliged your Lordship? if she has, she shall ask your Pardon; but as for Mrs. Bracegirdle, she is no Concern of mine; and I hope your Lordship will not vindicate such an ill Man as Mr. Hill in such a Matter as this. Upon that I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said, That I will; and drew his Sword; but whether he received his Wound before he drew his Sword, or after, I cannot tell.

L. H. Stew. Speak that last again.

Mrs. Browne. Mr. Mountford and my Lord met; saith Mr. Mountford, Your Servant, my Lord; saith my Lord, Your Servant Mr. Mountford, I have a great Respect for you, and would have no Difference be between us; but here has been a thing fallen out between Mrs. Bracegirdle and Mr. Hill: Saith Mr. Mountford presently again, Has my Wife disobliged your Lordship? If she has, she shall ask your Pardon. But Mrs. Bracegirdle is no Concern of mine: I know nothing of this Matter, I come here by Accident.

Mr. Att. Gen. Who said they came there by Accident?

Mrs. Browne. Mr. Mountford said, I know nothing of this Matter, I come here by Accident. But, I hope your Lordship will not vindicate Hill in such Actions as these are: Upon that, I heard Mr. Hill bid Mr. Mountford draw; Mr. Mountford said he wou'd, and drew his Sword; but whether he received his Wound before or after, I cannot tell; it was in the Night.

Then the Lord Godolphin stood up.

L. H. Stew. My Lord Godolphin.

L. Godolphin. My Lord Steward, I desire this Witness may be ask'd, Whether my Lord Mobun's Sword was drawn when he talk'd with Mountford, because the Council opened it before, that the Watch came to them, and saw them with their Swords drawn when they were walking in the Street.

L. H. Stew. Mistress, you heard my Lord's Question: Was my Lord Mobun's Sword drawn whilst he talked with Mountford, or no?

Mrs. Browne. I do not remember I did see my Lord Mobun's Sword drawn.

Mr. Att. Gen. Were they near together?

Mrs. Browne. They were near together.

L. Mobun. I desire she may be asked whether I went up the Street to meet Mr. Mountford, or he came down to me?

L. H. Stew. You heard the Question, Mistress, what say you?

Mrs. Browne. Mr. Mountford came down to him.

L. Mobun. I desire she may be asked whether she did not go to hinder Mr. Mountford from coming that way?

Mrs. Browne. Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the Hand, and told him I would speak with him, but he did not hear me, but went on.

Mr. Att. Gen. You did not tell him upon what account you would have spoke with him?

Mrs. Browne. No, I had no time.

L. Mobun. I desire she may be asked, whether Mr. Mountford's Sword was within his Arm, or by his Side.

Mrs. Browne. I believe it was by his Side.

L. Mobun.

L. Mohun. I desire she may be asked one Question more, whether he could not have went home, without coming to Mr. *Hill* and me?

Mrs. Browne. He did come out of his Way; his Way was not by my House; he did come down the Street towards them.

L. Mohun. I desire your Lordships to take notice, that he came out of his way to me. I desire to ask her: Did he come as if he was going to his own House, or yours?

Mrs. Browne. As if he was coming to mine.

L. Mohun. I desire to ask her, Whether I had any hand in killing Mr. *Mountford*, or went to hold him, or meddled with him?

Mrs. Browne. Not that I did see.

L. H. Stew. Have you any more to say to this Witness.

Mr. Att. Gen. No, my Lord.

L. H. Stew. Nor your Lordship?

L. Mohun. No, my Lord.

Mr. Att. Gen. Then the next Witness we desire to call, is *Richard Row*. (*Who was sworn.*)

Mr. Att. Gen. *Richard Row*, where do you live?

Row. In *Surrey-Street*.

L. H. Stew. Where doth he live, saith he?

Mr. Att. Gen. In *Surrey-Street*, my Lord. Pray how near is that to the Place where Mr. *Mountford* was kill'd?

Row. About ten or twelve Pole.

Mr. Att. Gen. Did you observe my Lord *Mohun* and Mr. *Hill* that Night, and where were they?

Row. All that I can say to the Matter in that Case is, I was in my own House about a quarter after Tea a Clock, and I heard a Noise in the Street, and I went out, and saw two Gentlemen and two Lads about the Middle of the Channel; one of the Lads had one of the Gentlemen by the Arm, just by the Channel, and said, *Pray my Lord, good my Lord don't do it, alter your Resolution.* There was an Answer made, that they would be revenged that Night, or To-morrow.

Mr. Att. Gen. Do you know who the Boy was that used that Expression.

Row. No, my Lord, it was very dark.

Mr. Att. Gen. Do you not know neither who returned the Answer?

Row. No indeed.

Mr. Att. Gen. But you are sure you heard those Words pass?

Row. Yes, indeed, and I went to the Door afterwards, whilst they went to the Upper-end of the Street and returned again; and I saw Capt. *Hill's* Boy following him. My Lord, I knew Capt. *Hill*, though he was not in the Cloaths he formerly used to come to my House in, and the Boy I knew to be his Boy.

Mr. Att. Gen. Were those Persons together that you heard speaking so?

Row. Yes, all four together, in a Confusion they seemed to be, for they were pushing to and again, and the Boy had hold of one of the Gentlemen's Arms, when he bid him alter his Resolution.

Mr. Att. Gen. Repeat those Words again that you heard him say.

Row. *Pray my Lord, good my Lord, do not do it, alter your Resolution.*

L. H. Stew. Has your Lordship any thing to ask this Witness?

L. Mohun. No, my Lord.

Row. I spoke of this same afterwards, and so they have brought me here to give Evidence: This is all that I can say. I cannot swear to my

Lord *Mohun*, that he was one, I do not know that ever I saw him to my Knowledge in my Life.

E. of Mulgrave. My Lord Steward, I desire he may be asked, whether he knoweth who that Boy was that made that Answer.

Row. There was no Answer made by any Boy, but begging and praying, *That my Lord would not do it.*

E. of Mulgrave. Do you know who that Boy was?

Row. No, I do not know what Boy it was. But when I heard Mr. *Mountford* was killed, and my Lord *Mohun* was concerned, I told what I had heard and seen, and so they bring me here to evidence it. That is all I can say to the Matter.

Mr. Att. Gen. My Lord, we desire next to call some of the Watch, and shall begin with *Merry*. (*Who was sworn.*)

L. H. Stew. What is his Name?

Mr. Att. Gen. *William Merry*. Mr. *Merry*, I think you are Beadle of the Parish.

Merry. Yes, I am.

Mr. Att. Gen. Pray acquaint my Lords what you observed that Night Mr. *Mountford* was killed, when you saw my Lord *Mohun* and Mr. *Hill*, the first time; and the second time, when my Lord *Mohun* was taken.

Merry. When I first came down the Street, walking the Rounds between Eleven and Twelve a Clock, as I turned at the Corner out of *Surrey-Street* into *Howard-Street*, I saw my Lord *Mohun* and Capt. *Hill* walking, that is, upon the paved Stones; my Lord was walking towards me, and I asked, Who comes there? Saith my Lord, A Friend. Said I, What is the meaning of your Swords being drawn? Return your Swords, and stand off. With that, he returned his Sword immediately. Saith he, *I am a Peer of the Land; here, will you have my Sword?* and he proffered me his Sword; but the Constable was not there then, and I did not take his Sword; but, said I, God bless your Honour, my Lord, I know not what you are, but I hope you are doing no Harm; No, saith he. With that, the Constable came immediately, and he proffered the same to him; there were two Candles in some Maids or Womens Hands at a Door hard by, and I went to ask them if they knew the Meaning of it; and there being a Neighbour's Man leaning with a Bottle and a Glass against the Wall, whom I knew. I think they told me one of them had a Sweet-heart there; and my Lord said, he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That is all I heard of the Matter.

Mr. Att. Gen. Was Mr. *Hill* there?

Merry. Yes, he was.

Mr. Att. Gen. Was his Sword drawn?

Merry. Yes, his Sword was drawn, and I asked what made that Gentleman with his Sword drawn? and my Lord *Mohun* said, he had lost his Scabbard; but seeing this Neighbour's Man stand there, I went to the House.

Mr. Att. Gen. Were both their Swords drawn at first?

Merry. Both their Swords were drawn when I came first into the Street; but my Lord put up his Sword, and the other continued drawn, by reason, as they said, he had lost his Scabbard. And so seeing, as I said, my Neighbour's Man standing there, we went to that House to enquire if they knew what their Business was; we

were not got into the House, I am sure not a Stone's cast within the House, but Murder was cried out, and we came back again, and my Master being nimbler of Foot than I, because he was a younger Man, came first into the Place, and seized my Lord before I came; how the Seizing was I do not know.

Mr. Att. Gen. Our next Witness is *Thomas Fennell.* (*Who was sworn.*)

Mr. Att. Gen. *Fennell*, you was one of the Watch that Night when Mr. *Mountford* was killed.

Fennell. Yes, Sir.

Mr. Att. Gen. Give my Lords an Account what you observed that Night, in relation to my Lord *Mobun* and Mr. *Hill*.

Fennell. The Constable and his Watch going the Rounds, divided themselves into two Parts; I went down *Surrey-Street* with one Party; the Constable he went down *Strand-Lane* with the other Party. We were four or five that came down *Surrey-Street*, and when we came down, my Lord *Mobun* and Capt. *Hill's* Swords were both drawn; my Lord *Mobun* put up his Sword just as we came down.

L. H. Stew. Speak out Man, that my Lords may all hear you.

Fennell. I say, the Constable and his Party went down *Strand-Lane*, and another Party down *Surrey-Street*, four or five of us, and my Lord *Mobun* and Capt. *Hill* had both their Swords drawn: When we came down, my Lord put up his Sword just as we came down, but the Constable not being come, I went and called him.

Mr. Att. Gen. You say both their Swords were drawn when you came down?

Fennell. Yes, but my Lord put up his Sword just as we came down.

Mr. Att. Gen. What time of Night was that?

Fennell. It was between Eleven and Twelve.

Mr. Att. Gen. How long before the Murder was committed?

Fennell. A quarter of an Hour.

L. H. Stew. Do you not say, they put up their Swords as soon as you came down?

Fennell. My Lord *Mobun* put up his Sword, but *Hill* said he had never a Scabbard.

Mr. Att. Gen. Did you ask them why they had their Swords drawn at that time of Night?

Fennell. No, I went to call the Constable.

L. H. Stew. Have you any more to ask of this Witness?

Mr. Att. Gen. I have not, my Lord.

L. H. Stew. Nor you, my Lord?

L. Mobun. No, my Lord.

L. H. Stew. Pray go on then; whom do you produce next?

Mr. Att. Gen. Our next Witness is *James Bassit.* (*Who was sworn.*)

Mr. Att. Gen. Were you one of the Watch that Night Mr. *Mountford* was killed?

Bassit. Yes.

Mr. Att. Gen. Did you see my Lord *Mobun* and Capt. *Hill* that Night?

Bassit. Yes.

Mr. Att. Gen. Acquaint my Lords where it was, and in what manner you found them.

Bassit. In *Howard-Street*; I came along with the Constable, and I walked before them that went down *Surrey-Street* with my Lanthorn, and there was my Lord *Mobun* with his Sword drawn, and Captain *Hill* with his the like: We asked them what they did there? They said they were

drinking of a Bottle of Wine: *Hill* said to me, You may knock me down if you please: Nay, said I, we never use to knock any Gentlemen down, unless there be Occasion; and then we went into *Norfolk-Street* to the Tavern to examine what they were, and what they were doing; and in the mean time the Murder was done.

Mr. Att. Gen. Did you not ask them why their Swords were drawn?

Bassit. Yes, I did.

Mr. Att. Gen. What did they say?

Bassit. *Hill* made Answer, that he had lost his Scabbard.

Mr. Att. Gen. What said my Lord *Mobun*?

Bassit. My Lord *Mobun* had put up his Sword by that time we came up to him: That is all I can say to it.

L. H. Stew. If you have nothing more to ask him, call another.

L. Mobun. My Lord, I desire he may be asked whether he came with the Constable when I surrendered myself?

Bassit. Yes, and I took hold of your Sleeve, and you shook, and quak'd, and trembled, as if you would tear it to pieces.

L. Mobun. I desire he may be asked, whether my Sword was in the Scabbard when I surrendered myself?

Bassit. Yes, it was, he surrendered it.

L. H. Stew. That was after the Murder was done.

Mr. Att. Gen. With your Lordship's Favour, I desire he may answer my Lord *Mobun's* first Question again, so as to be heard by your Lordships: What was that you were saying when my Lord surrendered himself?

Bassit. I took him by the Arm when he surrendered himself up.

Mr. Att. Gen. What then?

Bassit. Then he quaked, and I had him to the Round-House.

L. H. Stew. Hear my Question; You say you took him by the Sleeve, when he surrendered himself; what do you mean by that? is it that he had surrendered himself before you laid hold on him, or afterwards?

Bassit. I took hold of his Arm, when he surrendered himself.

L. H. Stew. But was it before he surrendered himself to the Constable?

Bassit. No, it was afterwards, my Lord; to have him away.

L. H. Stew. Then you did see him surrender himself to the Constable?

Bassit. Yes, my Lord.

Mr. Att. Gen. Then call Mr. *Charles Knowles*; But he did not appear.

L. H. Stew. Whom do you call next, Sir?

Mr. Att. Gen. My Lords, we call'd Mr. *Charles Knowles*; but they say, he is not come; therefore, with your Lordships Favour, we will call Mrs. *Brewer.* (*Who was sworn.*)

Mr. Att. Gen. Mrs. *Brewer*, I think, you live at the next Door to Mrs. *Bracegirdle's* Lodging?

Mrs. *Brewer.* Yes, I do so.

Mr. Att. Gen. Pray give my Lords an Account what you saw and heard that Night Mr. *Mountford* was kill'd.

Mrs. *Brewer.* I was at Mrs. *Bracegirdle's* House, and I went to the Door with them; and just as I went to the Door, my Lord *Mobun* came up to me; just as he came to the Door, Mr.

Mountford came down the Street, and my Lord went to him, and imbraced him, and said, *Mr. Mountford*, Your humble Servant, I am glad to see you. Who is this, said *Mr. Mountford*, my Lord *Mohun*? Yes, said my Lord. What makes your Lordship here at this time a Night, saith *Mr. Mountford*? Saith my Lord again, I suppose, *Mr. Mountford*, you was sent for. Sent for, for what, saith he? You have heard of the Business of *Mrs. Bracegirdle*, I suppose, saith my Lord: No, my Lord, saith he, I come by Chance.

Mr. Att. G. Who said that?

Mrs. Brewer. *Mr. Mountford*, Sir.

Mr. Att. G. Well, go on, and speak aloud.

Mrs. Brewer. My Lord, *Mr. Mountford*. — *And there she hesitated, and seemed to be in a Confusion.*

Mr. Att. G. She is not used to such publick Examinations: If your Lordships will please to allow her to begin, because she is in some Confusion, she will be the better able to give you what Account she can of this Matter.

L. H. Stew. Let her recollect herself, and begin again.

Mrs. Brewer. When *Mr. Mountford* came down the Street, I stood at the Door, and my Lord *Mohun* was come to the Door, and my Lord *Mohun* went to him and said, *Mr. Mountford*, your humble Servant, I am glad to see you, and embraced him. Saith *Mr. Mountford*, *Who is this, my Lord Mohun*? Yes, saith he, *it is*. *What maketh your Lordship here at this time of Night*? saith my Lord *Mohun*, *I suppose you are sent for*, *Mr. Mountford*. No indeed, said he, *I came by Chance*. Saith my Lord, *You have heard of the Business of Mrs. Bracegirdle*. With that, after he had said this, *Mr. Hill* cometh up, and saith, *Pray, my Lord, hold your Tongue, this is not a convenient Time to discourse this Business*, and would have drawn my Lord away. Saith *Mr. Mountford*, *I am very sorry my Lord, to see that your Lordship should assist Capt. Hill in so ill an Action as this*; pray let me desire your Lordship to forbear. Upon this, as soon as he had said so, *Mr. Hill* came up and struck *Mr. Mountford* a Box on the Ear. Saith *Mr. Mountford*, *Damme, what's that for*? And with that, he whipped out his Sword, and made a Pass at him, and I turned about and cry'd out *Murder, Murder*.

Mr. Att. G. But you say, you saw *Hill* draw his Sword, and make a Pass at him?

Mrs. Brewer. No, his Sword was drawn before; but he, immediately after the Box on the Ear, made a Pass at him, and I turned about and cry'd *Murder*.

Mr. Att. G. Had *Mr. Mountford* his Sword drawn at that Time?

Mrs. Brewer. No, he had not.

Mr. Att. G. Are you sure he had not?

Mrs. Brewer. Yes, I am sure he had not, for as soon as he struck the Blow, he made a Pass at him.

Mr. Att. G. Was my Lord present at that Time?

Mrs. Brewer. He stood just by on the Right-hand.

Mr. Att. G. How near to them?

Mrs. Brewer. They were all close together, as well as I could discern.

L. H. Stew. My Lord, have you any mind to ask this Witness any Questions?

L. Mohun. No, my Lord.

L. H. Stew. Have you done with her?

Mr. Att. G. Yes, my Lord. The next Witness we desire to call is *Mr. Davenport*, the Constable.

(Who was sworn.)

L. H. Stew. Well, what saith this Man?

Davenport. The Ninth of *December* last at Night, as I was walking my Rounds between eleven and twelve a Clock, I divided my Watch into two Parts, one was to go down one Street, and the other another, and coming into *Howard-street*, my Beadle happened to be there before me, and he had spied them, as he told me, with their Swords drawn: As soon as I came up, my Lord *Mohun* very civilly (his Sword not being then drawn) proffered to surrender his Sword to me, and said, he was a Peer of the Realm. I asked the other Man what he did with his Sword drawn? and he made answer, he had lost his Scabbard in *Drury-lane*. With that I found them very civil, and I heard some Women at the Door, and they said, they were Serenading them with a Bottle of Wine. There was a Drawer there that I knew, who formerly lived over-against me, and then lived at the *White-horse* Tavern; so I left them (finding them very civil) and went to the *White-horse* Tavern to examine what the Business was; they told me, they were there a drinking, and before I had spoken three Words almost to the Man of the House, the Watch was called, and when we came, *Mr. Hill* had made his Escape, and so I secured my Lord *Mohun*.

Mr. Att. G. What was the Occasion of calling the Watch?

Davenport. They cryed out *Murder* in the Street; So I took my Lord *Mohun*, and carry'd him to the *Round-house*, where we kept him all Night.

M. Att. G. I think you say, when you first came my Lord *Mohun's* Sword was not drawn.

Mr. Davenport. It was put up then, but the Beadle said they were both drawn before.

Mr. Att. G. You did not see them so soon as your Beadle?

Davenport. No, he was there before me.

Mr. Att. G. Then acquaint my Lord what was done, after you had secured my Lord *Mohun*.

Davenport. After I had taken him, I carried him to the *Round-house*, and when we came there, he asked me, If *Hill* was taken? I said no; and said I, My Lord, this is a bad Misfortune you are happen'd into; and he said, *God Damn me, I am glad he is not taken, but I am sorry he has no more Money about him; I wish he had some of mine; and, I do not care a Farthing if I am hang'd for him*.

L. Mohun. My Lord, I desire he may be asked whether I offered to fly.

Davenport. No, my Lord, I do not say you did, but you know, my Lord, you said this to me.

L. H. Stew. But, *Mr. Davenport*, did not my Lord surrender himself to you?

Davenport. Yes, my Lord, mighty civilly.

Mr. Att. G. Did my Lord say any thing to you about changing of Coats?

Davenport. He said, they had changed Coats three or four several times that Day, and at the same time he had *Hill's* Coat upon his Back; and I asked him, If he knew where *Hill's* Lodging was? and he told me; and I went to his Lodging with my Watch; and when we came there, we searched the House, but did not find him there; but *Captain Hill's* Boy came in whilst we were there; so with that, I secured the Boy, and searched

searched him, and found Gunpowder and Ball about him; and I have *Hill's* Sword in the Court, and Mr. *Mountford's*, and my Lord's.

L. Mohun. I desire he may be asked, whether *Mountford's* Sword was not broke in the Street, or whether he carried it away.

Davenport. I took up a Piece myself, and a Servant Maid took up another in the Street.

L. Mohun. I desire he may be asked, whether Mr. *Mountford's* Sword, when it was found, was in the Scabbard or not?

Davenport. No, it was not; I saw no Scabbard.

L. H. Stew. My Lord, you ask the Questions so fast, that we do not hear the Answers. Was not your first Question, whether *Mountford's* Sword was not broken?

L. Mohun. Yes, my Lord.

L. H. Stew. What Answer giveth he to that?

Davenport. I do not know when it was broken; but by the Report of People that were there by, it was said, Mr. *Mountford* made a Pass, and at the first Pass, his Sword was broken? and I went with a Lanthorn, and according as they said, I found a Piece of a Sword, and I took it up myself.

L. H. Stew. What is your next Question, my Lord?

L. Mohun. I would ask him in what Part of the Street he found the Piece of the broken Sword.

L. H. Stew. You heard the Question, what say you?

Davenport. It was in the Highway in the Street.

L. H. Stew. My Lord *Mohun*, what do you mean by that Question?

L. Mohun. Whether it was in the Middle of the Street towards *Surrey-Street* or *Norfolk-Street*, or near Mrs. *Bracegirdle's* Lodging, or upon the Pavement?

Davenport. It was over against the Door where you stood.

L. Mohun. How far might it be from where I stood? I desire he may be asked that.

L. H. Stew. You hear my Lord's Question, answer it.

Davenport. He was walking up and down when I came to take him; and I took the Piece of the Sword up in the Highway; he was walking on the Pavement, the broad Stones.

L. H. Stew. Have you done with that Witness?

Mr. Att. G. Yes, my Lord. Is Mr. *Charles Knowles* come? (*He did not appear.*)

Mr. Att. G. Then we desire to call Mr. *Bancroft* the Chyrurgeon, and Mr. *Hunt*.

L. H. Stew. Who do you examine first?

Mr. Att. G. We begin with Mr. *Bancroft*.

(*Who was sworn.*)

Mr. Att. G. You attended upon Mr. *Mountford*, Mr. *Bancroft*, when he was wounded?

Bancroft. Yes, my Lord.

Mr. Att. G. Pray acquaint my Lords what you know of this Matter.

Bancroft. My Lord, upon the ninth of *December* last at Night, between the Hours of twelve and one, I was knocked up to go to Mr. *Mountford*, whose Servant came for me, and told me, he was a dying of a Wound he had received. So I came to his House, and found him very desperately wounded; it went in and out by his Back-Bone, behind his left Side. I told him what he must expect, that he was a dead Man. I attend-

ed him that Night, till about four a Clock in the Morning, and then I took my Leave of him, and went home: About eight a Clock in the Morning I came thither again, and met Mr. *Hobbs* there, and he was of the same Opinion. He lived till about one, and then he died.

Mr. Att. G. What Discourse had you with Mr. *Mountford*?

Mr. Bancroft. About ten a Clock I was sent for by the Constable to come to *Hicks's-Hall*, to be examined there before the Justices; and being then with Mr. *Mountford*, and some Company being there, Mr. *Powell* (as I take it) was one; I said to Mr. *Mountford*, I suppose where I am going, I shall be asked some Questions about what you may have said to me, you are now upon the Brink of Eternity, and pray answer me truly, who gave you this Wound, was it Mr. *Hill*, or my Lord *Mohun*? Said he, *My Lord Mohun offered me no Violence, but whilst I was talking with my Lord Mohun, Hill struck me with his left Hand, and with his right Hand run me through before I could put my Hand to my Sword.*

Mr. Att. G. Did he tell you his Sword was drawn?

Bancroft. He did not say, it was or not, but that *Hill* struck him with his left Hand, and, at the same Time, run him through with his Right, before he could put his Hand to his Sword.

Mr. Att. G. Did he tell you my Lord *Mohun's* Sword was drawn?

Bancroft. The Words were these, as near as I remember, My Lord *Mohun* offer'd me no Violence, but whilst I was talking with him, *Hill*, with his Left-Hand, struck me, and with his Right run me through, before I had time to put my Hand to my Sword.

Mr. Att. G. Did he tell you he had his Sword drawn at all afterwards?

Bancroft. No, not a Word of that, that I heard.

L. H. Stew. My Lord *Mohun*, have you any thing to say to him?

L. Mohun. No, my Lord.

(*Then Mr. William Hunt was sworn.*)

Mr. Att. G. Mr. *Hunt*, you have heard what Mr. *Bancroft* was examined to, do you give an Account what you know in relation to this Business.

Hunt. I was sent for to Mr. *Mountford* when he lay very ill; and I then asked him the Manner of his being hurt, he said, *My Lord Mohun spoke to me, but Hill run me through before my Sword was drawn.* I asked him, Whether he had time to draw his Sword? And he said, *Hill was in me, and was through me, before my Sword was out;* and this he repeated again about twelve a Clock, about half an Hour before he died the next Day.

L. H. Stew. Will you ask him any thing else, Mr. Attorney?

Mr. Att. G. We shall ask him no more Questions, my Lord.

L. H. Stew. Will you ask him any, my Lord *Mohun*?

L. Mohun. No, my Lord.

L. H. Stew. Then have you any more Witnesses?

Mr. Att. G. My Lord, I do not hear that Mr. *Knowles* is come yet; and if he be not come, we have no more Witnesses to examine; if he does come, we must beg Leave that we may examine him.

L. H. Stew. You know that the Court cannot stay;

stay; for after you have done on both Sides, my Lords are to withdraw, and we are not to sit here in Expectation of your Witnesses.

Mr. *Att. Gen.* My Lord, we do not expect that; if my Lord *Mohun* please to examine any Witnesses on his Part, and it happen that the Witness should come before my Lord has made an End, we hope your Lordships will favour us so far, as that we may examine him.

L. *H. Stew.* My Lord *Mohun*, if you have any Witnesses to be examined, now is your time to call them.

L. *Mohun.* I desire first, Mr. *Hill's* Foot-Boy may be called.

L. *H. Stew.* Name him. (*He came to the Bar.*)

L. *Mohun.* My Lords, if you please, I desire Mr. *Brereton* may be called first, because I would prove to your Lordships, and shew you I had no Malice to Mr. *Mountford*.

L. *H. Stew.* I thought you had called that Boy first.

L. *Mohun.* That was a Mistake, my Lord, this Gentleman Mr. *Brereton*, I desire may be first examined.

Mr. *Brereton.* My Lord, I know nothing as to this Matter of Fact, for I had not seen my Lord *Mohun* of two or three Days before.

L. *H. Stew.* What do you examine this Witness to, my Lord?

L. *Mohun.* To shew that I had no Malice against Mr. *Mountford*, but spoke kindly of him several times.

Mr. *Brereton.* I had not seen my Lord *Mohun* for two or three Days before this Fact was committed, and therefore can give no Account of what happened then; but the *Friday* before, the Play of *Alexander the Great* was acted, and my Lord *Mohun* and I were at the *Play-house*, and he and I went to Supper together, and we were talking of the Play, and he said it was a good Play, and commended several Parts in it, and particularly the Acting; and he commended Mr. *Mountford's* Acting extremely: I said, I thought he never acted so well in his Life before; but my Lord spoke particularly very kind Things of Mr. *Mountford*, that he thought him a very good Actor. I answered, as to Comedy he did use to act very well, but I thought he would never make so good a Tragedian as Mr. *Betterton*, or some others. But my Lord before this, had used to commend Mr. *Mountford* and speak kindly of him: And he said, that several of the Players had been very rude to him, more than their Business did require of them; but Mr. *Mountford* had been more civil than any of the rest. Upon this, my Lord *Mohun* was pleased to ask me, Whether I was acquainted with Mr. *Mountford*? I told him, I never was in his Company but once with Mr. *Bludworth*. Saith, my Lord, I have a great mind to drink a Bottle of Wine with him. Said I, I do not think him worth your Acquaintance, but you may do what you will. Several Things more my Lord said, and spoke more kindly of him than of any of the rest of the Players; but there was no Time fix'd for drinking with him. Upon *Tuesday* after my Lord *Mohun* came to my Lodgings, and told me, Mr. *Mountford* had been very civil to him the Night before at the *Play-house*, when the rest were very rude to him; and he had a mind to drink a Bottle of Wine with him. Saith he, I am going about some Business to *Kensington*, but

within a Day or two you shall certainly hear of me, and we will fix a Time for it, and if I do not like his Company, I will never trouble you, nor myself more with it.

L. *H. Stew.* When was this, Sir?

Mr. *Brereton.* This was the *Tuesday* before; the first Discourse was upon the *Friday* before.

(*Then the Boy was examined.*)

L. *Mohun.* Was you along with me and Mr. *Hill*, that Night Mr. *Mountford* was killed?

L. *H. Stew.* My Lord, you must propose your Questions to me, and I will ask them.

Mr. *Att. Gen.* I desire to know what the Boy's Name is, and who he is?

L. *Mohun.* His Name is *Thomas Lake*, and he was Mr. *Hill's* Foot-Boy.

L. *H. Stew.* What do you ask him, my Lord?

L. *Mohun.* Pray, my Lord, ask him, if he was with Mr. *Hill* and me that Night that Mr. *Mountford* was killed.

L. *H. Stew.* You hear the Question; what say you to it?

Boy. Yes, my Lord.

L. *H. Stew.* I do not hear you what you say.

Boy. I was with them, my Lord, and all I heard was, they had a Design to take away the Woman, Mrs. *Bracegirdle*, and they had provided Night-Cloaths and a Coach for her, to go to *Totteridge*, which was the Place where they designed to carry her.

L. *H. S.* I do not hear one Word this Boy saith.

L. *Mohun.* My Lord, shall I repeat to your Lordship what the Boy saith?

Lords. No, no, no.

L. *H. Stew.* No, my Lord, you are not to repeat what your own Witness saith.

Boy. They had a Design to carry away the Woman Mrs. *Bracegirdle*.

L. *H. Stew.* I do not hear one Word. That Boy can speak out, if he pleaseth; I warrant him, he would make Noise enough if he was in another Place. Speak out, that my Lords may all hear you.

Boy. I cannot speak any louder than I do; I say, they had a Design to carry away the Woman.

L. *H. Stew.* I may as well be at the other End of the Town, as in this Place, as for hearing what he saith. Some-body should repeat what he saith.

L. *Mohun.* If your Lordship please to allow it, that one of the Officers of the Court may come down to the Bar, and repeat from his Mouth to the Court what he saith.

Lords. Ay, ay.

L. *H. Stew.* Mr. *Walker*, Then do you go and stand by him, and tell us what he saith.

Mr. *Walker* the Clerk went and stood by the Boy at the Bar, and repeated his Evidence aloud.

Mr. *Walker.* My Lord, he saith, they had a Design to take away the Woman, and they had Night Cloaths in the Coach for the Woman to put on, and they enquired at the Woman's Lodging where she was, and there they were told, that she was at Mr. *Page's* at Supper, and her Brother came to the *Horse-shoe* Tavern and drank with them, and he was to go to tell them when she came out, and which way she was to go Home; and there was a Man that was to give Notice, and they went down before her, and the Coach stood almost at the lower end of *Drury lane*, where there were some Soldiers to put

put her in; and the Soldiers went and took hold of her.

L. H. Stew. Is this my Lord *Mobun's* Witness?

Mr. Walker. Yes, my Lord; and he saith, when they went to take hold of her to put her in, *Mr. Page* struggled with them, and would not let them, and she cried out, and was very much troubled at it.

L. Mobun. My Lord, I desire he may be asked; Whether he was in *Howard-street* when *Mr. Mountford* was wounded, and what passed in *Howard-street* before *Mr. Mountford* was wounded?

Mr. Walker. He saith, he was in *Howard-street*, and saw *Mr. Mountford* come down in *Norfolk-street* towards them, and turn into *Howard-street*, but out of his way to his own House; He saith, he came down, and there met my Lord *Mobun* and his Master, *Mr. Mountford* did; and he came to my Lord *Mobun*, and bowed to him, and said, *He had a Kindness for his Lordship.* And my Lord *Mobun* reply'd, *He had a Kindness for him.* My Lord *Mobun* said to him, *He hoped he was not come to vindicate any thing of Mrs. Bracegirdle.* *Mr. Mountford* said *Not*, and asked if his Wife had done any thing to him, and said, *He was very sorry his Lordship should have any thing to do to vindicate Mr. Hill in such Rudeness.* He saith, *Captain Hill* was at the lower end of the Street, and *Captain Hill* heard him say so, and came up and said to him, *Mr. Mountford, if you have any thing to say to me, I can vindicate my self, and pray now draw;* and he went into the Street, and *Mr. Mountford* drew and met him, and made three or four Passes, and in the Passes, the Sword was broke. He cannot tell which Sword it was that was broke, he supposeth it hit against the Hilt, and snapped in two.

L. Mobun. I desire he may be asked, where I was when they fought?

Mr. Walker. My Lord stood upon the flat Stones, he saith, by the House Side all the while, and they were in the Middle of the Street.

L. Mobun. My Lord, I desire he may be asked, Whether *Mr. Mountford* had his Sword by his Side, and where it was, and whether I meddled with him?

Mr. Walker. He saith my Lord *Mobun* did not meddle with him, but stood upon the flat Stones, nor did offer to draw his Sword, and when *Mr. Mountford* came down, he carried his Sword in his Hand.

L. Mobun. My Lord, I desire he may be ask'd, Whether *Mr. Hill* did not stay in the Street to ask *Mrs. Bracegirdle's* Pardon?

Mr. Walker. He saith he desired to see *Mrs. Bracegirdle*, and to beg her Pardon, and as soon as he had seen her, he would be gone.

L. H. Stew. How can he tell that? Where was he?

Mr. Walker. He was just by my Lord *Mobun* and *Mr. Hill* in the Street, and *Mr. Hill* said, He would but stay and beg *Mrs. Bracegirdle's* Pardon for what he had done, and he would go Home.

L. Mobun. I desire he may be asked, Whether I offered to fly when his Master went away?

L. H. Stew. What is it you ask, my Lord?

L. Mobun. Whether I offered to run away, or make my Escape?

Mr. Walker. He saith, my Lord did not offer to run away, but stood still and said he had done no Hurt, nor drawn his Sword.

L. Mobun. I desire to ask him, Whether I

could not have run away as well as *Mr. Hill*, if I had had a mind?

Mr. Walker. He saith, He might have run away as well as his Master *Mr. Hill*, but he stood still a great while, till the Watch came and took him, and he gave himself up.

Mr. Att. Gen. My Lord, before the Boy goeth away, I desire to know of him whether he has not been already examined upon his Oath elsewhere?

Mr. Walker. Yes, my Lord, he was examined at *Hicks's-Hall*, and was kept in Prison two Days.

Mr. Att. Gen. Were you examined before the Coroner?

Mr. Walker. He saith, He was examined before the Coroner.

Mr. Att. Gen. Which was the first Place he was examined at?

Mr. Walker. He saith he was examined at *Hicks's-Hall* first.

Mr. Att. Gen. When he was examined before the Coroner, did he give the same Evidence as he does now?

Mr. Walker. He gave the same Evidence before the Coroner that he doth now, as near as he can remember.

Mr. Att. Gen. When you did make Oath before the Coroner, was it read to you what you swore?

Mr. Walker. He saith, his Evidence was not read to him.

Mr. Att. Gen. Did you subscribe the Evidence you gave before the Coroner yourself?

Mr. Walker. Yes, he did.

Mr. Att. Gen. Did not you write your Name yourself?

Mr. Walker. Yes, he saith.

Mr. Att. Gen. Did you not know what it was you subscribed your Name to?

Mr. Walker. He saith, It was not read to him afterwards, he knoweth what it was he gave in.

Mr. Att. Gen. Are you sure it was not read to you?

Mr. Walker. He saith, He is sure it was not read to him.

L. H. Stew. Was it not read to him before he subscribed it?

Mr. Att. Gen. That I did ask him, my Lord.

Mr. Walker. He doth not remember that it was read to him at all.

L. H. Stew. Can he read himself?

Mr. Att. Gen. He writes a very good Hand, my Lord.

Mr. Walker. He saith, They bid him put his Hand to it; and as soon as he had put his Hand to it, they put him out, and bid him call another Woman.

Mr. Att. Gen. I would have him consider of it, before he makes Answer; because there are several Persons present here, who were present when it was read to him before he subscribed it.

Mr. Walker. He cannot remember that it was read to him.

Mr. Att. Gen. Do you remember you swore at that Time, That when *Mr. Mountford* and *Mr. Hill* were pushing at one another, my Lord *Mobun* said, He would stand by his Friend, and *Mr. Hill* was his Friend?

Mr. Walker. He saith, my Lord said, He would not go, he would stay by his Friend, for *Mr. Hill* was his Friend.

E. of Carlisle. My Lord Steward.

L. H. Stew. My Lord of *Carlisle*.

E. of Carlisle. I desire that he may be asked, Whether he was the Boy that said to my Lord *Mobun*, Pray, my Lord, good my Lord, do not do it, alter your Resolution.

L. H. Stew. Call the Boy again (*which was done*); Was you by when those Words were spoken; Pray, my Lord, will you repeat your own Question?

E. of Carlisle. Whether he was the Boy that said to my Lord *Mobun*, Pray, my Lord, good, my Lord, do not do it, alter your Resolution, or defer it to another Day?

Boy. No, my Lord, I did not hear him.

L. H. Stew. Did not you say so your self?

Boy. I said no such thing, nor heard no such thing said by any body.

L. H. Stew. Do you bring any more Witnesses, my Lord.

L. Mobun. Yes, my Lord, Mrs. *Elizabeth Walker*, Mrs. *Bracegirdle's* Maid.

Elizabeth Walker. Here, my Lord, I am she.

Mr. Att. Gen. My Lord, before my Lord *Mobun* proceedeth to examine any other Witness, I have one thing humbly to offer to your Lordships.

[*Then Proclamation was made for Silence.*]

Mr. Att. Gen. Of what Consequence it will be to my Lord *Mobun*, I must submit to your Lordships when you have heard it; that is, whether it may not be proper now since this Boy has given an Evidence, so very different from what he gave upon his Oath before the Coroner, to have his Deposition that he made before the Coroner, read in his Presence.

L. Mobun. My Lord, I think I ought to conclude, and give all my own Evidence before Mr. Attorney maketh his Remarks.

L. H. Stew. Then reserve that till the last, Mr. Attorney.

Mr. Att. Gen. My Lord is certainly in the right of it, there ought to be no Observations made upon his Evidence, and we shall be sure to keep exactly to the usual Method in this Matter; but I take it to be the Course of Evidence, where there is an Objection to what the Witness delivers now, which does arise from what the same Witness has sworn before, it is proper to make the Objection, as soon as he has delivered such Evidence, whilst the Matter is fresh in your Lordships Memories.

L. H. Stew. Mr. Attorney, let the Boy stay, he shall be called upon afterwards; but let my Lord go on now with the rest of his Witnesses.

L. Mobun. Here is *Elizabeth Walker*, my Lord.

L. H. Stew. What is that Woman's Name?

L. Mobun. *Elizabeth Walker*; did you live with Mrs. *Bracegirdle*?

Elizabeth Walker. Yes, I did my Lord.

Mr. Att. Gen. This Person has conceal'd her self, we have been endeavouring to find her out all this while, but could not.

L. H. Stew. What do you ask her, my Lord?

L. Mobun. I desire she may be asked, Whether she lived with Mrs. *Bracegirdle*, and what she saw and observed that Night Mr. *Mountford* was killed.

El. Walker. If it please you, I lived then with her.

L. H. Stew. I cannot hear what she said; Mr. *Walker*, I think you must go thither again; speak out, Woman.

El. Walker. I was her Servant at that time,

when Mr. *Mountford* was killed. And, may it please you, my Lord, that Night, old Mrs. *Bracegirdle* and her Daughter, were invited to Supper at one Mrs. *Page's* in *Drury-lane*, and coming Home about Ten or Eleven a Clock out of *Drury-lane*, my Mistress desired me to go to Mr. *Mountford*, to see if Mr. *Mountford* was come home. I went, and they said, He was not come home: She desired me then to go again, and tell Mrs. *Mountford*, that if he was not come home, she should send to see where he was, and desire he would not come home without a good Guard, for my Lord *Mobun* and Captain *Hill* were walking about the Street, and she did not know their Design, by reason Mr. *Hill* had his Sword drawn in his Hand, out of the Scabbord. I asked the Reason why he had his Sword drawn, and the Answer was made; He had lost the Scabbord in a Skirmish in *Drury-lane*; but that I know nothing of. Mrs. *Mountford* said, She would send her Maid to see where her Husband was, and I told her, if my Mistress would give me leave, I would go along with her, to bear her Company. And when I returned to my Mistress, she did give me leave, and I went along with her to several Places; but we could not find Mr. *Mountford*; so coming home, I went to my Mistress, and I saw them two stand at the Door, and they staid there above an Hour, and in the mean time our Landlady, Mrs. *Browne*, heard the Watch come into the Street, and she said, she would go to the Door, and bid the Watch seize them; and she did go out, and I was kept within Doors, and heard her talk to the Watch, but what she said, I cannot tell; but presently the Watch went away and left them. And I stood at the Door, and heard Mrs. *Browne* say, There cometh Mr. *Mountford*, and she would go speak with him; and with that, she went as fast as she could to meet him, and came to him a good way before he came down to them, and took him by the Arm thus, to stay him, and she said, Captain *Hill* and my Lord *Mobun* was walking in the Street, and Captain *Hill* had his Sword in his Hand drawn, and she did not know what their Design was.

L. H. Stew. Indeed she must speak louder, or I cannot tell what she saith.

El. Walker. My Lord, I say Mrs. *Browne* when I was at the Door, said, Yonder cometh Mr. *Mountford*, and she said, she would go and meet him, and away she went as fast as she could towards him; and when she came up to him, she took him by the Arm thus, and desired him that he would not come down that Street, but go to his own House, for there were Captain *Hill* and my Lord *Mobun* walking in the Street, and she did not know what their Design was, but Captain *Hill* had his Sword drawn in his Hand. If it please you, my Lord, Mr. *Mountford* did not answer her a Word; but pressed forward to meet my Lord *Mobun* and Captain *Hill*. If it please you, my Lord, they met one another, and my Lord *Mobun* and Mr. *Mountford* complimented one another very lovingly, and said, They were glad to see one another; and Mr. *Mountford* said to my Lord, He had a great Respect for his Lordship, and my Lord replied to him again, By my Honour, I have the like for you, Mr. *Mountford*, and with that, they embraced one another. I am sure this is Truth, for I followed Mrs. *Browne* out, and stood by when

it was done. Mr. *Mountford* told my Lord, it was a Dishonour to him to keep Company with Captain *Hill*. I will not take my Oath that Captain *Hill* did hear him say so, but he might have heard him, and it may be he did too; and that might occasion the Quarrel; but I will not take my Oath of that: It came just in my Head after this was said, that our Door was open, and I turned my Back to hear and look who was at our Door, and I heard Mrs. *Browne* say, that Captain *Hill* and Mr. *Mountford* were going to Fight: I saw them Fighting, making Passes at one another, I saw them engaged, I never saw Men naked fighting so in my Life.

At which there was a great Laughter.

El. Walker. My Lord, I do not understand these Matters, I tell you as well as I can, they were fighting with naked Swords, Mr. *Mountford's* Sword was upon Mr. *Hill* hereabouts, and Mr. *Hill's* Sword was upon Mr. *Mountford* hereabouts; and after they had made two or three Pushes at one another, Mr. *Mountford* said, he was kill'd, and threw down his Sword thus, and I took it up, and there was a good Piece of the Sword broken off. I turned me about thus, towards our own Hatch at our Door, and there stood two or three People, I cannot say who they were, but I gave them the Sword, and I turned my Face towards *Surrey-street*, and saw Captain *Hill* making his Escape, running up *Surrey-street*; and, if it please you, my Lord, Mr. *Mountford* was the Friend I had most Respect for; and I saw him, as fast as he could, going towards his own House, and my Lord *Mobun* stood in the same Place that he was in, when he and Mr. *Mountford* were embracing one another, and I did not see my Lord *Mobun* stir from that Place; but when they fought, they were engaged in the middle of the pitched Stones, where there was a Place made for the Water to run along the Street like a Channel; and to my Knowledge, I did never see my Lord *Mobun* off of the Paved Stones, on the Side. I cannot say he was never off, when my Eye was turned another way; but to my Knowledge, I never saw him off of those Stones. If it please you, my Lord, the next thing that I saw, was this, After Captain *Hill* run up *Surrey-street*, and Mr. *Mountford* did go home, I saw my Lord *Mobun* walking up to the End of the Street, where the Watch were coming, and when the Watch came, I see him deliver himself up to the Watch; but I think one of the Watch said, he must have his Sword, and he did deliver up himself and his Sword to the Watch. And he bid me take Notice, Bear Witness, said he, I have no Hand in the Death of Mr. *Mountford*. Said I, No, my Lord, I think you have not. The next thing I remember, was Mrs. *Page* came and said Mr. *Mountford* was killed, upon which, said my Lord *Mobun* to her, Bear Witness, I had no Hand in his Death. Said she, You were in his Company, therefore seize him, and carry him to the *Round-house*; and the Watch did secure him; and my Lord answered, As he was a Gentleman, he desired to be used like a Gentleman; and they did carry him away to the *Round-house*. This is the Thing that I did say, as near as I can remember, to the Justices; but I have been very much abused and distracted amongst them, and therefore to a Word I cannot say; but as near as I can remember, being abused at the rate I have been, this I did then say, and it is the Truth.

L. Mobun. I desire she may be asked, whether

she was not exanined before the Justices at *Hick's-Hall*, and whether she was not then Mrs. *Bracegirdle's* Maid.

L. H. Stew. Truly, my Lord, I have heard very little of what she has said, but I hope my Lords that have been nearer have observed it.

El. Walker. If it please you, if you ask what was done at *Hicks's-Hall*, I will tell you just as it was, what happened there, and so proceed on to tell you how I have been abused.

L. H. Stew. My Lord, what would you have her asked more?

L. Mobun. I desire to ask her, Whether she was not Mrs. *Bracegirdle's* Servant when she was examined at *Hicks's-Hall*, and whether she swore the same there, as she saith here, and what was done to her since, or what they would have done, and whether they did not try to make her speak what they would, and to put her out?

El. Walker. If it please you, my Lord, that next Morning, there came several of the Players to me, to ask me what I knew of the Death of Mr. *Mountford*, and I told them; but they did not like what I said, and they seemed discontented at me. And when they were to go to *Hicks's-Hall*, they said, they had no need of my Evidence, they could do without me. So Mrs. *Browne* and her Maid they went away, and left me at Home; what they did, or where they staid, I do not know; but about two or three Hours after, a Messenger came and said, my Mistress and I must go to *Hicks's-Hall* to be examined before the Justices; and we went, and when we came there, all were examined, and I was examined in the last Place; where, my Lord, I gave in the same Evidence that I do now, as near as I can speak. I do verily believe it to be the same, but I have had so much Trouble with their abusing me, that I cannot speak to every Word or particular Thing. For my Mistress stood before me, and said, They brought Evidences that confounded themselves; and another said, Hang her a Jade, pull her by the Coat. I turned me to the Justices, and said, I hoped I might speak now I was there; but it may be for fear of my Mistress, I did not then speak all that I have done now, because I have called more since to my Remembrance. And there is one particular Thing that I call to mind now; I remember that in our Parlour, as soon as they came home out of *Drury-lane*, there was a Discourse between my old Mistress, and my Young, that Captain *Hill* waited at the Door to see my Mistress, and that if he might but have Leave to see her, and to beg her Pardon, they would be gone thence to their own Lodging; and I said to my Mistress, If she would give me leave, I would go out to them, and demand Captain *Hill's* Sword, and then he might come in.

L. Mobun. I desire she may be asked, Whether she was not turned away and threatned?

El. Walker. I am going on to tell my Lord what happened in our House that Night. I told my Mistress, If she would give me leave, I would undertake to get Captain *Hill's* Sword from him, and then she might let him come in and see her, and beg her Pardon, and I thought it would prevent a great deal of Danger that might follow else. And my Mistress said, I was a prating Slut; and my young Mistress said, If he begged her Pardon upon his Knees never so, she would never forgive him, nor see him more.

My

My Lord, there was another Discourse in the Street, that Captain *Hill* had made a Vow that he would kill himself that Night, and that my Lord *Mohun*, having a Respect for him, watched to prevent him from doing himself a Mischief. That was discoursed in the Street, but I cannot say it was so of my own Knowledge.

Then another Proclamation for Silence was made.

L. Mohun. I desire she may be asked, whether she was not turned away, and whether she was never threatned.

Eliz. Walker. If it please you, my Lord, that Night that I gave in my Evidence at *Hicks's-Hall*, by their talking, I knew before I went from Home what a Life I should have with my Mistress, for I knew they did not like my Evidence, and I was afraid of coming Home, and went and staid with my Sister; but notwithstanding I went Home about Nine a Clock, and they were very inveterate against me, and I told one of them, I had witnessed the Truth, and nothing but the Truth, and that I would stand by. If it please you, my Lord, the next Morning there was this *Ann Jones* that lay with me that Night, and she told me that in the Morning they threatned, and intended to fetch me to Mrs. *Mountford* to rattle me for what Account I had given in, and she giving me this Item, I got up, and went to dressing my Dinner, and Mrs. *Mountford* sent a Man, that I know by Sight, I think it was one *Roberts*, I believe that was his Name; whereupon he came and asked me where was Mrs. *Bracegirdle's* Maid; I said, I was she, and then he said Mrs. *Mountford* desired me to come to her. I said, I had given in my Evidence where I ought to do it, and I had nothing to do with her; but it was upon this account, not that I had any Antipathy against Mrs. *Mountford*, but only as *Ann Jones* had given me that Item of a Design to send me to her, to rattle me for the Evidence I had given in, and I did not know what might come of it, or what their Design might be.

Mr. Att. Gen. My Lord, I would not interrupt any Witness, but because she speaks of what was said by *Jones*, and Mrs. *Bracegirdle*, I desire they may be by to hear what she saith.

L. Mohun. My Lord, I desire my Witnesses may not be hared.

L. H. Stew. This is not haring of Evidence, my Lord.

L. Mohun. My Lord, I desire I may go on with my Evidence without Interruption.

L. H. Stew. My Lord, this is no Interruption.

Mr. Att. Gen. Pray, my Lord, let Mrs. *Mountford* be called in to hear what she saith of her; I desire she may be by.

L. Mohun. My Lord, I have no more to say to her.

Mr. Att. Gen. But then, my Lord, before she goeth away, I have two or three Questions to ask her.

L. H. Stew. What do you ask her, Mr. Attorney?

Mr. Att. Gen. She saith she was examined at *Hicks's-Hall*, I desire to know if ever she was examined before the Coroner.

Eliz. Walker. If it please you, my Lord, I was not, and I will give you the Reason.

Mr. Att. Gen. Ay, pray let us hear it.

Eliz. Walker. Why you have not heard how badly they used me after this.

Mr. Att. Gen. But pray, Mistress, answer my Question.

Eliz. Walker. But, my Lord, if it please you, I went to my Sister, and staid with her till Eight or Nine, and my Aunt told me there had been a Porter to enquire for me, to go to the Jury; I was sorry I was not at Home, but I took a Neighbour with me to go to Mrs. *Mountford's*, to see if the Jury were not gone; and I knowing how they had threatned me, I desired him to leave me at a Victualling-House by *Temple-Bar*, and go and tell them, if the Jury were not gone, I was ready to wait upon them; he went, and I remained at the Victualling-House, and he came again, and told me Mrs. *Mountford* said they had done without me; but he was a little surprized.

Mr. Att. Gen. My Lord, she maketh a long Answer to a short Question. I would ask her another Question presently; but by the way, as to this Examination at *Hicks's-Hall*, I would observe that it is a very unusual, and, I think, under Favour, a very unwarrantable Thing for Justices of the Peace, to take upon them, under a Pretence of considering, in order to bail a Person charged with Murder, to enter into a particular Examination of every one of the King's Witnesses, as if they were either a Grand Inquest, charged upon Oath for finding a Bill of Indictment, or Coroners to take an Inquisition of the Murder, both the Grand Jury and the Coroner are upon their Oaths to keep the King's Evidence secret; but this is to make it publick by an indirect way by a Justice of Peace's examining, in order to the Bailing of an Offender. But I would observe this Woman goeth away from her Mistress, and continueth away, and concealeth herself; she was not to be found to be examined before the Coroner, the proper Officer, nor are we able to tell where she has been; I desire some account may be given, in whose Hands she has been all this time.

L. Mohun. My Lord, I desire your Lordship's Opinion, whether this may be permitted, that he should talk thus.

L. H. Stew. What do you say, my Lord?

L. Mohun. My Lord, I desire to know whether he may interrupt me in my Evidence thus: All this Matter is foreign to the Business before your Lordships.

Mr. Att. Gen. If you please, I would ask her this one Question.

Lord — Under Mr. Attorney's Pardon, I think the Prisoner, or his Witnesses, ought not to be interrupted; but if he have any Remarks upon the Evidence, when they have gone thro' he may call them again, and ask them any Questions, or make any Remarks upon them.

Mr. Att. Gen. My Lord, I would ask her but one Question.

L. H. Stew. What is it, Mr. Attorney?

Mr. Att. Gen. If she heard Mrs. *Browne* say to Mr. *Mountford* that she would not have him come forward, because my Lord *Mohun* and Mr. *Hill* were there, and she did not know what their Design was?

Eliz. Walker. If it please you, my Lord, I did hear them, and I was just by them; and there was none but she and I.

Mr. Att. Gen. She upon her Oath saith, she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: But, my Lord, I have no more Questions to ask her.

L. H. Stew.

L. H. Stew. Have you any more to ask this Witness, my Lord?

L. Mobun. No, my Lord.

L. H. Stew. Who is your Lordship's next? Pray call your Witness.

L. Mobun. I desire *Ann Jones* may be examined (*She came to the Bar.*)

L. H. Stew. What doth your Lordship examine her to?

L. Mobun. I desire she may be asked what she knoweth of what passed that Night Mr. *Mountford* was hurt, and tell the whole Story.

Jones. First, I saw Mrs. *Bracegirdle* coming home with her Mother and Mr. *Page*, about ten a Clock at Night, and there were Captain *Hill* and my Lord *Mobun* with them when they came home, but they did not come in with them, but walked in the Street about an Hour and an Half; and after they came in, Mrs. *Browne* sent to Mrs. *Mountford*, for she said Captain *Hill* had some Design, and my Lord *Mobun*, upon Mr. *Mountford*, but Mr. *Mountford* not being at home, they sent to all the Taverns thereabouts, but could not find him; they came home again, and told Mrs. *Mountford* and Mrs. *Bracegirdle*, they could not find him, and there my Lord *Mobun* and Captain *Hill* walked to-and-fro about the Street for an Hour and Half in all; about an Hour after they had been to look for Mr. *Mountford*, or about three Quarters of an Hour, Mr. *Mountford* came down, and I saw my Lord *Mobun* and Captain *Hill* at this Door.

L. Mobun. At whose Door, I desire she may be asked.

Jones. At this Mrs. *Browne's* Door, and Mr. *Mountford* coming down, my Lord *Mobun* met him, and embraced him, and said, He had a great Honour and Friendship for him, and Mr. *Mountford* said, he had a great Honour and Respect for his Lordship. Saith my Lord *Mobun*, Mr. *Mountford* I suppose you are sent for. No not I, upon my Honour, said he. Upon that he up and told him how they had like to have got Mrs. *Bracegirdle* into a Coach, and carried her away, but were prevented. Saith Mr. *Mountford*, as to Mrs. *Bracegirdle*, I have nothing to do, she is no Concern of mine, if my Wife have offended your Lordship, she shall beg your Pardon. Said Mr. *Mountford* again, I hope your Lordship will not vindicate Mr. *Hill* in any such Action as this. With that Captain *Hill* came up and hit Mr. *Mountford* a Box on the Ear, and bid him draw. And, said Mr. *Mountford*, Damn ye, What is that for? And thereupon he drew; and I tell you what I saw, they both came off from the paved Stones into the Middle of the Highway, and made two or three Passes at one another; at the second Pass Mr. *Mountford's* Sword broke, and he flung down his Sword, and run away, and said he was a dead Man; Mr. *Mountford* went one way, and Mr. *Hill* another.

L. Mobun. I desire she may be asked, If I did meddle with Mr. *Mountford* at all, or helped Mr. *Hill* whilst they fought, and where I stood all the while?

L. H. Stew. What say you? answer all those Questions my Lord asked you.

Jones. If it please your Lordship, he stood upon the Causey, the paved Stones, in the same Place where he was all the time.

L. H. Stew. Did my Lord meddle at all?

Jones. No, I did not see my Lord *Mobun* meddle.

L. H. Stew. Was my Lord's Sword drawn?

Jones. I did not see it drawn.

L. Mobun. I desire she may be asked, Whether I run away, or whether I did not surrender myself to the Watch.

Jones. If it please your Lordship, I did not see my Lord run away; But I did see him surrender himself.

L. Mobun. I desire she may be asked, if she was not examined at *Hicks's-ball*?

Jones. Yes, my Lord, I was.

L. Mobun. And whether she did not there declare the same upon Oath, that she doth now?

Jones. Yes; my Lord, I did.

L. H. Stew. Have you any thing to say to this Witness, Mr. Attorney?

Mr. Att. Gen. My Lord, I would only ask her this Question: She saith my Lord *Mobun* was upon the Pavement, or Causey, as she calleth it, all the while; I desire to know whether the Scuffle did not begin upon the Pavement?

Jones. Yes, it did upon the Causey.

Mr. Att. Gen. I desire to know, whether she saw any Blood upon that Causey the next day?

Jones. No, I saw none.

L. Mobun. I desire she may be asked, Whether they did not fight in the Middle of the Street?

Jones. Yes, and please your Lordship, I did see them make Passes at one another in the Street.

L. Mobun. I desire she may be asked, Whether the Sword was not broken there in the Middle of the Street, and whether Mr. *Mountford* did not then cry out, I am killed?

Jones. His Sword was broken in the Middle of the Street; but I did not hear Mr. *Mountford* say he was killed, but he flung down his Sword, and run away, and said, I am a dead Man.

L. H. Stew. Have you done with this Witness, my Lord?

L. Mobun. Yes, my Lord.

L. H. Stew. Have you any more to say to her, Mr. Attorney?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Then who is your next Witness, my Lord *Mobun*?

L. Mobun. *Edward Warrington*, my Lord.

(*Who came to the Bar.*)

L. H. Stew. What say you to him, my Lord?

L. Mobun. I desire to ask him where he liveth? Whether he be not a Neighbour to Mrs. *Bracegirdle*? and what he saw that Night Mr. *Mountford* was killed? I desire he would give his whole Evidence.

Warrington. I live, if it please your Honour, over-against Mrs. *Bracegirdle's* House, at the *White-swan*, on the other Side of the Way.

L. Mobun. I desire he would tell all that he saw that Night.

Warrington. All that I can say, is, About nine or ten a Clock, as near as I can guess, I heard a Disturbance at Mrs. *Browne's* Door, where Mrs. *Bracegirdle* lodgeth, and looking out, I saw there were two Gentlemen talking to old Mrs. *Bracegirdle*, and Mrs. *Bracegirdle* and some People went into the House, and when they were gone into the House, I saw the two Gentlemen walk about the Street, one's Sword I saw was drawn.

L. H. Stew. Whose Sword was that was drawn?

Warrington. Captain *Hill's*, as they say; for my part, I did not know either of them; they walked there for the Space of an Hour and a Half, I saw

saw them oppose no body. But as they came along, I heard them ask a Gentleman that came towards them, Whether he would not drink a Glass of Wine or not?

L. Mohun. My Lord, I desire he may be asked, what he saw afterwards of fighting?

Warrington. For fighting, I saw Mr. *Mountford* come down *Norfolk-street*, and I saw him turn at the Corner with his Sword in his Hand in the Scabbard, to the best of my Knowledge, and seeing some People there, as I suppose, went towards them, and came up to them; and I saw my Lord *Mohun*, to the best of my Knowledge, lay his Hand upon his Shoulder, and embraced him, and complimented him; but I cannot be certain what the Words were that passed between them.

L. H. Stew. Did you see them fight?

Warrington. If it please your Honour, I did see their Swords both drawn, Mr. *Mountford* and he that they said was Captain *Hill*; there were some Women about them, so that I could not so well discern when they drew their Swords, or who begun the Quarrel. *Hill*, they said, had no Scabbard to put his Sword in; my Lord *Mohun* stood by, and laid his Hand upon Mr. *Mountford's* Shoulder.

L. H. Stew. Was that before the Fighting, or at the time of the Fighting?

Warrington. It was before their Fighting, at their first Meeting.

L. Mohun. I desire your Lordship would please to ask him, In what Part of the Street they fought, and whether I was near them then?

Warrington. When first I saw their Swords drawn, it was upon the flat Stones of the Pavement; and I saw Mr. *Hill* come off of the Stones and Mr. *Mountford* with him. Mr. *Hill* was, I think, the first, and they came both up together with their Swords drawn in their Hands, they were not a Sword's Length off from one another; and they passed at one another, and I run into our House to fetch a Paring-Shovel, with an Intention to part them; but before I could get out of Doors with the Paring-Shovel in my Hands, the one was gone one way, and the other the other way; and I saw no body in the Street to ask any Questions of, but my Lord *Mohun* at the Corner, three or four Doors above this Place. And I came out, and asked which way they were gone, my Lord *Mohun* turned about, and I was a little afraid of him at first; but, said he, Here am I, I did not offer to oppose or draw my Sword; you all know it; and immediately, if it please your Honour, the Watch came in; that is all I know.

L. Mohun. I desire he may be asked, Whether I did not go towards the Watch, and surrender myself.

Warrington. I cannot say that, but the Watch came in a Minute. My Lord turned about, and said, Here am I, I did not oppose or draw my Sword, you all know.

L. Mohun. Pray my Lord, let him be asked, Whether I did offer to fly? And whether I had not as much time to fly, as Mr. *Hill*?

Warrington. I cannot say that, my Lord. I suppose he might have gone away as well as Mr. *Hill*, for they were both together.

L. M. My Lord, I desire he may be asked another Question, Whether, when Mr. *Mountford* came into *Howard-street*, he did not come out of his way to his own House, to come towards us?

Warrington. My Lord, if it please your Honour, it was out of his way; but whether he did it on purpose, or because he saw People there, I cannot tell.

L. Mohun. I desire he may tell you where Mr. *Mountford's* House is.

Warrington. Mr. *Mountford's* House is in *Norfolk-street*, two Doors in the Corner out of the Cross Street; and this was done in *Howard-street*.

L. H. Stew. I would ask you a short Question, Whether that was the way to his House that he went?

Warrington. No, it was not the way, my Lord; for he turned on the Right-Hand, and he should have kept straight along.

L. Mohun. I desire he may be asked, Whether he was not sworn at *Hicks's-ball*, and whether he gave not the same Evidence there, that he doth now?

Warrington. I was sworn there, and did, to the best of my Knowledge, give the same Evidence I do now.

L. H. Stew. If I understand you aright, you say both the Swords were drawn of *Mountford* and *Hill*?

Warrington. Yes, my Lord, I did.

L. H. Stew. Can you say whether *Mountford's* Sword was drawn before he was hurt, or not?

Warrington. If it please you, my Lord, I cannot tell that, I cannot be positive whether it was or no, for there were Women about them, I say, at first, and I could not discern the Beginning; and I did not stand to see them push, for as soon as I saw their Swords drawn, and they come off the Pavement to fight, I run into the House to fetch a Paring Shovel.

L. Mohun. Now, my Lord, I will call another Witness.

L. H. Stew. Mr. Attorney, have you any Questions to ask this Witness?

Mr. Att. Gen. No, my Lord.

L. Mohun. Then, my Lord, I will call another Witness to shew you the Reason why Mr. *Hill* and I stayed in the Street, and what was the Business we stay'd for. I desire *Ann Knevit* may be examined. (*She came to the Bar.*)

L. H. Stew. What do you ask her, my Lord?

L. Mohun. I would ask her where she liveth, and what she knoweth of this Business?

Knevit. My Lord, I live in *Howard-street*, exactly against Mrs. *Bracegirdle's* Lodging, and my Lord *Mohun*, as he gave his own Name to be, to the Watchmen, and another Man that they called Captain *Hill*; for so he gave his Name to be; they came down with Mrs. *Bracegirdle*, both the Mrs. *Bracegirdles*, into the Street, and came to their Door, and old Mrs. *Bracegirdle* put her Daughter in at the Door, and then she stood still and talked with the Gentlemen, and asked them their Business. They said, They wanted to beg the young Woman's Pardon for what they had done, and then they would be gone. She said she thought they came to rob her. They said, No, they came upon a very honourable Design. She said, Then they might have come at a more seasonable time; but she believed they came to rob her.

L. Mohun. What time of Night was it?

Knevit. It wanted a Quarter of Ten, I believe, or it was about Ten, a Quarter over or under; I cannot exactly tell. They said, If she would give them leave but to speak to her, and beg her

Pardon

Pardon for what they had done, they would go home immediately. She said, she would not, they should not see her any more that Night: Then one of the Gentlemen, I know not which of them it was, said, They would walk a little while in the Street: she did see them walk very quietly, but she made a great Noise herself; and at last she went in, and shut the Door, and the Gentlemen walked quietly up and down, and by and by, they went to the Door again, and desired to be admitted to speak with young Mrs. *Bracegirdle*, that they might beg her Pardon for some Affront that they had put upon her, I suppose, and she still refused them, and would not let them speak with her; and several times they called and knocked at the Door, and still desired but to speak with her, and beg her Pardon, and they would be gone home, but she every time refused it.

L. H. Stew. Woman, I do not hear you, you must speak louder.

L. Mobun. My Lord, I desire your Lordships will let one of the Clerks come and take the Evidence, and report it to you.

L. H. Stew. If it be material, another must report it; for I have not heard one quarter of it.

L. Mobun. It is very material, my Lord, to shew the Reason why we stayed there.

Knevit. My Lord, I will repeat it over again, if you please.

L. H. Stew. Then pray speak so loud that I may hear.

Knevit. My Lord *Mobun* is a perfect Stranger to me, I only tell you what I saw and heard. At the first beginning of all, two Gentlemen, and two Women, came to a Door over against our Door, and at that House Mrs. *Bracegirdle* and her Daughter lodged, the Gentlemen ave their Names to the Watch afterwards to be my Lord *Mobun* and Captain *Hill*: So when they came there, the old Woman put her Daughter in at the Door, and when she had pulled off her Hood and Scarf, she came to the Door, and asked them their Business; and they told her, they wanted to beg her Daughter's Pardon for what they had done; but she abused the Gentlemen mightily, and gave them very ill Words, and said, She believed they came to rob her Daughter; they said, No, they came upon a very honourable Design; then she said, They should have come honourably at a seasonable time; they said, It was not an unseasonable time, for she was out of Doors herself at that time. So she stood there a little, and then at last she went in a Doors, and shut the Door, and some of them opened the Door again, and they were walking upon the Causey, and came up to the Door, and still desired the same thing, to speak with the young Gentlewoman to beg her Pardon for what they had done, and they would go home for that Night. One of them, I think it was Mr. *Hill*, said, He had given her an Affront, and he desired to beg her Pardon; but still they said, he should not be admitted to speak with her. Then one of them, I think it was Mr. *Hill*, desired she would be pleased to come but to the Hatch, that he might see her, and beg her Pardon, and he would not desire to come in, but that would not be permitted. So one of them made Answer, That they would not stir till they did see her, and they would walk there all Night.

L. H. Stew. Cryer, call for Silence, and pray, my

V O L. IV.

Lord Great Chamberlain, take some Order with those People behind there, for they cannot hear themselves what the Witnesses say, and therefore they are resolved we shall not hear them neither.

(Proclamation was made for Silence.)

L. H. Stew. Now go on, Woman.

Knevit. They said they would stay in the Street all Night, unless they did speak with her: But if she would give them leave to speak with her, they would depart to their own Lodgings immediately; but they were denied to be admitted to speak with her. Whereupon one of them called unto his Boy, to bring him his Cloak; but then he said, He would not have his Cloak, he would walk without it, because they had not both of them Cloaks; by and by they sent for a Bottle of Wine, and there they drank her Health, and took several Turns, and after they had drunk off the Bottle, or some part of it, they went to the Door again, and knocked at the Door, and some body answered from within, for they were not at the Door, what they would have? They said the same thing as before, that they desired only to see her, and beg her Pardon, and they would go home; for it was a very cold Night, and it was not convenient to walk there; but they still refused to let them in: By-and-by the Watch came down, and asked, Who was there, and what was their Business? and one of the Gentlemen made Answer, and said, He was a Peer, and his Name was *Mobun*, the other said, his Name was *Hill*. So the Watch went by, and said no more, but some Body made Answer, and said, There was a Gentleman had a Sweet-Heart in that Street, and he wanted to speak with her. Just at that Time, I went up Stairs to warm a Bed in our House, and whilst I was warming the Bed, I heard a little Bustle in the Street, and running to the Window there I saw a Sword in a Man's Body, I could not tell who the Man was, nor who put the Sword there, but the Man that drew out the Sword, run away as hard as he could, and the Man in whose Body the Sword was, went as fast as he could, the other Way. And my Lord that gave his Name to the Watch to be *Mobun*, stood on the farther Side of the Street, and said, I have done no Hurt to any Body, and I will not stir. And there was a Woman that called out to the Watch to seize him; but who the Woman was, I cannot tell, but he stood still between Mrs. *Bracegirdle*'s Door, and the next Neighbour's, one that is called *Nuttall*, I think, and never stirred till the Watch came to him, and the rest went to Mr. *Mountford*; he said there was no Occasion to lay Hands upon him, for he would not stir from them.

L. Mobun. I desire to ask her if Mr. *Mountford* did not say, I am killed, after the Sword was broke?

Knevit. Yes, he did say he was a dead Man.

L. H. St. What, after his Sword was broke?

Knevit. After the Sword was drawn out of his Body, his Sword was in his own Hand, I squalled out when I saw the Sword in his Body, and had like to have gone out of the Window, and some Body said to me, when I told them why I cry'd out, Will you break your Neck for that Reason? it may be it is one of the Watchmen. No, said I, it is not a Watchman.

L. Mobun. I desire she may be asked where Mr. *Mountford* and Mr. *Hill* fought, whether it was not in the middle of the Street?

Y y y

Knevit.

Knevit. My Lord, it was exactly in the Middle, as near as I can guess, rather on our Side of the Way, with his Arms spread, and his Sword in the Scabbard.

L. H. Stew. Have you any more to ask this Witness?

L. Mohun. No, my Lord.

L. H. Stew. Have you any thing to say to her, Mr. Attorney?

Mr. Att. G. I would ask her where she liveth?

Knevit. I live in *Howard-Street*.

Mr. Att. Gen. With whom there?

Knevit. At one Mrs. *Brewer's*.

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

Knevit. My Mistress keepeth a Coffee-house.

Mr. Att. Gen. Do you live near Mrs. *Browne's*?

Knevit. I know not any of that Name there; but I live over against Mrs. *Bracegirdle's* Lodgings.

Mr. Att. Gen. Do not you know the People of that House?

Knevit. No, upon my Word, I do not know their Names that keep the House.

Mr. Att. Gen. Let me ask you another Question: You speak of many Messages sent backward and forward, and that they said Mrs. *Bracegirdle* should not be spoken with while my Lord staid there; I desire to know if you can tell who any of the Persons were that brought those Messages?

Knevit. It was the Man that called himself my Lord *Mohun*, and the other that called himself *Hill*, they spoke themselves.

Mr. Att. Gen. But who was it that came to them so often, to tell them they should not speak with her?

Knevit. It was old Mrs. *Bracegirdle*.

Mr. Att. Gen. You are sure of that.

Knevit. Yes, Sir.

Mr. Att. Gen. I would ask you one Question more: When the Watch came up to them, did my Lord tell the Watch his Name was *Mohun*, or only that he was a Peer of *England*?

Knevit. He said first, He was a Peer of the Land, and then he said, his Name was *Mohun*, and the other said, his Name was *Capt. Hill*.

Mr. Att. Gen. You are sure both of them told their Names to the Watch?

Knevit. Yes, I am sure I heard them say so.

L. H. Stew. Have you any more Witnesses to call, my Lord?

L. Mohun. No, my Lord, I could call some as to *Sandys's* Reputation, but I do not think it at all material.

L. H. Stew. Have you any thing, Mr. Attorney, to say to the Boy that was set by? Will you have him called again?

Mr. Att. Gen. My Lord, I did propose that the Boy should hear the Information read which he gave in to the Coroner.

L. H. Stew. Will you have him called again?

Mr. Att. Gen. Yes, if your Lordships please.

L. H. Stew. Well, then call him again.

(The Boy came to the Bar, and his Deposition before the Coroner was shewed to him.)

Mr. Att. Gen. Look upon that Paper, is that your Name or your Writing?

Boy. Yes.

Mr. Att. Gen. Was it true you then swore before the Coroner?

Boy. Yes, it was true.

L. H. Stew. Read it.

(It was taken by the Clerk, and read at the Table.)

Clerk of the Crown. Reads.

Middlesex. The Information of *Thomas Leake*, Servant to *Richard Hill*, Gent. taken upon Oath the twelfth Day of *December*, 1692, before me.

HE saith, That on Friday Morning last, about Nine of the Clock, 'twas agreed betwixt my Lord Mohun and Capt. Hill, to seize Mrs. *Bracegirdle* with some Soldiers, and carry her away in a Coach about nine Miles off, and about ten of the Clock at Night my Lord Mohun and Captain Hill, with about six Soldiers, did seize her, and endeavour to put her into a Coach; but she refused to go, and they led her down into *Howard-street* to her Lodging, and then said, they would walk an Hour under Mrs. *Bracegirdle's* Window, and another under Mrs. *Barry's*; and about an Hour and an Half after, Mr. *Mountford* came down the Street, and Mr. *Mountford* and my Lord Mohun saluted each other, and my Lord Mohun said, he hoped Mr. *Mountford* was not come to vindicate Mrs. *Bracegirdle*; and Mr. *Mountford* hoped my Lord did not come to vindicate the Rudeness done to Mrs. *Bracegirdle*, by Mr. *Hill*; and then Mr. *Hill* said, He was able to vindicate himself, and bid Mr. *Mountford* to draw, and they both pushed at each other with their Swords, and my Lord said, He would stand by his Friend, and Mr. *Hill* was his Friend: and during the Time that Mr. *Hill* and Mr. *Mountford* fought, my Lord Mohun did not endeavour to part them.

Jo. Cooper, Coroner.

Thomas Leake.

Mr. Att. Gen. My Lords, as to this last Witness, I would desire some of the Watch may be asked, because she saith my Lord told them his Name was *Mohun*, and *Hill* told them his Name was *Hill*, whether it was so or not.

L. H. Stew. Who would you call?

Mr. Att. Gen. Merry, my Lord, if you please.

L. H. Stew. Call him.

Lord Mohun. I desire the Constable may be called. [*Merry did not presently come in.*]

Mr. Att. Gen. My Lord, I think it is not so material, as to desire your Lordships should stay for him. But as to that one Witness that entertained your Lordships so long, Mrs. *Bracegirdle's* Servant, I desire, that she being here, may give your Lordships an Account what became of this Servant of hers.

Mrs. Bracegirdle. My Lord, she went away from me on the *Sunday*.

L. H. Stew. Who did?

Mrs. Bracegirdle. My Maid that was then, and I sent to her Aunt's the Week after to seek for her, but she could not be found; where she was I cannot tell; nor could not hear of her from that time to this.

Lord Mohun. I desire she may be asked whether she did not discharge her, or pay her her Wages.

Mrs. Bracegirdle. I did not.

Lord Mohun. Did not you or your Mother?

Mrs. Bracegirdle. My Mother, my Lord, did; she was not my Servant, my Mother hired her, my Lord.

L. H. Stew. What doth she say? were her Wages paid, and she discharged?

Mrs. Bracegirdle. They were paid because she would not stay with me, my Lord; I desired her to stay, and she would not, and then she demanded her Wages, and my Mother paid her.

L. Mohun.

L. Mobun. My Lord, I desire you would ask the Maid the Reason why she would not stay.

El. Walker. If it please you, my Lord, the Reason was this. When I came from *Hicks's-Hall* Mrs. *Mountford* the next Day sent for me, and I lying with this *Ann Jones* that was here, she told me that I should be sent for, and they would rattle me off for my Evidence that I had given at *Hicks's-Hall* for the King; my Lord, I having such an Item from *Ann Jones*, and they being all Players, I was afraid, because Players have a worse Reputation than other People.

Mr. Att. Gen. My Lord, we shall not trouble your Lordships with any more Witnesses.

L. Mobun. My Lord, I desire she may be asked if there were not Bailiffs sent to take her, and she threatned to be arrested.

L. H. Stew. What say you to that?

El. Walker. If it please you, my Lord, I cannot swear it, but I will tell you as near as I can, how it was; I had not Time to look over my Cloaths, being in Haste when I went, and for fear I should have mistaken any Thing, the next Day I went to look over my Cloaths, whereupon I found I had mistook, and taken one of my Mistress's Aprons, and left one of my own for it, and knowing their great Suspicion and Inveteracy against me, I went the next Day to my Uncle's, a Porter's, and desired him to carry it to them; but when I had delivered it to him, he would not let me stay to speak much, for he said there had been three Bailiffs to take me, and I having no Friends, was much affrighted, and run crying up and down, and did not know where to fly, for fear they might lay me in a Prison; and having no Friends, therefore I was forced to fly, and so I went to a Justice of Peace, and there I gave him an Account of the Business. But he said he must have nothing to do with it, I must go again to proffer my Service to my Mistress; but I was not willing to proffer my Service again to her, so I kept away ever since.

L. H. Stew. If you have done with the Evidence on both Sides; what have you more to say, my Lord?

L. Mobun. My Lords, I hope it will be no Disadvantage to me, my not summing up my Evidence like a Lawyer, being a young Man; I think I have made it plainly appear that there never was any former Quarrel or Malice between Mr. *Mountford* and me; I have also made appear the Reason why we staid so long in the Street, which was for Mr. *Hill* to speak with Mrs. *Bracegirdle*, and ask her Pardon, and I staid with him as my Friend, so it plainly appeareth I had no Hand in the Killing of Mr. *Mountford*, and upon the Confidence of my own Innocency, I surrendred my self, and I commit my self to this Honourable House, where I know I shall have all the Justice in the World.

L. H. Stew. Has your Lordship no more to say?

L. Mobun. No, my Lord, but I am innocent of the Fact, and leave my self wholly to your Lordships.

Mr. Sol. Gen. * May it please your Lordships, according to my Duty, I am to repeat the Evidence to your Lordships on the Behalf of the King.

My Lord, the Evidence hath been very long, both that on the Part of the King, and that

on the Part of the Prisoner, and I know your Lordships have given Attention to it with very great Diligence. I cannot pretend that my Memory will serve me so well, as to repeat the Circumstances of this so long Evidence; but that which has been material, I shall crave leave shortly to mention to your Lordships.

My Lords, I know a great many Things may slip my Notice and Repetition, but nothing can slip your Lordships Observation: So that though I should not lay a due Weight upon the Evidence for the King, yet your Lordships will let nothing pass without giving it its just Consideration, and will give Judgment according to the exactest Justice.

My Lords, the Evidence for the King doth consist first of Facts precedent to the Killing of Mr. *Mountford*, and next what happened at that Time.

As to what preceded this Fact thus committed, there were two or three Witnesses called, and the first of them is Mr. *Hudson*, the next is Mr. *Powel*, and they give you an Account that Mr. *Hill* had made his Applications in the Way of Courtship to Mrs. *Bracegirdle*, but that he had an Apprehension that Mr. *Mountford* was an Obstruction to him in that Matter, and therefore he did declare several Times, that he would be revenged of him. And one Time (which I think was two or three Days before the Fact was done) my Lord *Mobun*, the Prisoner at the Bar, was at Dinner with *Hill*, when *Hill* had this Discourse concerning *Mountford*, and said he would be revenged of him. My Lord *Mobun* was by, they both say, when such Discourse was used by *Hill*, but they cannot tell what Notice he took of it.

My Lords, after this, the Day that this Fact was committed, your Lordships have heard how my Lord *Mobun* and *Hill* hired a Coach and six Horses in order to seize Mrs. *Bracegirdle* and carry her away by Force, and that is proved most fully, both upon my Lord *Mobun* and *Hill*, that they were both concerned in that Design, and actually ingaged in it; there can be no Dispute of that. Accordingly they dined together that Day, and at Dinner there arose a Discourse in relation to Mrs. *Bracegirdle*. And at that Time my Lord *Mobun* said it would cost *Hill* 50 l. to carry her off. And *Hill* said, if the Villain resisted he would stab him. And my Lord *Mobun* said, He would stand by his Friend. This Declaration was made at Dinner, on the Day this Fact was committed; and then they appointed to meet at the Play-House at six o'Clock in the Evening, expecting Mrs. *Bracegirdle* would be there; and accordingly the Coach was ordered to be ready at that Time in *Drury-lane*.

My Lords, in pursuance of this Design, they both came to the Play-House at Six o'Clock; this is prov'd by two or three Witnesses. When they came there, they inquired for Mrs. *Bracegirdle*, but she was not there at that Time. And then not finding Mrs. *Bracegirdle* there, your Lordships have an Account from the Coach-man, to what Places he carried them from thence. First to *Drury-lane*, there they staid some Time and not finding her there, he drove them into *Norfolk-street*, near the Place where she lodged, and there a Man and a Woman being discoursing together, gave them Occasion to say, they thought they were betray'd. And *Hill* said, My Lord, let us go and cut that Fellow's Throat, or Words to that Effect.

Then, my Lords, they drove back from that Place, into *Drury-Lane* again, and ordered the Coach to stop over-against my Lord of *Clare's* House. There it happened that Mrs. *Bracegirdle* came from Mr. *Page's* House, where she had supped. At that Time there were present her Mother, her Brother, and Mr. *Page*, and Mr. *Page* led her along. *Hill* came up with seven or eight Soldiers, and forced her out of Mr. *Page's* Hand, and endeavoured to thrust her into the Coach. In that Coach my Lord *Mohun* was, that is agreed upon on all Hands, the Coach Door was open, and my Lord *Mohun* was there in it with seven or eight Pistols.

It happening they could not carry her off, but the Matter taking Air, People came in to their Assistance, and the Design being prevented, *Hill* would needs go home with her to her Lodging in *Howard-street*, and my Lord came out of the Coach and went along with him. When they were come to the Lodging, the Witnesses tell your Lordships, that at that Time, when Mr. *Page* was going into the House, *Hill* would have had some Discourse with Mr. *Page*, and desired to speak with him, but Mr. *Page* said it was not a convenient Time, but to-morrow would do better, and so went into the House, and the Door was locked.

My Lord *Mohun* and *Hill* continued walking about the Streets for about two Hours before Mr. *Mountford* was killed, and now your Lordships will observe what Transactions there were during the Time that they continued walking in the Streets.

Then there was an Interruption for about a Quarter of an Hour, occasion'd by a Lady's falling into Fits in one of the Galleries; but she being removed, and Proclamation made for Silence, the Court proceeded.

L. H. Stew. Pray, go on, Sir.

Mr. Sol. Gen. My Lords, I was observing to your Lordships, that Part of the Evidence which related to what happen'd after the Time that Mrs. *Bracegirdle* was in her Lodging. And, my Lord, your Lordships hear from the Witnesses, that my Lord *Mohun*, and this *Hill* continued in the Street, where Mrs. *Bracegirdle* lodged, and walked up and down for near two Hours before Mr. *Mountford* came.

During that Time, the Constable and the Watchmen have told your Lordship upon their Oaths, that my Lord *Mohun's* and Mr. *Hill's* Swords were both drawn. And the Constable swears expressly, That he ask'd my Lord *Mohun* what he did with his Sword drawn, and that my Lord answered, he was ready to put it up, and told him withal, he was a Peer of the Realm; the Constable then ask'd, why the other Gentleman's Sword was drawn, and my Lord *Mohun* made answer that his Scabbard was lost.

But your Lordships observe, that before the Watch came, Mrs. *Browne* (as she herself hath sworn) came out of the House where Mrs. *Bracegirdle* lodged, and desired to know what they did there, and then *Hill* said, he should light upon *Mountford* one Time or other; saith Mrs. *Browne* to him, Why, what hath he done to you? to which he replied, He hath affronted me, and I will be revenged upon him; and this was said in the Presence of my Lord *Mohun*, he being just by.

My Lords, after this, in a very short Time, Mr. *Mountford* came down, and Mrs. *Browne* tell-

eth your Lordships, that they were so much aware of this Matter, that my Lord *Mohun* and *Hill* staid to do *Mountford* a Mischief, that there were Persons sent to Mrs. *Mountford* to give her Notice of it, and she sent Messengers to find out her Husband, to prevent his coming in their Way, but they could not find him.

Upon Mr. *Mountford's* coming down, Mrs. *Browne* seeing him, steps up towards him, to tell him that my Lord *Mohun* and *Hill* were in the Streets with their Swords drawn, and she was afraid they had some ill Design against him; but she sweareth she did not, nor could not tell him this, he was in such Halte; but one of the Witnesses for my Lord contradicts her in this; and says, that she did tell him, but whether the one Witness sweareth true, or the other Witness saith true, must be left to your Lordships Judgment.

But Mr. *Mountford* came down immediately, and as he came down, he met my Lord *Mohun*, and they did salute one another (for I would not injure my Lord in mistaking the Evidence, as near as I can) but your Lordships will observe the Witnesses say, that presently my Lord *Mohun* asked Mr. *Mountford*, whether he was not sent for, and said, I suppose you have heard what happen'd to the Lady this Night, and I hope you do not come to vindicate Mrs. *Bracegirdle*. And Mr. *Mountford* replied, I hope your Lordship doth not come to vindicate Mr. *Hill* in such an Action.

Thereupon *Hill* stepped up, and struck Mr. *Mountford* a Box on the Ear, and at the same Time, with his Right Hand, passed at him, and run him through, before his Sword was drawn. This two of the Witnesses for the King say Mr. *Mountford* told them upon his Death-Bed, and it was very probably so; because your Lordships observe by all the Evidence, *Hill's* Sword was ready drawn in his Hand.

There being some Noise, Proclamation was made for Silence.

Mr. Soll. Gen. My Lords, I was observing that it was immediately, and at the same Time that he struck him, and run him through, and it is very likely it was so, as Mr. *Mountford* said when dying; for several of the Witnesses for the King do swear, that the Box on the Ear, was before his Sword was drawn, and *Hill's* Sword was ready in his Hand. So Mr. *Mountford* said when he was expiring, and what Regard your Lordships will have to the Declaration of a dying Man, we must submit to your Lordships Judgment; and Mrs. *Browne* who was there and saw the Fact, sweareth the same Thing, that it was done before Mr. *Mountford* could have Time to draw his Sword.

If that be so, it is very plain it was Murder in Mr. *Hill*, and your Lordships will please to observe another Piece of Evidence that came from the Mouth of a Witness, examined for the Noble Lord the Prisoner at the Bar, and that is *Leake* the Boy, he was examined before the Coroner; indeed he was not called now for the King, and your Lordships may see some Reason why he was not; but your Lordships have had his Deposition before the Coroner read, and by that your Lordships may observe, how different his Testimony then was, from what he now giveth. And whether your Lordships will believe what he then said upon his Oath, or what

what he now saith, is left to your Lordships Consideration. He saith, when he was examined upon his Oath, soon after the Fact, that my Lord *Mobun* was by, when *Hill* did wound *Mountford*, and that my Lord *Mobun* said, that he would stand by his Friend, and that *Hill* was his Friend, and that my Lord *Mobun* did stand by, and did not offer to part them. Though he hath something varied from this in his Testimony now; yet he still affirms what he there swore to be true.

But further, my Lords, your Lordships will consider what the Constable swore my Lord *Mobun* said after he was taken, and when he was in Custody at the *Round-house*. Whether he did surrender himself or no, we must leave to your Lordships, upon the Evidence that hath been given on the one Side, and on the other. But when he was in Custody (as I said) my Lord *Mobun* asked whether *Hill* was taken, and being answered No, he said he was glad of that; but he was sorry he had no more Money about him, and wished that he had that Money which he himself had, and that he would be willing to be hanged for him. So great a Kindness he expressed for *Hill*, and said, he had changed Coats with him, and then had *Hill's* Coat on his Back.

This, my Lords, is the Substance of the Evidence on the King's Part, and upon the whole of it, it is plain, with humble Submission to your Lordships, that here was a premeditated Malice in *Hill*, by his own Declarations preceding, by what was done at the time of the Fact committed, and by stabbing him before his Sword was drawn.

The Question will be, whether, my Lord *Mobun* the Prisoner at the Bar, was privy to this Design of *Hill's*, and did so far agree in it, as to keep him Company to assist and encourage him. For if he was privy, and knew of *Hill's* Design, and staid there for that Purpose, to give him Assistance in it, with humble Submission to your Lordships Judgment, he will be as much guilty of the Murder, as *Hill* that actually killed him: That therefore will be the Question before your Lordships, for your Judgment upon the Consideration of what has been prov'd in this Case.

My Lords, the Prisoner my Lord *Mobun*, has called and produced several Witnesses to your Lordships, in Defence of himself. The first Witness was called to this Purpose, to shew that my Lord had no Malice to *Mountford*, but that they were very good Friends but two or three Days before; that he spoke of him with a great deal of Kindness, and desired to drink a Bottle of Wine with him.

Now for this, I would observe to your Lordships, that it is not the Question, whether my Lord *Mobun* had any direct or express Malice against *Mountford*; but if *Hill*, who was so great a Friend of my Lord *Mobun's*, had a Malice against *Mountford*, and my Lord *Mobun* had so great a Kindness for *Hill*, as to accompany and assist him in taking his intended Revenge (whether it was so or no, your Lordships are to judge) it will be as much Murder in Law, as if my Lord had himself had a Hand in it.

For the other Witnesses that have been called for the Prisoner, I must leave the Consideration of what they say, to your Lordships. They are

not upon their Oaths, but yet they are to be believed so far, as your Lordships shall judge what they say credible, upon Consideration of all that you have heard. But for the Boy, who hath contradicted his own Evidence, which he gave upon Oath before the proper Officer, but acknowledgeth what he swore then, was true, what Credit is to be given to him, will deserve your Lordships particular Consideration. How he has been prevailed upon to change his Evidence, I cannot tell; nor what Weight it will have with you.

My Lords, I will not spend more of your Lordships Time; I know you very well remember, and will carefully recollect all the Evidence, both for the King and for the Prisoner, and your Lordships will consider that it is a Case of Blood, and if your Lordships think him Guilty, tho' he be one of your own Body, you will adjudge him so; if not, you will acquit him; and therefore I leave the Matter to your Lordships just Determination.

L. H. Stew. My Lords, I think now, having heard the Evidence on all Sides, your Lordships will think fit to adjourn to the House of Lords. Is it your Pleasure to adjourn?

Lords. Ay, Ay.

L. H. Stew. This House is adjourned to the House of Lords.

Then the Lords returned to their own House, in the same Order as they came into the Court.

After some Debate amongst themselves in their own House, they adjourned till the next Day, and ordered the Prisoner, Council and Witnesses to attend in the Court.

Die Mercurii Primo Februarii 1692.

The Lords sate all Day in their own House, debating amongst themselves in the Absence of the Judges, who were in the Court, and about eight o'Clock in the Evening, the House of Lords adjourn'd till the Friday following, the Thursday being Candlemas-Day, and no Law-Day.

And the Prisoner, Council, and Witnesses were ordered to attend in the Court on Friday Morning.

Die Veneris Tertio Februarii 1692.

ABout the Hour of Four in the Afternoon, the Lords (who had till then been debating amongst themselves in their own House) came in the same Order as the first Day into the Court of *Westminster-hall*, except only that the Judges were a great Part of the Day waiting for them in the Court.

The Lords being seated on their proper Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamations were made for Silence, and for the bringing the Prisoner to the Bar in usual Manner; and the Prisoner coming to the Bar, and having saluted his Grace the Lord High Steward, and the Peers, and being resaluted by them, the Court proceeded in this Manner.

L. H. Stew. My Lord *Mobun*, My Lords have heard the Evidence on both Sides, for and against you; and upon that Evidence some Questions have arisen in Point of Law, in which
some

some of my Lords are doubtful. I am therefore by their Lordships Command to propose to your Lordships, my Lords Chief Justices and the rest of the Judges here, to have your Opinions upon a Case stated by their Lordships; and it is this:

In a Case where a Man shall murder another, Whether all those that are in his Company at the Time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person so as in some Cases to be found guilty of Manslaughter?

To this, my Lords expect you the Judges should give your Resolutions severally one after another, and therefore it is to begin with you, my Lord Chief Justice.

L. C. J. Holt. My Lord, the Question is pretty long; and I desire, that I may not be mistaken in the Opinion I shall give, that I may have it in Writing, and that I may have a little Time to consider it, because it hath been a Question framed upon very great Consideration and Deliberation: Therefore I would be very well advised before I give an Answer to such a Question, because it is of so great Importance.

L. H. Stew. You must speak out, my Lords; for else I am at such a Distance that I cannot hear a Word you say.

L. C. J. Treby. My Lords, I make the same humble Request: The Question propounded is long, and the Fruit of great Deliberation among your Lordships: I desire therefore my Answer may be such as becometh me to it, and to that Purpose, that I may have a Copy of it, and some Time to consider of it.

L. H. Stew. I have it here in Writing, and will give it you, if that will serve the turn.

The Paper was brought by the black Rod from his Grace to the Judges.

L. C. J. Holt. My Lord, we desire your Lordships will give us Time to withdraw, and consider of it among ourselves.

L. H. Stew. Your Lordships hear the Motion of my Lord Chief Justice; the Judges desire your Leave to withdraw, and consider of the Question among themselves.

Lords. No, no, no.

Then the Judges sitting upon the Wool-Packs conferred for a little time privately with one another; and then the Earl of *Rocheſter* stood up.

E. of Rocheſter. My Lords.

L. H. Stew. My Lord of *Rocheſter*, What say you?

E. of Rocheſter. My Lords, the Prisoner doth desire to have a Copy of this Question, it being a Question in Point of Law, that his Council may see it.

Lords. Ay, ay, he ought to have it.

A Copy was carried by one of the Clerks to the Bar, and delivered to the Prisoner, and he gave it to *Sir Thomas Powis*, who with *Mr. Hawles* and *Mr. Price*, before assigned of Council for my Lord *Mohun* in Matters of Law, stood by him at the Bar.

L. Mohun. My Lords, I desire to know whether my Council may speak to this Case before the Judges give their Opinions, it being a Matter of Law, and the Judges superior to my Council?

L. H. Stew. My Lord, they may be heard to any Matter of Law that is Law singly, the

Council of either Side may be heard to any Thing that is a Point of Law only.

L. Mohun. My Lord, I conceive this to be so.

L. H. Stew. My Lord, it is agreed to be so: But, my Lords, I must desire your Lordships leave to go down to the Wool-Pack, or I shall not be able to hear what is said.

Lords. Ay, ay,

Then his Grace came down and seated himself on the Wool-Pack.

Sir T. Powis. May it please your Lordships, I am of Council —

E. of Devonshire. My Lords.

L. H. Stew. My Lord *Devonshire*.

E. of Devonshire. I think your Lordships have not yet resolved that the Prisoner's Council shall be heard before the Judges; therefore I desire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Stew. My Lord, it must be either then, or not at all; and I understand the Resolution of the House to be so.

Lords. Ay, ay.

L. H. Stew. Go on, Sir.

Sir T. Powis. May it please your Lordships, I am of Council assigned by your Lordships for this Noble Peer that is now a Prisoner at the Bar: The Question your Lordships are pleased to propound is this:

In a Case where a Man shall murder another, Whether all those who are in his Company at the Time of the Murder, are so necessarily involved in the same Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter:

My Lords, with humble Submission to your Lordships, I take it there are many Cases where a Person that is present when a Murder is committed by another Man, shall be equally Guilty of that Murder; and there are many Cases where a Person that is present when a Murder is committed by another Man, shall be guilty only of Manslaughter: And there are many Cases where a Person that is present when a Murder is committed by another Man, shall not (with humble Submission) be Guilty of any Crime at all.

For the first, there is no Question but if two Persons or more do meet together with Malice premeditated to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the mortal Wound is only given by one, there is no Question but they are all equally guilty of the Murder with him that gave the Mortal Wound: And it is also as clear, if two Persons meet together to commit an unlawful Act, and during the Execution of that unlawful Act, one of them doth kill another Man, the other will be involved in the Guilt of it.

But, my Lords, if several Persons do meet together to commit an unlawful Act, and the Design of the Act is totally over, so that the Prosecution of it is quite left off —

There being some Noise and Disorder about the Court, Proclamation was commanded to be made, and was made again for Silence.

Sir T. Powis. My Lords, I say in the second Instance that I was offering to your Lordships; If two Persons or more meet together to do an unlawful Act, but are either disappointed in it, or

or have totally desisted from it; and afterwards these same Persons having quitted their Design, are together, and a third Person coming into their Company, though there were Malice between one of those Persons, and that third Person, and upon Words, or some other Occasion or Accident, there should be Quarrelling and Fighting between those two Persons that bore Malice to one another, and one of them is killed, and he that before had joined in the Design of committing an unlawful Act, be only there in the Company, if he doth neither aid nor abet, nor any ways agree to the doing of the Thing, the Authorities are it will neither be Murder nor Manslaughter; and of this I would, with your Lordships Favour, put some Instances.

If two Persons agree together, (as the Case is put in that which goeth by the Name of my Lord *Dacre's* Case) to enter into another Man's Park and steal his Deer, this is an unlawful Design; and if one of them kill the Keeper, and the other no way at all act in the doing of it, yet it will be Murder in the Person that did go along with that other in that unlawful Act: But the Lord *Dacre's* Case was accompanied with further Circumstances; for there it did appear that the Lord *Dacre's* had agreed before hand to kill any Person that should oppose them; there was that particular Circumstance in that Case.

But, my Lords, I take it, with Submission, to be very clear, that if two such Persons who made such an Attempt to rob or steal Deer in a Park, should be disappointed, and should leave the Park, and afterwards go to a Tavern, or an Ale-house, or any Place to drink, having quitted that Design, and some Hours afterwards, a Person cometh in that was not expected, or thought of, and a Quarrel ariseth between one of those two Persons who were before together, and the Man that so came in, and he shall be killed, I take it that the other Person who was present will not be guilty of the Murder, unless he aided, or assisted, or acted in it.

My Lords, I would speak to your Lordships in a Case of this Nature with as good Authority as I could, besides my own poor Reason to prove to your Lordships that there may be many Cases where a Person may be present at the Time when another is murdered, and yet he shall be guilty of only Manslaughter, and in some Cases shall be guilty of no Crime at all.

The Case that I shall cite is out of a Treatise of a very Great and very Learned Man; it is the Book that goeth under the Name of Sir *Matthew Hale's Pleas of the Crown*; the Case is this, You will find in that Book under the Title of *Murder*, Fol. 51. If *A.* and *B.* having Malice prepenſe, meet and fight, and *C.* the Servant of *A.* not acquainted therewith, take Part with *A.* his Master, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.* So here is an Instance where one is guilty of Murder, and the other only guilty of Manslaughter, when both are present at the Time of the Fact committed. The same Law, saith he, it is, if *C.* came in suddenly, and took part with *A.* and killed *B.* In this Case it is Murder in *A.* if there was Malice prepenſed between him and *B.* but only Manslaughter in *C.* who came in suddenly, and actually killed *B.*

My Lords, He goeth further, and saith, if one come by chance where one is killed, and doth

not abet, he is neither Principal nor Accessory to that Murder or Manslaughter; so that here are Cases where it is Murder in one, and Manslaughter only in the other; and here are Cases where it is Murder in one, and not so much as Manslaughter, or any Crime at all in the other.

These that I have cited are Cases where one has Malice against another, and he that joineth in the Quarrel doth not know it. But I will put the Case now, That a Person hath Malice against another, and one happeneth to be in his Company that knoweth he hath Malice against that other Person; if those two that had Malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of Murder or Manslaughter. For if the Law should be, that Men are involved in the Guilt of Murder whenever they are present at a Time when one that beareth Malice against another killeth his Enemy, Conversation in the World would be very dangerous: For, my Lords, we know the World is too full of Malice, and there are few Men but have Acquaintance with such as bear Malice to others; but if so be that no Man that is acquainted with one that bears Malice to another, may be in his Company but at the Peril of his Life; if his Enemy come in his way, and he happen to kill him in his Presence, then no Man that is ever so innocent can be safe.

For I would put this Case to your Lordships: I am walking with a Friend, or an Acquaintance, that I know hath Malice against another, and that other Man cometh in the way, and they fight, and my Friend killeth that other Man, and I am no way aiding or assisting in it, if that should involve me in the Crime, surely the Law of *England* would be the most unreasonable and dangerous Law to live under in the World. No doubt but in such a Case the Person that is so present is unfortunate, but he is innocent, is not guilty.

For to make one guilty of Murder where Murder is committed, it must be either that he doth aid or abet, or some way assist in the killing of the Man, or he must have before that time agreed and confederated with the Person that killed him, that he would join therein at that Time, and he must be there for that End and Purpose: For if he never engaged or agreed to the Killing of him, nor was there for that Purpose, nor at the Time did any way act, or join, or assist, in the doing of it; in those Cases he is certainly not guilty.

My Lords, I dare not apply any of these Things to the present Case, because I suppose your Lordships only propounded this as a Question of Law, and not of Fact; your Lordships are the great Judges both of the one and the other: But what in the Argument or Resolution of this Case, your Lordships will find agreeable to the present Case of my Lord now before you, I submit to your Lordships Judgment.

Mr. *Hawles.* My Lords, I will not repeat what has been offered, the Distinction is certainly true that has been made, that there are Cases and Instances in Law where a Man may be guilty of Murder, when he is present where Murder is committed, and he may be guilty of Manslaughter only, where another is guilty of Murder; and a Man may be present where Murder is committed, and be innocent both of the one and the other. But this I do venture to say,
That

That there is no Authority in our Law; that faith a Person present, when a Murder is committed, must be guilty either of Murder or Manslaughter, it must be according to the Circumstances of the Thing, either that he intended to aid or assist in the Killing, when he was there by Agreement before-hand, or must actually aid or assist by some Action or Encouragement.

But, with Submission, the Authority of Law is very plain upon this Question proposed by your Lordships, That one Person may be guilty of Manslaughter, and another of Murder at the same time. The Case that hath been put out of my Lord *Hales*, was, upon his Account, Authority sufficient to quote, if we would only rely on him: But, my Lords, with Submission, the Authority goeth a little higher yet; *Stamford* putteth the Question before the Justices; *A.* that is, the Master, fighteth with *B.* and *C.* the Servant taketh Part with his Master, and killeth *B.* *A.* is guilty of Murder, and *C.* only of Manslaughter.

And that Authority is followed afterwards in the Case of *Salisbury*, in *Plowd. Com. Fol. 100.* *B.* with the Resolution of all the Judges in that Case, That one Man may be found guilty of Murder, and another of Manslaughter, as to the same Fact; and *Stamford* doth expressly say, as my Lord Chief Justice *Hales* quotes it out of him, that if a Man be present, but do not abet or assist, or contribute to the Thing, he is totally innocent, and neither Principal nor Accessory to the Murder or Manslaughter.

My Lords, We do not find that our Law hath any way prohibited a Man to keep Company with one that oweth another a Spleen; sure there should be some Warning given about it, if that was the Law in such a Case. The Law goeth no farther than to caution a Man, that he take care he doth not break the Law himself, that he doth not transgress the Bounds set him by the Law.

And it were a very hard Case upon a private Person, if it should be otherwise; for no Law compelleth a private Person to part two that are fighting; if he doth attempt it, he doth it at his own Peril, as in that Case of *A.* the Master fighting with *B.* and *C.* the Servant taking part with his Master to part them, if *B.* be killed, *C.* is guilty of Manslaughter, though his Design was only to part them, because the Law putteth it not upon a private Person to do it; if it did, the Law would protect him for what he did in Obedience to it.

The Law is otherwise in the Case of a Magistrate, or a Constable, who endeavoureth to part any Persons fighting, and to keep the Peace; if he happen so to kill a Man, he is totally innocent; but a private Person shall answer for it.

My Lords, I will not trouble your Lordships further; I hope it is plain, that Malice is absolutely necessary to make a Man guilty of Murder, and there is no such thing in this Case stated by your Lordships; and therefore I submit the Matter to your Judgment.

Mr. *Price.* My Lords, I am of Council for this noble and young Lord the Prisoner at the Bar: I shall not trouble your Lordships so far as to make any Repetition of what has been said by those Gentlemen that went before me.

But there was a Case in *Plowden* that was cited by Mr. *Hawles*, by the Name of *Salisbury's* Case; and I would crave leave to cite the Case that is next precedent; it is in that Book *Fol. 98.* There, my Lords, was an Indictment for Mur-

der against several, and, among the rest, against two, one for giving the Wound, and the Stroke, and the other for being present, and aiding the other; and they tell you how he was an Aider and an Abetter because he was present, and put the Man upon whom the Assault was made in Terror, which Terror was the Occasion that he could not defend his Life; and made him full as much a Principal as the other that gave him his Death's Wound. And there, my Lords, he citeth another ancient Record, which is *Quarto Libro assisarum Placito 25.* of an Appeal of Murder by a Woman for the Death of her Husband against Sixteen; four whereof were Principals, and the other Accessories, where the Words are *Presence, Force and Aid.*

How that will come up to this Case now before your Lordships, I am not to trouble you with the Consideration of, you who have heard the Evidence, are best able to judge of it.

My Lords, by the same Reason and Rule that one Man may be found guilty of Murder, and another of Manslaughter; one may be found guilty, and the other not guilty. As for Example, if *A.* commandeth *B.* to kill *C.* and afterwards it repenteth him of this Command, and he countermandeth it: yet notwithstanding *B.* doth kill *C.* now *B.* that killed *C.* is guilty of Murder; but *A.* that countermanded it, is not guilty as Accessory; for his Malicious Intent did not continue till the murdering Stroke was given, and to make Murder, there must be a continuing Malice till the mortal Wound given. Cases to this Purpose many might be cited; but for a full Authority there is my Lord *Coke* in his Pleas of the Crown, *Fol. 51.*

My Lords, I have no more to say, but that by the same Rule, that one may be found guilty of Murder, and another of Manslaughter for the same Fact, by the same Rule, (as Circumstances may be,) the one may be found guilty of Murder, and the other not guilty at all.

L. H. Stew. Have you any more to say that are of Council for the Prisoner?

Sir Tho. Powys. No, my Lord, I have nothing further to offer to your Lordships.

L. H. Stew. Have those who are of Council for the King any thing to reply to this that is said by the Council for the Prisoner?

Mr. *Att. Gen.* May it please your Lordships, the Question that is proposed, is this,

In a Case where a Man shall murder another, Whether those who are in his Company at the Time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, that which, with all Submission, we would offer to your Lordships is this; We are intrusted by their Majesties, to prosecute for the Death of one of their Subjects; there hath been a Case stated to your Lordships by the Evidence which hath been given before you; That which is mentioned in this Paper has nothing certain in it, we are to imagine a Case, and suppose Facts, and then to argue what will be the Law upon those Facts supposed. When your Lordships are pleased to let us know what it is which your Lordships take to be the Fact of the Case before you, we shall be ready to speak to the Law upon that Case, as it becomes us, and as it

it is our Duty to do; but till the Fact be so stated by your Lordships, and declared to be that which your Lordships take to be the Fact of my Lord *Mobun's* Case, we think it not consistent with our Duty to enter into a Debate upon Supposals, or upon other Cases than that which is in Judgment before your Lordships.

L. H. Stew. Will your Lordships then please that the Judges give their Opinion?

Mr. Sol. Gen. My Lords, not to trouble your Lordships with any Repetition of what hath been said, it is my Opinion, as Mr. Attorney General has declared his, That, as this Case is stated, we are bound not to give any Answer to it, unless your Lordships will please to tell us what the Case is upon the Evidence that hath been given before you.

Mr. Serj. Thompson. My Lords, I desire to be heard one Word in this Case. I take it for granted, that your Lordships here are Judges both of Fact and Law in this Case, and you are so entirely Judges of it, that no Body can interpose in giving their Opinions in relation to your Judgments, what the Fact is, and from the Fact the Law ariseth. We, that are of Council for the King, must needs prejudice him as to the Evidence of the Fact that we have given, except we argue that which is the Fact of this particular Case, and the Law arising thereupon together; which is not necessary here, where your Lordships are Judges of both; and since you are better Judges of them than any one else can be. Therefore we do not think it our Duty to argue upon a Case put *ad dextra*, and *obiter*; and hope your Lordships will excuse us from answering what hath been said by the Council for the Prisoner; tho' I think it might be easily answered in every Point; but I shall not enter upon the debating of it. For your Lordships see what Caution we ought to have in relation to our Duty to the Government, which your Lordships will always expect we should perform as exactly as we can. When the Fact that hath been proved in this Case is stated, your Lordships then are the proper Judges what it amounteth to in point of Law, or if your Lordships desire that Council should argue it, we shall be ready to do it.

L. H. Stew. Then my Lords the Judges, what say you to it? my Lords here expect your Opinion in this Case.

L. C. J. Holt. If your Lordships please, I will repeat the Question; which is this:

In a Case where a Man shall murder another, whether those who are in his Company are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found guilty only of Manslaughter?

My Lords, I shall not enlarge upon the Matter, but humbly offer my Opinion to your Lordships as generally as the Question. I am of Opinion, that the Crime of those who are in the Company at the Time of the Murder committed, may be so separated from the Crime of the Person that committeth the Murder, as in some Cases they are only to be found guilty of Manslaughter. I suppose your Lordships do not expect that I should argue the Case, or explain my Opinion upon so general a Question, by particular Instances, or run into a Consideration

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of the different Cases that may be put upon it, therefore I only deliver this as my Opinion.

L. C. J. Treby. May it please your Lordships, I am of the same Opinion; I think the Import of your Lordships Question is, Whether there may be a Case in which it is possible that one Person, who is in the Company of another at the Time that he committed Murder, may be guilty of Manslaughter; and, my Lords, I think a Case may fall out, and may be so circumstanced, as that it may be possible, that he who did accompany the Murderer, may be guilty only of Manslaughter. Your Lordships only expect our Opinion, and therefore I will not go about to argue it.

Mr. J. Nevil. My Lords, I shall not spend your Time to repeat the Question, it hath been so often repeated; but I am of the same Opinion with my Lords Chief Justices: I must concur with them in it, that there may possibly be such a Case, as that when Murder is committed where others are in Company, he that doth the Thing will be guilty of Murder, and those that were in Company, guilty but of Manslaughter. There may be such a Case.

Earl of Carlisle. My Lords, to save your Lordships Time, unless the rest of the Judges differ from those that have spoken their Opinion, I think you need not trouble them to speak to it severally.

Mr. B. Turton. We are all of the same Opinion, my Lords; we cannot differ in Opinion upon such a Case.

Earl of Monmouth. My Lords, I humbly beg your Lordships leave to propose a Question to my Lords the Judges for their Opinions.

Lords. Ay, ay.

L. H. Stew. What is your Question, my Lord of Monmouth?

Earl of Monmouth. My Lords, the Question is this,

A, conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder?

L. H. Stew. Pray, my Lord, be pleased to hand up your Paper, that my Lords the Judges may see it.

Earl of Mulgrave. My Lords.

L. H. Stew. What saith your Lordship, my Lord of Mulgrave?

Earl of Mulgrave. I only desire, that the Prisoner at the Bar, if he hath a mind to it, may have his Council speak to this Question, before the Judges answer it, as was done in the other Case.

L. Mobun. I desire, my Lords, my Council may have the Question in Writing.

L. H. Stew. Make my Lord a Copy of it. One Copy was delivered by the Clerk to the Prisoner, and by him to his Council, and another to the King's Council; and the Original was delivered to the Judges.

L. Mobun. Is it your Lordships Pleasure that my Council may be heard to this Question?

Lords. Ay, ay.

Sir T. Powis. My Lords, the Question that this noble Peer hath been pleased to propose, is this:

A, conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder?

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My Lords, with humble Submission to your Lordships, I take it in this Case the Law is very clear, That as this Case is put, he that was in Company when the Murder was committed, under these Circumstances, is not guilty of any Crime: But without question he is not guilty of Murder.

My Lords, Malice is so absolutely necessary to Murder, either express, or that which the Law calleth Malice implied, that there can be no Case where Murder can be committed without it; no Indictment can ever be good, unless *Ex malitia sua precogitata* be alledged in it; because this is absolutely essential to Murder.

But, my Lord, if so be a Man that is present, not designing, or foreseeing that unhappy Accident that doth fall out between his Friend with whom he is in company, and another Person that came accidentally to them, tho' Malice was between those two, God forbid he should be guilty, if he did neither foresee it, nor any way acted in it.

He that is present must be involved in the Crime, either by some way aiding, abetting, or contributing to the Death of the Man, or there must be some precedent Combination and Agreement to do that Act which at that time was done; and that must be plainly and clearly proved: For his acting, his standing by innocently and harmlessly, is so great an Evidence of his not concurring, that it must be a mighty Proof of Malice that must convict that Man of a preceding Agreement to do the Fact; and if it doth not appear plainly and manifestly, that he agreed before-hand, or acted then, and abetted and contributed to the Thing; I say, unless this be clear and manifest, it is no Question, but in Law, he is innocent of the Murder.

For in such a Case it is plain he never had pre-pended Malice express, nor is there any Evidence of that which the Law calleth Malice implied; which is when a Man killeth another without Provocation, that is, when he that doth the Act, had no Provocation, or killeth an Officer in the Prosecution of his Office, That the Law calleth Malice implied. But then that is never but in the Person that did the Act, and not in the Persons who were present at that time, unless before-hand they had agreed to do that Act; and therefore they cannot be guilty of Murder.

And this, my Lords, is what I humbly offer to your Lordships Consideration, in relation to the Case put by that Noble Lord.

Mr. *Hawles*. Will your Lordships please to favour me with a Word on the same side with Sir *Tho. Powys*, and I shall be very short in the matter.

The King's Council did complain that the last Case was not fully stated, and therefore they could not speak to it; my Lords, with Submission, this Case is fully stated: there was nothing in the other Case said of Malice between him that was murdered, and him that killed him; but here it is said, That the Person present was not conscious of any Malice, nor had any manner of hand in the doing of it: And then, with Submission, my Lords, upon the Question, Whether he was not guilty of Murder? If this was a special Verdict found by twelve Men, and referred to the Judges, I do not at all doubt but their Judgment would be, That he was not guilty. For tho' in a Special Verdict, where Malice is not found, the Prisoner would be acquitted;

yet if it be expressly found in the Verdict that he did not know of any Malice between them, then, with Submission, there would be no Colour to find him guilty of any thing.

A Lord interrupted him, and said, The Case was put of one conscious of the Malice.

Mr. *Hawles*. My Lords, I beg your Pardon, I confess it is so, I did mistake it; but, with Submission, that will not not much alter the matter. If he was conscious, that will not make him guilty; for that Consciousness of his is no matter of Crime: if he did not act any thing, or agree to do any thing before hand, but only was in Company with the Person that had Malice against another, that will not make him guilty of any Crime whatsoever.

Mr. *Price*. My Lords, I shall speak but one Word to it; I observe the great Stress of the Case lieth upon the Word being conscious of the Malice between *B* and *C*. Now as to that, with Submission, I conceive, and am of Opinion, that as this Case is, *A* is not guilty of Murder, and for Authority, I shall rely upon the Cases in *Stamford's Pleas of the Crown*, Fol. 40. And my Lord *Coke's Pleas of the Crown*, Fol. 51. The Case is this, If a Man happen to be in Company where Murder is committed, or Felony, and he cometh not there on purpose, or by confederacy to do it, in that Case, tho' Murder be committed, and he doth not endeavour to part them, this is no Murder in him, for he is punishable by Fine and Imprisonment, if not an Infant; but if he was an Infant, he is not punishable at all, for he is not Conusant of the Law in such a Case. But in this Case, except Malice pre-pended, express, or implied, be proved, without doing any thing or abetting, he is not guilty of Murder.

L. H. Stew. Gentlemen, you that are of the King's Council, have you any thing to say to this Question?

Mr. *Att. Gen*. My Lords, here is a Case put which I hear from the Council on the other side, is certainly enough stated. My Lords, if this be stated to us, as that which is agreed to be the Fact of the present Case, we are ready to speak to it; but if this be not taken by your Lordships, to be my Lord *Mohun's* Case, and as such stated to us, then we must humbly beg to be excused. I know your Lordships will be tender in this matter, and as well pleased that we hold to that which we conceive to be our Duty in reference to that Station in which we serve the King, as with any Forwardness in us to answer Questions: And therefore we beg your Lordships Excuse for saying nothing more to it.

Earl of Monmouth. My Lords, I did not propose it as a Case stated and agreed by your Lordships, it is only a Case particularly stated for my own Satisfaction.

Earl of Mulgrave. My Lords.

L. H. Stew. My Lord of *Mulgrave*.

Earl of Mulgrave. If your Grace please, let the King's Council know, that they are not to ask you the Question, Whether the Lords are agreed what the Case is? They are to answer such Questions as are proposed, and not to ask any such Question.

Mr. *Att. Gen*. My Lords, with that noble Lord's Pardon I did not ask any Question; all that I said was, That when a Case is agreed to, and stated by your Lordships to be the present Case,

Case we would be ready to speak to it, and till we receive that Intimation from your Grace, we shall think our selves excused from giving any Answer to other Questions.

L. H. Stew. My Lords, I think we must go on, and if any Lord has any more Questions to propose, he may propose them.

E. of Nottingham. My Lords.

L. H. Stew. My Lord of Nottingham.

E. of Nottingham. Your Lordships will not certainly require of the King's Council to answer any Questions that they think improper for them to speak to; but when a Question hath been proposed by any noble Lord, to which the Council for the Prisoner hath been heard, and the King's Council think not fit to speak to it, there is nothing more requisite, but that in the Presence of the Prisoner (as the Law requireth it should be) you do demand the Opinion of the Judges.

L. H. Stew. What say you to it, my Lord Chief-Justice?

L. C. J. Holt. If your Lordships please, I will repeat the Question.

A, conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him; Whether A, without any Malice to C, or any actual Hand in his Death, be guilty of Murder?

And, my Lords, as this Case is stated, I do conceive, that *A* is not guilty of the Murder, for it appeareth the Meeting was casual, and there was no Design in *A* against *C*, and therefore tho' *A* did know of the Malice between *B* and *C*, yet it was not unlawful for *A* to keep Company with *B*, but he might go with him any where, if it was not upon a Design against *C*.

Therefore I take it as this Case is put, that *C* came accidentally into the Company where *A* and *B* were, and then, without any Design in *A*, *B* killeth *C*. This is not Murder, indeed no Offence in *A*.

L. C. J. Treby. If it please your Lordships, as this Case is put, I think it is not an Offence of Murder or Manslaughter in *A*; it dependeth upon the Words as the last Question did. For the former Question was put generally, Whether there might not be a Case found or framed, wherein one might be guilty of Murder, and the other of Manslaughter? So here it dependeth upon the Word [*Happeneth*], which I take to signify, (as my Lord doth) a casual coming into, or being in the Company.

Now, my Lords, when *B* had communicated to *A* this malicious Purpose to kill *C*, it stood uncertain, whether he to whom *B* had communicated it did consent; if he had any way declared his Consent, that he would go to such a Place, and stay there with *B* for such a Purpose, then it had been Murder in both; but if he merely was silent, and only kept *B* Company, perhaps with an Intent to dissuade him from it, or possibly without any Consideration at all, and then the Person intended to be killed accidentally came by, and is killed by *B*, *A* doing nothing towards it: In that Case, it is neither Murder nor Manslaughter in *A*.

Mr. J. Nevil. My Lords, as this Case is, it seemeth to be meer accidental the coming of *C* into their Company, for it is said, *Happeneth to come*; and so though *A* did know that there was an Animosity between *B* and *C*, yet declaring no Intent of going with *B* to that Purpose, but

coming with *B* into a Place where *C* accidentally came or happen'd to be, between whom and *B* there is a Quarrel, and *C* is killed; I do not take it at all that *A* is concerned; but merely as any other Person that accidentally was there, and in that Case he cannot be guilty of Murder or Manslaughter, or any other Crime.

E. of Devonshire. My Lords:

L. H. Stew. My Lord Devonshire.

E. of Devon. If the rest are of the same Opinion, you need not give them any farther Trouble, I think.

Judges. We are of the same Opinion.

E. of Scarborough. My Lords.

L. H. Stew. My Lord of Scarborough.

E. of Scarborough. I humbly beg your Lordships Leave, that I may offer a Question to your Lordships, to be proposed to the Judges, and the Question is this:

Whether if A heard B threaten to kill C, and some Days after A shall be with B upon some other Design, where C shall pass by, or come in the Place where A and B are, and C shall be killed by B; A standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's Part against C; whether A will be guilty of the Murder of C?

L. H. Stew. Pray, my Lord, give your Paper to the Clerk. (*Which was done.*)

L. H. Stew. My Lord *Mobun*, doth your Lordship desire that your Council may have a Copy of this Question, and be heard to it?

L. Mobun. Yes, my Lord, if you please.

Then a Copy was given to him for his Council, and another to the King's Council, and a third the Judges had.

Sir Tho. Powis. Will your Lordships please to favour me with a few Words, and I shall trouble your Lordships very little, because I have said that already to your Lordships which will be an Answer to a good Part of this Case: The Case is this:

Whether if A heard B threaten to kill C, and some Days after A shall be with B upon some other Design, where C shall pass by, or come in the Place where A and B are, and C shall be killed by B; A standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's Part against C; whether A will be guilty of the Murder of C?

My Lord, with humble Submission, we do take it, that the Law in this Case is likewise very clear, that *A* is not guilty of Murder: For as this Case is put, there doth not appear (nay, the contrary doth appear) that he had any manner of Malice to this Man that was killed, nor any Hand in the Killing of him: And, as I said before to your Lordships, (and I hope the Judges will verify us in that, and your Lordships will be of the same Opinion) there can be no Case wherein a Man shall be guilty of Murder, but where there is Malice against the Person so murdered, or some way abetting and assisting in the Killing of him, or what the Law calleth *Implied Malice*.

But in this Case that is now put, there is neither express Malice, but the contrary appearing, nor any implied Malice, which is by Construction of Law; the Person that was by, and heard *B* threaten *C* before, yet doth no way aid or assist to the Killing of him; and therefore I think,

with Submission, the Law, and all our Law-Books, and Reason itself, are clear for the acquitting of *A* in this Case.

Mr. *Hawles*. My Lords, I think the Resolutions that have been given in the Cases before, will warrant us in our Opinions in this, that *A* is not guilty of Murder in this Case: For I think it was said by the Judges, That notwithstanding a Man knew another had a Design upon a third Person, yet it was lawful to keep Company with him, if he did not join with him in the Design. Now here it doth appear, that *A* keepeth *B* Company, but not upon that Design, for he had no Malice to *C* nor had any Hand in his Death, and *C* cometh in by accident into the Company or Place where they are: With Submission, my Lords, *A* is totally not guilty, for there was no Malice in him; and though he was there, he was there upon his lawful Occasions; and if they two fight, the best Course he can take is to stand still and do nothing; and therefore he cannot be guilty of Murder or Manslaughter.

Mr. *Price*. My Lords, I have but this Word to say, His being there was lawful, *C* cometh there but by accident, and when they two do fight, his not parting of them doth not make him guilty of the other's Death; here is no Malice, therefore he is not guilty of Murder, and he hath done nothing towards the Fact, therefore he is not guilty of Manslaughter.

L. H. *Stew*. Will you say any Thing to this Question, you that are of the King's Council?

Mr. *Att. Gen*. My Lords, we are ready to speak to the present Case, when we receive Intimation from your Lordships that what is put is the present Case.

Mr. *Serj. Thomp*. My Lords, if they put a Case of Fact to be argued as a Case of Law, and from time to time alledge Facts which are not in the Case before us, we cannot speak to them.

Mr. *Att. Gen*. My Lords, we are ready to argue the Case of the Prisoner at the Bar when it is stated; but till then, we humbly beg your Pardon: We think we are not bound to speak to other Cases.

L. H. *Stew*. My Lord Chief-Justice, What say you to it?

L. C. J. *Holt*. If your Lordships please, I will put the Question:

Whether if A heard B threaten to kill C, and some Days after A shall be with B upon some other Design where C shall pass by, or come in the Place where A and B are, and C shall be killed by B; A standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's Part against C; whether A will be guilty of the Murder of C?

My Lords, I am of Opinion that *A* in this Case will not be guilty of Murder or Manslaughter: For it doth not appear by the stating of the Case, that *A* did consent to the Design, or in any wise contribute to the Fact.

L. H. *Stew*. My Lord Chief-Justice *Treby*.

L. C. J. *Treby*. My Lords, I take this Question to be the same in Substance as to the Point in Law with the last; and am of Opinion that *A* is not guilty of Murder or Manslaughter.

Mr. J. *Nevil*. I am of the same Opinion.

L. H. *Stew*. If all the rest of you are of the same Opinion, you may spare your selves the Trouble of delivering it particularly.

Judges. We are all of the same Opinion.

[Then there was a little Pause; and afterwards the Earl of Kingston stood up.]

Earl of Kingston. My Lords, I desire for my own private Satisfaction to know,

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of that Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual Hand in his Death?

L. H. *St*. My Lord, I must crave your Excuse, there is another Question to precede this.

E. of Devon. My Lords, I had a Question to ask; but it being much to the same Purpose with the two last, I think it better to wave it, for there hath been given an Answer to it already.

L. H. *Stew*. Then, my Lord of Kingston, will you be pleased to deliver up your Paper to the Table? [Which was done.]

L. H. *Stew*. My Lord Mohun, Do you desire your Council may have a Copy of this Question?

Earl of Mulgrave. My Lords.

L. H. *Stew*. My Lord of Mulgrave.

Earl of Mulgrave. I desire your Grace will hear the Question. Pray let it be read, that we may know what it is.

L. H. *Stew*. Read it.

Cl. of Crown. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

Earl of Mulgrave. My Lords.

L. H. *Stew*. My Lord of Mulgrave.

Earl of Mulgrave. I think, my Lords, in a Case of this Nature we cannot be too exact: I humbly conceive that is not a proper Question to be put, therefore I move that we may adjourn to consider of it, whether it shall be put or not, if that Lord do insist upon it.

L. H. *Stew*. My Lord of Kingston, Doth your Lordship insist on this Question being put?

E. of Kingston. Yes, my Lords, I do, and I must insist upon it; for I think I cannot give my private Opinion in this Case without Satisfaction in it.

Lords. Then Adjourn, Adjourn.

L. H. *Stew*. This Court is adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order, and debated this Matter amongst themselves for about an Hour.

Between six and seven in the Evening the Lords returned into the Court in the same Order, and being seated on their Benches, and his Grace in the Chair before the Throne, they proceeded thus:

First, Proclamation was made for Silence.

L. H. *Stew*. My Lord Chief-Justice and you the Judges—

L. Cornwallis. My Lords.

L. H. *Stew*. My Lord Cornwallis.

L. Cornwallis. My Lord, Before your Grace giveth any Directions, I think you should call the Prisoner.

L. H. *Stew*. Is not the Prisoner at the Bar?

L. Cornwallis. No, my Lord.

L. H. Stew. Call for the Prisoner.

Then Proclamation was made for the Governor of the Tower to bring forth the Prisoner, and he was brought as before.

L. H. Stew. I am to let you that are of Council for the King and the Prisoner know, That if any Question be put by any of my Lords, which any of you shall not think fit to give an Answer to, my Lords will take it for granted either on the one Part or on the other, that the Reason is, because it is not necessary to give any Answer; and then they will proceed to have the Answer of you, my Lords the Judges. And now for my self, I must desire your Lordships will give me leave to come down again to the Wool-Pack.

Lords. Aye, ay.

Then his Grace came down, and seated himself on the Wool-Pack.

L. H. Stew. My Lord of Kingston, Will you please to propose your Question?

Earl of Kingston. My Lord, my Question is this, which I desire the Judges Opinion in for my own Satisfaction:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord *Mobun*, Do you desire your Council may have a Copy of that Question?

L. Mobun. Yes, if your Lordships please.

L. H. Stew. Read it aloud, and deliver a Copy to my Lord.

The Question was read by the Clerk of the Crown, and one Copy of it delivered to the Prisoner's Council, and another to the King's Council, and a third to the Judges.

L. Mobun. Is it your Lordships Pleasure, That my Council be heard to this Case?

Lords. Ay, ay.

Sir T. Powis. The Case that is put, my Lords, is this:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime which the Party who had the Design and killed him, though he had no actual Hand in his Death?

My Lords, I shall not insist upon the same Privilege that the King's Council did even now do, to decline speaking to any Case that your Lordships shall put. But I hope your Lordships will permit me to say, That I do not admit this to be the Case of my Lord *Mobun*, and I hope that my speaking to it shall not be taken as any Admission that this is his Case. But as this Case is put with that Allowance, that I speak to it not as his Case, I do take it, that this Person thus present at the Killing of the third Man is not guilty of Murder.

My Lords, there are but two Circumstances in the Case that can draw him into any Danger:

The *First* is, That he knew another Person had a Design to make an Assault upon a third Man. And,

The *Second* is, That he who had the Know-

ledge of this Design, was also present when upon that Assault that third Person happened to be killed.

But, my Lords, I do take it, that in this Case neither of these Ingredients will make this Man guilty of Murder.

As to the *First*, The knowing that a Man has a Design to make an Assault upon a third Person, that taken by itself is no Crime. It frequently happeneth, that a Man heareth what others threaten, that they will assault and beat such an one; I may know that another doth so design, and that he will watch his Opportunity for the doing of it, and yet my meer Knowledge, my meer knowing of it, doth not make me guilty of any Crime, tho' I do not endeavour to prevent it.

I confess, it doth become a good Man upon such Knowledge to do all that he can to prevent such Beginning of Mischief, but if he doth not prevent it, that is no Crime.

The *Second Matter* is, That tho' he did know of this Design, he was also so unfortunate as not to prevent it; nay more, he was present when the Assault was made, and that Assault is attended with the Death of the Party assaulted, but he never acted in it, never abetted it. Take all this together, and yet he is not guilty of Murder, nay, perhaps not of any Crime, at most only of a Misdemeanour.

For it is no more than this: I knew another Person did intend to assault a third Man; I was present when he did assault him, but did not prevent it either before he made it, tho' I knew he designed it, nor whilst he was making the Assault upon which the Man is killed. That is all that this Thing doth amount to, and no Man can say, with humble Submission, That this can involve me in the Crime of Murder.

It is true, if I command *A* to beat *C*, and he according to my Command doth fall upon him, and so beat him, that he dieth; this maketh me guilty of his Death, because what is done by that Command of mine is my doing; therefore tho' I only commanded him to beat him, yet he dying upon that beating, which was made pursuant to my Command, I that gave the Command must answer for it, and am guilty of all that followeth thereupon.

But if I only know, that another Person designeth to do such a Thing, and am neither commanding, aiding nor assisting in the doing of it, but only present at the Time, but did not interpose to prevent it; that doth not make me such an Agent in this Matter, as that I should be any ways guilty of his Death if it doth ensue. I take it this Case cometh to no more than this, there is no Malice precedent, no Sort of abetting, aiding or assisting, but a bare declining to prevent the Assault, and that will not amount to any Thing that is Capital; if it be any Offence, it can only be construed as a Misdemeanour, but neither Murder nor Manslaughter.

Mr. Hawles. If your Lordships please to spare me one Word on the same Side: It is no Manner of Crime for a Man to know, that another doth design to lie in wait to murder a third Person, much less to assault him.

There is but one Case that I know of in Law, where the Knowledge of an ill Design, without Discovery and Endeavour to prevent it, is an Offence, and that is in the Case of High-Treason; and yet even there the bare Knowledge doth not make

make a Man guilty of Treason: And it was a hard Case if it should, for it is not in the Power of any innocent Man to say, that he shall not know of an ill Design, either of Murder, or High-Treason.

It is true, in the Case of Treason, if I conceal it, it is a Crime, but it is not Treason, but only Misprision of Treason; which is Forfeiture of Lands, and perpetual Confinement in Prison during my Life: But it doth not extend to any other Matter; for tho' I know, and do conceal it, that is no Manner of Crime at all, tho' that is farther than this Case putteth it; for it only goeth to the Knowing, and not to the Concealing.

And, my Lords, with Submission, this would be likewise a hard Case if the Law was otherwise; For sometimes a Man may apprehend he knoweth of a Design, when there is no such Thing designed. Your Lordships know where a certain Gentleman said he would kill any Man that did oppose him, when he neither designed it, nor executed any such Purpose: And in such a Case, tho' it had been well done of the Person that heard of the Design, to have gone and informed the third Person (and if he had, I believe your Lordships would have had no Occasion of a Trial at this Time, for it might have been determined another Way) yet his not doing it is not a Crime.

Then further, my Lords, a Person's being present at such a Time is his Misfortune, but not at all his Fault; he can no more help the Action, than he could the ill Design, or his own Knowledge of that Design. It is a complicated Misfortune, both to know it, and be present at the Execution of it; but without having any Hand in it, it can be no Offence: For indeed, it is as to him no more than a Man's being present that did not know of such a Design. And if this was a Special Verdict, upon an Indictment for Murder, I doubt not but my Lords the Judges would give their Judgment, that the Defendant was not guilty.

Mr. Price. I have only this Word to add, my Lords; I do take it, That the bare Privy of this Design, with the bare personal Presence of him that was so privy when this Act is committed by another Man, will not amount to make him Principal; and so he will not be guilty of Murder: For we find, that to make a Man Principal in Murder, there must be aiding and abetting, and only being present will not do it. Now the aiding and abetting must be, either by commanding or assisting, or putting the Person assaulted in Terror and Fear, or he must be there ready, and designing to assist in Case of Opposition. These are Facts that the Law requireth to the making a Man Principal in Murder: and bare Privy, with a Mind to assault, and bare Presence, when upon the Assault the Man is killed, will not amount to make a Man Principal, and consequently guilty of Murder.

L. H. Stew. Mr. Attorney, Do you think fit to say any Thing to what the Council for the Prisoner have alledged?

Mr. Att. Gen. No, my Lord.

L. H. Stew. Nor any other of the King's Council?

Mr. Soll. Gen. No, my Lord.

L. H. Stew. Are ye all of that Mind?

Mr. Serj. Tremain. I am of that Mind, my Lord.

Mr. Serj. Thompson. And so am I.

L. H. Stew. Then, my Lord Chief-Justice, what say you to it?

L. C. J. Holt. If your Lordships please, I will repeat the Question:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed (when the Person who knew of the Design is present) be guilty in Law of the same Crime, with the Party who had the Design and killed him, tho' he had no actual Hand in his Death?

My Lords, I am of Opinion this is no Murder nor Manslaughter; he that knew of the Design of assaulting, only happened to be present when the Assault was made, and the Party killed; but if he did not contribute to his Death, he is not guilty of Murder. This Question is much to the same Effect with the Question that was put before: But if the Person that knew of this Design did advise it, or agree to it, or lay in wait for it, or resolved to meet the third Person that was killed, with him that killed him, it would be Murder: But as this Case is put, it is neither Murder nor Manslaughter.

L. C. J. Treby. My Lords, I am humbly of the same Opinion as this Case is put. The Person to whom this Matter of the Design to lie in wait to assault another is communicated, is only passive; he only receiveth the Notice of it, and doth nothing towards the Fact. But if by going to the Place, directing, persuading, promising Assistance, or encouraging, he had discovered his Consent, or had lain in wait himself, then he had been guilty: But if he did nothing, but only receive this Notice, and then the Person assaulted happened to come by, and is killed in his Presence, this is but an Accident, and doth not involve him in the Murder. And I think in Effect, it is the same with the second Question that was proposed. There it was put, of one that had an Animosity against another, here it is put, of one that lay in wait to assault him; There it was put, of accompanying him to the Place where the Party was killed; here it is, of his being killed in his Presence: So that the Resolution must be the same in this Case that was given in that.

Mr. J. Nevill. My Lords, I shall not spend any of your Lordships Time: I am of the same Opinion with my Lords that spoke before, and for the Reasons that they have given.

L. H. St. If they are all of the same Opinion, I suppose your Lordships will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the same Opinion,

L. H. Stew. I am now to know of your Lordships, whether there be any of you that have any more Questions to ask?

E. of Nottingham. My Lord.

L. H. Stew. My Lord of Nottingham.

E. of Nottingham. The Question that I have to propose to your Lordship is the same that hath been already offered to you, but with some little Variation; for I do find, my Lords, the Judges do interpret this Person's being killed in the Presence of another, to be upon an accidental Meeting. I would propose to your Lordships, that the Judges may answer what the Law would be, when a Person, knowing of the Design of another to lie in wait to assault a third Man, accompanieth

compained him at that Time that that Design is to be executed, Whether it be the same Crime in the one as the other?

L. H. Stew. If your Lordship have your Question in Writing, pray deliver it in.

Earl of Nottingham. I will immediately, my Lord. *(Then he did put it in Writing.)*

L. H. Stew. Will your Lordship please that it may be handed to the Table? *(Which was done.)*

L. H. Stew. Read it.

Cl. of Crown. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that Time in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

L. H. Stew. My Lord *Mobun*, Do you desire a Copy of this?

L. Mobun. Yes, if your Lordships please.

L. H. Stew. Carry my Lord one.

(Then Copies were delivered as before.)

L. H. Stew. Well, Sir, what say you to that Question?

Sir Tho. Powys. The Case that is now propounded is this:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that Time in the Presence of him who knew of that Design, and accompanied the other in it, be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

My Lords, I shall not, (though I am of Council for this noble Lord) decline or refuse speaking to this Question; still, my Lords, with that Saving which I know your Lordships will allow me, that I am very far from admitting that this which goeth much farther than the last Case, is the Case of my Lord *Mobun*. Whether your Lordships will permit the King's Council, who have declined speaking to any of the Cases hitherto, as not being, as they pretend, my Lord's Case, now to speak to this which we do much less admit to be so, than they did the others, will be in your Lordships' Pleasure to determine, but I shall not decline to speak to it with that Saving.

And truly, my Lords, with humble Submission, I do take it, that as this Case is put, the Party who accompanied the other in such Manner as in this Case it is stated, is not Guilty of Murder. I know it was intended by that Noble Lord who proposed the Question, that it should be admitted, that beyond all Doubt the Fact was so as here it is stated; and then the Question is, What the Law will be where the Fact is thus admitted and agreed to on all Sides: And if there was such a Case, (for, my Lords, I speak to this as a Case at large) if there was such a Case where the Fact is beyond all Question made out to be so as it is here stated; yet I take it that in a Case of Life, which is the Case now before your Lordships, the Party will not be guilty of Murder.

My Lords, here is a further Circumstance added in this Case than what hath as yet been inserted into any of the other Cases; that is, That the Party knoweth of the Design of him

that he accompanieth to Assault a third Man, and doth accompany him in his Design, and then is present when the Design is executed; yet all these together, will not, as I humbly conceive, with Submission to your Lordships Judgment, make this to be Murder; because it doth not appear in this Case that he did accompany him with an Intention to execute this Matter, or to aid and assist him in the doing of it: There is no such Circumstance in the Case, and 'tis that which must be the Thing that will draw him in to be guilty of Murder.

For if two Men (to put a Case, which I hope I may do, with your Lordships Pardon, to explain my self) should be travelling upon the Way, and one of the Persons should acquaint the other, that at such an Inn, there is a Servant that he is resolved to beat, and this Person that has this Matter imparted to him, doth accompany the other in the Journey, (which I take it answereth the Knowing the Design, and Accompanying him in the Design) and, when they come to the Inn, the Thing is executed in the Presence of the Party that knew of such a Design, and it doth fall out that Death doth ensue upon it, unless he that did accompany him did some way or other act, contribute, or assist in the doing of it, it doth still remain a thing whereof he had only Privity and Knowledge, which he had done well, especially (in regard of the Consequence of it) to have prevented. And he is highly blameable, that he would accompany a Man who had such a Design to do an unlawful Act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be Murder in him; for I must insist upon that in Point of Law, that to make any thing Murder, there must be prepensed Malice in the Person that is to be found Guilty of it, or some precedent Agreement to do it, or some Act of Aiding or Assisting of the Person who doth it; but as this Case is, here is nothing of Malice doth appear, or that the Person who accompanied the other in his Design had any sort of Malice against the Person assaulted. And it doth not appear that he did any way assist in the doing of it. He was present at the Time when the other executed the Design he had imparted to him, but he never joined in it, nor had any Malice precedent, nor did assist or do any Act at that Time; and therefore I take it in this Case, which (as I said), I am very far from admitting to be my Lord *Mobun's* Case, that the Party who accompanied the other is not Guilty.

Mr. Hawles. My Lords, Though we who are of Council for this Noble Lord, the Prisoner, do not think this Case, that is put, to be his Case, for, with Submission, if the Indictment be looked upon, your Lordship will find —

L. H. Stew. Sir, I must stop you there, you are not to tell my Lords what your Opinion is as to the Fact, for of that my Lords are the Judges, you are to take the Case fairly, as a Case put, and you are to inform my Lords what the Law, in your Opinion, would be upon such Case. It is not before you, but before my Lords only, to consider whether this be applicable to my Lord *Mobun's* Case or not.

Mr. Hawles. If your Lordship please, I shall observe your Directions in that Matter, and, with humble Submission, this is not Murder in him who accompanieth the other, as this Case is put; for