

in every Case of Murder the Indictment must be either, that he actually killed him, or aided and assisted him that did kill him. But, with Submission there is neither of these in this Case.

He did know of the Design, there is no Crime, he did accompany him in it, that is, he bore him Company at that Time; he went with him to the Place where he executed his Design, but he did nothing when he came there to further, promote, or encourage the Execution of it; and therefore it can never make him Principal, nor Accessory to the Murder.

Mr. Price. I shall only say this, my Lords, that I take it, that the bare going with him in this Design, without doing any Act, doth not involve him in the Confederacy, as Aiding and Abetting. Something must be done or said, either he must assist or advise, or otherwise he cannot be Principal, and consequently cannot be guilty of this Murder.

L. H. Stew. Mr. Attorney, have you any thing to say to this?

Mr. Att. Gen. My Lords, we that are of the King's Council do not desire to be heard to this Case neither.

L. H. Stew. I do not hear you, Sir, what you say?

Mr. Att. Gen. My Lord, we do not desire to speak to it.

L. H. Stew. Then, my Lord Chief Justice.

L. C. J. Holt. This is the Question:

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 that Design and accompanied the other in it, be guilty in Law of the same Crime with the Party who had that Design and killed him, though he had no actual Hand in his Death?

My Lords, as for this last, I desire to make some Observations upon the Words, *Had no actual Hand*. By these Words, I suppose, is meant he did not draw his Sword, or lay any Hand upon the Person slain, or give any actual Assistance to the other Person at that time when the Third Person is slain, but was only in Company, and a Looker-on.

E. of Nottingham. My Meaning in those Words is, That with his Hand he gave no Stroke.

L. C. J. Holt. That, my Lords, I take to be the Meaning, he did not give an actual Stroke, nor held the Person whilst the other killed him, nor used any Violence.

Now, I am of Opinion, my Lords; that this is Murder in the Person that did accompany the other in the Design. For he being acquainted with the Design, and knowing of the Intention of the Party to commit Murder, or do an unlawful Act, upon which Death might ensue, accompanying him in that Design, he shews an Approbation of it, and gives him greater Courage to put it in Execution. Which is an Aiding, Abetting, Assisting and Comforting, which are the Words used in such Indictments, and so my humble Opinion is, it is Murder in that Person that accompanied the other, as well as in him that did the Fact.

L. C. J. Treby. My Lords, as this Case is, I think the accompanying of him in that Design (which are the effectual Words upon which the Question turneth) is Murder.

Here is first of all the Party that designeth the Assault, and he doth, pursuant to that Design,

make this Assault, and thereupon doth kill the Third Man; this undoubtedly is Murder in him, for here was Malice prepensed, an Intent of Bodily Hurt to the Party, and in Pursuance of this Intent, Death ensueth; this is unquestionably Murder in him.

Then the Question is, What Crime it is in him to whom this is made known, and who accompanied the other in that Design, knowing of it? I take this to be a Consent to the Design, and to the Execution of it. It is more than knowing and not revealing of it, though that was his Duty to have done, (and so the Council for the noble Lord did admit, that it was a Misdemeanor in him not to hinder such a Breach of the Peace.)

But here I say is more than that: He goeth with him to the Place, and accompanieth him in order to the executing the Design, and this is an Aiding and Abetting of it. If a Man say to another, I intend to assault and beat such a one; come along with me, stand by me, and see it done; and the other consenteth, and accordingly goeth along with him, and accompanieth him whilst he beats and kills the Man; this is an Approving, Encouraging, and Emboldening of him in his mischievous Purpose, and shews such concurring Malice in that other Person, as renders him guilty of the same Crime with him that with his Hand and Weapon beat and killed the Man.

Mr. J. Nevil. My Lords, as this Case is, and as I take the Law to be, this is Murder. It is a Case of one's lying in wait, and another Person doth accompany him in the Design, he that did design the lying in wait having told it to him, and then he is present at the Execution. I take it as Law, if the Party is killed, he that is present, and cometh with the other upon that Design, shall be taken to come to assist or abet the other, or defend him if any thing of Opposition should happen, and that I take to be Murder.

L. H. S. Are you all of the same Opinion?

Judges. We are all of that Opinion, it is Murder in both in that Case.

E. of Devon. My Lords.

L. H. Stew. My Lord Steward.

E. of Devon. My Lords, I desire they may all give their Reasons, as well as their Opinions, as this Case is.

Mr. J. Gregory. My Lords, I am humbly of the same Opinion with my Lord Chief Justice that spoke before me, that this is Murder, and my Reason is this: First, He knew of the Design, which was an unlawful Design; then he accompanied him as this Case is put, not only to the Place, but in the Design, which differs the Case from his being present by Accident; for by his going along with him he doth encourage him to do that, which perhaps singly the other would not venture upon, and going and being present when the Design is executed, upon which the Man is slain; I take it he is as much guilty as the Person that struck the Stroke in Point of Law.

Mr. J. Eyres. My Lords, I am humbly of the same Opinion, I take it to be Murder in him that knew the Design, and did accompany the other in it, though he did nothing at all towards the killing of the Man.

For, my Lords, it is the Intention of the Party that diversifieth the Act. If he came there with an ill Intention, and to assist him if need did require, as it is plain he did if he did accompany him in the Design, which is a strong Evidence

dence of the Intention: And, my Lords, Nature hath allowed no Man a Casement into another's Heart, and therefore we can judge of no Man's Intention, but by Circumstances of the Fact appearing without; and then, I say, if the Fact be so apparently from the Circumstances of it, that he knew of the Design, and accompanied him in it, it is a strong Evidence that he came to assist him; and though he doth nothing actually in the Matter, yet being present to assist him if Occasion did require, it is plain he did aid and abet him in the Action, and so it is as much Murder in him, as in the other that gave the Stroke.

Mr. *B. Turton*. My Lords, I am humbly of the same Opinion; the thing that differeth this from the former Case is, That this Person was in the Design with the other; for that, my Lords, I take to be accompanying him in the Design in order to the Execution of it, for bare Privy and Knowledge of the Design would not do it; but if he be with him at the Time, and accompany in order to the Execution, that maketh him as much criminal, as he that did actually occasion the Death of the Person, for he was present in the Company, and ready to assist him in the evil Design, which I conceive is as much Murder as the other.

Mr. *B. Powel*. My Lords, I am of Opinion, as this Case is now put, That this is Murder in both, and my Reason is this: Where one Person is privy to a Design of Felony, or committing some Personal Violence, as this Case is, and is not only privy to it, but goeth along with him, and accompanieth him in putting this Design in Execution, tho' he may not think it will extend so far as Death, but doth only intend Beating, and hath no Personal Hand, or doth otherwise contribute; but by his being with the other Person when he executeth his Design of assaulting, and the Party beaten dieth, they are both guilty of Murder.

L. Mobun. My Lords, Will your Lordships give leave, that my Council may answer some things that the Judges have said?

L. H. Stew. No, my Lord, you must not Reply after the Judges have given their Opinions. Have any of your Lordships any more Questions to propose?

L. Cornwallis. My Lords, I have one.

L. H. Stew. My Lord *Cornwallis*.

L. Cornwallis. My Lords, I am very sorry to have Occasion to ask any Questions in this Case, but I humbly desire a Question may be answered by the Judges, which is this:

If a Person be by, named William, when Thomas said, he would stab John, upon which William said, He would stand by his Friend, and afterwards Thomas doth actually murder John, and William is present at the same Murder: Whether the Law will make William equally guilty with Thomas, or what Crime William is guilty of?

L. H. S. Pray deliver in your Paper, my Lord.

It was deliver'd in, and read by the Clerk of the Crown, and Copies given of it as before.

L. H. Stew. What say you to this Question, Gentlemen?

Sir Tho. Powys. May it please your Lordships, this Question runneth thus:

If a Person be by, named William, when Thomas said, he would stab John; upon which William said, he would stand by his Friend; and afterwards Thomas doth actually murder John, and William is present at the same Murder:

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Whether the Law will make William equally guilty with Thomas; or what Crime William is guilty of?

My Lords, I do not question but many Cases may be put which will be plainly Murder, and if this Case should be attended with Fact equal to the State of this Case, I believe it will amount to Murder. But upon this Difference the Resolution of it will depend, and every Case must stand upon its own Circumstances.

If a Person do generally say, I am fully resolved I will stab such a Man, and say so without Condition or Limitation, that he will do it; and another doth declare his Intention to assist and aid him, by saying, I will stand by you in it, and afterwards the thing is executed in his Presence, who so concurred; I do take it, that that is an Evidence that he is equally guilty with the other.

But, on the other hand, if a Man say, I will stab such a one if he oppose me in such a Design, and so maketh his Resolution conditional, and the Person that is present doth say, I will stand by you in it, that is in your doing it, if you are opposed in such a particular Matter; my Lords, with Submission, if he is not opposed in that particular Thing or Design upon which he did say he would stab him, but if he doth afterwards, upon some other Occasion different from the former, and not relating to what he was talking of before, or upon some other Provocation, stab him, and the other Person happeneth only to be present, I take it, that the Words which he spoke with a Limitation to a particular Matter, will not make him liable to the Guilt of the Murder that is committed upon quite another Account.

The Words, *Standing by him*, are capable of two Senses; but I would not, in so serious a Matter as this, offer to put a jocular Sense upon them, as if it was meant he would stand by and not meddle; but I take it, that such a Case as this will turn upon the Manner of the Man's engaging himself; if he engaged to stand by him in a particular Matter, and the other doth stab the threatened Person afterwards, not upon that particular Occasion, but upon another Account, and he happeneth only to be by, these Words will not draw him in, though they should be well proved to be spoken, so as to involve him in the Guilt of that Murder.

For the Law is favourable to a Man in the Case of Life, and will judge according to the Intention of the Party; and he having not abetted or contributed to the Fact, his Words shall not be carried to his Prejudice, farther than his Intention, or farther than the concomitant Circumstances of the Matter, will make them plainly import.

This Case is put generally, and without Restraint; and there is no Question but many Cases may be put that will undoubtedly be Murder; but every Case must, as I said, stand and fall by its own Circumstances.

Mr. *Hawles*. My Lords, I think the Case as it is put single, and upon these Circumstances, would be Murder; and my Reason is this, The Person that saith he will stand by a Man, who saith he will kill or stab another, is as much guilty as that Man himself, and will be thought as malicious; but if it should happen that between the Words pronounced, and the Murder committed, that the Person that saith he will stand by his Friend, cometh to have a Friendship and Kindness for the Party that is threatened

to be killed, and upon meeting him careffes him extreamly, and there being no Malice continuing (as there must be to the Time of the Stroke given, to make Murder) but he happened to be killed by that other, suddenly in his Presence, those Words will not make him guilty of Murder; but as the Case is put, I think it is Murder.

Mr. Price. My Lords, I shall not take upon me to trouble your Lordships with making a Case, but as this Case is put without any Condition, or other Circumstance annexed to it, I think it will be Murder.

L. H. Stew. There will be no need to ask the King's Council upon this Question whether they will speak to it, because the Council for the Prisoner agree it to be Murder; Therefore if your Lordships please, we may now proceed to ask the Judges Opinions; And first, What say you, my Lord Chief Justice?

L. C. J. Holt. My Lords, the Question is this. *If a Person be by, named William, when Thomas said he would stab John, upon which William said he would stand by his Friend, and afterwards Thomas doth actually murder John, and William is present at the same Murder; Whether the Law will make William guilty with Thomas; or what Crime William is guilty of?*

My Lords, I am of Opinion that this is a great Evidence of Murder in *William*, that was thus actually by. I cannot say it is Murder, as the Case is put; but upon such an Evidence, Fact is to be left to the Conscience of a Jury in the Case of a Commoner, or the Conscience of the Peers in the Case of a Peer.

For when *William* said he would stand by his Friend, who said he would stab *John*, That is plainly a Consent, or at least such an Expression, from which, a Consent to the Stabbing of him may be inferred.

Then afterwards it seemeth *Thomas* actually murdereth *John*, and *William* was present. Now if *William* was designedly present with the other that committed the Murder, then it is plain it will be Murder in *William*, but if there be no Evidence to prove upon what Account he was present, it may be presumed he was present in pursuance of his former Agreement, so that it may be Murder, or not Murder, as Circumstances may happen upon the Evidence; if he was present in pursuance of his Promise, then no doubt it is Murder; But if he did not meet in pursuance of that Agreement, it may not be Murder. But this is all Matter of Evidence, and that rests upon the Consciences of those that are to try the Prisoner.

L. C. J. Treby. My Lords, I am of Opinion that this is Evidence, and great Evidence of Murder; the Fact consisteth of two Parts.

First, Here was a deliberate Expression of his Intention, that he would stand by his Friend *Thomas*, when his Friend *Thomas* had said before he would stab *John*, and this I take properly to be interpreted, and understood as a Promise of Abetting him in the Murder he would commit; for, I presume, standing by him in this Case to be meant in a grave Sense, signifying that he would befriend, and if there should be Occasion, defend and support *Thomas* in what he resolv'd to do.

Secondly, He was present at the Stabbing, which was before designed and spoken of. Now I think his being present when that Resolution of his Friend was executed, coupled with his

preceding Declaration of his Intention, is a strong Evidence of Murder.

Mr. J. Nevil. My Lords, the Question I take to be, Whether the Law of *England* saith *William* is guilty of this Murder? Truly, my Lords, I must say as my Lords have said before, that as this Case is, This is a very strong Evidence of Murder: For when he doth say, That he will murder such a Man, and the other saith, he will stand by him, in the common Acceptation of those Words, it is taken, that he doth then agree with him in that Design, which he declareth to be to stab *John*.

But then it seemeth to me truly, that this Case is not put full, how long it was afterwards that the Fact was done, and what Circumstances attended it; for if any Circumstance happened afterwards that did amount to a Countermand of this Promise, or any thing interposed to interrupt it, that this Agreement was not performed, perhaps the Case might not be Murder, but still it is Evidence so far as your Lordships may judge upon the Circumstances that attend it, whether it be Murder or no. But to declare a further Opinion, as this Case is put, truly I cannot.

Mr. J. Gregory. My Lords, I do upon this Case humbly conceive, there is a little Difference from the former, only there it is put positively, but here as Evidence. Now, my Lords, I do humbly conceive that in common Discourse, I will stand by my Friend, is, I will assist my Friend. If my Friend should say, I will kill such a Man, or I will do any other Act, and I say I will stand by him, I think the Import of the Words is, I will assist him in it.

My Lords, As to the latter Part, as this Case is put, for I can go no further, it doth not appear, whether when the Man was killed, he came by Accident, or in pursuance of his Agreement, knowing of the Design. Now that is but Matter of Evidence, if he came by Accident it will not be Murder, but if he came with Design, no doubt it is Murder in one as well as in the other.

E. of Mulgrave. My Lords.

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

E. of *Mulgrave*. If any of my Lords desire that the rest of the Judges should give their Opinion, it is fit they should be heard; but if no Lord doth desire it, and they say they are of the same Opinion without any more to do, because it may save a great deal of Time; I desire your Grace may only ask them, Whether they agree in their Opinions with those that went before?

L. Cornwallis. My Lords, I humbly desire the Judges may all speak.

Lords. Go on then.

Mr. J. Eyres. My Lords, I humbly conceive this is a Question of Fact, and not of Law, and it is a very strong Evidence, if a Man hear another say he will stab such a Man, and he saith he will stand by his Friend, and accompanieth him at the Time when the Fact is done, it is a strong Evidence, that he came with a murderous Intent with his Friend; and doth as much manifest his Intention to commit Murder, as if he had actually given the Wound, and a great Evidence to involve him in the Crime, as much as the Person that gave the Stroke.

Mr. B. Turtton. My Lords, I am of the same Opinion with my Lords, and my Brothers that have spoken before me; my Lords, I confess I do not think it cometh up so close to the Matter as

the Question that was put last before; for this, as my Brother *Eyres* saith, is rather a Question of Fact and Evidence, than Law. But certainly a very strong Evidence it is of the Intention of that Party that was present when the other said he would stab the third Person, and his going away presently, and accompanying him when the Stab was given, and Murder done, I say his Presence after this Determination is a very great Evidence, that it was done in Pursuance of that Agreement: It is a Matter of Fact which your Lordships will determine, according as the Circumstances appear before you, which may vary the Resolution one way or other.

Mr. B. Powell. My Lords, I am of Opinion as this Case is put, that it may be Murder or not Murder, according to the concomitant Circumstances. If a Man say, I will stab such a one, and another say he will stand by him, and afterwards when he is with his Friend, the Man is stabbed, if that is at some Distance of Time from the Words speaking, and the Meeting be accidental, or other Facts happen that may alter the Case, it may receive another Determination. But if after this is said, there be any immediate going to look after this Man, or they be near the way where this Man is to come, and then he is killed; this is a mighty strong Evidence that something was done in Pursuance of this Resolution, and that the one went along with the other to countenance him in the Action.

L. H. Stew. Have any of my Lords any other Questions to propose?

Lords. No.

Earl of Mulgrave. My Lords, If there had been any other Questions proposed by any other Lords, I would have staid till they had all been over; but I see their Lordships are at an End with their Questions: I have one which I think is nearer the Case than any has been yet, and of more Importance to the Matter in Hand, and more fit for the Council to inform you in, and for your Lordships to ask, and the Judges to answer. The Question is this:

If A accompanieth B in an unlawful Action, in which C is not concerned, and C happeneth to come in the Way of B, after the first Action is fully over, and happened to be killed by B, without the Assistance of A; Whether A is guilty of that Man's Murder?

This Question was handed to the Table, read by the Clerk, and Copies given as before.

L. H. Stew. What say you to it, Gentlemen, who are of Council for the Prisoner?

Sir Thomas Powis. May it please your Lordships, I will not trouble your Lordships with the repeating of the Case again, because my Copy is agreeable with what was read at the Table: Nor shall I trouble your Lordships with many Words upon this Case, because I take it, the Law is very plain.

If two Persons accompany each other to do an unlawful Act, and in the Execution of that unlawful Act, one of them doth go beyond what was first designed, and a third Man is killed whilst they are in Execution of that Act, tho' the one did the Fact, and the other did not immediately contribute thereto, yet he being joined with him in the unlawful Action, upon which this doth ensue, he is answerable for all the ill Consequences of it; the Law herein is clear according to the Case that was put at first of two Persons going together to rob a Park and steal Deer.

But if that unlawful Action be executed, or the two Persons who joined in the Design have totally desisted from it, or are disappointed in it, if afterwards when they are together upon some other Occasion, it happeneth that one of them killeth another Man, but his Friend no way aided him or assisted him in the doing of it, your Lordships and the Law will separate these Persons who were at first joined together for another Purpose; and will distinguish between them in this new Matter that is subsequent to the former Agreement, tho' they were in Company together.

Because in the first Case, he that is joined in an ill Action must look to himself, and be answerable for all that followeth thereon: In the second Case, he is in no Fault at all, it is only his Misfortune to be in ill Company if he had no Hand in the Fact. This the Law is very plain in, and therefore I shall not trouble your Lordships further with speaking to it.

Mr. Hawles. My Lords, I would only add one short Word; There is but this one Difference between an Accessory and a Principal; The Principal is always present, the Accessory is always absent; and I would only put you one Case of an Accessory in Felony out of my Lord *Coke*; he saith, It must be the same numerical Thing in which they are joined, and therefore, if *A* bid *B* rob the Vintner's Boy of Plate as he cometh to a Gentleman's Chamber to bring Wine, but *B* doth not pursue the Instructions, but breaketh into the Vintner's House, and stealeth the Plate there; this is a different Matter, it is not the same Thing wherein *A* and *B* agreed at first, and *A* is no way concerned in it.

The same Law is, if *A* and *B* agree to kill *C*, and *B* killeth *D*; tho' *A* be present, it will not be Murder in *A*; for the Agreement was for the killing of *C*, and not of *D*.

My Lords, as this Case is put, they did agree in the unlawful Act, but that Matter was over, and there is no Agreement as to the other Matter, nor is that pursuant to the Matter agreed upon; and therefore the Presence of the Party that agreed to the unlawful Act doth not make him guilty of Murder, unless he agree to that too.

Mr. Price. My Lords, I have but one Word on the same Side. I take it, that when a Man is doing an unlawful Act, there is an inseparable Incident that doth attend it, which is Malice implied. And this is so inseparable, that when his ill Design is at an End, his Malice is at an End too, and hath no Being, and therefore if he entereth upon an ill Design afterwards, tho' another be present that was joined with him in the former ill Design, yet his Malice who was so joined, being coupled with the ill Design that is over, must be gone too; and there is no Malice in his being barely present. And therefore for that Reason, he that was aiding and assisting before, cannot be Principal in such a sudden Act as this new one is, and consequently cannot be guilty of Murder, or of Manslaughter.

L. H. Stew. Mr. Attorney, Do you or any of the King's Council think fit to say any thing to this Question?

Mr. Att. Gen. My Lords, we that are of the King's Council do not think we have any Occasion to be heard to this Question.

L. H. Stew. Then, my Lords the Judges, what say you to it?

L. C. J. Holt. If your Lordships please, I will again repeat the Question; it is this:

If A accompanieth B in an unlawful Action, in which C is not concerned, and C happeneth to come in the way of B, after the first Action (that is, the unlawful Action, I suppose) is fully over, and happeneth to be killed by B, without the Assistance of A; whether A is guilty of that Man's Murder?

And I do humbly conceive with great Clearness, That *A* is not guilty at all. For here is no Relation to the first unlawful Act that he was engaged in, but that is all over and determined; and then *C* cometh in the Presence of *B*, who killeth him, and of *A* who had no Knowledge of any Malice between them, or any Design of his Death. This is meerly accidental, and doth not depend upon the first unlawful Action; and therefore *A* is not guilty.

L. C. J. Treby. My Lords, I think there can be no Difference of Opinions in this Case: For it is plain there was an unlawful Action in which they did agree, (as a Riot or Assault to beat or wound a Man or the like) and if Death had ensued, they both had been guilty of Murder, as well he that looked on, as he that gave the mortal Wound. But then the Question addeth further, That the Action to which they agreed was fully over, and there only happeneth to be a Continuance of their Presence together; and there being an old Grudge between one of the Parties and a third Man, and the Party who had that old Grudge, meeting with his Enemy, executeth it then upon him, and murdereth him; this doth in no Sort affect the other that was present, and had joined in the former unlawful Action that was over. In the former, he did join and concur, and therefore if Death had ensued, they had been both guilty: In the latter, he did not join and concur; and therefore though Murder did happen in his Presence and Company, he is not guilty, but only the Party that actually killed is.

Mr. J. Nevill. My Lords, I am of the same Opinion.

L. H. Stew. If you are all of the same Opinion, I think you need say no more.

Judges. We are all of the same Opinion, my Lords.

L. H. Stew. My Lords, all the Judges are of the same Opinion; and now I think it is your Lordships Resolution to adjourn to the House.

Lords. Ay, ay.

L. H. Stew. This Court is Adjourned to the House of Lords.

And then the Lords returned to their House in the same Order, and there presently Adjourned till the next Morning.

Die Sabbati Quarto Februarii 1692.

About four of the Clock in the Afternoon, the Lords came from their House in the former Order into the Court in *Westminster-Hall*: and being seated on their Benches, and his Grace the Lord High-Steward in the Chair before the Throne, Proclamation was made for Silence; and the Judgment of the Peers was demanded, and delivered in this Manner.

L. H. Stew. My Lords, Your Lordships have now heard all the Evidence both against the Prisoner and for him: The next Thing is your Lordships Judgment, and for that the Method is this; Your Lordships Opinions are to be deliver-

ed in the Absence of the Prisoner. The Question that your Lordships are to deliver your Opinion about will be this:

Whether my Lord Mohun be guilty of the Murder of William Mountford, whereof he stands indicted, or Not guilty?

The Order of delivering your Opinions must be, to begin with the youngest Baron, and so upwards; and therefore I must desire your Lordships to allow me to take your Judgments distinctly, and that I may write them down.

Lords. Ay, ay.

L. H. Stew. My Lord *Lemster*, is my Lord *Mohun* guilty of the Murder whereof he standeth indicted, or not guilty.

The Lord Lemster stood up in his Place uncovered, and laying his Right-hand on his Breast, pronounced his Judgment thus:

L. Lemster. Not guilty upon my Honour.

The same Question was severally asked of all the Lords, who in the same Form delivered their Opinions as followeth:

L. Capel. Guilty upon my Honour.

L. Ashburnham. Not guilty upon my Honour.

L. Cholmondeley. Not guilty upon my Honour.

L. Godolphin. Not guilty upon my Honour.

L. Osborne. Not guilty upon my Honour.

L. Arundel of Trerice. Not guilty upon my Honour.

L. Crew. Not guilty upon my Honour.

L. Cornwallis. Not guilty upon my Honour.

L. Granville. Not guilty upon my Honour.

L. Berkley of Stratton. Not guilty upon my Honour.

L. Lexington. Not guilty upon my Honour.

L. Lucas. Not guilty upon my Honour.

L. Clifford of Lansborough. Guilty upon my Honour.

L. Colpeper. Guilty upon my Honour.

L. Vaughan. Not guilty upon my Honour.

L. Fernyn. Not guilty upon my Honour.

L. Leigh. Not guilty upon my Honour.

L. Lovelace. Not guilty upon my Honour.

L. Brooke. Not guilty upon my Honour.

L. Hunsdon. Not guilty upon my Honour.

L. Chandos. Not guilty upon my Honour.

L. Willoughby of Parham. Not guilty upon my Honour.

L. Evers. Not guilty upon my Honour.

L. Fitzwalter. Not guilty upon my Honour.

L. Morley. Not guilty upon my Honour.

L. Berkley of Berkley. Not guilty upon my Honour.

L. De-la-Ware. Not guilty upon my Honour.

L. Willoughby of Eresby. Not guilty upon my Honour.

L. H. Stew. My Lord Viscount *Villiers, &c.*

Visc. Villiers. Not guilty upon my Honour.

Visc. Longueville. Not guilty upon my Honour.

Visc. Weymouth. Guilty upon my Honour.

Visc. Newport. Not guilty upon my Honour.

L. H. Stew. Earl of *Warrington, &c.*

Earl of Warrington. Guilty upon my Honour.

Earl of Scarborough. Not guilty upon my Honour.

Earl of Marlborough. Not guilty upon my Honour.

Earl of Mountague. Not guilty upon my Honour.

Earl of Monmouth. Guilty upon my Honour.

Earl of Falconberg. Not guilty upon my Honour.

Earl

Earl of Portland. Guilty upon my Honour.
Earl of Abington. Not guilty upon my Honour.
E. of Rochester. Guilty upon my Honour.
Earl of Nottingham. Guilty upon my Honour.
Earl of Radnor. Not guilty upon my Honour.
Earl of Macclesfield. Not guilty upon my Honour.
Earl of Feversham. Not guilty upon my Honour.
Earl of Craven. Not guilty upon my Honour.
Earl of Carlisle. Not guilty upon my Honour.
Earl of Bath. Not guilty upon my Honour.
Earl of Essex. Not guilty upon my Honour.
Earl of Sandwich. Guilty upon my Honour.
Earl of Scarfsdale. Not guilty upon my Honour.
Earl of Sunderland. Not guilty upon my Honour.
Earl of Thanet. Not guilty upon my Honour.
Earl of Chesterfield. Not guilty upon my Honour.
Earl of Carnarvon. Not guilty upon my Honour.
Earl of Kingston. Guilty upon my Honour.
Earl of Stamford. Not guilty upon my Honour.
Earl of Rivers. Not guilty upon my Honour.
Earl of Mulgrave. Not guilty upon my Honour.
Earl of Manchester. Not guilty upon my Honour.
Earl of Westmoreland. Guilty upon my Honour.
Earl of Bullingbrook. Not guilty upon my Honour.
Earl of Clare. Not guilty upon my Honour.
Earl of Denbigh. Not guilty upon my Honour.
Earl of Northampton. Not guilty upon my Honour.
Earl of Bridgwater. Guilty upon my Honour.
Earl of Bedford. Not guilty upon my Honour.
Earl of Huntingdon. Not guilty upon my Honour.
Earl of Kent. Not guilty upon my Honour.
Earl of Shrewsbury. Not guilty upon my Honour.
Earl of Oxford. Guilty upon my Honour.
L. H. Stew. My Lord Chamberlain, &c.
Earl of Dorset. Not guilty upon my Honour.
L. H. Stew. My Lord Steward, &c.
Earl of Devon. Not guilty upon my Honour.
L. H. Stew. My Lord Great Chamberlain, &c.
Earl of Lindsey. Not guilty upon my Honour.
L. H. Stew. My Lord Marquiss of Hallifax, &c.
L. Marquiss of Hallifax. Not guilty upon my Honour.
L. H. Stew. My Lord Duke of St. Albans, &c.
Duke of St. Albans. Not guilty upon my Honour.
Duke of Northumberland. Not guilty upon my Honour.
Duke of Ormond. Not guilty upon my Honour.

Duke of Somerset. Not guilty upon my Honour.
Duke of Norfolk. Not guilty upon my Honour.
L. H. Stew. My Lord Privy Seal, &c.
Earl of Pembroke. Not guilty upon my Honour.

Then his Grace the Lord High Steward stood up uncovered, and laying his Right Hand on his Breast, pronounced his Grace's own Judgment thus:

L. H. Stew. My Opinion is, That my Lord *Mobun* is not guilty upon my Honour.

Then his Grace seated himself again in the Chair, and numbered up the Opinions of the Peers.

L. H. Stew. My Lords, I have carefully taken your Lordships Opinions, and find the Numbers to be thus: My Lords that have found my Lord *Mobun* to be Guilty are Fourteen; my Lords that have found him Not guilty are Sixty-nine. Call for the Prisoner.

Proclamation was made for the Chief Governor of the Tower to bring forth the Body of the Prisoner, and he was brought to the Bar as before: And Proclamation for Silence was made.

L. H. Stew. My Lord *Mobun*, you have been indicted for the Murder of *William Mountford*; upon your Arraignment you have pleaded Not guilty, and have put your self upon the Judgment of your Peers; and your Peers have considered what hath been said both for and against you, and the Judgment of my Lords is this, That your Lordship is Not guilty: Your Lordship is therefore discharged. Make Proclamation for dissolving the Commission.

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

Serjeant. O Yes.

Cl. of Crown. Again.

Serjeant. O Yes.

Cl. of Crown. Again.

Serjeant. O Yes.

Cl. of Crown. My Lord High Steward of England his Grace, doth straightly Charge and Command all manner of Persons who have given their Attendance here, to depart hence in the Peace of God, and of our Sovereign Lord and Lady the King and Queen; for his Grace the Lord High Steward of England intendeth to dissolve his Commission.

Which the Serjeant at Arms repeated, and at the End of it, his Grace standing up, and holding the White-Staff in both his Hands, broke it in two, by which his Commission was dissolved.

Marq. of Carmarthen. Is it your Lordships Pleasure to Adjourn to your own House?

Lords. Ay, Ay.

Marq. of Carmarthen. This House is Adjourned into the House of Lords.

And then the Peers returned to their own House in the same Order:



CLII. *Proceedings between the King and THOMAS KENDALL and RICHARD ROE, in the King's Bench, on an Habeas Corpus upon a Commitment for High Treason. Mich. 7 Gull. III. Octob. 31. 1695.*



ON *Thursday* October the 31st. 1695, the Prisoners being brought up into Court on the *Habeas Corpus*, the Keeper of *Newgate*, to whom the Writ was directed, returned the Cause of their Detainer to be a Warrant under the Hand and Seal of Sir *William Trumball*, Knight, one of His Majesty's most Honourable Privy Council, and principal Secretary of State, directed to the Keeper of *Newgate*, or his Deputy, *prout sequitur*, "These are in his Majesty's Name to authorize and require you, to receive into your Custody the Bodies of *Thomas Kendall* and *Richard Roe*, herewith sent you, they being charged with High Treason, in being privy to, and assisting the Escape of Sir *James Montgomery*, out of the Custody of *William Sutton*, one of His Majesty's Messengers in Ordinary, and charged with High Treason. You are to keep them in safe and close Custody, until they shall be delivered by due course of Law: And for so doing this shall be your Warrant. Given at the Court at *Whitehall* the 24th Day of *Oct.* 1695."

Sir *Bartholomew Shower* moved that the Return might be read, and then that it might be filed: And Mr. Attorney owning that he had been attended with a Copy of it, and having nothing to say against it, the same was accordingly filed.

Then Sir *Bartholomew Shower* took Exceptions to the Return.

Sir *Bart. Shower*. My Lord, I am of Council for these two Prisoners; and what we desire at present is only that they may be bailed, though perhaps we might press to have them discharged, and that upon good Reason.

To induce your Lordship to bail them, I must beg your Lordship's Pardon, and I hope Mr. Attorney will hold me excused, if I make a Question whether the Person committing hath any Authority for such a Purpose; it is for my Clients, who think themselves aggrieved by this Imprisonment; and in Truth they say, That they are somewhat hardly dealt withal in this Case; for the Information against them is only for being privy to and assisting the Escape of the Centinels, who were privy to Sir *James Montgomery's* Escape: But this is Fact, of which the Court will not take Notice, and therefore I shall confine my self to the Return, as it appears before your Lordship.

With Submission I must insist upon it, that a Secretary of State, *quatenus* Secretary, cannot commit for Treason or Felony; he is not an Officer for such a Purpose in common Parlance. The Word *Secretary* imports only a Writer of Letters or other Escripts for a Superior; and as *Spelman* explains the Word, this is the Sense of it, with the Addition of Secrecy, of Privacy; and so is his *Glossary* upon that Word. He is not a Privy Counsellor *quatenus* a Secretary, nor is he a Justice; and though perhaps in Fact he may be in the Commission, yet unless he hath taken the Oath of that Office upon a *Dedimus*, he cannot act as such: And I have seen five or six Privy Counsellors at a Time appearing at a Ses-

sions of the Peace for this County, in the Case of the Duke of *Bedford's* Power as *Custos Rotulorum*, to remove the Clerk of the Peace; and when Intimation was made to them of the Justices Oath, which they had not taken, they refused to vote, and did thereupon withdraw. Here Sir *William Trumball* cannot be presumed or intended to be a Justice of the Peace, because the Commitment by him is as Secretary, and not as Justice; and so is the Return: And upon the Return, the Authority by which he commits ought to appear, otherwise the Return is vicious; and here doth appear none but that of Secretary. Now if the Office of Secretary doth not imply and carry in it a Power of Committing, then this Commitment is erroneous.

Our Constitution hath distributed the Administration of Justice, both in criminal and civil Causes, into several Courts, and hath appointed several Officers for several Purposes, some for civil, some for criminal Matters; and in Criminals some are to examine and commit, others to obey and carry, others to receive and keep; some to try and sentence, others to execute; each hath his proper Province: And of those your Lordship will take Notice, as also of their several Duties and Powers, and so do our Law Books. But a Secretary is a Court Officer of State, not relating to the Administration of Justice.

You take Notice, as do our Books, of Headboroughs, Constables, Sheriffs, Coroners, Escheators, and the like: But neither *Coke*, *Crompton*, *Fitzberbert*, *Smith*, or any Book which treats of the Jurisdiction of Courts, the Pleas of the Crown, or the Officers of Justice, do ever mention a Secretary of State; his Office rather relates to foreign Negotiations than domestick; and if any home Affairs fall under his Cognizance, it is rather as an Intelligencer, than with any Relation to Criminals, Prisons, or Gaolers, &c. In all the Debates about the Liberty of the Subjects, and wrongful Commitments, which were in Parliament in 4 *Car. I.* or 1628, and amongst all the Precedents mentioned there upon each Side, which are Multitudes, there is none by a Secretary: It is true, there are divers *per mandatum Dom' Regis*, by Warrant from the Lords of the Council. I have perused Dr. *Franklins* Annals of King *James* the 1st. fol. 261. and *Rushworth*, Vol. I. 458. and can find none by a Warrant from a Secretary. I have read *Coke's*, *Selden's*, and *Littleton's* Arguments upon that Subject, but see nothing of a Secretary's Commitment. And it seems very strange, if such a Power were lodged in this State Officer, that there should be no Precedents for it in those Times, when extrajudicial and general Warrants were so frequent, that they became a Grievance to the People, and such a one as laid the Foundation for the *Petition of Rights*.

I shall not controvert the Power of the Council at present, because it doth not concern the present Question: All that I can observe in the Case is, that it first began to be practised in Sir *Lionel Jenkyns's* Time; and yet even in 1678, when the Popish Plot had increased the Number

of Prisoners to a wonderful Degree, it is notoriously known, that the Chief Justice *Scroggs* was frequently and often sent for to *Whitehall* to examine, and commit, and grant Warrants. And some time since the Secretaries of State have thrown that Burden off from themselves upon their Secretaries under them, who have been sworn Justices of the Peace; and Mr. *Bridgeman* hath accordingly executed the Office of a Justice of Peace at *Whitehall*, and that frequently. It hath been a Question, Whether a Chancellor or Keeper of the Great Seal can commit; and the better Opinion hath been that he cannot: And it seems to be agreed by *Glanvill's* and other Cases in *Moore's Reports*, 839, &c. that his Commitment is illegal, unless for a Cause within his Jurisdiction, as a Court of Equity: and the Matters must so appear. I must agree, that any Man may apprehend another for Felony or Treason; but there is a vast Difference between an arresting of a Traytor or Felon upon Suspicion or Knowledge, and a formal Commitment to Prison, with a Charge of Treason. And I am sure Mr. Attorney General will not insist upon this Reason; for then the Consequence will be, that any Man may commit as well as a Secretary: And I suppose that Doctrine will scarce be allowed, though I think that any Man may as well as he. The Reason of an Apprehension upon Suspicion, or Hue and Cry, or the like, is not to detain, but to carry to a Constable or Justice, as in 3 *Inst.* 52. Then here the Gaoler doth not return that he detains him, because he is guilty or suspected, but because by virtue of a Warrant he is committed to his Custody.

Besides, the Reason of our Law is against it; for a Secretary cannot administer an Oath. Now the Law requires that no Man should be committed by an extrajudicial Warrant, unless upon Oath. If there be but a Suspicion, there ought to be Oath of the Cause of that Suspicion; for the Person committing cannot commit upon another's Suspicion, unless there be Oath of some reasonable Cause for it. He cannot take Bail for any Person accused, he cannot take a Recognizance to prosecute: And I may very well challenge any Man living to shew me any one Recognizance ever returned into any Court, that was taken by a Secretary, either for Appearance of a Criminal, or for the Prosecution of one: And the Practice is always otherwise; for they have often taken Bonds to the King, with Condition to appear here. And your Lordship and the Court hath often had much Trouble in that Matter; for tho' they were bound to appear here, the Court hath refused to record their Appearance, because no Recognizance returned or taken, whereupon to found such an Appearance.

Now it seems strange, nay absurd, that our Constitution, which we admire for its Wisdom, should appoint an Officer who should commit, and yet cannot give an Oath whereon to found a Commitment, that cannot bail, that cannot take any Recognizance to prosecute: This is to make the Liberty of the Subject very precarious, notwithstanding the many Laws and Sayings of Judges in favour of it.

A Secretary is not obliged within the Statutes that require Justices to return the Informations and Examinations of the Persons accused, and Witnesses; which is a Method prescribed by the Wisdom of our Ancestors, both for the Service

of our King and the Subject; and may upon several Occasions prove useful to each.

This I may say, that Mr. Secretary *Coventry* did scruple it, and upon good Advice, even from Sir *William Jones*, he took the Oath of a Justice of Peace. Now, my Lord, I think that those Exceptions to this Power of a Secretary may very well be thought to render it so far a doubtful Question, as to induce Mr. Attorney not to oppose our being bailed, to avoid any further mention of this or any other Question.

But supposing that a Secretary can commit, yet in this Case the Parties ought to be bailed according to the *Habeas Corpus Act*;* for the Act commands, that they shall be forthwith bailed, unless they be committed for Treason or Felony, specially mentioned and expressed in the Warrant; and if it be specially expressed, then upon Prayer, if not indicted, they are to be bailed the last Day, &c. Now here the Commitment of a Person charged with Treason, if it goes no further, then unquestionably the Parties ought to be admitted to Bail, because that the High Treason is not specially expressed; so a Commitment for Felony generally would bring a Man within the Benefit of the Act to be bailed, because the Species of the Felony is not expressed. This is plain, and cannot be denied. Then I must further argue, that if the Facts mentioned after the Word *High Treason* be not, or cannot be Treason, it must be allowed to me, that it is the same as if it had been for High Treason generally, and without more Words: For if there be not a Species of Treason expressed, then we are still admissible to Bail; this must be acknowledged.

Now that the subsequent Matter expressed after the Word *Treason* is not any Species of Treason, I shall endeavour to make out thus: A being privy to, and assisting the Escape of Sir *James Montgomery*, out of the Custody of a Messenger, and charged with High Treason, is not any Species of Treason, it is not Treason.

First, I may with a great deal of Colour make a Question whether the rescuing or helping the Escape of one in Custody for Treason, be Treason, or only Felony: If the latter, then the Commitment is erroneous.

At the Common Law the helping any Prisoner to escape was Felony, and so is, 2 *Inst.* 589. Now the Law in this Respect is not altered otherwise than by 1 *Edw. 2. de frangentibus prisonam*, and that Statute was rather to make it less penal than more; and if to promote the Escape of one imprisoned for Treason, was at the Common Law but Felony, then this Statute seems not to make it a greater Offence; for it is in the Negative, that none shall undergo Judgment of Life or Member for the breaking of Prison, unless, the Cause, for which the Imprisonment was, did require such a Judgment, if the Party were convicted.

The Lord *Hale*, in his *Pleas of the Crown*, saith, that Breach of Prison turns into Felony only, though the Party were committed for Treason; though in another Place he seems to be of another Opinion. Now my Argument to make this a Doubt is this: By 2 *Hen. 6. Cap. ult.* to break Prison when committed for Treason, is declared to be Treason; which would be needless, if it had been Treason before. By 23 *Edw. 3.* nothing is to be Treason, but what

* 31. Car. II. cap. 2. §. 7.

is there declared to be such; and by 1 *Mar.* all Treasons and Declarations of Treasons made by any Act of Parliament since 25 *Edw.* 3. are repealed. So that by this way of arguing such Escape was only Felony.

There is one Case, *viz.* *Beufsted's*, 16 *Car.* 1. *Jones Rep.* 415. upon an Insurrection in *Surrey*, where it is held, that if a Man be committed for Treason, and another breaks the Prison, and by that Means the Traitor escapes, this was Treason in the Rescuer, and there was one accordingly indicted and arraigned; but I find that he was acquitted; and though the Books say it was for want of full Evidence, yet it is more than probable, that it was the best Ingredient in his Case, that the Judges doubted what Offence it was, whether Treason or Felony. Now that Case is founded upon *Stamford's Pleas of the Crown*, 32. and all that is in *Stamford* is a Quotation of a Case in the Year Book, *viz.* in 1 *Hen.* 6. 5. that the Escape of a Traitor imprisoned was held Treason: But there it is put with a *quod nota*, as a strange Thing, and some call it Petit Treason: But however, it was a strange Thing, since we find in 2 *Hen.* 6. an Act of Parliament made to declare it Treason; which is improbable that such a Law should be made, if the Judges had the Year before justly condemned the poor Rescuer. So that either they doubted the Law of that Case, or that Case had some other Ingredient in it, than the Book informs us of.

This is not for receiving, aiding, and comforting a Traitor, knowing him to be such, as was the Case of *Abington*, who aided *Henry Garnet* the Superior of the Jesuites in 3 *Inst.* 138. but this is only for assisting the Escape: But supposing that such an Assistance to escape, or rescue of one committed for Treason, were Treason, and not Felony, yet in this Case, as this Warrant is, it is neither Felony nor Treason; for,

Secondly, Here is no legal Commitment of Sir *James Montgomery*; and consequently the helping him to escape is not Treason. My Lord *Coke* 3 *Inst.* 70. on 1 *Edw.* 2. says, that a voluntary Escape of a Prisoner can be no Felony, unless the Prisoner be under lawful Custody by a lawful Warrant expressing the Offence. Now there can be no Pretence, but that the same Rules must hold in Case of a Traitor's escape, as to the Warrant of Commitment, and lawfulness of Custody, as doth in Case of Felony. Now if the Party commanded to receive, or the Party to whose Custody he is committed, were no lawful Officer, then such Custody cannot make the Rescuer guilty of any capital Offence. *Co.* 2. *Inst.* 550. saith, that false Imprisonment is not within the Law in this Case; now there can be no lawful Warrant in this Case, because the Officer was not a lawful one. This is not the Case of one carrying to Prison, for then it would have been so expressed; but here it is under the Custody of a Messenger, and charged with Treason, which supposes it a Custody with a Charge by way of Commitment. Then my Lord *Coke* explains what is a lawful Warrant, and that is twofold; either when the Offence appeareth by Matter of Record, as a *Capias* upon an Indictment, Inquisition, or Presentment; or when it doth not appear so, but only upon Oath, that a Felony is committed, and the Party is committed for the same to Gaol. And he tells us, that there is a great diversity between them; for in the first, the

breaking of Prison is Felony, though there were none committed; but in the other Case, where there is no Record of an Accusation to found a Commitment on, if there be no Felony committed by him, who is committed to Prison for a supposed Felony, the breach of Prison is no Felony. Now this makes another good Exception to the Return, that here doth not appear, that there was either an Indictment or Appeal, or that there was a Felony or Treason committed; and one of them is necessary.

There must be a Felony done at the time of the Commitment; for a Relation, which is a Fiction in Law, shall never make a third Person a Felon; as *Plowd.* 401. if there be a Stroke or Wound one Day, and Death ensues upon another Day, this is Murder in the Party from the first Stroke; but the rescuing of such a Criminal before the Death is no Felony; which further shews, that a Felony done is necessary to make the Escape a capital Offence.

In 2 *Inst.* 591. *Coke* saith two or three times in four Pages, that the Weight of the Business depends upon the Lawfulness of the Warrant, or *Mittimus*; and he saith, that it must be in Writing, in the Name, and under the Seal of him that makes the same, expressing his Place, Office, and Authority, by force whereof he makes the *Mittimus*, as is to be directed to the Gaoler; and it must contain the Cause more especially, and with more Certainty, than a Writ of *Capias* need to do, because the latter is founded upon a Record, unto which a Resort may be had. Then he saith, that if a Warrant be not lawful, it is no Felony in the Gaoler to suffer him to escape. Now here, we say, it doth not appear what the Warrant was, upon which Sir *James* was in Custody; and a Messenger is not a lawful Gaoler; he is merely a Conveyancer of a Message, Notice, or Summons; and the Practice of making their several Houses Prisons is but of late date; our Law-Books do take no notice of him as any legal Officer.

Gaolers have Fees, are subject to Prosecutions for Extortion; a Messenger is not within the Laws concerning it; for he cannot take Fees *colore Officii*, who hath no Office; he is, at most, but a Gentleman Porter. I have often heard this Method of Commitments to the Custody of Messengers severely censured; and though any Man may be ordered to carry another to a Prison, yet he cannot therefore become a Gaoler to detain him, as some Messengers have done, for Nine or Eleven Months, or more. How long Sir *James* was in Custody, I cannot tell; but surely the Law, which requires Commitments to the County Gaols, is sufficient Evidence of the Insufficiency of a Messenger's Power to detain; and if he could not legally detain, the Consequence must be, that the Escape or Rescue is no Treason.

Besides, here it doth not appear, that Sir *James* was in Custody for Treason; it is said, that he was in Custody, and charged with Treason: The last might be upon Accusation by Oath, or by an Indictment, and yet not charged in Custody with Treason.

Then it is not said with what Treason Sir *James* was charged; it might be for such a Treason, wherein the receiving or helping to escape was not Treason; and it might be for Treason generally, and then Sir *James* was bailable; and it will be hard to exclude the Rescuer from Bail, when the Person rescued might challenge it.

Then further, though the Warrant be lawful, and in particular for Felony, and the Gaoler do willingly suffer him to escape, yet till the Prisoner is attainted, the Gaoler shall not answer to the Escape, though the Prisoner be indicted; and there is a very good Reason assigned for it, because the Felony of the Prisoner shall not be tried between the King and the Gaoler, for that he is a Stranger to it. Now a Rescuer or Assistant of an Escape is the same with a Gaoler in this Case, and shall not be in a worse Condition. It is true, the Party himself, if he breaks Prison, may be indicted for the Escape before he be tried for the Felony: Now the Reason of this holds for our being bailed, for that it is impossible that we can be tried in this Case, because Sir *James Montgomery* is dead, and was never attainted, or so much as indicted. Lord *Hale* agrees with this too, that if the Prisoner break Prison, he may be arraigned of it before he be convict of the first Felony; but the Gaoler permitting a voluntary Escape, shall not be arraigned till the Prisoner be first attaint; for if the Prisoner be acquit, the Gaoler is punishable as to any Capital Offence, or if the Prisoner die before Attainder, the Rescuer shall only be fined and imprisoned.

Now supposing the assisting the Escape of one committed for Treason, as some Books seem to say, shall make the Rescuer partake of the same Crime, for which the Party rescued was committed; yet if a Secretary cannot commit, or if a Messenger's House be not a lawful Prison*, or if Sir *James Montgomery's* Offence be not specially enough expressed, or if by reason of his Death the Escape be only finable, then these Prisoners ought to be bailed.

Sir Thomas Trevor. Mr. Attorney General, *e contra*, said, that they ought not to be bailed, because committed for Treason specially expressed; that harbouring a Traitor, knowing him to be such, was Treason; that there were no Accessaries, but all Principals in Treason; that rescuing him was a comforting of him; that to rescue a Felon, was Felony; to rescue a Traitor, was Treason; that a Messenger was a lawful Officer, and that any Man might imprison a Traitor; that Sir *James Montgomery's* Death was Matter of Evidence upon the Trial; that they need not set forth a Treason committed, or an Attainder, though perhaps it would be necessary to prove it when the Prisoners came to be tried; that the Power of a Secretary to commit had been settled (but he could not say when) that there were many Precedents, which he doubted not to produce, and therefore prayed time to look into it.

Sir J. Hawles. Mr. Solicitor spoke much to the same effect, with this further, That the Prisoner's Council admitted, that the Privy Council might commit, and a Secretary of State was much more antient; that as to the Messenger, a Gaoler *de facto* was within the Law; that those Persons were wrong doers, and that they could not take advantage of their own wrong; and therefore the Insufficiency of Sir *James Montgomery's* Commitment was not material; and that this Warrant need not be so certain and special as an Indictment, which must have Time and Place; and that if Commitments be good in Substance, the same was enough; and therefore prayed that they might be remanded.

Sir *Bartholomew Shower* replied, That the Commitment of a Secretary was never yet allowed;

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that the same was always complained of; that though it were Treason to rescue one committed for Treason, yet here it did not appear to be so; that though in Trespasses a Man cannot take Advantage of his own Wrong, yet that was not the Question; because if Sir *James* was not legally in Custody, then this Fact was not Treason; that the Insufficiency of his Commitment was an Advantage allowable, especially *in favorem vite*; that though Sir *James's* Death did not appear upon the Return, yet it was a Reason to induce the Court to bail, since they might bail in Cases of High Treason specially expressed; and if the Court were informed that they could not be tried, it would be hard to detain them in Custody.

Lord Chief Justice *Holt*. How were the Commitments at Common Law before Justices of Peace were instituted? It is true, my Lord *Coke* saith, that none could be imprisoned till Indictment, but that deserves Consideration. If you were to enquire, and search in the Tower, undoubtedly you will find Commitments there by Secretaries of State; look into the Resolutions in *Anderson*.

Mr. Just. *Rokeby*. I can see no reason upon the whole matter, why they should not be bailed; but since Mr. Attorney is not prepared, and has had so little Notice, it is fit he should have time. *Accordingly Wednesday next was appointed.*

Then Sir *Bartholomew Shower* moved, that they might have their Wives and Friends, and a Solicitor come to them, for that hitherto they had been kept close Prisoners. *Which was granted accordingly.*

Upon *Wednesday* the sixth of *November* the Prisoners were brought up by Rule of Court; and Sir *Bartholomew Shower* moved again, that they might be bailed, and that if Mr. Attorney thought fit to oppose it, he prayed to be further heard, for that he had more matter to alledge to justify the former Exceptions to the Return.

Then Mr. Attorney and Mr. Solicitor and Sir *William Williams* came into Court.

Lord Chief Justice. Mr. Attorney, here are *Kendall* and *Rozve* brought up by Rule, and their Counsel desire to know whether you oppose their being bailed; for if you do, they desire to be further heard to the Return; you had best consider of it.

Mr. Attorney General. I should not have so much opposed it, but that several Questions have been made and argued here at the Bar; as, that a Secretary hath not power to commit, that this Escape is not Treason, that a Messenger is not a legal Officer; and since these things have been started, I must insist upon it that this is a good Return, and that they ought to be remanded.

L. C. Justice. Then we must hear them again.

Sir *Barth. Shower*. My Lord, we do with Submission insist upon it, as I did the other day, that a Secretary is not such an Officer, as hath a Power of committing for Felony or Treason: I have further looked into it, and do find somewhat in the Books concerning it, more than the King's Counsel did last time urge, but not enough to warrant such a Power in the Office of a Secretary, and a great deal more against it. What I find I shall offer to your Lordship's Consideration, as it appears upon the Words of the Books, and submit it to your Judgment.

My Lord, I have perused the Resolutions of the Judges in 34 *Eliz.* 1 *Anderson* 297, 298. and

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I must

* See Proceedings against Bishop *Atterbury*, &c. N^o. 91. p. 338.

I must own, that it is there said, that one or more of the Lords of the Council may commit; how far that is Law, I shall endeavour to examine presently: But now I have named it, I would beg your Lordship to observe another of those Resolves; though it would be more proper anon, yet I will just mention it here, and that is, that there is a Resolution which condemns this Return, it destroys the Power of a Messenger's Office, and, if it be Law, my Clients ought to be bailed; it complains that divers Persons were against Law committed to Prison in private Places, and not to any common or ordinary Prisons, or lawful Officers, as the Sheriff or other Person lawfully authorized to have or keep a Gaol: so that upon Complaint made, the Queen's Courts could not learn to whom to direct her Majesty's Writs, and by this means Justice could not be done. Now this seems directly calculated for the 42 domestick Prisoners, at the Pleasure of the Messengers; and if Mr. Attorney will allow these Resolutions to be of any Authority in one part, he must agree it to be the same in the others.

But I shall not need it in respect of the Messengers Franchises, and therefore shall offer some things to your Consideration against those Resolutions.

In the first place they are extrajudicial, and not the Opinion of Judges upon their Oaths in any Matter before them; and I am sure my Lord Coke did refuse to subscribe his Opinion upon such Occasions. They are such Opinions, as the Judges may and often have varied from, when the Point hath come judicially in Question before them. Several of the Judges did so in the Case of the *Ship-Money*; and if they were not binding to the Judges, who gave the Opinions, much less can they be binding to their Successors, as legal Resolutions; and if they be Law, yet they do not relate to the Office of Secretary, but only to that of a Privy Counsellor. Now we do, without any Disrespect to Authority, for our Clients, insist upon it, that that Resolution is not Law, that one single Privy Counsellor may commit for Treason.

In the first place, what is there said, can never be reconciled to the Rules of Law, that Persons committed by them ought not to be delivered; for those general Commitments were illegal at Common Law; and so it is affirmed in the *Petition of Right*; and very great Opinions have been, that there is nothing in the *Habeas Corpus* Act, but the Penalties and Times, that was not Common Law, and that it is affirmative in substance of the antient Law of this Realm, which makes that Resolution to be suspicious; for if what is affirmed by it in express Terms (*viz. That such Persons as they shall commit, ought not to be delivered*) be not Law, then what is implied, that one Privy Counsellor may commit, is more doubtful still.

I shall not inquire into the Occasion of those Resolutions, nor meddle with what our Histories tell us of that Time, and the then Jealousies between some great Men; but, as I said before, those are not judicial Opinions, but only a written Certificate delivered to the then Chancellor and Treasurer: Besides, there is not one Objection, which can be made against the Power of a Secretary in this Matter, but stands as firm and forcible against that of one Lord of the Council; we find no Authority for him to administer an Oath, or take a Recognizance, and there is no Precedent of either. And, as I said the other Day, it looks absurd, that a single Person should be an Officer to commit, and yet cannot do that which is neces-

sary in order to it; he ought to have a Power to examine, and that upon Oath; and if upon Examination of Witnesses it appears that the Party deserves not to be committed, he ought to have Power to take Bail, as also a Recognizance to prosecute. A Justice of Peace is fineable by the Justices of Oyer and Terminer, and Gaol Delivery, if he misbehave himself, or be guilty of a wilful Irregularity therein; but it will scarce be said, that a Lord of the Council is in those Circumstances. My Lord Coke saith, that a Lord of the Council is made by summons and taking the Oath, and that continues during the King's Life: It is true he may be discharged, and generally it is by forbearing to summon him; suppose then it be omitted, and afterward he is summoned again, doth he take a new Oath? When doth this Authority begin? How doth it continue or end? Our Law Books take no Notice of it.

Then further, the King himself cannot arrest a Man for Treason or Felony, nor can he command one in his Presence to be arrested for Felony or Treason; so said Sir *John Marlham* to *Edw. 4.* and *2 Inst. 186. per mandat. del Roy* is by Writ, or by Order or Rule of some Court of Justice; now what Judge is a Lord of the Council? He is to advise the King, and is sworn to it, and to withstand all Traitors, and to discover all traitorous Conspiracies, and so is every Subject by his Oath of Allegiance, but the Oath of a Privy Counsellor contains nothing relating to Commitments.

At Common Law, extrajudicial Commitments were Rarities; the usual Practice was to indict, and then to take them upon a Writ of *Capias*; the antient Law was tender of a Man's Liberty, and then were the Writs framed in the Register *de odio & atia, & de tradendo in Ballium*, and the Writ of *Habeas Corpus*.

By *Magna Charta* 19 *Hen. 3. cap. 29.* which hath been confirmed forty times by subsequent Acts of Parliament, it is enacted, that *nullus liber homo imprisonetur nisi per legem terræ*, which I shall explain anon. This was made upon a Grievance then complained of, *viz. illegal Commitments*: What could those be in that Age, but taking Mens Persons without a Record to found a Charge or Accusation? and that it was so, appears by *Coke* in his Comment upon those antient Statutes: He says, that there is no Invasion upon this Law till *Edward 3d's* Time, and then the People quickly resented it; for in *5 Edw. 3. cap. 9.* the great Charter is confirmed; but then in *25 Edw. 3. cap. 9.* it is fully and more at large expressed, and recited, that whereas it is contained in the great Charter of the Franchises of *England*, that none shall be imprisoned, unless it shall be by the Law of the Land; it is awarded, asserted, and established, that from thenceforth none shall be taken by Petition, or Suggestion made to our Lord the King, or to the Lords of his Council, unless it be by Indictment or Presentment of his good and lawful People of the Neighbourhood, though *Magna Charta*, and the rest of the seven Statutes mention'd in the *Petition of Right* usually quoted upon these Occasions, be in the General, and have ambiguous Words in them, or Words made ambiguous by the King's Council in most Ages, yet this is plain and express, and needs no Strain on our Side. And I cannot find it ever pretended to on the other Side to be a Strain, they are so plain that the Inference is easy, and hard to be avoided, I will not, I must

not say, that they are Authorities against the Commitment by a Privy Council, but methinks they are strong against an extrajudicial Commitment by a single Lord of the Council, unless Mr. Attorney will argue, that the Council cannot commit by reason of this Law, but a single Privy Councillor is out of the Words of the Act; and when I hear that, he may expect another Answer.

Now for the Words *per legem terræ*: In *Magna Charta* in 2 *Inst.* 51. my Lord *Coke* doth indeed say, that in some Cases a Man may be taken and arrested before Indictment or Presentment; and one Case which he mentions is, by lawful Warrant, where there is a Witness against an Offender: Upon Suspicion there may be an Apprehension, but there cannot be a Commitment, with a Charge of an Offence, unless there be an Indictment or Presentment, or a Witness against the Offender; now there can be no Witness, but there must be an Oath: So it is by all Laws, a Man cannot be a Witness, though he may be an Informer, unless he be sworn, and by our Law, even Peers, if they are Witnesses, must be sworn. Now that a single Privy Councillor can give an Oath, I can find no Law or Precedent for it; it is true, the Privy Council may administer an Oath, and have done so for a long time, but that every single Member can do so, doth not follow, it is no more a Consequence, than that because the House of Peers can give an Oath, therefore every Peer may at home do the same. He is one of his Majesty's most Honourable Privy Council, and that is all; and that is only (as I may with Respect say) when they are *capitulariter congregati*.

Further, my Lord *Coke* saith, that to make a Commitment lawful, the first Requisite is, that he, or they, who do commit, have lawful Authority; now whether a particular Lord of the Council hath such a lawful Authority, I must submit to your Judgment.

In ancient Times the Practice was for the Privy Council not to send for Men in Custody, but to issue Citations and Summons, and that by their Messengers, as doth the Court Christian by their Pursuivants, who cannot arrest or imprison, as in 12 *Co. Rep.* 49. In all the Records cited by *Coke* in his *Jurisdiction of Courts*, cap. *Privy Council*, or *Prynne's Animadversions* upon that Book, 46. there is no Precedent mentioned of imprisoning, or bringing Men into Custody, but only Summons and Citations to appear; and there are many of them.

I shall not meddle with their Power of committing for a Contempt, or refusal to answer, or question the Authority of the Countess of *Shrewsbury's* Case, 12 *Co. Rep.* 93. but I urge this only to shew the Improbability, that our Law should vest such an Authority in each Member of the Privy Council.

In *Prynne's Animadversions* on 4 *Inst.* it is in his Comment upon *Coke's Epilogue*, pag. 422. is a very notable Record. *Rot. Parl. Anno 28 Hen. 6. num.* 56. where there is an Impeachment of *Talbois*, for a notable Riot upon several Lords of the Council met within the Palace at *Westminster*; and it is prayed, that he may be sent to the Tower of *London*, to be kept without Bail or Mainprize for twelve Months, to answer all Indictments for that and other Riots, before the King and his Justices in his Bench within that Time; and if the Constable of the Tower should suffer him to escape, or go at large, he should forfeit One thousand Pounds; to which Article of the Com-

mons Petition and Bill the King assenteth, so that here was an Act of Parliament (for such it is, though in form of a Petition granted, as was the ancient Form) to enforce a Commitment to the Tower for any Affront to the Lords of the Council: Now I would beg leave to observe, that it was not by way of Punishment for the Offence, but to secure the Parties to be forth coming to answer an Indictment, the Punishment must be Fine and Imprisonment: Now it seems strange, that an Act of Parliament should be made to secure a Man, in order to answer an Indictment for an Assault and Riot upon the Lords of the Council, when any one Lord of the Council might have committed him, and he might have been indicted next Term; for the Fact was done at *Westminster* in *Middlesex*.

I find a Case in 1 *Leon.* 70, 71. it is *Newell's* Case, he was committed *per mandatum Francisci Walsingham, Militis, Principalis Secretarii, & unius de privato concilio Domine Regine*, and the Return was held insufficient. I must agree, that the Book says it was, because the Cause for which he was committed was not alledged, and they amended the Return, and then they made it *ex sententia & mandato totius concilii privati, ita quod corpus ejus paratum habere non possimus*; it is true, that at last the Court took Exceptions to it, because the Body was not brought, and there was a very wise Distinction made by the Court, That where one is committed by one of the Privy Council, there the Cause ought to be returned; but where the whole Council do commit, there need no Cause to be alledged. Now it is plain, that this was a Distinction without a Difference, for by the Petition of Right, and the seven old Statutes, and all the Records and Law of old Time, no *Englishman* ought to be deprived of his Liberty by an extrajudicial Commitment or Warrant, unless the Cause be shewn; and I would infer, that the then King's or Queen's Council thought a Commitment by one Lord of the Council was not legal, and therefore they added *ex sententia & mandato totius privati concilii*; as it seems to me, that the Court did slide over that Question, by insisting upon the other Exception: However, at the most, though it make against the Novelty of the Commitments, yet it can never make for the Legality of them, when the whole is considered.

Upon these Considerations, I hope it will appear to your Lordship and the Court, to be a doubtful Point, whether a Secretary of State may commit; and the Consequence of that is, that the Prisoner ought to be bailed according to *Bushell's* Case, *Vaughan* 157. that the King's Bench may bail in any Case of Treason, if they think fit, but the Common Bench must remand, if the Cause of the Imprisonment returned be just, and well returned; but then there is this Distinction; if it shall appear to the Court, that the Party was imprisoned against the Law of the Land, they ought, by Force of *Magna Charta*, to deliver him; but if it be doubtful, and under Consideration, then he ought to be bailed: And this hath been the Practice upon Convictions by Justices of the Peace; and the Excuse of the Judges in 4 *Car.* for their *Remittitur*, &c. that it was *quousque*, &c. *i. e.* till further Consideration, was never allowed as a wise or legal one. Now I hope I have said enough to make it doubtful.

Then for Messengers, I have further matter to urge; the Reason why Commitments are required

to be to the County Gaol, by 5 *Hen. 4. cap. 10.* is mentioned in 2 *Inst. 43.* and 9 *Co. Rep. 119.* that they may have their Trial at the next Gaol Delivery, or Sessions of the Peace; and my Lord *Coke* saith, that at Common Law the committing to Prison is only to this end, that the Party may be forth coming to be duly tried according to the Law and Custom of the Realm: And the Abbots of *St. Alban* and *Crowland* lost their Franchises of having Gaols, because they detained Men in Prison, for a long time, without making a Deliverance; and all this doth in Reason argue against Messengers Power to make their Houses Prisons.

My Lord *Coke* saith, in 2 *Inst. 43.* that the Statute 5 *Hen. 4.* extendeth to all Judges and Justices for two Reasons: First, Because this Act is declarative of the Common Law; and secondly, *ubi lex est specialis, & ratio ejus generalis, generaliter accipienda est;* and if so, this was a false Imprisonment of *Sir James Montgomery*, and then the Consequence is what I urged the other Day.

I find further, in 2 *Inst. 705.* that by the Parliament Roll, 51 *Edw. 3. numb. 68.* it appears, that Gaols were anciently to be repaired at the King's Charge; and by Lord *Coke* upon 23 *Hen. 8. cap. 2.* concerning the new erecting of Gaols, his Opinion is, that the same cannot be done without Act of Parliament; and I cannot find any Act of Parliament for making the forty two Houses of the Messengers to be lawful Prisons: If there be any such, I suppose the King's Counsel will shew them to your Lordship; nay, I cannot find any Grant of such a Franchise to them.

Besides, the Reason of the Law is with us. Out of the County Gaols you have at every Sessions of Gaol Delivery, Calendars of the Prisoners that are in Custody there, but of the Prisoners in Custody of Messengers you can have no Notice; and this is no small Mischiefe in respect of the Subjects Liberty; for at a Gaol Delivery the Calendar is to be called over, and by the Calendars in former times were the Executions made without any special Warrant from the Judge or Recorder, which is but a late Practice.

Besides, according to 3 *Inst. 209.* a Man regularly before the *Habeas Corpus* Act, if committed for Treason or Felony by a Person having Authority to commit, was not to be discharged until he was inquired of, and either indicted or acquitted, or an *Ignoramus* found, and delivered by Proclamation; now how this could be practised of a Messenger's Ward, is to me unaccountable.

I will in this Case offer to your Lordship what I find in this Matter, with Sincerity, and submit it to your Judgment. There is in 12 *Co. Rep. 129.* a Case cited out of the Year Books, *viz. 22 Assize pl. 49.* One was beheaded for killing *Adam Walton, nuncii Domini Regis, missi ad mandatum ejus exequend'* which is there taken for Petit Treason: This is all that I can find of antient Authority, which mentions such a Creature as a Messenger; but nothing can be inferred from hence to prove the Messengers in Ordinary to be Keepers of Gaols, for the receipt of Felons and Traitors.

Nay, I find further a Case, which seems to overthrow the Commitment to any other Prison than the County Gaol: I will but name it, and submit its Consideration to your Lordship's Judgment; it is in *St. John's* Argument at a Conference concerning the Attainder of the Earl of *Strafford* (it is *fol. 46* of the 4^{to} Print of that Argument) the Case of *Sir John Mortimer*, who was drawn, hanged, and quartered for breaking

the Prison of the Tower, having been committed thither upon Suspicion of Treason: But this was in 2 *Hen. 6.* and upon an Attainder by Bill in Parliament, and so it is in *Cotton's Abridgment of the Records, pag. 368.* and there it is mentioned as a strange Thing to be done in Times of Peace, and when the Realm was in quiet, for a Man to be condemned without Trial or Arraignment. Now I might infer from hence, that if the Law had been undoubtedly plain concerning an Escape out of the Tower, as a legal Prison, there had been no need of an Act of Parliament to attain him; but however, it may argue thus much, that if a Bill were necessary for such an Escape, that an Act of Parliament is certainly necessary to make a Rescuer of one suspected of Treason out of the Custody of a Messenger to be guilty of Treason; but all these I submit to your Lord's Consideration. All that I contend for is to make it a doubtful Question to the Court, whether upon this Return, taking it for true, it is possible to indict and convict these Prisoners for Treason? for if not, they ought to be bailed.

Then there is another Exception, which I just mentioned the last time, and that is, that it is not mentioned in this Warrant, what the Species of Treason was, for which *Sir James Montgomery* was committed. I shall, as I have already, avoid the Repetition of any thing, which I then offered; there are several Treasons at this Day, where the receiving, comforting, and relieving of them afterwards, knowing them to be such, may not be Treason; and then in such Case the helping him to escape will not be so, and consequently it ought to have been alledged in the Warrant, what the Treason was for which *Sir James Montgomery* was committed. Now it is no Treason to receive and comfort a Counterfeiter of the Great Seal, it is only Misprision, for there are no Accessaries in Treason, and Principal he is is not, because he did not know of it at the Time; to this effect are the Words of the Book, 12 *Co. Rep. 81.* so it is of the receiving and comforting a Jesuit, or other *Englishman* taking Orders abroad, and returning into *England*; for by 26 *Eliz.* that is made Felony; which Statute would never have been made, if it had been Treason, *Dyer 296, 297. Corrier's Case.* If I know that one hath made false Money, and receive, comfort, and abett him, this is only Misprision: How far these are Law I am not to argue, but I suggest the Words or Effect of the Authority, and submit them. Sure I am of this, that if your Lordship and the Court be satisfied that they cannot be attainted of Treason, if the Fact be as this Return is, then you will not remand them.

Mr. Solicitor was pleased to argue, that these are Niceties too subtle for a Return upon a *Habeas Corpus*; but according to *Vaughan, 136.* the Writ of a *Habeas Corpus* is now the most usual Remedy, by which a Man may be restored to his Liberty, if he have been against Law deprived of it; and therefore it is, that the Writ doth command to know, whether it be according to Law, or against Law; and therefore the Cause of the Imprisonment ought by the Return to appear, as specially and certainly to be judged by the Court, where the Return is made, as it did appear to the Court or Person authorized to commit, else the Return is insufficient. Now the Reason of adjudging that Return in *Busbell's Case* to be insufficient, was because it was only said, that their Verdict was against full and manifest Evidence, and did not say what; by the same Reason *Sir*

James Montgomery's Treason ought to have been set forth in this Case; and as to Credence, no more ought to be given to a Person committing, when a *Habeas Corpus* is brought, than there is to a Court giving a Judgment, when a Writ of Error is brought to examine it, in order to Affirmance or Reversal; for an *Habeas Corpus* is brought in like manner to examine the Cause of the Party's Imprisonment, either to bail or discharge, or else to remand him, which is to affirm the Commitment to be legal, and upon good Cause.

I have modern Authority to justify much nicer Exceptions to Commitments, than those I have mentioned; such Authority as Mr. Solicitor will not deny to be good. Complaint hath been of a Warrant of Commitment, that it did not appear in whose Reign the Treason was committed, whether in the late King's, or the former King's; it is observed in the Remarks upon *Cornish's* Trial, and I am sure Mr. Solicitor must own that to be much nicer than what I have offered upon this; I do not justify that, but my Exceptions to the Return.

Mr. Serjeant *Levintz* argued on the same Side, that the Return was ill, because the Commitment was to a Messenger; it ought to have been to a County Gaol, that the Custody upon an Apprehension ought to be but twenty four Hours, *Britton* 19. *Customer of Normandy* 456. *Hil.* 22 *Edw.* 4. pl. 4. those Messengers exacted Fees, viz. 6 s. 8 d. or 10 s. *per diem*. It is in effect to fine the Party before he is convicted. Then he said, that all those Questions might have been spared, if Mr. Attorney would consent to their being bailed.

Lord Chief Justice. In truth most of them might have been spared, for they have been argued more for Pleasure than Necessity.

Then Mr. *Attorney General*, and Mr. *Solicitor*, insisted, that the rescue of one in Custody upon Suspicion of Treason, was Treason; that the setting forth the Overt Act was more for the Advantage of the Prisoner, than barely alledging the Species of Treason: That as to the Secretary's Commitment, it was owned now not to be such a Novelty as was pretended the last Time: That it was very ancient; that the Case in 11 *Leon.* is very fiat to that Purpose; that in the Tower they found a Commitment in 1660, by Secretary *Morris*, and that many more had been since, but that Sir *Joseph Williamson*, who had the Papers, was now in *Ireland*; that it was not needful, that he who commits, should be able to give an Oath; that the House of Commons could not give an Oath, and yet could commit; and more to the like Effect.

Sir *Bartholomew Shower* replied, that he was glad to hear there were so few Precedents for a Secretary's Power; that if there had been more, Mr. Attorney would have shewn them; that the House of Commons Power was an Instance not fit for him to answer; that he did desire no more of Mr. Attorney, than that a Secretary could not give an Oath, and then he hoped the

Consequence would be plain; and so submitted it to the Court.

Lord Chief Justice. I did always give Credit to the Resolutions of the Judges in *Anderfon*, and it is Part of a Privy Counsellor's Oath to take care of the King's Person against all Traitors, &c. Was there not a Gaol Delivery at Common Law? And are not the Commissioners by their Commission to inquire of the Prisoners in that Gaol, and a Grand Jury to be Impanelled? And consequently, doth not the Law suppose some to have been committed thither before? And then, by whom were they committed? Though a Messenger be not a proper Officer, yet any Person may be ordered to received for convenient Time for Examination, † *Et.* *Birt.* 19. 92. Commitments regularly ought to be to the County Gaols, and I wish the Justices of the Peace, who commit to *New Prison*, and the *Gate-house*, were here to hear this. But, Mr. Attorney, the Question is, whether you ought not to have specified these two Things in your Warrants, for what Treason Sir *James* was committed; and my Reason is, because the Escape will be the same Species of Treason with that, for which the Party rescued was committed; and secondly, that he had done a Treason, that Sir *James* was guilty. But, Mr. Attorney, will you further consider of it, though I think we must bail them in the mean time, an *Habeas Corpus* being *festinum remedium*; but I would hear my Brothers Opinion.

J. Rokely. Sir *Barth. Shower*, I am glad to see that you have rectified a Mistake you were in about a Secretary's Commitment: It was long before Sir *Lionel Jenkins's* time: *Walsingham* committed near Two hundred Years ago; and there is another Precedent in 2 *Leon.* 175. *Hilleyard's* Case, I think, that a *Conservator pacis* at the Common Law may commit, and so may a Constable; it is incident to his Power of committing, that he may give an Oath, and take a Recognizance, and (*quod mirum*) one of the Council may commit. I would not have the Students go away with the Notion of the Novelty of it: I take Secretaries of State to be great Officers; they are Centinels to watch for the Preservation of the King, and the common Peace of the Realm: And for Messengers, for any thing appears, he might be only carrying to Gaol; but yet I think they ought to be bailed, because it is not expressed in the Warrant, what the Species of Treason was for which Sir *James Montgomery* was committed.

J. Eyre, There may be a Difference between carrying to Prison, and a Commitment with a Charge upon them; and there may be a difference between specifying and not specifying Sir *James's* Treason. Upon the whole, I think they ought to be bailed.

J. Gregory was absent.

Accordingly they were bailed to appear the last Day of Term, to answer such Matters as should then be objected against them.

* Justices of the Peace are not by Common Law, but appointed by Statutes, the first of which was 1 *Edw.* 3. cap. 16. By Common Law there were only Conservators of the Peace, whose Power was very short of a Justice's now a days. See *Crompton's* and *Dalton's* Justice.

† This is at most but for three Days, *Cro. Eliz.* 830.



CLIII. *The Trials of* ROBERT CHARNOCK, EDWARD KING, *and* THOMAS KEYES, *at the Old-Baily, for High Treason, March 11. 1695. 8 WILL. III.*

THIS Day the Trial of *Robert Charnock, Edward King, and Thomas Keyes*, who were indicted at *Hickes's-Hall* on this Day seven-night, upon a special Commission of Oyer and Terminer for High-Treason, in Compassing the Death of the King by a barbarous Assassination, in order to further and assist an Invasion into this Kingdom from *France*, and Subversion of the Government, were proceeded upon in Manner following.

After opening the Court, at which were present a great many of the Nobility, Members of Parliament, and other Persons of Quality, the petty Jury returned by the Sheriff of *Middlesex* to try the Prisoners, were all called over, being in Number above Eight-score, and consisting of Barons, Knights, Esquires, and Gentlemen, and the Appearances of those who answered to the Call were recorded; and six of the Judges, *viz.* The Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, Mr. Justice *Nevil*, Mr. Justice *Powell*, and Mr. Justice *Rokeby*, being upon the Bench, the Prisoners were called for to the Bar, and there arraigned upon the said Indictments.

Clerk of Arraignments. Robert Charnock, hold up thy Hand (*Which he did*): *Edward King*, hold up thy Hand (*Which he did*): *Thomas Keyes*, hold up thy Hand (*Which he did*): You stand Indicted in the County of *Middlesex* by the Names of *Robert Charnock*, late of the Parish of *St. Clements Danes* in the County of *Middlesex*, Gent. *Edward King* of the said Parish and County, Gent. and *Thomas Keyes* of the same Parish and County, Yeoman, for that You the Fear of GOD in your Hearts not having, nor the Duty of your Allegiance weighing, but being moved and seduced by the Instigation of the Devil, as false Traytors against the most Serene, most Illustrious, most Clement, and most Excellent Prince, our Sovereign Lord *William* the Third, by the Grace of GOD, of *England, Scotland, France, and Ireland*, King, Defender of the Faith, &c. your Supreme, True, Lawful, and Undoubted Sovereign Lord, the Cordial Love, and true and due Obedience, Fidelity, and Allegiance, which every Subject of our Lord the King that now is, towards him our said Lord the King should bear, and of Right ought to bear, withdrawing, and utterly to extinguish, intending and contriving, and with all your Strength purposing, designing and conspiring the Government of this Kingdom of *England* under him our said Sovereign Lord the King that now is of Right happily and duly established, altogether to subvert, change and alter; as also our said Sovereign Lord the King to Death and final Destruction to put and bring, his faithful Subjects and the Freemen of this Kingdom of *England* in-

to intolerable and miserable Slavery to *Lewis* the French King to subdue and subject, the tenth Day of *February*, in the seventh Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, contrive, purpose, design and intend our said Sovereign Lord the King that now is, to slay, kill, and murder, and a miserable Slaughter amongst the Faithful Subjects of our Lord the King throughout this whole Kingdom of *England* to make and cause. And the same most abominable, wicked and devilish Treasons and traiterous Contrivances, Intentions and Purposes of yours aforesaid to fulfil, perfect, and bring to Effect, you the said *Robert Charnock, Edward King* and *Thomas Keyes*, and very many others false Traytors to the Jurors unknown, afterwards, to wit, the said tenth Day of *February*, in the Year aforesaid, at the Parish aforesaid in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, falsely, maliciously, advisedly, clandestinely, traiterously, and with Force and Arms, &c. did meet, propose, treat, consult, consent and agree our said Sovereign Lord the King by lying in wait, to assassinate, kill and murder: And that execrable, horrid, and detestable Assassination and Killing the sooner to execute and perpetrate, afterwards, to wit, the same Day, Year and Place last mentioned, traiterously did treat, propose, and consult of the Ways, Manner and Means, and the Time and Place where, when, how, and in what Manner our said Sovereign Lord the King, by lying in wait the more easily you should kill, and did consent, agree and assent, that forty Horsemen or thereabouts, of you the said *Robert Charnock, Edward King, and Thomas Keyes*, and the said other Traitors unknown, and others by them to be hired, procured and paid, with Guns, Carbines and Pistols with Gun-powder and leaden Bullets charged, and with Swords and other Arms armed, should lie in Wait, and be in Ambush, our said Sovereign Lord the King in his Coach being when he should go abroad, to set upon, and that a certain and competent Number of those Men so armed upon the Guards of our said Sovereign Lord the King then and there attending upon him, and being with him, should attack, and should overcome and subdue them, whilst others of the said Men so armed our said Sovereign Lord the King should Assassinate, Kill, Slay and Murder: And also that You the said *Robert Charnock, Edward King, and Thomas Keyes*, your Treasons and traiterous Intentions, Designs and Contrivances aforesaid, to execute, perpetrate, fulfil,

fulfil, and fully to bring to Effect afterwards, to wit, the Day and Year last abovesaid at the Parish aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords, and other Weapons, Ammunition, warlike Matters, and military Instruments, falsely, maliciously, secretly and traiterously did obtain and buy, collect and procure, and cause to be bought, obtained, collected and procured with that Intention, the same in and about the detestable, horrid and execrable Assassination, killing and murdering of our said Sovereign Lord the King as aforesaid, to be used, employed, and bestowed, against the Duty of your Allegiance, and against the Peace of our Sovereign Lord the King that now is, his Crown and Dignity, as also against the Form of the Statutes in such Cases made and provided.

How say you, *Robert Charnock*, are you guilty of the High Treason whereof you stand indicted, or Nor Guilty?

Charnock. My Lord, I desire, I may have a Copy of this Indictment; that I may advise with Council upon it before I plead.

* *L. C. J.* Pray, Mr. *Charnock*,

* *Sir John Holt*. will you speak out, that we may hear what you say.

Charnock. My Lord, I find here is a very bad Crime that is laid to my Charge; I desire that I may have a Copy of the Indictment, to advise with Council upon. And that I may have Council to assist me in my Tryal, and to direct me, who am an ignorant Man in these Matters, how to manage myself according to the new Act made this Sessions of Parliament, for regulating Tryals in Cases of High Treason.

L. C. J. Have you not had Council already to advise and direct you, Mr. *Charnock*?

Char. My Lord, I had Notice on *Wednesday* last before I could get my Council to come to me.

L. C. J. And what did your Council advise you? Did they tell you, you were to have a Copy of your Indictment, by Virtue of the late Act of Parliament?

Char. My Lord, tho' the Act does not take Force as to some Things till the 25th of this Month, yet the Equity of that Act, it being now reduced into a Law, is conceiv'd to reach to Cases of the like Nature before the 25th, and I desire the Act may be read.

L. C. J. You shall have it read if you will, but of what Avail or Benefit it will be to you I cannot tell; for you yourself take Notice that it is an Act of Parliament made this Session, and is not to take Effect until the 25th of this Month. You now here stand indicted before the 25th, and for a Treason committed before, and therefore you can't claim, nor have any Benefit or Advantage by this Act; but you are to be proceeded against according to the Law before, and the Practice used in all Proceedings against other Persons in your Circumstances. And it is the known Practice and received for Law, in all Times before this new Act was made, That no Copy of an Indictment for High-Treason should be granted, nor Council assigned, or permitted to assist the Prisoner in making his Defence: True it is, a Copy of the Indictment has been often desired, but as true that it has as often been denied.

Charn. My Lord, the Equity of this Act (it being now an Act of Parliament) is now in Force, as much before the 25th of this Month as after.

L. C. J. Equity is nothing in these Cases: You are here tried by the Law, and we are bound to go in all such Cases according to the Rules of Law, and are not to be guided by any equitable Consideration, further than the Law itself does allow us.

Char. But, my Lord, the Ground of that Act, which is the Reasonableness and Equity that all Prisoners should be made capable of fairly defending themselves, is now in Force, I say: And I hope your Lordship and the Court will look upon it to be reasonable that I should have the Benefit of that Equity.

L. C. J. I tell you we are not here in a Court of Equity, but must proceed according to the Rules of Law; and the Law you now speak of does not yet commence.

Char. My Lord, I am informed, for I am very ignorant in these Matters myself, that there is nothing that I now desire which is contained in this Act, but what was Law before the making of this Act, tho' the Practice may have been otherwise.

L. C. J. Then I must tell you, Mr. *Charnock*, you have been very much misinformed; for if all that is contained in this Act of Parliament that you mention was Common Law before, there would have been no Occasion for the making a new Act of Parliament.

Char. My Lord, I do not say that all Things in this Act of Parliament were Law before, because there are several Things in it that have not been Law before. But, my Lord, there are several Things besides; and particularly those two Things which I now desire, a Copy of the Indictment and Council to assist me, were Things that were agreeable to Law before; and I must take the Liberty to appeal to a Judge that I see upon the Bench, my Lord Chief Justice *Treby*, as to his own Opinion, and desire he would please to declare, whether formerly in a Conference between the Lords and the Commons he did not deliver his Opinion, That it was the Common Law, that a Prisoner should have a Copy of his Indictment, and Council to assist him.

L. C. J. Here is my Lord Chief Justice *Treby*, you had best to apply yourself to him for his Opinion.

L. C. J. Treby. Pray, Sir, What is your Question you would ask me?

Char. My Lord, I am here for my Life, and must take all the Advantages that I can; I am here Arraigned for a very grievous Offence; I desire I may have a Copy of the Indictment, and Council to assist me in my Defence. Here is an Act of Parliament, out of the Equity of which I apprehend, I ought to have some Advantage; for I am informed that what I desire was Common Law before the making of the Act; and particularly that your Lordship's Opinion, in a Conference between the two Houses, was, that the Prisoner ought to have those Advantages by the Common Law.

L. C. J. Treby. Then, Sir, I take your Question to be this: You would have my Opinion to be declared, That this Act which was lately pass'd for regulating Trials in Cases of High-Treason, and all the Particulars in that Act, were Common Law before.

Char. No, my Lord, I do not say that all the Particulars in the Act were Common Law before.

L. C. J. Treby. Then pray, Sir, name your Particulars, and I will endeavour to give you an Answer.

Char. My Lord, the Particulars that I do ask are these, First, that I may have a Copy of the Indictment, and Council to advise me, because it is a grievous Crime I stand here accused of, and that

that I may have them to assist me at my Trial in Court: This I do insist upon from the Equity of the Act of Parliament and your Lordship's Opinion at the Conference that it was Common Law before.

L. C. J. Treby. As to my Opinion about the having a Copy or Council, I do not think or believe, that I ever said that it was Common Law.

Char. My Lord, I beg your Pardon; I was informed your Lordship had delivered such an Opinion, at a Conference between the Lords and the Commons: But I desire the Assistance of Council, because I myself am ignorant of the Law; and particularly as to this Point, whether I am not intitled to the Equity of this Act of Parliament; for it now having pass'd both Houses of Parliament, and had the Royal Assent, it is a good Law; and though it be to take its Commencement on the 25th of this Month, yet that which is the Law of all Laws, the Reason and Equity of it, is, and always will be, the same.

L. C. J. No, Mr. *Charnock*, that does not follow, that because the Wisdom of the Law-makers has thought it to be equitable *de futuro*, therefore it should be Law now; which, as I told you before, is the Rule that we are to go by; it is Equity and Justice, that the Proceedings be according to this Act of Parliament, from and after the 25th of this Month; but it is not Justice that such Proceedings should be till then, because not according to Law.

Char. My Lord, the Ground of all Laws is Equity; and certainly it cannot be Equity, that a Prisoner should make his Defence against an Accusation in Writing, without having a Copy of it.

L. C. J. The Time of the Court must not be spent in this Manner; you have been already told, that by Law you are not to have a Copy of the Indictment; but you are to plead without having any Copy; for there is no Law now in being that allows the giving of such a Copy, and 'tis but a short Question that you are asked in order to your Trial; *viz.* Are you Guilty, or Not Guilty?

Char. My Lord, it is impossible for me to go to Trial presently, and without the Assistance of my Council.

L. C. J. Why, had you not Notice of your Trial?

Char. My Lord, I confess I had Notice, upon *Wednesday* last.

L. C. J. Had you not your Council with you since that?

Char. Yes, my Lord, I had on *Saturday* last; but from that Time I have not been able to prepare myself, as I think I ought; and I cannot conceive but that I should have the Assistance of some Council to direct me in my Trial; for here is a very great Crime, and heinous Charge laid against me in this Indictment, and I am very ignorant in all Law Proceedings.

L. C. J. It is very reasonable that there should be convenient Notice given to all Persons in your Circumstances; and truly this Day seven-night, is a very convenient Notice; especially you having had, by your own Confession and Acknowledgment, Council with you in the mean Time.

Char. But, my Lord, what is the Advantage of having Notice, if one have not Privilege of Pen, Ink and Paper, and one's Council and Friends coming to them, and Privacy, without the Presence of the Jaylor?

L. C. J. What say you that are of the King's

Council; Was there Council allow'd to come to them?

Mr. Attorney General. My Lord, there was Order given, that their own Council that they desired should come to them. *Sir Thomas Trevor.*

Mr. Baker. My Lord, as soon as ever they desired Council there was an Order for it, and left with the Jaylor, that he should permit the Council to come to them, and be with them in private.

L. C. J. Then tho' you had not your Council come to you till *Saturday*, it was your own Fault, for you had an Order for Council as soon as you desired it; and even from *Saturday*, is a reasonable Time enough to prepare for answering the Question, whether Guilty or Not Guilty.

Char. I suppose Mr. *Bale* is in Court, who gave Notice on *Wednesday*, and I acknowledge he came upon the *Thursday*, and asked if I would have any Body come to me; and he took then the Names of the Council that I desired might come to me; and told me he would carry them to Mr. Attorney General, and see what his Opinion was of them; I suppose he did so: For upon *Friday* he came again, and brought me an Order for it; but when that Order was brought, the Council that was desired was not to be had, or at least with very great Difficulty, because it was the Time of the Assizes, or very near it, and Council were gone or going out of Town; so that we could not have the Advantage of the Order for Council.

L. C. J. Look you, Sir, We think you have had convenient Notice, with Liberty of consulting whom you had a mind to; if you have neglected your Opportunity of consulting them, you must blame yourself, and no Body else; we must go on according to Law.

Mr. Att. Gen. My Lord, they had the Liberty of naming their own Council, and the Names were brought to me, and as soon as ever they were so brought, those that were named had Leave to go to the Prison to them, and they had a further Order than the first, which was, that their Friends should be permitted to come to them; but that was not, as it was not convenient to be, in private; but the other Order was, that the Council should speak with them in private, and not in the Presence of the Jaylor.

L. C. J. Pray hear what Mr. Attorney says, that your Council was ordered to be with you in private.

Char. But there was no Order, my Lord, for my Solicitor to be with me in the Absence of the Jaylor, who is the only proper Person for the consulting with, and for going about to summon the Witnesses.

L. C. J. We think you have had convenient Notice, and all the Allowances that can be in such a Case. Ask him to plead.

Cl. of Arr. Robert Charnock. Are you guilty of the High-Treason whereof you stand indicted, or Not Guilty?

Char. My Lord, I hope you will give me some more Time to get my Witnesses, that are now absent; several of them are ten Miles out of Town; and therefore, I would beg your Lordship to give me some Time.

L. C. J. Why, is ten Miles such a Distance, that you could not have your Witnesses between this Day seven-night and this Day? but besides, Mr. *Charnock*, what you now urge is out of Time, you speak too soon to put off the Trial, for there can be no Trial till Issue joined; and that cannot be till Plea pleaded.

Char.

Ch. My Lord, I was never instructed in Querks of Law, nor bred up to the Law; and I hope your Lordships will take care that I be not hurt for Want of Knowledge in the Forms of Law.

L. C. J. You may assure yourself, Mr. Charnock, you shall not be hurt by your Ignorance in the Law. All the Harm you will receive will be for having done contrary to the Law, and there is none of your Council, if they have been faithful to you, but must tell you the same Things we tell you now.

Char. My Lord, if I am to have no Council, I must desire that the Court would be pleased to take the greater Care of me: For, as I have been informed, that was the Reason of the Practice of denying Council, that the Court should be of Council for the Prisoner.

L. C. J. Mr. Hardesty, ask him whether he be guilty, or not guilty.

Cl. of Ar. Robert Charnock, are you guilty, or not guilty?

Char. Not guilty.

Cl. of Ar. Culprit, how will you be try'd?

Char. By God and my Country.

Cl. of Ar. God send you a good Deliverance. Edward King, How say you, Are you guilty of the High-Treason whereof you stand indicted, or not guilty?

King. My Lord, I beg the same Favour that Mr. Charnock has done, that I may have some more Time to prepare for my Trial, and a Copy of the Indictment, and Council assigned.

L. C. J. But you hear what has been said to Mr. Charnock upon those Points; and the same Rule that was given in his Case; you must expect will be in your Case:

Cl. of Ar. What say you, are you guilty or not guilty?

King. Not guilty.

Cl. of Ar. Culprit, how wilt thou be try'd?

King. By God and my Country.

Cl. of Ar. God send thee a good Deliverance. Thomas Keyes, are you guilty of the same High-Treason, or not guilty?

Keyes. My Lord, I have had no Council at all.

L. C. J. But you might have had if you would; you had an Order for it as well as the others:

Keyes. My Lord, I was a Servant to Captain Porter; I was not able to see any Council.

L. C. J. But you can tell whether you are guilty, or not guilty.

Cl. of Ar. Art thou guilty, or not guilty?

Keyes. Not guilty.

Cl. of Ar. Culprit, How wilt thou be tried?

Keyes. By God and my Country.

Cl. of Ar. God send thee a good Deliverance.

Charnock. My Lord, I desire I may have the Favour of Pen, Ink and Paper, upon my Trial.

L. C. J. Yes; yes, you shall have it; and if you have a Mind to it, you shall have the Indictment read to you in Latin.

Char. My Lord, my Ignorance in Forms of Law made me not ask that before, because I did not know whether I should properly ask it or not: And I do not know whether I should ask it properly now.

L. C. J. Yes, it is a very proper time to ask it, and you shall have it, if you have a mind to it.

Char. My Lord, I do really desire it, if it be a proper Time for me to have it.

L. C. J. Read the Indictment in Latin.

Char. And now, my Lord, I hope your Lordship will please that I shall have Pen, Ink and Pa-

per, that I may make the best Observations I can, since I cannot have a Copy.

Cl. of Ar. *Furtores pro Domino Rege super sacrum suam presentant quod Robertus Charnock, nuper de Parochia Sancti Clementis Dacorum, in Com. predicto, Generosus; Edwardus King, nuper de Parochia Sancti Clementis Dacorum in Com. predicto, Generosus; & Thomas Keyes, nuper de Parochia Sancti Clementis Dacorum, in Com. predicto, Teoman, timorem DEI in cordibus suis non habentes, nec debitum Ligeantiae suae ponderantes, sed instigatione diabolica moti & seducti, ut falsi Proditores contra serenissimum, illustrissimum, clementissimum & excellentissimum Principem, Dominum Gulielmum Tertium, DEI Gratia Angliae, Scotiae, Franciae, & Hiberniae Regem, Fidei Defensorem, &c. Supremum, verum, legitimum, legalem & indubitatum Dominum suum; cordialem dilectionem, ac veram & debitam obedientiam, fidelitatem & ligeantiam, quas quilibet subditus dicti Domini Regis nunc erga ipsum Dominum Regem gereret, & de jure gerere tenetur, subtrahentes & penitus extinguere intendentes & machinantes, & totis suis viribus excogitantes, designantes & conspirantes, gubernationem hujus Regni Angliae sub ipso Domino Rege nunc de jure feliciter & debite stabilitam omnino subvertere, mutare & alterare, nec non eundem Dominum Regem ad mortem & finalem destructionem ponere & adducere; ac subditos suos fideles, & liberos homines hujus Regni Angliae, in servitutem intolerabilem & miserrimam Ludovico Regi Gallico subjugare & mancipare decimo Die Februarii, Anno Regni dicti Domini Regis nunc septimo; & diversis aliis diebus & vicibus tam antea quam postea, apud Parochiam predictam in Com. predicto, falso, malitiose, diabolice & proditorie eum assassaverunt, imaginati & machinati fuerunt, excogitaverunt, designaverunt & intendebant dictum Dominum Regem nunc occidere, interficere & murdrare—*

Char. What Word was that last, Sir?

Clark of Ar. Murdrare.

Char. That is an odd Word, I can't understand what it means.

L. C. J. It is a Term of Art, the Signification of it is to murder: —Go on, Mr. Hardesty.

Cl. of Ar. *Ac stragem miserabilem inter fideles subditos ipsius Domini Regis per totum hoc Regni Angliae facere & causare & easdem nefandissimas, nequissimas & diabolicas prodiciones & proditorias machinationes, intentiones & proposita sua predicta perimplend' perficiend' & ad effectum redigendum ipsi iidem Robertus Charnock, Edwardus King, & Thomas Keyes, & quam plurimi alii falsi proditores Furatoribus predictis ignoti, postea, scilicet eodem decimo die Februarii, Anno supra dicto, apud Parochiam predictam, in Com' predicto; ac diversis aliis diebus & vicibus tam antea quam postea, ibidem & alibi in eodem Com. falso, malitiose, advifate, clandestine, frauditorie ac vi & armis, &c. conveniebant, proposuerunt, tractaverunt, consultaverunt, consenserunt & agreeaverunt ad ipsum Dominum Regem ex insidiis & dolo percutiend' Anglice To Assassinate, interficiend' & murdrand'; & ad execrabilem horrendam & detestabilem Assassinationem, Anglice Assassination, & interfectionem illas citius exequend' & perpetrand' postea scilicet eisdem die anno, & loco ultimo mentionatis, proditorie tractaverunt, proposuerunt; & consultaverunt de viis, modis & mediis ac tempore & loco ubi, quando, qualiter, & quomodo dictum Dominum Regem sic ex insidiis facilius interficerent, & consenserunt agreeaverunt & assenserunt quod qua-*

*draginta homines Equestres, aut eo circiter de ipsis; Roberto Charnock, Edwardo King & Thoma Keyes & predictis aliis proditoribus ignotis ac aliis per eos conducend' procurand' & impendend' cum bombardis, sclo-
pis & sclopetis, pulvere bombardico & globulis plumbeis oneratis, & cum gladiis ensibus & aliis armis armatis insidiati forent & essent in subsessa, Anglice Ambush, ad eundem Dominum Regem in Rheda sua in Anglice, his Coach, existentem, quando foris iret invadend'; quodq; quidam & competens numerus de hominibus illis sic armatis in satellites, Anglice the Guards, ipsius Domini Regis eum tunc ibidem attendentes, & secum existentes aggressi forent & eos devincerent, & expugnarent, dum alii eorundem hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & murrerent; & etiam iidem Robertus Charnock, Edwardus King & Thomas Keyes ad proditorias & omnes proditorias intentiones, designationes & machinationes suas predictas exequend' perpetrand' perimplend' & plenarie ad effectum redigend' postea, scilicet die & anno ultimo supra dictis, apud Parochiam predictam, diversos equos & quam plurima arma, bombardas, sclopos, enses & gladios, & alia armamenta munitiones & res bellicosas & instrumenta militaria falso, malitiose, secrete & proditorie obtinuerunt, emebant, colligerunt & procuraverunt ac emi, obtineri, colligi, & procurari causaverunt, ea intentione ad illa in & circa detestabilem, horrendam & execrabilem. Assassinationem, Interfectionem & Murrdrum dicti domini Regis ut praefertur utend', occupand' & impendend' contra Ligeantiae suae debitum, & contra pacem dicti Dom. Regis nunc, Coronam & Dignitates suas, nec non contra formam Statut' in hujusmodi Casu edit' & provis.*

Char. My Lord, I desire the Indictment may be read again, for there is so great a Noise in the Court, and that Gentleman hath not the most perfect Delivery; he is more used to Law-Latin than to any other. But I beg I may have it read again, that I may as perfectly as I can understand it.

The Indictment was read again in *Latin*.

L. C. J. Look ye, you that are the Prisoners, every one of you has the Liberty to challenge 35 of those that are returned to serve upon the Jury that is to try you, without shewing any Cause; now if you will all join in the same Challenge, then we can try you all together, as ye are all together jointly in the Indictment; and save the Time and Trouble that will otherwise be unavoidable. But if you will not join in the same Challenge, but every Man challenge for himself, as by Law he has Liberty to do, we must be forced to try you single, and therefore we would know of you, whether you design to join in your Challenge or not?

Char. My Lord, I hope the Court will give me leave to have my Solicitor by me during my Trial, that I may be instructed in some measure how to manage myself, and when it is proper for me to speak, and what.

L. C. J. No, we can order no such Thing, you must speak for yourself.

Char. My Lord, I am ignorant of the Methods of Law, and may make a great many Mistakes and Slips, and omit what may be material to be observed for my Defence, and therefore shall the more need a Friend or Solicitor to be by me, to mind me of it.

L. C. J. No, we cannot direct any such Thing by Law. What say you as to your Challenges?

Char. As to the Jury, I had not a Copy of the Pannel till Yesterday, and I have been informed,

that it is usual to have a Copy of the Pannel ten Days before the Trial; they are Gentlemen that I have no Knowledge of, nor can come at any Account of their Qualifications, so as to make proper Challenges.

L. C. J. You have the same Privilege that is ordinarily given to Persons in your Condition.

Mr. Att. Gen. There was Order given for a Copy of the Pannel to be delivered.

L. C. J. That was not of Right, but of Favour; and it is a Practice that has of late obtained; but for what you talk of ten Days, that never was in any Case, nor is it practicable; you have the same Favour shewn you, that all other Prisoners have, and you can expect no more: But you do not answer the Question, whether you will join in your Challenges or not?

Char. It is an indifferent Thing to me, my Lord.

L. C. J. Do you agree to it, Mr. King?

King. My Lord, I do not well understand it, I am ready to do any Thing I should.

L. C. J. What say you, Keyes?

Keyes. My Lord, I have had no Council at all, to advise me about any Thing.

L. C. J. I tell you what the Law is in such Cases; You may every Man of you challenge 35 peremptorily without Cause, but if you do not all agree in the same Challenges, ye cannot be tried together by the same Jury: But the Court must separate you, and try you every one single.

Char. My Lord, I have got a Copy of the Pannel, if these Gentlemen that are by me do agree to join in the Challenge, I am very well content; it is indifferent to me.

L. C. J. Do you understand what is said to you, Mr. King, and Mr. Keyes? Every one of you may, without shewing any Cause, except against 35 of those that are returned of the Jury which are to try you, if you have no mind that those should be sworn; but then if each of you do severally challenge 35, ye cannot be tried by the same Jury.

Char. I hope, my Lord, if I do challenge, as I do not know how I shall be enabled without knowing their Qualifications, the Court will put me in mind when I come near the Number, that my challenging may not injure me; because I am ignorant in the Law, and perhaps may slip in point of Number; and therefore, I would beg that your Lordships would allow me a Solicitor to assist me, and put me in Mind, that I may not run into Errors.

L. C. J. You have been told over and over, that we cannot do that; the Court will take care that you be informed in Time, that you do not exceed in challenging a greater Number than you ought: What say you, Mr. King? Do you agree that one shall make Challenges for you all?

King. I do agree, that whatsoever Exception Mr. Charnock makes, I will abide by.

Char. My Lord, I cannot but think it hard, that I have not either Council or Solicitor; my Council that I had are out of Town.

L. C. J. Why, was there no Council but those that are gone the Circuit?

Mr. Att. Gen. My Lord, he had Order first for one Council, and then for another, and whomsoever he named he had Order for.

L. C. J. If you will chuse none but those you cannot have, that is your own Fault; You, Mr. Keyes, will you join in the Challenge?

Keyes. Yes, with all my Heart.

Cl. of Ar. Then you the Prisoners at the Bar, those

those Men that you shall hear called and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of your several Lives and Deaths: If therefore you, or any of you, will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, and before they be sworn.

Then those of the Pannel that had appeared were called, and the Prisoners challeng'd 33. And the Names of those that were sworn are as follow.

<i>Samuel Harwer,</i> <i>Jonas Morley,</i> <i>Anthony Nurse,</i> <i>Jasper Hodgsden,</i> <i>William Farnborough,</i> <i>William Bird,</i>	}	<i>Simon Smith,</i> <i>Thomas Dunck,</i> <i>Richard Heath,</i> <i>John Mills,</i> <i>James Ketwich,</i> and <i>Christopher Redknap.</i>
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Then Proclamation for Information, and the Witnesses appearing, was made in usual Form.

Cl. of Ar. Robert Charnock, Hold up thy Hand, (*Which he did*): *Edward King,* Hold up thy Hand, (*Which he did*): *Thomas Keyes,* Hold up thy Hand, (*Which he did*): You Gentlemen of the Jury, look upon the Prisoners, and hearken to their Cause; They stand indicted by the Names of, &c. (*prout* in the Indictment, *mutatis mutandis*) — And against the Form of the Statutes in that Case made and provided. Upon this Indictment they have been Arraigned, and thereunto have severally pleaded, Not Guilty, and for their Trial have put themselves upon God and their Country, which County you are: Your Charge is to enquire of them, and every of them, whether they be guilty of the High-Treason whereof they stand indicted, in Manner and Form as they stand indicted, or Not Guilty; if you find them or any of them Guilty, you are to enquire what Goods or Chattels, Lands or Tenements they had, at the Time of the High-Treason committed, or at any Time since. If you find them, or any of them, Not Guilty, you are to inquire whether they fled for it; if you find that they, or any of them, fled for it, you are to inquire of their Goods and Chattels, as if you had found them Guilty; if you find them Not Guilty, nor that they did fly for it, you are to say so, and no more; and hear your Evidence.

Mr. Mountague. May it please your Lordship, and you Gentlemen of this Jury; The Record that has been now read unto you, is an Indictment of High-Treason, which charges the Three Prisoners at the Bar, *Robert Charnock, Edward King,* and *Thomas Keyes,* with a Traiterous Conspiracy, and Design to subvert the Government of this Kingdom, and to murder the King, and to bring the Subjects and Freemen of this Kingdom into Slavery and Subjection to the *French King*; and to this End the Indictment sets forth; That upon the Tenth of *February* last, and diverse other Times, as well before as after, at the Parish of *St. Clements Danes,* in the County of *Middlesex,* these three Prisoners at the Bar, with diverse other Traytors unknown, did Consult and Agree, to Assassinate the Person of our Sovereign Lord the King, as he was riding in his Coach; and did likewise agree, that Forty Horsemen, of which they themselves were to be part of the Number, should lie in Ambush, and set upon the King, so being in his Coach, and upon the Guards

that were to attend him: And it likewise charges them with buying Horses and Arms, for the Execution of this Wicked and Villainous Intention: To this they have pleaded Not guilty. We shall call our Witnesses, and prove this Matter upon them; and then we doubt not, but you, Gentlemen, will do Justice according to your Evidence.

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, these Gentlemen at the Bar stand indicted for a most Horrid and Barbarous Conspiracy, to Assassinate and Murder his Majesty's Royal Person: Gentlemen, this Assassination was to be seconded with an Invasion from *France,* where Troops lay ready at *Calais,* as soon as the dismal Stroke was given, to have landed upon our Coasts; which if it had taken Effect we had not only suffered that most unspeakable Loss of the King, but it would have made an End of all our Liberties and Laws at once.

Gentlemen, This Offence in its Nature, is so Horrid and Barbarous, that as it needs no Aggravation, so it is incapable of having any, by any Words that can be used; for the very Naming of an Assassination of a King, carries such Horror and Detestation in its self, to all honest People, that it is impossible to aggravate it by any Expressions that can be used about it. But there is this peculiar Consideration to be had, by all *Englishmen,* who love their Country, that this designed Assassination upon the Person of His Present Majesty, was to take away the Life of a King, who every Body knows first ventured his own Life, to restore our Religion, Laws and Liberties, when they were just expiring under the Oppression of Popery and Tyranny. And as he ventured his Life first to restore 'em, so he has since, upon all Occasions, with the utmost Hazard, exposed his Royal Person to the most imminent Dangers, for the preserving and maintaining our Religion, Laws and Liberties, against the Power and Violence of the common Enemy: This Consideration to all true *Englishmen* must have a very great Weight, and create the greatest Horror and Detestation, both of the barbarous Design, and of all those who had any Concern or Hand in it, to attempt upon the Life, not only of a King, but of such a King.

Gentlemen, when you hear the Evidence that we shall offer to you, to prove this bloody Conspiracy against these Prisoners, I doubt not but that there will be enough, and more than enough, to satisfy all true-hearted *English* Subjects, and all People that have a Desire to preserve our Constitution and Government, in what Danger we and our Posterity were of being utterly ruined, and involved in a common Destruction. I shall not detain you longer with any Discourse about the Heinousness of this Offence, because every Man's own Thoughts cannot but suggest to him, how dismal the Consequences must have been, if so fatal a Stroke had been given.

But, Gentlemen, I must crave leave to take up so much of your Time as to open how this bloody execrable Conspiracy was first framed, and afterwards carried on by the Prisoners at the Bar, together with others, till it was very near putting in Execution, had not the infinite Mercy of God prevented it, by a timely Discovery.

Gentlemen, this Conspiracy was first framed and consulted upon the last Year; there were several Consultations and Meetings, at several Places about the Town, for this Purpose; then and

at those Consultations and Meetings, there were present Capt. *Porter*, the Prisoners, and others of whom you will have an Account from the Witnesses; and at that Time they had an Expectation of Commissions from the late King, to authorize the Design; that not coming, they yet resolved to put it in Execution before the King went away. But because the *French* Troops were then not in a Readiness to come over hither, to protect them, after the Execution of the bloody Design, it was necessary for them to fly thither for Shelter; and therefore they endeavoured to procure a Vessel to be ready to carry them over to *France*. But they could not get a Vessel time enough; and then the King's going over into *Flanders* quickly after, prevented the Execution of the Design for that Time, and so Matters rested till the King's Return.

About two or three Months ago, Sir *George Barclay*, who is an Officer in the late King *James's* Guards in *France*; and some other Officers, with Sixteen or Eighteen Troopers in those Guards, privately came over from *France* to put this Design in Execution; and he did acquaint Mr. *Porter* and Mr. *Charnock* with the Design, knowing that they had been engaged in the Matter before, and so could not but expect that they would readily assist. This Design was treated and consulted of between them at several Times, and in several Places, at Captain *Porter's*, and Mr. *Charnock's* Lodgings in *Norfolk-street*; at the *Globe* Tavern in *Hatton-Garden*, the *Nags-head* Tavern at St. *James's*, and several other Places; several Consultations and Meetings were had between the Prisoners at the Bar, and others, whom you will hear named at these Meetings; several Ways and Methods were proposed, how it should be best effected; it was proposed by some, that it should be done by Ambuscade, that should be laid near the King's House at *Richmond*, such a Number on Foot were to lie in the Wood, there ready to attack the King as he came by, and the rest of the Conspirators at the same Time to fall on the Guards. But this Method was not so well approved of, as that which was afterwards proposed and agreed to: That is, there were to be three Parties of them, and the Place was the Lane, lying between *Brentford* and *Turnham-Green*, at the End next *Turnham-Green*, which the King used to pass thro', upon his Return from *Richmond*: The Order and Method of the Design was this; Sir *George Barclay*, with Eight or Ten more, was to attack the Coach, and by firing into it, to have killed the King, and all in it, and the rest were to attack the Guards, in two Parties, on each Side of the Lane, whereof Mr. *Charnock* and *Porter* were to command one, and Brigadier *Rookwood* the other. In order to see how feasible this Design might be, the Prisoner *King*, Capt. *Porter*, and *Knightly*, were to go and survey the Place; and the next Day after that Consultation, they went to view the Ground, and did very carefully do it, both on this Side the Water, and on the other Side the Water; and they came back and met the rest of the Company at the *Nagg's-Head* Tavern late at Night, to give an Account what they had done in order to this Enterprize. It was agreed the Number should be about Forty; Sir *George Barclay* was to make up about Twenty, Mr. *Charnock* was to furnish Eight, Capt. *Porter* Seven, and so in other Proportions, in all to make up the Number of Forty; which they thought were enough to effect and accomplish the Design.

In order to make this Matter the more sure, they did appoint Two to lodge and wait at *Kensington*, near the Guards; who were to give Notice, when the King went abroad: And they had their several Persons assigned to whom they should give Notice, who thereupon were to send Orders to the several Parties; one of which was *Chambers*, who was to give Notice to the Prisoner at the Bar Mr. *Charnock*, and there was one *Durance*, who was to give Notice to Sir *George Barclay*; and when such Notice was given, then they were to send Orders to the several Persons, who were to be concerned in this bloody Business, to come at the Time appointed, to be disposed of into their several Posts.

Gentlemen, in order to the furthering of this Design, they did likewise send *Durance* to go and view, and give them an Account of the most convenient Inns at *Brentford*, and *Turnham-Green*, and the Places adjacent; which were least liable to Observation, where the Men might be the most conveniently disposed of, to lie ready against the Time, when they were to execute this barbarous Assassination; accordingly he went, and took an Account of the several Inns within that Compass, and they were to be billeted by Two or Three in an Inn, so as not to be observed; Sir *George Barclay* and his Party at *Turnham-Green*, and the rest at *Brentford*.

Gentlemen, after they had thus laid the Design, *Saturday* the 15th of *February* was the first Time pitched upon for the putting it in Execution, if the King went abroad, as he used to do, upon *Saturdays*, to *Richmond* to hunt; and if they had Notice from *Durance* and *Chambers*, that he was so to do, which Notice they had; and every Thing was prepared in order to have perpetrated this villainous Design; but it happened that the King went not abroad that Day, of which they had Notice about Noon from *Chambers* to *Charnock*, and *Charnock* sent Word so to *Porter's* Lodgings, and then the Order for their getting together was countermanded, and the Note, by which *Charnock* sent Word, was subscribed with the Name of *Robinson*; which you will hear is a Name he goes by, as well as by that of *Charnock*.

Thus they were disappointed at that Time, but they were not discouraged from pursuing this inhuman Enterprize; but resolved to go on the next Opportunity that should be given. And to omit several Things that intervened, which the Witnesses will give you an Account of, on the *Friday* following they met again, to have every Thing ready against the next Day, which was *Saturday* the 22d of *February*; when they expected the King would go abroad, as he usually did on that Day of the Week; and that Meeting was at the *Sun* Tavern in the *Strand*, and there were present Capt. *Porter*, Sir *William Perkins*, Sir *George Barclay* and Mr. *Charnock*; and at that Time there was a Discourse amongst them about the Disappointment, which they had had the Week before, and some of them had a Jealousy that a Discovery had been made of their Design: But then, upon further Consideration, They concluded, If it had been so, they should not have met there, but should have been taken up: And therefore they concluded the King's staying at Home that Day was but Accidental, and so resolved to put their Conspiracy in Execution the next Day.

While they were there, several Persons for whom

whom Capt. *Porter* had undertaken, that is, one *Cranborne*, *Kenrick*, and *Keyes* the Prisoner at the Bar, came to *Porter*; these were carried into another Room, and commanded all to be ready the next Day, when it was resolved to put the Assassination in Execution: And then Capt. *Porter* asked *Kenrick* for *Sherborne*, who it seems had been undertaken for; but it was answered, That he asked so many Questions about the Matter, that he did not think fit to trust him.

The next Morning they met again at Captain *Porter's* Lodgings; and there met, as the Witnesses will tell you, amongst others, Mr. *Pendergrafs*, Mr. *Keyes*, and Mr. *King*; *King* brought a Message to Capt. *Porter* from Sir *George Barclay*, to know the Names of those that were concerned, and upon that Message Capt. *Porter* writ down the Names of his Men, who were for his Quota, and sent the List by *Cranborne* to Mr. *Charnock*, to add his List to it of the Men he was to have under him; *Cranborne* afterwards came back, and brought the List that Capt. *Porter* sent, with the additional List sent by Mr. *Charnock*, written with his own Hand, and subscribed R. C. and *Cranborne* told them that *Chambers* had sent Word, that the King would go out that Morning: At the Hearing of which there was much Joy amongst them; for they hoped then their wicked Design would be put in Execution that Day. There was a Discourse then likewise, that *Porter* had a Piece which carried Six Bullets; and this, it was ordered, should be put into the Hands of *Pendergrafs*, who was to be one of Sir *George Barclay's* Men, to attack and fire into the King's Coach.

This was upon *Saturday* the 22d of *February*, when they had News that the King was to go abroad, and every Thing was to be put in Execution at his Return from *Richmond*. From Captain *Porter's* Lodgings they went to the *Blue Posts* in *Spring Garden*; but about 12 o'Clock there came News from *Chambers*, one of the orderly Men at *Kensington*, that the King did not go abroad that Day: This put them into a very great Confusion; they then thought some Discovery must needs be made because of the Disappointment two *Saturdays* together; and *Keyes*, the Prisoner at the Bar, came up and told them, that the Guards were all come back in a Foam, and the King's Coaches were brought back to the *Meuse*: And this confirmed them in their former Jealousy that the Matter was discovered; upon which Captain *Porter*, Mr. *Pendergrafs* and Mr. *Keyes* went together to lie hid some Time; but they said they would send *Keyes* to Mr. *Charnock*, to let him know where they might be heard of; and if the Matter was not discovered, they would still go on to put it in Execution: But they could not part without drinking some Traiterous Healths, which the Witnesses will tell you of, to the Restoring of the late King and his Queen, and the Prince of *Wales*; and after all, one of the Company taking an Orange in his Hand, began a Health to the Squeezing of the Rotten Orange; and in this Manner it was drunk by all of them before they parted, tho' they were under the Apprehension at that Time of being discovered already.

This is the Beginning and Progress of the several Consultations that were had for the Carrying on this execrable Traiterous Conspiracy. I have opened it shortly to you, but you will hear it much fuller in its several Parts by the Witness-

ses. By what I have opened, you cannot but observe; that it was very near coming to be executed, if there had not been a Discovery of it Time enough, thro' the Providence of Almighty God, to prevent it. They had agreed, after the intended Assassination, to keep together, till they came near the Town, and then they were to lie hid till the *French* Troops landed, which they were assured of were ready upon the least Intimation of the Success of this Conspiracy.

Gentlemen, every Body may guess at the dismal Consequences that would have follow'd, had this bloody Design taken Effect; and I am sure, as we and our Posterity could not have expected any Thing less than the perpetual Yoke and Burden of Slavery and Popery, if it had pleased God to permit this Conspiracy to take Effect; so I hope we shall always remember the merciful Hand of Providence, that has detected and disappointed it.

Gentlemen, I shall not detain you any longer; I have opened unto you Part of that which will more fully be made out by the Witnesses; only I would observe, that the Providence of God has not only made a Discovery to prevent the Execution of this abominable Villainy, but hath brought this Conspiracy so far to light, by such unquestionable Testimony, that no Man can doubt of the Reality of it, which I hope will raise in every honest Man's Mind an Abhorrence and Detestation of those Principles, upon which so villainous and barbarous a Design was founded; and I think I may say, that after the Evidence you will hear this Day, no one will pretend any Doubt of the Truth thereof, but either such as are sorry for the Discovery, or such as knew too much of the Conspiracy before. I shall trouble you no further, but call our Witnesses, who will give you a clear and full Account of this Conspiracy. Swear Capt. *Porter*. (Which was done.)

Mr. *Sol. Gen.* Captain *Porter*, Sir *John Hawles*. I would not lead you with any Question, but pray will you give the Court and the Jury an Account what you know concerning any Conspiracy about assassinating the King, and when it was to be done, and where, and how, and by whom; and particularly what relates as to that Matter to the Prisoners at the Bar.

Char. My Lord, there are two Things that I must beg of the Court, in Relation to the Witnesses that are to be produced and the Evidence that is to be given against me at this Time: And the first is, That before any of the Witnesses give any Evidence against me, the rest that are to be sworn and produced, may be kept out of Court, till they that are called have severally given their Evidence, that one may not hear what the other says; That I suppose is but reasonable in a Case of this Nature, and what was never denied, but always allow'd, as I have been informed.

L. C. J. There is but one Witness sworn, and I believe, that there are none of the rest here.

Char. Yes, my Lord, here is one Gentleman in Court whom I suppose to be an Evidence, and that is Mr. *De la Rue*.

L. C. J. If there be any others of the Witnesses, let them withdraw till they be called for; let there be some Body to look after them and attend them. (Which was accordingly done.)

L. C. J. Mr. *Charnock*, you have your Desire as to this Matter, all the rest of the Witnesses are withdrawn.

Char.

Char. My Lord, there is another Thing that I have to beg of the Court, and that is, in relation to the Evidence in general, That if there be any Thing prov'd to be spoken in Company, and talk'd of by Way of common Discourse, or only in Jollity in ordinary Conversation, that may not be interpreted as a Proof of any settled Design or Practice.

L. C. J. Look you, Mr. *Charnock*, who can tell what the Evidence will be until it be given? you will hear what is depos'd by the Witnesses, and you have Pen and Ink, and may make such Observations as you think fit: When the Witnesses are heard, you will have all the Advantage that can be allowed you, and you may then propose your Objections to the Matter of their Evidence; which, no doubt, will have their just Weight with the Court: In the mean time, have you any Exception to this Man's being a Witness? If you have no Exception against him, then he must give his Evidence; and after he has deliver'd himself, and the King's Council have done with him, you are at Liberty to ask him what Questions you think fit.

Mr. Sol. Gen. Captain *Porter*, I desire you will acquaint the Court and the Jury what you know of any Conspiracy to take away the Life of his Majesty, when it began, in what Manner it was carried on, how far it proceeded, how it came to be disappointed, who were concerned in it, and what relates to the Prisoners at the Bar, as to their Share therein.

Capt. Porter. My Lord, I am unfortunately engaged in this Matter, and have made a frank Discovery, to make the King all the Atonement I can, for having been concerned in such a Design. Some Weeks before this Conspiracy for Assassinating the King was in Hand, there came to my Lodging——

Mr. Att. Gen. Captain *Porter*, I would not interrupt you, but to put it into a Method, and Order of Time, will you please to recollect your self, and give the Court and the Jury an Account of your Knowledge about the first Beginning of this Conspiracy the last Year; I would not lead you, and therefore I ask you the general, and no particular Question.

Char. My Lord, I suppose that any Question about what was done the last Year is not at all to the Purpose in this Case, for there is nothing mention'd in the Indictment of the last Year.

L. C. J. It is in the Indictment diverse Days and Times, as well before as after.

Char. The Crime for which we are accused is laid to be the 10th Day of *February*, 1695.

L. C. J. The Day is not material, but only a Circumstance, but in Form, some Day before the Indictment preferred, must be laid; and tho' the Day mentioned in the Indictment is the 10th of *February*, yet it is also said, that the Things contained in the Indictment, of which you are accused, were done likewise at diverse Days and Times, as well before as after, and so the Indictment comprehends even what might be done the last Year as well as this.

Char. I beg the Favour of the Court in this Matter, for sure the 10th of *February* last can no way be supposed to be in the last Year.

L. C. J. I told you before, the Day is not material, nor are the Witnesses nor the King's Council tyed up either to the particular Time or Place mention'd in the Indictment, so it be within the

County, and before the Indictment preferred. All that is to be regarded is, that no Evidence be given or admitted of any other Species of Treason, but what is contained in the Indictment; for a Man may certainly be indicted for a Treason committed this Year, and upon his Trial Evidence may be given of the same Treason committed the Year before.

Char. But then how can a Man prepare for his Defence?

Mr. Att. Gen. The Time is but a Circumstance, it may certainly be proved at another Day than what is laid in the Indictment, and yet very good Proof; and so it is in all other Cases, as well Civil as Criminal.

Char. Mr. Attorney General has said enough I think to confute himself; for if one Year may be put in the Indictment, and nother Year brought in in the Evidence, how shall any Man be able to apply himself to his Defence, whose Thoughts run only upon the Time laid in the Indictment? I hope neither the Court nor the King's Council will come so hard upon us, as to put our Thoughts quite out of all Order, that when we apprehend we are only to defend ourselves against what is said to be done this Year, we must afresh prepare ourselves to answer what was done the last Year.

L. C. J. It is always so; for Form Sake, there is a particular Time laid in the Indictment, but the Proof is not to be tyed up to that Time; but if it be proved at any Time before or after, so it be before the Indictment preferred, it is well enough: And not without great Reason, for the Treason consisting in imagining and compassing the King's Death, which may be manifested by diverse Overt Acts, some before, some on, and others since, the Tenth of *February*, yet they are Evidences of one Treason, which is the Compassing the King's Death.

Char. Then we may be under an Obligation to give an Account of all the Transactions of our Lives, if that be the Rule.

L. C. J. No, not so neither, for that very Treason assigned in the Indictment must be proved, and therefore you are only to give an Answer to that, and nothing else.

Char. But, my Lord, it may give a very great Loose, and much hinder our Defence; for as it is now desired that Proof may be given, of what was done last Year, at the same Rate, they [as well before and after] may signify seven Years ago.

L. C. J. And so it may if your Conspiracy reach'd so far, or did then begin, and was afterwards pursued; this is not any Thing that is unusual, but the Common Law is plain in it. Well, what say you, Mr. *Porter*?

Capt. Porter. My Lord, I will give you an Account, if your Lordship pleaseth, of what was done this Year? and if any Questions afterwards be thought fit by the King's Council to be now asked me, about what pass'd before, I will answer them very readily.

Mr. Att. Gen. Well then go on your own way, we will reserve ourselves till afterwards.

Capt. Porter. Some Weeks before this Design was on Foot, for assassinating the King, Sir *William Perkins* when he was in Town, was at the same Place where Mr. *Charnock* and I did lodge; it was about the latter End of *January*: He asked Mr. *Charnock* where he would be at Night; and I told them, if they were not about private Business, I would

would meet them. He told me, there were some Friends come from *France*, and that something was a doing that would be for the Service of the King: I told them, if any Thing of that Nature was a doing, I would readily engage in it; and they told me I should know it very soon. A little after I fell sick of the Gout, and could not stir from my Chamber: But then Mr. *Charnock* did acquaint me, that Sir *George Barclay*, and those that came from *France*, had brought a Commission to raise and levy War upon the Person of King *William*; and he asked me how many I could bring to join with them, if the King landed; I desired to consider of it, and he told me Sir *George Barclay* would come to him about it. Accordingly, he and *Holmes* came to the House where we lodged, in *Norfolk-street*, and there they were in private with Mr. *Charnock*; and afterwards, because I was lame, and could not stir, they came into my Room, and Sir *George Barclay* told me, he was glad to see me in good Health, but sorry to find me lame, but he hoped to see me abroad in a little Time; and I told him, I hoped so too. They said, they were going then to some Company, and they hoped to see me afterwards. After that there were several Meetings that we had, particularly at the *Globe Tavern* in *Hatton-Garden*, the *Neggs-Head* at *St. James-street*, and the *Sun-Tavern* in the *Strand*, and in all these Places we did consult together, which was the best Way, and where was the best Place to assassinate the King, when he came from Hunting. Sir *George Barclay* told us he had some Money to buy Horses, but not much, he had as much as would furnish about Forty. Capt. *Charnock* said, he would bring six or seven Men, that should come out of the Country. Sir *William Perkins* said he would lend five Horses, there to be mounted by Men of his own, the other two by such as should be provided. I promised to bring seven Men with Horses, and Sir *George Barclay* said, that *Lowick* and others that came over with him from *France*, would engage in the Design, and make up the Number. I desired very much to see the Commission that came from the late King, and asked Mr. *Charnock* about it; he said he never saw it, but Sir *William Perkins* told me, he had seen it, and that it was all writ with King *James* his own Hand, and signed by himself. All this was agreed to, and then there were Consultations in what Method it was to be done. Several Proposals there were; one was to set upon him as he came from *Richmond* by the Road, others when he was on Horse-back at *Cue*. Sir *George Barclay* was for having it done by Ambuscade in the *Park* by *Richmond*, and therefore desired me to go with Mr. *Knightly*, and view the several Places and Ground thereabouts, to find out which was the most convenient Place. The Day before we were to go, Capt. *King* came to me, and would know if we were to go about such a Matter, and proffered to go with us. I told him I had never a Horse, but he said, he would get one. We went that Night to the *Swan* at *Knight's-bridge*, and there we lay, and went the next Day to view the Ground, and came the next Evening to the Company, to give an Account what we had done; and upon the Account that we gave, Sir *George Barclay's* Mind was altered, and it was agreed to do it in the *Lane* coming from *Brentford* to *Turnham Green*, and the particular Manner was agreed on too.

There was one *Rookwood* that was to command one Party of Sir *George Barclay's* Men, to attack the Guard; he told us, he had bought twenty Horses which were to be employed in this Expedition; they were to be divided in three Parties, and Sir *George Barclay* was to have four out of each of the other Parties, and to seize upon the King's Coach, and to shoot into it, and kill the King, and all those that were with him: And this was to be done on the 15th of *February*, which was a *Saturday*, and the King usually went to *Richmond* on *Saturdays*. We had two orderly Men (as they were called) who were to lie at *Kensington*; to give Intelligence when the King and the Guards went out, the one was *Chambers*, and the other one *Durant*, a *Flemming*, I think, or I do not well know what Country-man he was; and *Durant* was to bring an Account when the Guard went out, and *Chambers* when the King went out, and when we had Notice that the King was gone, we were to go by three or four in a Party to prevent Suspicion, and we were to be dispersed in the several *Inns* about *Brentford* and *Turnham Green*. Sir *George Barclay* was to be at the King of *Bohemia's* Head; and we ordered a Man to give Notice to him when the King landed, and then he was to give Notice to us, and so we were to form our selves into our several Bodies, to take our several Posts as were agreed upon. I asked him, what he thought to do when the Matter was over, how we should dispose of our selves? He told me, we need not fear any Thing, but might go to Town and lie still, and that there would come a sufficient Number from Abroad ready to assist us. That 4 or 5000 *French* were to divert in *Scotland*, and the King would be near the *French* Shore with a sufficient Army. On *Friday* before the 22d, when it was to have been executed again, we met at the *Sun-Tavern* in the *Strand*; and there discoursed, for a matter of half an Hour, about the former Disappointment, and several in the Company were afraid the Design was discovered; but then I told them, if it had been so, sure we should have been taken up before now; upon which it was agreed, Then let us resolve upon it again to Morrow, and so it was resolved upon. Capt. *Charnock* said, he could not stay, because he should want some Men that were come up out of the Country on purpose. I said, I was afraid my Horses were sick, and could not be used in the Service, and Sir *William Perkins* thereupon undertook to furnish me, and told Mr. *Charnock* and me he had sent to Mr. *Lewis*, that belongs to the Earl of *Fewersham*, to procure some, having, as he said, promised so to do. I sent the next Morning to have a Note for two, by Mr. *Cranburne*, and he sent me a Note back again by *Cranburne*, that he had sent to Mr. *Lewis*, and Mr. *Lewis* said, he would help him to three Horses, with Saddles, Holsters and Pistols, and desired the List of my Men, which I sent him, and he sent it me back again with the List of his own, and then I shewed it to Mr. *De la Rue*, and we were preparing all Things for the Execution of this Design, and presently after News came, that the King did not go out that Day neither; upon which I said I would go out of Town, and I asked Capt. *Pendergrafs* to go with me, and we sent *Keyes* to bring Linnen unto us, but he did not come until the *Wednesday*, and upon the *Thursday* we were taken.

Mr. *Att. Gen.* Captain *Porter*, you mention several Consultations, at several Times and Places; who were present at any, and which of them? Were any of the Prisoners at the Bar there, and which?

Capt. *Porter*. There was Mr. *Charnock*, and Mr. *King*, at all of them.

Mr. *Att. Gen.* What do you say about *Keyes*? What was he?

Capt. *Porter*. He was my Servant a Year and a Half.

Mr. *Att. Gen.* Was he acquainted with the Assassination?

Capt. *Porter*. Yes, he was, and was present at most of the Consultations. He hired Horses for me to be employed in the Business. On the first *Saturday*, he hired two, I gave him Money for them, and he did know upon what Account they were hired.

Mr. *Att. Gen.* Was he present when News was brought of the Disappointment?

Capt. *Porter*. Yes, he was both Times.

Mr. *Att. Gen.* You are sure he was present then?

Capt. *Porter*. Yes, the second Time he said, that he met the King's Guards that were come back all in a Foam, and that he had spoke to one of my Lord of *Oxford's* Regiment, and that something was mutter'd, upon which he feared a Discovery.

Mr. *Att. Gen.* Did *Keyes* agree to be one of the Men, that should be concerned and act in this Business?

Capt. *Porter*. Yes, he did.

Mr. *Att. Gen.* What Quality is he of? What is his Profession?

Capt. *Porter*. He used formerly to help to dress me, and he was to look after my Linnen and Equipage.

Mr. *Sol. Gen.* Had he not been a Trumpeter? Was not that his Profession?

Capt. *Porter*. He was a Trumpeter, and used sometimes to entertain us with his Trumpet.

Mr. *Conyers*. You speak of a Meeting at the Sun Tavern in the *Strand* upon *Friday* the 21st of *February* where it was resolved to execute this Attempt upon the next Day.

Capt. *Porter*. Yes, there was such a Meeting.

Mr. *Conyers*. Was *Keyes* there at that Time?

Capt. *Porter*. He was not in the Room where we were, but he was in another Room in the same House, where I went out to him, and there was he, *Cranburne* and *Kenrick*.

Mr. *Conyers*. Pray what did you go to them for?

Capt. *Porter*. I went to acquaint them what was resolved upon; and I told them they were resolved to do it the next Day, to which they agreed, but that I thought my Horses would not be ready, but I hoped I should get some other.

Mr. *Con.* Pray, what other Discourse had you in that Company: With whom, and about what?

Capt. *Porter*. Mr. *Kenrick* came to me with his Arm in a String; either he had broke his Arm, or pretended so to have done. I then asked him for Mr. *Sherbourn*, whom he had mentioned before to me, as one that was likely to be concerned; He told me Mr. *Sherbourn* asked a great many Questions about the Design, which he did not think fit to answer; I thanked him for telling me so, and said I would not send to him.

Mr. *Cooper*. Pray, Captain *Porter*, give me leave to ask you one Question, Can you remember what

Number of Men *Charnock* was to provide for this Enterprize?

Capt. *Porter*. He promised seven or eight Men, some of which should bring their Horses out of the Country, others he would borrow or hire for them.

Mr. *Att. Gen.* Pray, Sir, was there any Body sent to take an Account of the Inns about the Place where this Assassination was to have been executed?

Capt. *Porter*. Yes, Mr. *Durant* was, and he did bring us an Account of the several Inns about *Brentford* and *Turnbam Green*.

Mr. *Att. Gen.* As to the List of Men, which you say you sent to *Charnock*, and he sent you back with a List of his Men, pray can you tell whose Hand that List of his Men was in?

Capt. *Porter*. I know Captain *Charnock's* Hand very well, and, to the best of my Knowledge, it was his own Hand, and subscribed *R. C.*

Mr. *Att. Gen.* Sir, you have given an Account of the Meeting the 22d at your Lodging.

Charnock. I was not there he says.

Mr. *Att. Gen.* First let me ask you, how came it that it was not put in Execution the 15th; for that you did not tell us before?

Capt. *Porter*. I tell you, Sir, it was because the King did not go out that Day, according as we had Notice, that he intended to do: *Durant* wrote first Word that the Guards were gone before, upon which I went for my Men, and about Noon I received a Note from Mr. *Charnock* that the King did not go out that Day.

Mr. *Att. Gen.* Pray what Name was subscribed to that Note?

Capt. *Porter*. *R. Robinson*, which was a Name he used to go by sometimes.

Mr. *Att. Gen.* And pray in whose Hand was that Note?

Capt. *Porter*. To the best of my Knowledge it was Captain *Charnock's*, I know his Hand very well.

Mr. *Att. Gen.* My Lord, if the Prisoners will ask him any Questions, they may.

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

Char. My Lord, in the first Place I desire the Judgment of the Court, whether he be a legal Evidence or no. I conceive he is not, and I hope your Lordships will think so too: For he makes himself a Criminal by his own Confession, and that of a very heinous Crime, and it is equal in my Judgment (and as I have been advised, who I must still say am ignorant in these Matters) as if he had confess'd it upon an Indictment, and then the Law can take no Notice of him as a good Witness. And if he were no legal Witness then, I take it by the same Reason he is no legal Witness now: For the Crime is the same, and it is an Acknowledgment in open Court.

L. C. J. Look you, Mr. *Charnock*, if it had been a Confession upon an Indictment, it would have been a Conviction, which would have had quite another Operation; but it not being upon an Indictment, it is no Conviction, and therefore he is a legal Witness, though he does acknowledge himself to be guilty of the Crime.

Char. Then, my Lord, he is looked upon as no good Evidence, in my Judgment, because he is a Criminal.

L. C. J. He is a legal Evidence, tho' he does confess himself guilty of the Crime.

Char. He owns himself a Partner in a bloody Design,

Design, and to convict me, he swears to take away my Life, to save his own. I cannot imagine why he should be accounted a legal Witness, that is a Party by his own Confession in such a Matter.

L. C. J. Pray, who can tell better what was intended and done in such a Conspiracy than he that was a Party in it?

Char. My Lord, he has forfeited his Life by his own Confession, and now he would by Swearing against me take away my Life to save his own.

L. C. J. Whatsoever Objections you have against the Credit of his Testimony, you may make what Use of them you can in the proper Time; but for any thing that yet appears, he is a legal Witness.

Charnock. My Lord, I know not how far he is a legal Witness, therein I must be governed by the Judgment of the Court; but sure it will take away from the Credibility of his Testimony, his own Acknowledgment of his being guilty of such a Crime. Tho' he may be a legal Witness, he cannot be a good one. And I hope the Gentlemen of the Jury will consider of it, when a Man comes to take away other Mens Lives to save his own, by accusing them of Crimes which he acknowledgeth himself to be guilty of.

L. C. J. Look you, Mr. *Charnock*, for that matter, it is so in all Cases of this Nature, not only in Cases of High-Treason, but of Robberies and Burglaries, and the like, where the Parties concerned are and always have been allow'd to be good Witnesses against their Accomplices in those Crimes. Will you ask him any Questions, Mr. *Charnock*?

Charnock. My Lord, here is another Thing, which, I apprehend, I have Reason to object against the Testimony of this Witness; he does not only swear to save his own Life, and take away another's to deserve the saving of his own, but there is in this Case Swearing to get a Reward, for there is a Reward of 1000 *l.* apiece promised by Proclamation, for the Apprehension of this Man and others. And not only a Pardon but the 1000 *l.* to any of those in the Proclamation who shall discover and take any of the proscribed Persons. Now, where a Man stands accused by Proclamation, and his own Life is thereby concerned, and a Reward is propos'd for any of the Conspirators discovering and apprehending the others, it is a hard Matter to admit any one that acknowledgeth himself guilty of such a Crime, to prove a Prisoner guilty of that Crime under those Circumstances. Besides, my Lord, I have known this Gentleman, and tho' he may have had an Estate, yet since I have Reason to suspect, and perhaps it may be very well known, that the Fortune he had is lavished away; to make up that Damage, he may be tempted to undertake this Way of Swearing. So I think he cannot be a good Evidence; and I hope your Lordship will think so too, and that he is to receive no Credit or Countenance before an honest Jury, as I doubt not these Gentlemen are that are to try us.

L. C. J. Mr. *Charnock*, do not mistake yourself, he is to have no Reward by the Proclamation unless he had come in voluntarily; and apprehended one of the others; for only those that apprehend any of the Persons named in the Proclamation, are to receive any Part of the Reward, not any of the Witnesses against any of them; the Reward is for the Apprehension, whether they be found guilty or not guilty.

Char. But still, my Lord, he cannot be a good

Witness, for it looks as if he was a Man that was willing to have become an Evidence, because we whom he has accused, particularly my self, were permitted to be taken, and then in the mean while he seems to withdraw, only that he might be taken as a Colour. For my Part, I know not but that it may be a Contrivance of his own, to be colourably taken up, because he is so willingly an Evidence, as the Jury may perceive he is.

L. C. J. It is certainly a very hard Matter, if not impossible, to discover Crimes of this Nature, if the Accomplices in those Crimes shall not be allowed to be good Witnesses against their Fellow-Conspirators.

Char. My Lord, I must submit to the Judgment of the Court that he is a legal Witness. But tho' I shall not press upon the Legality, yet I must say he is not a good Witness for all the Reasons that I have urged.

L. C. J. Nay, he is a very good Witness, if he be a legal Witness; but the Credit of what he says, as in all other Cases, must be left to the Jury, who are Judges of the Matter of Fact, and the Credibility of the Witnesses.

Char. My Lord, when Persons will own themselves guilty of joining in so barbarous a Crime as we stand indicted for, and accused of, sure there will be little Credit due to their Testimony.

L. C. J. His Credit must be left to the Jury, who are the Judges of it; now if you will ask no Questions, I must speak to the rest; Mr. *King* will you ask him any Questions?

Char. I speak this only in general; but I have some Remarks that I have made upon the Evidence that has been given, out of which, when I have told you of them, Questions may arise, which it may be fit for me to propose, and I shall desire your Lordship's Leave accordingly.

L. C. J. Look you, Mr. *Charnock*, you shall be heard all that you have to say, when your Time comes for your Defence, and to make what Observations upon the Evidence you please. But the Matter is now, whether you will think fit to cross-examine the Witnesses that are produced for the King, or to ask them any Questions?

Char. My Lord, I have taken some Notes of what has been said, and I desire I may make the best Use of them that I can.

L. C. J. You may make what use you will of your Notes, and make what Observation you will to make any Question you ask intelligible.

Char. My Lord, Capt. *Porter* in his Evidence hath said that this Conspiracy was in the latter End of *February*. Now I apprehend his Oath is not valuable upon this Indictment, because the Offence is laid the Tenth of *February*, and so his Conspiracy that he talks of, was after the Time laid in the Indictment.

L. C. J. I believe you mistake him, Sir.

Mr. *Att. Gen.* If he pleases to ask him, I suppose he will find himself mistaken.

Capt. *Porter.* My Lord, I say the latter End of *January*; if I said *February* I mistook.

L. C. J. And so it must be; for the two and twentieth of *February*, was to have been the second Time for the Execution of the Design, and several of the Conspirators were taken the next Day.

Char. My Lord, I desire Capt. *Porter* may be asked, where it was, and when, that I brought Sir *George Barclay* and Mr. *Holmes* into his Company?

Capt. *Porter.* It was the Beginning of *February*,

at my Chamber in the same House where Mr. *Charnock* lodged, and I was then sick of the Gout.

Char. My Lord, I declare it, I know nothing of it. Then he says we had several Meetings, particularly at three several Taverns; by what I can observe, there is no Time at all, nor at any of those three Places that there was any Sort of Conspiracy for the Assassinating of the King.

L. C. J. Yes, he says, that you met at those Places, where you did consult about Assassinating of the King, and the Ways and Methods how it should be carried on, and that you was at those Consults; for Mr. Attorney asked him particularly, Whether you that are the Prisoners were there? and he says, Ay.

Char. He says, that we met at the *Nagg's-head* Tavern in *St. James's-street*, where it was agreed that he and *Knighly* should go and view the Ground, to see which would be the most convenient Place; and that they came the next Night to give an Account according to our Desire. Now, my Lord, I was there at Dinner, and Capt. *Porter* did come in at Night; and if you do remember, Captain, you could not pull off your Boots well, and complained of the Gout, and was very peevish; and said you had been at *Mortlack*, and had met with a Friend there; That is all that I know. There was Capt. *King* and Mr. *Knighly* indeed; who sent for some other Cloaths, but it cannot be pretended that there was any Crime transacted at that Time; for you cannot imagine, that I would have to do in any such Matter amongst Porters and Messengers that were to go on common Errands.

L. C. J. I will only put you in a right Method; You may ask what Questions you will now; but you are not to make your Observations upon the Witnesses to the Jury till the King's Evidence be given, for then your Time will come for your Defence.

Char. My Lord, it may be I may forget then what may be proper for me to insist upon. If your Lordship will please to allow me a Solicitor to put me in Mind, I should be the better able to manage my self.

L. C. J. You may be helped by your Notes; but you have been told over and over, we can allow no Solicitor.

Char. My Lord, Capt. *Porter* says, I told him there was such a Commission brought by Sir *George Barclay* from King *James*; he says indeed, I told him I never saw it; and I do not know how I could, because I do not believe there ever was any such, and it is improbable there should be any such.

L. C. J. Mr. *Charnock*, I would not hinder you from saying any Thing that would be proper for your Defence, nor will interrupt you when your proper Time comes.

Char. My Lord, what I say is as to what Captain *Porter* has evidenced, and I will make Observations upon one Part of the Evidence after another, as it is given.

L. C. J. But that is not regular, according to the Course of Evidence, and will introduce a Confusion. You may ask any Questions of the particular Witnesses, as they are in Order, if you will; but your Observations, as to your own Defence, you must defer, till the Witnesses are heard, that so the Evidence may be intire, and your Defence intire; therefore if you will ask him any Questions, say so.

Char. No, my Lord.

L. C. J. Then Mr. *King*, will you ask him any Questions?

King. Capt. *Porter*, Did I mention any Thing, or was there any Discourse when you and I, and Mr. *Knighly*, as you say, went out to view the Ground, about killing the King?

Capt. Porter. The Day before we went, we dined together, and it was at the *Nagg's-head*, and he asked if I was to meet *Knighly*, and go and view the Ground, in order to settling the Design, which was then talked of, and consulted about; and Captain *King* desired to go with us, and we lay at *Knights-bridge*; and when we were about it, we discoursed several Times of the Nature of the Place; and Captain *King* did not approve of the Place on this Side the Water, but liked the Ambuscade better which was to have been on the other side the Water.

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

King. No, my Lord.

L. C. J. Well then, What says the other Man, *Keyes*? Will he ask him any Questions?

Keyes. My Lord, I have had no Body to advise me, no Council; I was only a Servant to Captain *Porter*.

Mr. Att. Gen. If then they have done with him, before he goes, I desire to ask him one Question. What Discourse, or Treaty, or Consultation about this, or such like a Matter, there was the last Winter, and between whom?

Capt. Porter. There were several Meetings and Consultations the last Winter between Capt. *Charnock*, Sir *William Perkins*, and myself, about such a Thing; and we thought that the quickest Way to bring in the King, and restore him to his Crown, was by knocking King *William* on the Head; and there were several Meetings about the Ways of doing it.

Mr. Att. Gen. Who else were there at those Meetings?

Capt. Porter. There were several others in Company.

Mr. Att. Gen. But the Meaning of my Question is, who of the Prisoners?

Capt. Porter. I cannot remember any but Capt. *Charnock*.

Mr. Att. Gen. Pray will you acquaint us with the Reason why it was not done at that time.

Capt. Porter. We wanted a Commission from *France*, which we thought was a necessary Authority for us to act by.

Mr. Att. Gen. You speak of a List that was brought you again from *Charnock*, with the Addition of those Names that were his Men; pray at that time was there no Discourse about a particular Gun that was somebody's, and that one in the Company was to have, to be employed in this Service?

Capt. Porter. My Lord, I said, I had a Musquetoon that carried 6 or 8 Bullets, that Capt. *Pendergrafs*, who was one of the Four out of my Quota, that was to go with Sir *George Barclay*, should have if he pleased.

Mr. Att. Gen. Capt. *Porter*, I would not lead you, but were there any particular Directions given, and what, touching the particular Employment of that Gun?

Capt. Porter. I remember I told Capt. *Pendergrafs*, if the Coach made any great haste to get away, he might easily hinder that, by killing or laming one of the Horses with that Gun.

Mr. Att. Gen. Pray recollect yourself, Sir, was *King*, the Prisoner at the Bar, present at that Discourse?

Capt.

Capt. Porter. Capt. King was then in my Room in Maiden-lane, where I then lay, being removed from my Lodging at Norfolk-street.

King. Do you say that I heard any such Discourse?

Capt. Porter. I cannot say you heard it, but you was present then.

Mr. Att. Gen. Was there not some Discourse about a Defect of the Numbers that were appointed, and expected to join in this Thing?

Capt. Porter. My Lord, I told you I wanted a Man, and that was Kenrick, who had his Arm in a String; and Mr. De la Rue brought one that I knew not, and some of the Company went to the Blue-Posts to tarry there whilst I came to them, and Capt. King was present when the News was brought us of the Disappointment, and then I resolved to go out of Town.

Mr. Att. Gen. The next Witness, my Lord, that we call is Mr. De la Rue, and we desire he may be sworn. (Which was done.)

Mr. Sol. Gen. Mr. De la Rue, we would desire you to acquaint the Court and the Jury, what you know of any Design or Conspiracy to Assassinate the King, when it began, how it was carry'd on, and by whom, and by what Methods?

Mr. De la Rue. My Lord, this Conspiracy hath been carrying on a great while, for some Years: And it originally came from Col. Parker, especially as to my Knowledge of it; and that was five or six Years ago, at St. Germain's, when I was there: He propos'd it to me, and said he would propose it to my Lord Melfort, who was King James's Secretary in France. Two Years after, he came over into England, it was a little before the Business of La Hogue, and he would have had me come over into England with him; upon which I apply'd myself to my Lord Melfort, to know whether I should come over hither yea or no: My Lord Melfort advis'd me to stay there awhile; for, said he, you will find there is something a doing which will please you. But nothing being done, after that I came to England, and suffer'd a very tedious Confinement here. I became acquainted with Mr. Charnock and Capt. King abroad; I have been with Mr. Charnock, Mr. King, Mr. Porter, Mr. Goodman and Col. Parker, here in Town several Times, and at several Places. And now I come to what was a doing the last Year. In the Months of January, February, and March, till the King's going to Flanders, there were several Conferences, and Consultations about this Matter, between Sir William Perkins, Capt. Porter, and others; I cannot say that ever I was in Company with Goodman at that Time, when we talk'd of any Thing of this Nature. But Capt. Charnock carried me to Sir William Perkins, whom I had never seen before, to the Mitre-Tavern in St. James's Market, and there I was asked, if I would be concern'd in the Easing us from the Yoke that then lay upon us. I asked which way it was to be done, for I could not understand what was meant, but the taking off the King, and therefore I asked which Way it was to be done. Then they asked me, whether I knew where Capt. Stow lived; and they employ'd me to go to his Lodgings, and appointed me to meet them at the Star-Tavern in White-Friars. They were there before me, when I had met with the Captain, and brought him thither; but that they thought not a fit Place to consult in, and therefore they went to Bromfield's Coffee-house, and there they did talk something of it;

but they took one another aside, and talk'd privately amongst themselves, which I took some Observation and Notice of; and upon Enquiry I was told it was because there was an old Gentleman in the Company, whom they did not care to acquaint with any Thing of the Matter, because he was too Old to have any Hand in it, and they would acquaint none with their Resolutions, but those that were to be Actors in the Design. My Lord, I was not often in their Company after that, but I heard from Time to Time, how Matters went on, and I heard from Capt. Porter particularly, that they had been at Turnham Green and liked the Place very well, and that the Design was to take the King off, or else to hurry him away to Runney-Marsh alive, and carry him into France.

Charnock. Surely this is not any Evidence, because Captain Porter only spoke of it, and it is by Hear-say, and we are not concern'd what other People talk of.

Mr. Att. Gen. Pray who was in the Room, when the Proposals were made?

De la Rue. What Proposals do you mean, Sir?

Mr. Att. Gen. At the Tavern in St. James's-street.

De la Rue. At the Coffee-house there was a little Talk of it between themselves; but they would not talk much, they said, because there was an old Gentleman there, who was too old to engage, and they would have none but Actors; that I understood to be the Reason why they talk'd one with another so: But I taking notice of their Privacy, whenever I ask'd Charnock of it, he refer'd me to Captain Porter. But withal he told me several times, that he believ'd it would come to nothing. The Design was to carry the King alive into France, if they could; if they could not take him alive, then to assassinate him, and pretend it was done by a Random Shot. He told me also, they had sent to King James for a Commission to execute this Matter, and to authorize them to carry the King into France, if they could take him; and then if they could not, they agreed to excuse themselves, as I said, by pretending that he was killed by a Random Shot. It should seem (as I understood) the Commission was delay'd a long Time, and then they resolv'd to execute the Design without a Commission; and within a few Days before the King was to go to Flanders, I was told, all was ready. But then they wanted a Ship to carry him off when they had taken him; and there met at the Rose Tavern, as I remember, Captain Porter and Sir William Perkins; but I cannot tell whether Mr. Charnock was there or not. I ask'd them if they had concluded upon the Matter; they told me, it was concluded upon, and, as I remember, they told me Captain Charnock, or Robinson (for he went by both Names) was to have a Recommendation to some Body at Deal; and there they were to hire a Vessel, and I was ask'd whether I would go with him: I told them, I would. But then the King went a little after for Flanders; and they had no Time to compleat the whole Affair, and so the Business was put off, till the King's Return this last Winter.

Mr. Sol. Gen. Well, What say you to any Thing since?

De la Rue. This Year in the Months of November and December, Mr. King, the Prisoner at the Bar, told me, that there would be a Major General come over from France, and that there was a Man of Quality about the Town, that offer'd to dis-

burse two or three Thousand Pounds, if King *James* would give Order for it: And this was, as I suppose, to buy Horses to be engaged in this Matter, and he would tell me more a while after. A Month or two after, he told me he was out of Money about it, which could not be had: I was brought in by Capt. *Porter*, and they communicated this to me, about the latter End of *January*, or the Beginning of the Month of *February*; they told me there was a Major-General come over from *France*, and there were a great many People come over besides; and there would be something speedily put in Execution, which would be for the King's Service.

L. C. J. Who told you this?

De la Rue. Captain *King*. The next Time I saw him, he told me he wanted a Saddle with Holsters, it was the 7th of *February*, on *Friday* Night, for he was to go out of Town with some Friends, about something in order to this Affair; he desired me to lend him one; but I had none, I told him, but I would write to Captain *Porter*, to procure one for him; and he told me he was to go with *Knighly*, *Durant*, and others, to see whether the King went to *Richmond* or to *Hounslow*; because they were told the King had altered his Journey from *Richmond* to *Hounslow*. He afterwards told me, he went out with his Friends, and the *Sunday* Morning he comes to me, and told me, there was the rarest Place for the Execution of the Design against the King, that was possible to be thought of; if they should have studied never so long, and desired a convenient Place, they could not have had such another. It was within a Quarter of a Mile of the King's House at *Richmond*, in a Lane that leads to the House, and so narrow, that the Officers and the Guard could go but very few a-breast, hardly broad enough for a-breast; and there was to be an Ambuscade behind the Park Pales, and the other Side was the River; and, says he, he will have all the Pales sawed so far, that when the King's Coach comes into the Place, the Pales shall be broke down, and we will have a Parcel of Horse ready, that shall be sure to do the Work with the Guards; and when we fire, they shall take Notice to make their Attack. *Durant* desires to command this Party; and they were to be dressed in Country-Mens Habits, that they might the less be taken Notice of: And he said 10 or 12 Men on the other Side would beat 100 of the Guards in that Consternation, especially we having the Park Pales before us to defend us. He asked me if I would be one of the Ambuscade. I told him, I had rather be one of those on Horseback to secure the Retreat, and I would rather attack the Guards. It was late, and so *King* and I went Home; and the next Day I went to see Captain *Porter*, when he was ill of the Gout. This was *Sunday*, the 9th of *February*; we did go to *Porter*, and he was in his Chamber, and two or three more, and they were talking of indifferent Things: He asked for Captain *Charnock*, and they said he was gone out; but he takes out Capt. *Porter* into the Yard to talk with him by himself; and what he said to him, I suppose was to tell him what he had told me before: Says Captain *Porter* to him, I have taken care of a Horse for you; we will ride out on *Tuesday* next to see the Place. Mr. *Porter*, and Mr. *King*, and, as I was told, Mr. *Knighly*, went to *Knightsbridge*, and lay there all Night; and the next Day they went out of Town to view the Place. I was at *Porter's* Lodging on the *Monday*,

but I was told there by *Keyes* and his Landlady, that he lay that Night at the *Swan* at *Knightsbridge*, and was to go out the next Day. On the *Tuesday* Morning I was coming back from *Kensington*, which was the 11th of *February*, and when I was coming along the Street I met with *Keyes*, and ask'd him where he was going? Says he, I am going to Sir *William Perkins* with a Lorrying Trumpet; for it seems he was raising a Troop of Horse, as *Porter* told me afterwards; and within a little Time afterwards, I saw Captain *Porter* at the End of *Norfolk-street*, and he told me they would all be together at the *Nagg's-head* about 7 or 8 a Clock. I went, and expected to be admitted, and asked if Captain *Porter* was there; they told me he was above, but there were several other Persons with him; and there was a Coach at the Door which had brought two *Scotch* Gentlemen, of which I thought Sir *George Barclay* was one, whom I heard to be in Town. I desired to speak with Captain *Porter*; they told me he was busy above in Company, and could not be spoke with; by which I saw they were not willing that I should come there amongst them, which I took very ill. Captain *King* came out to me, and was talking with me at the Door, and Captain *Charnock* comes with another to the Door in a Coach: I saw him, but when, I suppose, he perceived me, he pulls himself back into the Coach, as if he had no Mind to be seen; but finding he could not avoid it, he comes out, and asks me if I would not go up Stairs into the Company? I told him, No, I hear they are busy, and because I was not invited up at first, I would not trouble them. I was then thinking of going to my Lord *Shrewsbury's* Office immediately, to get some Messengers immediately to apprehend them; but then I thought I had not enough to discover their Intentions, and make it out against them, but I should have one Time or another. I did not see Captain *King* till *Saturday* afterwards at 12 a Clock, and I was then at *Charnock's* Lodging, to see whether he was gone out, that I might be able to give the King the better Account; they told me, he was at the *Blue Posts* in *Spring Garden*: I would not go and dine there, but went home, and afterwards went thither; and *King*, told me, the King did not go out that Day; I told him that I heard so, and would come and see them after Dinner. At this Meeting at *Spring Garden* I saw *Keyes* was one, and *Kenrick*, and *Sherbourn*, and *Bryerly*, and two that I did not know. This was *Saturday* the 15th. On *Sunday* the 16th, I met Mr. *King* at *St. James's-street*, and we went thence to the *Dog Tavern*, and there we supped together, and he told me Sir *George Barclay* had brought over Sixteen of the Guards, and two Officers, and a Brigadier, and a Sub-Brigadier; and he told me the Day before, that he knew some of them, and was going to meet them; for they were *en Cachet*, as he called it in *French*, and did not stir abroad without Leave, and were subsisted at the Rate of 4 s. a Day, as the Guards were here. He told me, he had been lately with them a drinking. I asked him whether they went; he told me, to the *Bear Tavern* in the *Strand*; and he told me Mr. *Charnock* and Captain *Porter* had several Conferences with them to contrive how to take off his Majesty, to Murder and to Assassinate him. And he told me —

Charnock. My Lord, I desire he may be ask'd whether he was at the *Bear Tavern* with these Men.

L. C. J. What he says about this Matter; is what King told him.

Char. That is not Evidence, my Lord.

L. C. J. That is true, not to affect you, but only Mr. King.

De la Rue. Captain King told me besides, that Mr. Charnock did not argue like a Soldier, and reflected upon him for it; for he said, he seemed to desire to have his Post in as little Danger as was possible. And for Mr. Porter, he did not approve of him; for he told me he had as much Fat in his Brains, as he had in his Body. I remember those Words he said; and that what he and Durant had proposed, was rejected, that was about the Ambuscade: For it was said, that after all their Consideration, Sir George Barclay was not sure of Horse enough to carry them off afterwards; wherefore they resolved to Assassinate his Majesty in the Lane coming from Brentford to Turnham-Green; and Sir George Barclay was to command Eight Persons to assault the King, and those that were in the Coach; and Mr. Charnock was to attack the Guards in the Rear; and one Rookwood, with a Party that came from France, and Captain Porter, in two Wings, were to attack the two Sides of the Guards. I remember on Sunday Night I asked him if he had a good Sword, for I wanted one; and I said to him, Where is your Sword-Cutler? He told me, On the other Side of the Way; and he was sent for to bring a good Sword, and I chose one that was but a little Blade, which he thought would do best, and was ridiculing Captain Charnock's Sword, as being too broad, and of three or four Finger's Breadth. I liked his Sword, and spake to the Man to get me one like his; and he said a Tuesday, that he had sent him to my Lodging, but I had not seen him. On Tuesday, the 18th of February, I went to him, and asked him, whether I should see him in the Afternoon? He told me, No; for he was to go out with Knightly to buy Arms. Shall I see you then at Night? said I. I cannot tell whether you can or no, said he. I cannot remember any Thing more that passed upon the 18th. But I spoke to Mr. Charnock, whom I met near his Lodging in Norfolk-street, and desired to have a Word with him towards the Water-side: I asked him, how the Matter in Hand went; Says he, I find People that were sanguine, and hot, and forward, are now grown cold: I believe the King has Notice of it, and the Thing has taken Air; for he has not been abroad a good while. He was not abroad on Saturday, as he usually does go: and I hear that upon Friday Night it was agreed in Council, to take up several People. Said I, Does the Business go on? No, says he, I believe it is off, because we apprehend the Thing has taken Air; besides Things of such a Nature are not to be communicated to so many, nor delayed, both which are very dangerous; not above Three People should know of it. Said I, How then would they get enough for the Execution? If they be not acquainted with the Design, they will never engage. Well, said he, I believe they are quite off of the Thoughts of it; but you may depend upon the main Business, that will be very speedily, which was the Landing of King James. While I was talking, comes Bryerly from Captain Porter; and after him, came Captain King in a Coach, and asked me, if I would go Home with him? I told him, No, I was not going Home, but was going into White-

Fryers, and I took my Leave of them; and nothing pass'd more, that I remember, at that Time. On Wednesday Morning I went to Capt. Charnock's, thinking to learn something how Matters went on; but he was closer, and more reserv'd than before. I asked him to lend me a good Sword. He said he had none, but Mr. Porter had a good broad flaming Sword, which I thought to be the Sword that Capt. King mentioned to be his: And we had little Talk that Day; for I had Business to do, and I left him pretty soon on the Wednesday. Next Day after, I went to Captain Porter's Lodging, who was removed from Norfolk-street into Maidenhead-lane, to one Brown a Surgeon's, and very few People knew where he was, but those that were of the Party in this Business; and I went into another Room, into the Dining-room, because his Room had not a Fire, and he came in to us, and I told him what I had heard from Mr. Charnock, that the Thing was quite off. He told me, he heard nothing of it, but found all People that were concerned, as resolute for the Execution of it, as ever they were.

Char. My Lord, he speaks of what Captain Porter told him; that is nothing to me.

L. C. J. No, it is not, nor will it ever be urged against you; it is but Hear-say from another. Go on, Sir.

De lay Rue. I stayed there but a short Time: But, Capt. Charnock, since you speak of this Matter, I only say, I told Captain Porter what you told me, that you thought they were off of the Business, and that it had taken Air; and I asked him what he thought: Says he, I know nothing of any Alteration; I believe they are as resolute as ever they were: For they fully purpose, that if the King goes abroad on Saturday Morning, we will have all ready. And he told me how it was to be done. He desired me to lie with him on Friday Night, that we might prepare every thing against the next Day: But I could not do that; and therefore he bid me send at Nine, or thereabouts. I told him I would be at my Lodging about that Time, if he would send to me, to be sure about seven or eight a Clock in the Morning. About that Time in the Morning Captain Porter sends to me again; a Servant-Maid came to me, for the Black that used to attend him, used only to go abroad at Nights, and was not seen to go in and out a-Days, for Fear of being taken Notice of; because, as I said, none but those that were of the Party knew that he lodged there. I dress'd myself, and went to Captain Porter's Lodging. He was in Bed, but presently he rises, and told me in French, *Toutes Parties sont prests*; All Things are ready: And when he was up, he put on his Boots; and by and by, in comes Mr. Kenrick; and after him, in comes Mr. Keyes; and after him, Mr. King and Mr. Pendergrafs: and Captain King takes Mr. Porter into another Room, and there they were whispering a while, but I did not hear what they said; but King told me afterwards, he did not observe that I was in the other Room. The Question then was asked of Cranbourne, When he saw Sir George Barclay? He said, he just came from him: And then Captain Porter takes a Pen and Ink, and writes down a List of the Persons that he was sure of, and puts me down first. What, says Mr. Pendergrafs, are you the Captain? I told him, I believed I was in before the rest of the Company that were there. Then Capt. Porter sends Mr. Cranbourne with the List

List to Captain *Charnock's* Lodgings; and in the mean Time when Mr. *Cranbourne* was gone, Capt. *Porter* told me, that Mr. *Pendergrafs* was to be one of the Eight under Sir *George Barclay*, that were to Assassinate the King; And now, says he, I am going to lend him a Gun that will carry six or eight Bullets. Says Captain *King* thereupon to him, I hope you will not fear to break the Glass Windows. No, says he, I will have a Hand or a Finger in the Business. By and by came in News, that *Chambers*, one of the orderly Men, as they called them that lay at *Kensington* to give Intelligence, had sent Word that the King was to go abroad, and the Guards were gone out. *Durant* was to stay last, to see when the King went out. *Chambers* had been there all the Week. Mr. *Cranbourne* came back, and told Captain *Porter*, that *Chambers* had sent to Captain *Charnock*, that the King would go out that Day. At which all the Company seemed joyful. Captain *Porter* told me likewise of several Disappointments that they had, both as to Time, and as to Men; particularly that one Major *Lowick* had engaged to bring two Men, and that one of them had told his Wife, that he was to mount for King *James's* Service; and she went and cried after him when he went to the Coffee-house; and so he was forced to abscond, and so we lost three: And also told me, that *Kenrick* said he had broke his Arm; and when Captain *Porter* asked for *Sherbourne* whom *Kenrick* had talked of, he said he asked so many Questions that he durst not trust him: so that they had lost Five or Six in the whole: And there was one *Plowden* that they were disappointed of besides, whom they had very much reckon'd upon. When Mr. *Cranbourne* brought back the List that Captain *Porter* sent to Captain *Charnock*, there were added to it several Names, which Captain *Porter* said were the Names of the Men that were to be under Captain *Charnock*, and that it was his Hand; and at the Bottom there were the Letters R. C. which I thought stood for *Robert Charnock*. The Names made up about seventeen or eighteen: I told him, I thought there had been more. He told me, there would have been more, but that they were under some Disappointments, as I told you before. He asked me to get him some Men to supply the Defect, and I propos'd some Names, to make him believe I was hearty in the Business: We agreed to go to the *Blue-Posts* in *Spring-Garden*, and I went under Pretence to get the Men, and came and told them, I had got them, and I found Mr. *Pendergrafs* there, and I took Mr. *Keyes* thither, and Mr. *Porter* sent Mr. *Cranbourne* to Captain *Charnock* several times; by and by Word was brought that *Chambers* had sent Word, the King would not go abroad that Day; upon which they all look'd very blank: And *Keyes* came two or three times in, and went out again; he was several times up and down, at last he came and told us, the Guards were returned from *Richmond* foaming; and he went down again to learn further Intelligence, and within a little Time came and told us, the King's Coach was returned to the *Mews Gate*, and the People very much wondred what should be the Reason that the King did not go a Hunting for two *Saturdays* together as he used to do. They seemed to be in a very great Consternation at this News, and Captain *Porter* said he resolv'd to go out of Town, and asked me if I would go: I told him, No; I had a Suit in *Doctors Commons*, and I

would go to my Proctor and Lawyers to consult about it. Then he asked Mr. *Pendergrafs* to go with him, which he agreed to do; and Captain *Porter* sent *Keyes* up to give the rest of the Company an Account, that there was no Occasion for them then, and so they dispersed.

Charnock. Did I go out of Town, can you tell?

Mr. *De la Rue*. Now you put me in Mind, Mr. *Cranbourne* brought a Message from you about that Time to Captain *Porter*, that Sir *George Barclay* desired to speak with him at his Lodgings. Captain *Porter* was then apprehensive of *Bailiff's* meeting with him; and, says he, he know this, I wonder he would not come to me. But he did not go to him, but resolv'd speedily to go out of Town; and *Keyes* was to give an Account where he was in the Country, that if Occasion was, he might be sent for. This is all I can at present recollect, only, I beg your Pardon, I remember, there were several disloyal Healths drunk in the Company, at several Times, as the Restoring the late King, the Health of the Prince of *Wales*, the late Queen, and the *French King*; and particularly, I remember, when the News of the Disappointment was, Mr. *Porter* took an Orange in his Hand, and squeezed it, and gave it into the Hand of the next Person to him, whom he drank to, and began a Health to the squeezing the rotten Orange; and said, Though we are disappointed one Day, I hope to have another: And *Keyes* was at Dinner with them all the Time, and every Body drank it, I did not see any Body refuse it, but it went from one to another quite round.

Mr. *Att. Gen.* Pray, who were there at that Time?

De la Rue. All the Company pledged the Health, and Mr. *Keyes* was there.

Charnock. Pray was I there?

De la Rue. No.

King. Was I there?

De la Rue. No, there was none of the Prisoners, but Mr. *Keyes*, who belonged to Mr. *Porter's* Party; Mr. *King* for his Part belong'd to Sir *George Barclay's* Party.

Mr. *Att. Gen.* My Lord, before we go to another Witness, I desire to know whether the Prisoners will ask this Witness any Questions.

Char. You say, there was a Note of Names sent by me to Captain *Porter*; Pray, do you know my Hand-writing?

De la Rue. I cannot say I have seen you write, or that I saw you write that; but I have seen your Writing several Times, and I believe it to be your Hand.

Char. Why so, have you any of my Writing?

De la Rue. I have received several Notes from you, which I believe are your Writing.

Char. But you do not swear, that they were my Writing, or that this was my Writing.

De la Rue. I tell you, you have sent several Notes to me at several Times, and you have own'd the Messages came from you, and I do believe it was your Hand-writing, because it was like the rest: and Captain *Porter* told me, it was your Hand-writing.

Mr. *Att. Gen.* Pray did Mr. *Keyes* use to sit down at Table with Mr. *Porter*?

De la Rue. Yes, in all Companies he was treated as familiarly as a Companion, and no ways as a Servant; and dined and supped at the same Table with the rest.

Mr. *Att. Gen.* What was done after that the News

News was brought of the King's not going abroad, and Captain *Porter* resolving to go into the Country?

De la Rue. When Captain *Porter* was gone, the Company broke up; and away goes I to Captain *Charnock*, to see him, about four of the Clock in the Afternoon. When I came there, his Landlady told me there was a great deal of Company: But I desired her to go in, and tell him that I was there. She did so; and he sent and desired me to come in. I did so, and I saw several Persons there. There was one *Douglas*, and one *Trevor*, and four Troopers of my Lord of *Oxford's* Regiment, and a Trumpeter that was his Servant in *Ireland*, when he was a Captain in *Parker's* Regiment; I know Captain *Charnock* was a great Croney of *Parker's*, and he sent Letters by me to him: I have seen some of the Letters that *Parker* sent; and they were drinking the same Healths as were drunk before at the *Blue Posts*, to the restoring King *James*, the Queen, the Prince of *Wales*, and the Grand Monarch (as they called him) the *French King*.

L. C. J. Who was in Company then?

De la Rue. Mr. *Douglas*, Mr. *Trevor*, four Troopers of my Lord *Oxford's* Regiment, one *White*, one *Lowthorp*, and one *Mason*, whom I know when I see very well; Mr. *Charnock*, one Day in the Summer, asked me to go and drink a Bowl of Punch, which I was unwilling to do; but he must needs press me, and he carries me where *Mason* and *Lowthorp* were, at the *George Inn* in *Piccadilly*; whence we went to the Prince of *Orange's* Head, and Captain *Charnock* spent in Wine and other Liquors upon them a great deal of Money. This was half a Year ago in the Summer Time, but I do not remember that I saw those two, *Lowthorp* and *Mason*, afterwards, till the 22d of *February*.

Mr. Att. Gen. Is this all that you can say as to the Prisoners?

De la Rue. This is all at present that I can recollect.

Mr. Att. Gen. Then for the Satisfaction of the Court and Jury, give us an Account when you first made a Discovery of this Conspiracy, and in what Manner, and to whom.

De la Rue. The last Year I had discovered it if it had come to a Head, and been ripe enough to have been put in Execution; I did then design to acquaint the King with it; but it coming to no Head then, I deferr'd troubling the King with it: And now this Year I designed (had the King gone out the 15th of *February*) to have prevented any Mischief, but they had Notice that he was not to go: But my Way was, to have put them all into the King's Hands, by getting two or three General Officers to be acquainted with it; and dividing some of the Guards into several Parties in the Lanes between *Brentford* and *Turnham Green*, and so have surprized them and their Horses in their several Inns that they were quartered in. But upon *Monday* the 17th of *February*, lest they should alter their Resolution, and I should happen not to be acquainted how it was to be done, I went to a General Officer of my Acquaintance, that is, Brigadier *Lewson*, to acquaint him with the Matter; but he was gone out of Town with Colonel *Fitz Patrick* and another: I went then to *Durant's* Lodgings for a Colour, and it was told me, he had been out all Night. I went again to Brigadier *Lewson's*, but he was not in Town, and I left Word for him, that the next Day I would wait upon him, and desired he would not

go out till I came to him. I went, he was not then at home, but I afterwards met with him, and acquaints him with this Business, and begs of him to acquaint the King with it that Day, which he told me he would. He asked me which Way I purposed to put them into the King's Hands. I told him the best Way and safest for me, was for his Majesty to go out on the 22d, for the Party that was to execute this Design, were not to go out of Town till the Afternoon, to be at *Brentford*, when the King came back from Hunting, and that they should have two or three Troops of Horse by Parties to have seized them and their Horses in the several Inns and Publick-Houses, where they were dispersed. He said, it was not safe to run that Hazard, but he would offer it to the King, and let me know his Mind. He sent to me the next Day, and told me, he had acquainted the King with it, who desired to know who they were that were concerned in it; then I gave him the Names of those that I knew, and where they lived. I dined with him on *Thursday*, and told him what had passed on the *Wednesday* Morning between Captain *Charnock* and I, and what *Porter* said about it on *Wednesday* Night; and after Dinner he said he would go again to the King and acquaint him with it; and that I should come to him on *Friday* Night, which was the Reason I was not there with Captain *Porter*, where Sir *George Barclay* and they were together; for I went to the Play to pass away the Time. When I came home to my Lodging, I found there were a Couple of Letters from the Brigadier, to whom I went, and he told me, the King was desirous to see me: I told him I would wait on him to the King with all my Heart. I went with him to *Kensington*, and was introduced to the King by my Lord *Portland*, where I think I told the King what I have told the Court now.

Mr. Att. Gen. What Day do you say it was you discover'd it to the King?

De la Rue. Brigadier *Lewson* acquainted the King upon the *Tuesday* Night before, and that had been done the Day before, if I could have met with him; but it was *Friday* Night that I was with the King.

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

Char. No, my Lord, I do not think that any Thing he says against me is material at all.

De la Rue. My Lord, I remember one thing more; that upon *Tuesday* Night Mr. King told me he had my blue Coat on.

Mr. Att. Gen. Have you any thing more to say as to *Keyes*?

De la Rue. *Keyes* was the only Man that told me of the Meetings.

Char. Where was it that you say I pull'd myself back in the Coach?

De la Rue. It was at the *Nagg's-head* in *St. James's-street*, and he came out of the Coach and asked me to go up; but I took it ill to be refused before, and because I was not invited up at first, I refused, and said, I had Business elsewhere, and went away.

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

Char. No; yet I think I would ask him one Question more. You say, Sir, I carry'd you once to the *George Inn* in *Piccadilly*, where there were *Lowthorpe* and *Mason*: Are you sure it was the *George Inn*?

De la Rue. Yes, sure.

Char.

Char. Are you positive it was the *George Inn*?

De la Rue. I believe so, I took it to be that Inn.

Char. You did swear it positively, that it was the *George Inn* before.

De la Rue. I saw those two Men since, which was on *Sunday* the 23d, at *Kensington*, and they said they did quarter at the Inn in *Piccadilly*, where you carried me to them.

Char. Pray, whereabouts is the *George Inn* in *Piccadilly*?

De la Rue. The Inn that I speak of is about the Middle of *Piccadilly*, upon the Left-hand.

Char. There is but one *George Inn* in all *Piccadilly* that ever I heard of, and that is at the further End, there is no such Sign in the Middle.

L. C. J. He is not positive as to the Sign, but as to the Place.

Char. I appeal to every Body, if he did not swear before positively, that it was the *George Inn* in *Piccadilly*.

De la Rue. I do say, it was to an Inn in *Piccadilly*; and *Lewthorpe* told me on *Sunday* the 23d at *Kensington*, they were quarter'd at an Inn in *Piccadilly*, I take it to be the *George Inn*, if it be not the *George*, I know not what Sign it is; but I think it is not very material what the Sign was.

Char. Yes, it is all material to us; and I think it is very material for every Man to take care how he forswears himself.

L. C. J. No, it is not forswearing himself, when he is not positive as to the Sign.

Char. But I hope every Body considers, that he did swear it was the *George Inn*, and there is no such Inn there.

De la Rue. This I did not think of, to take so much Notice of it then, as to mind what the Sign was; 'twas you carried me thither.

Char. It was your Interest to mind every Particular; for, according to your own Words, you have been a *Trapanner* half a Year before.

De la Rue. I have told you already, I intended never to have been an Evidence; but to put you into the King's Hands, and prevent the Execution of the Design, and I begg'd of the Council to be excused from given any Evidence, but I could not by any Means get myself excused.

L. C. J. Will Mr. *King* ask any Questions?

King. No.

L. C. J. Well, what say you, *Keyes*, will you ask him any Questions?

Keyes. My Lord, he says I drank the Health to the Squeezing of the *Orange*, and the other Healths: I was not in the Room while any such Healths were drunk, nor did I sit down while I was there, nor do I know any thing of the *Horses*, upon my Word, that he speaks of.

Mr. Att. Gen. Then if they have done with him, there is a noble Lord, whom he has mention'd, as being present when he discover'd this to the King, who we desire may be examined touching that Matter: We must humbly pray my Lord *Portland*, that he will please to be sworn.

L. C. J. Hold my Lord the Book, and swear him. *(Which was done.)*

Mr. Att. Gen. My Lord, I humbly ask your Lordship this one Question, whether Mr. *De la Rue* did make any Discovery of this Matter in your Presence to his Majesty, on *Friday* the 21st of *February*.

E. of Portland. Yes, he did.

Mr. Att. Gen. Your Lordship has heard what he said now: Was it to the same Purpose?

E. of Portl. Yes, to the very same Purpose, and

he did it before he went in to the King to me, being brought to me by his own Desire: It was all the same in Substance as he has told you now; and afterwards he was brought to the King on *Friday Night*, and there he said the same Things.

Mr. Soll. Gen. This Gentleman did it not to save his own Life, but the King's. Our next Witness, my Lord, is Mr. *Pendergrafs*.

(Who was sworn.)

Mr. Att. Gen. But before we go on to another Evidence, I would ask Mr. *Porter* one Question, and that is, What is become of the List which you spoke of?

Capt. Porter. I burnt that List.

Mr. Att. Gen. Why did you so?

Capt. Porter. Because I thought the Thing was discover'd, and it was not fit to have such a Paper remain.

Mr. Soll. Gen. Mr. *Pendergrafs*, pray will you tell my Lord and the Jury what you know about this Matter, how you came to be acquainted with it, who were concerned it it, and when and how it was to be done.

Capt. Pendergrafs. My Lord, about the 11th of *February* last, I was sent to by Captain *Porter*, where I was in the Country, to come to Town; the 13th of *February* I met him at the *Blue Posts* in *Spring Garden*; we dined there, and he told me of a Design that was on Foot, to take away the King's Life, and that Sir *George Barclay*, and other Officers, were come on purpose out of *France*, in order to execute the same. I was very uneasy when he told me of the Thing, but I said nothing till I had an Opportunity of waiting upon my Lord *Portland*, which I did as soon as I could, and acquainted him with the whole Matter of the Design, and desired him to acquaint the King: This was upon the *Friday Night*, which was the 14th, and he told me the King had a mind to speak with me; and afterwards my Lord *Portland* carried me into the King's Closet, where the King ask'd me some Questions. I told him what I knew of the Design, but desir'd to be excus'd from naming any Persons, because my Intention was only to prevent such a barbarous Action, and I was resolv'd not to be a Witness. The King promised me I should be safe, and press'd me to name them, and assur'd me I should not be forc'd to come in as an Evidence; upon which I did tell all that I knew, and went out of Town with Mr. *Porter* as resolv'd not to be an Evidence; but being satisfied, after we were taken, that Mr. *Porter*, who had engaged me in it, had himself discover'd, and accus'd me, I thought myself discharged from any Obligation of Honour in concealing it, and am willing to give an Account of any thing that I know.

Mr. Att. Gen. We know you do it voluntarily, as you did it at first honourably, and therefore, Sir, we desire you would please to give an Account of your Knowledge in the Matter.

Capt. Pendergrafs. My Lord, as I told you before, the 11th of *February* I was sent to by Capt. *Porter* into the Country, where I was with Mr. *Bryerly*, to come to Town; accordingly the 13th, which was the *Thursday*, I came to Town with Mr. *Bryerly*, and found Capt. *Porter* at the *Blue-Posts* in *Spring Garden*, and we dined there. There was *Keyes*, and *Bryerly*, and *Porter*, and I in Company, where he acquainted me with the Design. We had no further Discourse that Day; the next Day we dined at the *Rose Tavern* in *Covent Garden*, where

where there was *King*, *Bryerly*, *Cranbourne*, *Porter*; and I dined together.

King. Pray, was it by way of Rendezvous or set Meeting?

L. C. & Holt. Look you, you must stay your Time before you ask any Questions of the Witnesses; you shall be heard, when your Time comes, as fully as you desire. Go on, Sir.

Capt. Penderg. This was *Friday* the 14th of *February*, we had some Discourse about the Matter; *Captain King* and *Captain Porter* went away, and then I went to my Lord *Portland's*, and was by him introduced to the King. The 15th I came to *Captain Porter's* Lodgings, and he was getting ready, in Expectation of Notice whether they should execute the Design that Day or no. While he was getting ready, I goes to the *Blue Posts*, where was *Kenrick* and *Sherbourne*, and *Mr. Bryerly*, and there we were drinking a Glass of Wine, and in comes *Durant*, who was an orderly Man that lay at *Kensington* to give Intelligence; and *Bryerly*, directed him to *Capt. Porter's* Lodgings to carry the Intelligence which he brought that the King intended to go out that Day; upon that he went away to his Lodging, and *Capt. Porter* came a little time after, booted, to the *Blue Posts*, and there he din'd; within an Hour or two after *Capt. Porter* came in, *Mr. Charnock* sent a Note to *Capt. Porter*, to tell him, the King did not go that Day, and so there must be Counter Orders; *Capt. Porter* told me it was his Hand; the Note was signed *R. Robinson*, and he shewed me the Note, and acquainted me and the rest of the Company, that they were disappointed that Day, since the King did not go; there we dined, and drank a Bottle of Wine. The next time we met, there was *Mr. King* and *Mr. Keyes*, and *Mr. De la Rue*, at *Mr. Porter's* Lodgings; this was *Saturday* the 22d in the Morning, there we had some Discourse of the Matter; and *Capt. Porter*, upon Notice from *Capt. Charnock* of the King's intending to go abroad, had sent a List of his Men, and receiv'd back a List of *Capt. Charnock's*, and *Capt. Porter*, and *De la Rue*, and we went to the *Blue Posts* to dine, where we had an Account afterwards, that the King did not go, and so there was another Disappointment; and a little after *Keyes* came in, and said, the Guards were come home all in a Foam, and the King's Coaches come back to the *Mews*. *Capt. Porter* then thought all was discover'd, and say he, I will go into the Country; *Mr. Pendergrafs*, will you go with me? With all my Heart, said I; so we sent *Keyes* to get our Horses ready; we lay at *Epsom* that Night, and from thence to another Place we sent the next Day, where we lay 'till *Thursday* Morning, when *Capt. Porter*, *Mr. Keyes* and I was taken together, the Place was called *Leatherhead*, in *Surry*, whence we were brought up to Town; and have remained Prisoners ever since.

Mr. Att. Gen. Which of the Prisoners were there present upon the *Saturday* the 22d at *Capt. Porter's* Lodgings.

Capt. Pendergrafs. There was *Capt. King* and *Mr. Keyes*.

Mr. Att. Gen. Pray was there any Discourse about a Gun, and who was to have it?

Capt. Pend. *Capt. Porter* told me there was a Musquetoon that he had would carry 6 or 8 Bullets, and I should have it, being to join with *Sir George Barclay* to set upon the King's Coach, and directed

me to be sure to shoot some of the Horses to stop their Course if they seemed to drive furiously away; and *Mr. Cranbourne* was the Person that carried the Messages from *Mr. Charnock* to *Mr. Porter*.

Mr. Soll. Gen. Do you remember, Sir, that *Keyes* said the Guards were come back?

Capt. Pendergrafs. Yes, and that they were all in a Foam, and the Coaches were come back to the *Mews* Gate, and one of my Lord of *Oxford's* Regiment told him there was something extraordinary mutter'd among the People, upon which they concluded it was discovered.

Mr. Att. Gen. Will the Prisoners ask him any Questions?

Char. King, and *Keyes.* No.

Mr. Att. Gen. Then I must beg the Favour of my Lord *Portland* to give himself the further Trouble of acquainting the Court how this Gentleman behaved himself in reference to this Discovery.

E. of Portland. My Lord, it was, as he has acquainted you. This Gentlemen came to me upon the *Friday* Night, and told me of it; and then upon the same *Friday* Night; which was the 14th, I think the Night before the first time that it was to have been executed, and declared his Abhorrence of such a barbarous Business: And he told me his Design of coming into it, and keeping Company with them, was to save the King's Life by acquainting me with it, and discovering it, which he would do upon a Promise that he should not be used as an Evidence, nor pressed so much as to name Names, which Promise I made him, and the same Promises were made him that Day seven-night, when I carried him to the King. But the King pressing him to name their Names, assuring him he should be safe and not forced to be an Evidence, he did then name the Names under that Promise from the King.

Mr. Att. Gen. Pray my Lord, who was by then besides your Lordship?

E. of Port. My Lord *Cuts*.

Mr. Att. Gen. We must desire my Lord *Cuts* will please to be sworn. (*Which was done.*)

Mr. Soll. Gen. Pray, my Lord, will you please to acquaint the Court and the Jury what happen'd at that time.

L. Cuts. My Lords, I was in the King's Closet that same *Friday* Night when *Mr. Pendergrafs* was brought in there: 'Twas, as near as I can remember, between 12 and 1 a Clock at Night; no Body was present but my self; with the King, when my Lord *Portland* came in with this Gentleman: All that he said to the King at first was, that he had a Discovery to make of a Design to assassinate his Person, if that his Name might not be made use of, nor he forced to be an Accuser or a Witness. And therefore desired to be excused if he said no more; then desiring the King not to go out the next Day, but to take care of himself, because there were some Persons had resolved to assassinate him coming home; but begg'd to be excus'd from naming Names, for he said he would rather die than betray his Friend, and he thought it enough that he had saved his Majesty's Life. It was above half an Hour before the King could persuade him to name Names, and he would not 'till the King had given him his Word and Honour that he should not be obliged to be a Witness, and then he did name the Names. Afterwards when *Captain Porter* and *Mr. Pendergrafs* were taken, as my Station obliged

me to give Orders, and require Intelligence, and assist at the securing and Examination of the Conspirators, I happen'd to see them before they were carried into the Council, and presently knew Mr. *Pendergrafs* to be the Person that was with the King that *Friday* Night; I had a great Compassion to see Gentlemen and Officers, whom I had some Knowledge of before, in such a Condition, and I told them naturally what my Opinion was: Mr. *Porter* did seem sorry for what he had done, and inclin'd to make the King that Atonement for his Fault which he has now done. When I came out and told Mr. *Pendergrafs* this, and that Mr. *Porter* had named him, and owned the whole Matter, I only gave him my Opinion upon it, that I thought he was discharged from any Obligation of Friendship: And he seem'd then inclin'd to do the same likewise that Mr. *Porter* had done.

Mr. *Soll. Gen.* Swear *Thomas Bertham*. [*Which was done.*] Pray do you give my Lord and the Jury an Account how long you have known Mr. *Charnock* to be engaged in this Conspiracy: Tell your whole Knowledge as to him.

Mr. *Berth.* The 5th or 9th of *February* last I was crossing *Covent-Garden*, I lit upon one Mr. *Trevor*, who is now in *Newgate*, and he told me he was going down to Mr. *Charnock's* Lodgings, and that he heard him say he wanted to speak with me; I told him he had no Business with me nor I with him that I knew of: But he prevail'd upon me to go with him, and when we came to Mr. *Charnock's* Lodgings, he met me in the Entry.

Mr. *Soll. Gen.* Who did?

Mr. *Berth.* Mr. *Charnock* did. He told me he wanted to speak with me, and took me into a back Room, because he had Company in his own; and he told me the King, that is, King *James*, was a coming, and there was a Piece of Service to be done before he could come, and if I would assist in it, it would answer my Expectation. I asked him what was to be done? He answered, you must only go abroad to take the Air, you will see several of your Acquaintance there. I desired to know what was to be done? He said it was to cut off this Spark or to take off this Spark, I can't tell which, and then the King will come home quietly.

Mr. *Att. Gen.* Who were to cut him off?

Mr. *Berth.* The Party that I was to meet when we rode out to take the Air.

L. C. J. Who did they say they were to take off?

Mr. *Berth.* He said we must take off this Spark, or cut off this Spark, I can't tell which, which I understood to be the King.

Mr. *Att. Gen.* How long had you known *Charnock*?

Mr. *Berth.* By Times, seven Years.

Mr. *Cooper.* How came you acquainted with him?

Mr. *Berth.* We were in the Army together; he was a Lieutenant in Col. *Parker's* Regiment, and I was a Trooper there then.

Mr. *Soll. Gen.* What Discourse was there between you and *Charnock* after you heard there were Warrants out?

Mr. *Berth.* Sir, I have not yet done with what pass'd at his Lodgings. He asked me if I would accept of being one in the Business? I told him I could not engage in it, for I had disposed of myself otherwise. So we came out of that little

Room, and he desired me to come into his Room and drink a Glass of Wine: There were three or four Gentlemen that I did not know; and then there was one Mr. *Chambers* and Mr. *Trevor*, and Mr. *Lee*, which Mr. *Chambers* fetch'd afterwards in there.

Mr. *Att. Gen.* He would not be engaged there because he had otherwise disposed of himself: Indeed, he was engaged with Sir *William Perkins*.

Mr. *Berth.* After I came in I observed great Whisperings among the Company, and frequent calling out of Mr. *Charnock* for private Discourse; but there was no other particular Discourse about this Matter that Night.

Mr. *Soll. Gen.* Pray when did you see Mr. *Charnock* again, and where?

Mr. *Berth.* At another time, which was the 22d of *February*, I met him at *Lincoln's-Inn* back Gate; and meeting me here, he called me aside, and took me within the Inn upon the Pav'd-stones; we took a Turn there: He told me Warrants were out against us, as he heard, and we had as good, if I would come to his Lodging, go out to *Kensington* and do the Work at once and take him off, and then we shall be quiet, and have the King peaceably here. I am sure he cannot say that I do him a Word of Wrong in what I have said, he knows it all to be true.

Mr. *Cooper.* Has any Body else engaged you in this Matter? Do you know one *Lowick*?

Mr. *Berth.* If that be necessary I will tell it. But this is all that I know of any thing of the Prisoners; only Mr. *Charnock* did ask me as to Mr. *Trevor*, what I thought of him, whether he might trust him? I told him he might do what he pleas'd.

L. C. J. H. Mr. *Charnock* will you ask him any Questions? for his Evidence relates only to you.

Char. No, I think not. Pray did I send for you?

Mr. *Berth.* I met Mr. *Trevor*, and he told me, he was coming to your Lodgings, and that you desired to speak with me: And when I came, you told me your self you wanted to speak with me: Indeed I knew no Business you had with me, or I with you.

Mr. *Att. Gen.* We have one more Witness, and that is one Mr. *Boyse*. (*Who was sworn*)

Mr. *Soll. Gen.* Pray, Mr. *Boyse*, will you give an Account when you were spoke to about this Design, and by whom?

Mr. *Boyse.* On *Friday* the 14th of *February* I went to visit Mr. *King*, and he was the first that ever told me of the Business; it was in his own Chamber, he told me there was a great Undertaking in Hand, and he had put my Name into the List, and if I would make one, I should have a Horse; and he asked me if I had any Boots? I said No. He desired me to see if I could get any, and to meet him in the Afternoon at the *Rose-Tavern* in *Covent-Garden*; but in the mean time he bid me go to Mr. *Knighley* and he would inform me further. I went to Mr. *Knighley*, and I came to Mr. *King* again in the Afternoon at the *Rose-Tavern*, and he desired me not to be out of the way the next Day, but to be at my Lodging, and he would come or send for me; and I had Twenty Shillings of him to buy Boots, and he still refer'd me to Mr. *Knighley*: When I came to Mr. *Knighley* I was told there was nothing to be done that Day: But I was desired to be always in the way, for the Business would soon be over. This

is all the Discourse that Day. After that I met Mr. King several times, who still referr'd me to Mr. Knighley, and when I asked him for my Horse, he told me I should have one allotted for me time enough; and when this Thing was done we should be happy: But he never told me it was to take off the King.

Mr. Att. Gen. Pray what did you understand was to be done?

Mr. Boyse. I did believe I should know further of it; for I would not have engaged till I did know. But he did not tell me it was to take off the King, or what it was. This, to the best of my Memory, is what I know of the matter.

Mr. Att. Gen. Pray when did you come from France?

Mr. Boyse. He told me indeed several were come from France, and that the King would land very speedily.

Mr. Att. Gen. But when did you come?

Mr. Boyse. I came the Beginning of June last.

Mr. Att. Gen. Do you remember nothing about Sir George Barclay?

Mr. Boyse. Yes, he told me Sir George Barclay would command the Party, and that there were about forty or forty-five, that were concerned in the Design.

Mr. Soll. Gen. Do you remember nothing else?

Mr. Boyse. No truly, I do not remember any thing more concerning Mr. King.

L. C. J. H. Mr. King, will you ask him any Questions? for what he says relates only to you.

King. No, my Lord.

Mr. Att. Gen. Then we have done, my Lord; we rest it here till we hear what they can say.

L. C. J. H. Mr. Charnock, The King's Council have done all the Evidence they design to give, and now is your Time to make your Defence.

Charnock. My Lord, I have taken some Notes of the Evidence, and made some Remarks, which must be my Defence; and I shall take them in Order of Time as they were given: The first is Capt. Porter; and the main Evidence he hath given against me, is my informing him that Sir George Barclay was come from France, with a Commission all written with King James's own Hand, thereby authorizing us to raise War against the Person of King William. But then he says at the same time, I told him I never saw it; and I know not how I should? for it is impossible to see a Thing that is invisible, a Thing that never was in being, and to suppose that ever there should be such a Commission under the King's own Hand, and writ with his own Hand, is such a Contradiction to all Sense and Reason, that no rational Man can be guilty of; and therefore I hope the Court and the Jury will consider of it, and reject it all as a foolish, idle, nonsensical Fiction and Story. It is very well known that King James has always had, and still has, notwithstanding his present Sufferings and Circumstances, his Ministers of State about him, in how slender a Condition soever, they may be, or be represented to be. He has my Lord Middleton as his Secretary of State, he has been all along with him, and it is not supposable that he should put himself to the Trouble of Writing any Commissions with his own Hand, when there were others enough to do it for him, and he need only sign the Top of it James R. much less is it supposable, that he should give any such Commission as this that they speak

of; and writ it all with his own Hand, and that Sir George Barclay should bring it over. This is such a nonsensical ridiculous Story as ought to be rejected with Scorn and Contempt, and is only fit to be laughed at: I hope every body will look upon it as such, and think that such Evidence is very incredible.

My Lord, Another Thing that I observe out of Capt. Porter's Evidence is this: He says, he and I was to command a Party; he knows what he himself intended to do, but I am sure I know of no Party that I was to command. It is all a Dream, a meer Dream and a Fiction. He thinks fit to acknowledge his own Guilt of a very bad Crime, and he may accuse himself as long as he will, but I think that will not make me guilty of an such Thing, only because he says so: He does not say what Men they were, or who they were; and it cannot be an Overt Act, unless he can tell who they were. He says Sir George Barclay and I met at the Sun Tavern in the Strand, and at several other Places where this Matter was discoursed of, and a great many were supposed to be in the Assassination, to the Number of Forty; but he does not mention any thing then of its being discoursed who they were to be: And is it supposable when the Design he talks of was so near being put in Execution, it should not be known who should engage in it? For my Part, I deny that ever I was with him at any Place where Sir George Barclay, or any Body else, talked of any such thing: When I was examined before the Council, my Lord Keeper asked me when I saw the Duke of Berwick? I thought it not fit to answer that Question, because I knew the Duke of Berwick was out-law'd here, and I might accuse myself if I acknowledged having been in his Company, tho' it were at St. Germain's. But I said I never believed he was in London; and I do not believe he was. I heard that Colonel Parker was in England, but I did not see him; and as to the Major-General and other Officers, they talk of, it is all a Jest to me, and it is no way at all to be believed or credited; that because other Men have Notions of Castles in the Air, I must be so foolish as to believe such Impertinencies too. He says I sent him a List of Men, and written with my own Hand, and subscribed with the two Letters of my Name; he does not swear he saw me write it, and Similitude of Hands was never thought good in Criminal Causes; and I believe it was never look'd upon for Law, that it should be a good Evidence for a Man to swear such a Writing was another Man's own Hand, unless he says he saw him write it, and kept it in his own Custody till it should be produced as Evidence, and produce it in open Court, and not let it go out of his Custody till then. All these Things I apprehend, the Law judges necessary to make a good Proof of a Writing to be of a Man's own Hand; but here is nothing of that here: Here is nothing produced, nor does he say he saw me write it; and so I think it all goes for nothing; a meer idle Invention of his own. My Lord, upon this Evidence there is not any positive Proof of my doing an Overt Act, by buying of Arms or Horses, or writing Letters, or any thing of that Nature; and I hope if I speak irregularly, your Lordship will pardon me; I am no Lawyer, and I have no Assistance but my own nonsensical Notes to depend

pend upon for my Defence. My Lord, he speaks about Horses that were to be provided, but there is no Proof of that; I never bought any Horses, or borrowed any; nay, nor is there any Proof, that while this bloody Assassination that he owns himself to have contrived and carried on, was on foot, I had not so much as a Horse any where, and that I should be so vain to get Men to engage in such an Expedition with me, and have never a Horse myself, is very strange. The Conspiracy he says was depending a long while, and whenever it was to be put in Execution, we were to go expeditiously to work, lest it should be discover'd; and 'tis very strange then that I should never have provided the least thing in the World to do it with! neither Arms, nor Horse, nor any thing: For there is no Proof of any such thing against me, but only Talk, as he is pleas'd to swear, to take my Life to save his own: And I hope your Lordship and the Court will declare to the Jury, that here is no Evidence of any Overt Act against me.

My Lord, there is another Thing he says against me: He says he had a Note from me by the Name of *Robinson*, to countermand the Orders upon the 15th: My Lord, The Truth of that would depend very much upon the producing of that Note, then it would be seen whether it was my Hand, and what it contained, and what it related to: For my Part I utterly deny I ever sent any such Note wherein there was a Word of the King, or of any Fact of this Nature that was to be committed, or any thing relating to it, if it were true that I had written any Note to him at all; and I hope the Jury will consider, and the Court will direct them so to do: For I know not that they are any more skill'd in the Law than myself, and therefore I hope your Lordship will give them ample and true Directions, what is Law and what is not Law, and what is Evidence and what is not Evidence; and this cannot be Evidence to affect me at all, there being nothing that doth appear or is produced.

My Lord, he says, there were four that were to go with *Sir George Barclay*, that were to be appointed out of each Party; he does not say I nam'd any, nor does he name any himself; but it seems they knew what was to be done; and truly if any Thing was to be done, they knew it themselves (and no Body else that I know of) who swear to save their Lives, and get a Reward: If the four were to be out of the Party, which he calls his own, he knows them best, and I believe the Party was his own, and the Plot his own too; and no Body's else; he does not say that I appointed any one, he only says there were four to be appointed out of a Party, which Party was *in Nubibus*, and so is the whole Design, unless it be in his Head, fram'd there by his own Invention, for it only exists there that I know of.

My Lord, these Observations I make upon *Captain Porter's* Evidence: The next Witness is *Mr. De la Rue*, and he is a very good Evidence indeed, if Hear-say be to be believ'd; he says I was very shy of discoursing with him about it, that I told him it would come to Nothing, without saying what would come to Nothing, not that the Plot would come to Nothing, for there was nothing at all spoken of any Plot, much less of a Design to Assassinate the King. This is all that he says, as to me, of his own Knowledge, all

the rest relating to me is but what *Captain Porter* told him. But to begin with the Beginning of his Evidence, he says one Thing which is very odd, that at the *Rose-Tavern*, the last Year, there was a Consultation about carrying *King William* away into *France*, in a Vessel alive, and that *Sir William Perkins* ask'd him whether he would go along with me to *Deal*, to procure a Vessel to carry the King over: He might as well have ask'd him to go with me to *Constantinople*, or any other Place in the World, as to *Deal*, and about any other Employment, as that. A pretty Sort of Thing, that I should go to *Deal* to hire a Vessel to carry the King over into *France*; I that know no Sea-Man, or any Master of a Vessel at *Deal*, that I should be employ'd to hire a Ship before the Design was form'd, as he says it was not come to an Head. If we had got the Prince of *Orange* into our Power: If we had *King William* in our Power, how was it possible we should ever have carry'd him to *Deal*? I cannot but think any one would believe us Madmen to entertain such a Chimera in our Heads. What nonsensical Stories are all these, that we should carry *King William* to *Deal*, and I hire a Ship to transport him to *France*? I hope the Jury, and all that hear it, will consider what ridiculous Stuff these Men talk of, as Evidence against Men for their Lives. Then he talks of my coming in a Coach to the *Nagg's-head* Door, where I was very shy of letting him see me, and afterwards, when I came out, ask'd him to go into the Company; but he was angry that they had deny'd to admit him before, and so would not go up: What a strange Sort of a contradictory Story is all this? here was a Conference it seems, appointed the Night before to be at that Place, when *Captain Porter*, and *Captain King*, and *Mr. Knightley* were just come from viewing the Ground, and were to make their Report, and *Porter* told him of it, and yet they would not admit him, and I was shy of him, and yet ask'd him to go up: What contradictory Nonsense is this? it must needs be look'd upon as improbable or impossible to be True, that I should ask him to go up into such a Company, where such a mighty Conference was to be had about such a great Transaction, when I had shewn myself apparently shy of him, by falling back in the Coach, as being unwilling to let him see me; I hope the Jury will consider the self Contradictoriness and Improbability of such Evidence. Then there is another Thing, and that is, what he says *Captain King* said he did not believe it would come to any Thing, because he did not like me as being no Soldier, for I was for keeping out of Danger, and having an easy Post: If he means I had no Mind to be in a Plot, he was in the Right of it; for no Man in his Senses, would ever be engaged in any such desperate Designs, where there is such apparent Destruction in view: so I cannot apprehend what there is in that of any Objection against me, or any Proof that I had a Hand in this Plot, because I desired to keep out of Danger. It was said that I was to have attacked the King, with *Sir George Barclay*; but *Captain Porter* says, we were to be together, to attack the Guards; and both can't be true, nor indeed is either of them true, but a Figment and Invention of their own: Then he says he ask'd *Keyes* for a good Sword, and he told me I had a very good one: 'Tis true, I had a Sword, I always wore one, but it does

not follow that that was to be employ'd upon such an Enterprize as this. And then he tells you a Story again of Captain Porter's having a broad flaming two-edg'd Sword. But what is all this to the Purpose? Does this prove any Thing against me, that I consented to, or was engag'd in any such bloody Design, as this. He saith that on *Wednesday* he came to me, and ask'd me of the Affair, how it went on; he doth not say what the Affair was, nor he doth not say it was about killing the King; nor indeed is it probable it should be, for he says I was always shy of him, and that he could never get any Intelligence but from Captain Porter. He saith I told him it was a Thing would not admit of being delay'd, and that only three People should know such a Thing; but still he doth not tell you what this Thing was; and therefore I do not apprehend how this should affect me, as Evidence of my intending to Assassinate the King. He saith he had it from Captain Porter, that Mr. Chambers was an orderly Man, a Word I do not understand, to convey Intelligence to me; and that *Durant* was an orderly Man, to convey Intelligence elsewhere: Still this is all but what Captain Porter told him, and there is no Proof that I sent Mr. Chambers any where; Chambers, I acknowledge I know, he is a poor Man; and my Lord Chief Justice *Treby*, I suppose, cannot but remember that he was in Prison, and try'd before him, upon the Account of Piracy; I must needs say, I thought him an honest Man because he had serv'd with me in *Ireland*: I knew he was in great want, and therefore I gave him his Diet and Lodging; there is no Proof that I furnished him with Money; but I acknowledge I did with Bread and Drink, to keep him from Starving; that I think was an Act of Charity; but it cannot be interpreted, nor is there any Proof to warrant it, that it was with any ill Design, or that I gave it him to hire him or engage him to any such Purpose. My Lord, they would make it as if the Persons that were intended to be employ'd in this pretended Plot, were to be regular Troops, and to have Courts of Guard; and to be dispos'd of into Quarters; and this was to be done by these orderly Men: I profess I know not what to make of it, it is such a Medley, a Fancy, and a Chimera, that it is perfectly Unintelligible, whether these were to be General Officers, or Private Centinels, or what. Then, my Lord, he saith *Cranbourne* brought a List from me to Captain Porter, with *R. C.* at the Bottom: *First*, that he does not prove that it was my List, nor doth that *R. C.* being at the Bottom of the List make me a Partner in this Conspiracy. Then he saith that *Cranbourne* came to the *Blue-Posts*, as from me, to acquaint them of the Disappointment, because the King did not go out that Day: Surely, my Lord, I need not trouble you with saying any thing to this, for it is all, as to me, but Hearsay; and what am I concern'd in that which other People talk amongst themselves? tho' they do use my Name, how can I help that? My Lord, he saith himself that he intended to discover this Conspiracy a Year ago, but the Thing failing then; which how ridiculous it was I observed before, he let it alone for that Time; but when I met him at the *Nagg's-head Door*, and he was so angry for their not admitting him into their Company, which was three Weeks before this Design they talk of was to be execu-

ted, he had a Mind to go to the Secretary's, and get Warrants and Messengers to apprehend us; and he saith he hath often come to me, to ask about the Affair, as he calls it, but I was still reserv'd and shy, and told him nothing would come of it. From all this I would observe that I have very good Reason to look upon him to be no Evidence, not only for the same Reason that I objected against Mr. Porter, that by his own Acknowledgment he is *Particeps Criminis*, but his coming to me after he resolv'd to discover, plainly declares, that he set himself to be a Trapanner, and no Trapanner can, in the Judgment of any honest or understanding Man, be a credible Person as an Evidence to take away any Man's Life: I am sure what he saith of my Shyness to converse with him, and his own frequent Attempts to converse with me, shews plainly, he was willing to trapan me, for so he himself saith. He came to me several Times, and took me aside, to ask how the Affair went on, but he did it only to enable himself, to make the better Discovery, which makes him ten thousand times worse, than if he had only gone at first and told what he pretends he knew, and afterwards forbore the Company. Besides, my Lord, as to trapanning, I have read in a Book of Sir *Robert Atkins*, that to be *Particeps Criminis*, proves a Person to be a bad Man, and consequently not so Credible, especially if it can appear the Witness has trapan'd the Prisoner into the committing the Crime; then the Witness will appear to be guilty of a far more higher Crime than the Prisoner, and therefore ought not to be believ'd as a credible Witness against the Prisoner, for he is a credible Witness that has the Credit of being a good and honest Man, which a Trapanner cannot have; and this Trapanning proves withal that the Trapanner did bear a Spight and Malice against the Person trapanned, and intended to do him a Mischief, and design'd to take away his Life: Shall such a one, says he, be a credible Witness, and be believ'd against him? *God forbid!*

My Lord, as to Mr. *Pendergrafs*, who is the next Witness, I do not take myself to be much concerned in all he saith. I think I have seen him but once of a great while, and that was on the *Wednesday* or *Thursday* before I was taken up; but, my Lord, I have this to say to his Evidence, I desire your Lordship to observe I was not in the Proclamation, though he was: They took Occasion to have me secured as a Colour, or to save Expences, I suppose, while they themselves went out of the Way, to have their Names put into the Proclamation; that some Body might colourably take them, and get the King's Money. All that he saith of me, is, that *Cranbourne* brought Messages from me: One Time I writ a Note, sign'd *R. Robinson*; another Time I sent a List subscribed *R. C.* and that Porter shew'd him them both; but all this is but Hearsay still out of the Mouth of Porter; and can be no Proof at all against me. He saith, upon the Disappointment he and they went to *Epsom*, which to me seems a very remarkable Thing; for if he say true, it is plain, this was before by him discover'd at Court; and to me it shews, that he had a strong Design of getting Money, and taking away People's Lives upon that Account; and that Capt. Porter was in the same Design: For *De la Rue* saith, Captain Porter ask'd him to go with them, as well as *Pendergrafs*. Now
can

can it be supposed, that these three should agree to go together, unless they were in a Combination, as it appears they now are? And I cannot but think, the Court and the Jury will think it reasonable to believe: For if I was in a Plot of such a Nature as this, and should hurry out of Town after I had discover'd it, with three or four of the People that were concern'd in it, and some of them afterwards pretend to be Discoverers too, nobody in the World can believe but they contriv'd the Thing amongst themselves, and went out of Town only for a Colour, that they might be put in the Proclamation, and pretend to be taken, to entitle themselves to the Reward.

L. C. J. Really, Mr. *Charnock*, I am loth to interrupt you in any Part of your Defence, but I do not understand what you mean by this, and I very willingly would understand you if I could.

Mr. Char. My Lord, I say, I look upon it, that they were all combin'd together in a Design to get the King's Money, and take away our Lives; that *Porter* should desire them to go with him, into the Country, and particularly *Mr. Pendergrafs*, who discover'd this to the King, and then that he should agree to go with him.

L. C. J. Truly, I do not understand the Force of your Argument; that because upon the supposed Discovery, *Capt. Porter* went to *Epsom*, and *Mr. Pendergrafs* went with him, therefore this must be a Design between them to get the King's Money, I cannot any way see how that must follow.

Char. Pray, my Lord, to what End should he run out of Town, upon the Apprehension of the Discovery, and with *Captain Porter* too, when he actually had got the King's Promise that he should be safe, and not be a Witness, unless it were a Combination between them, in order to set up as Witnesses against us, to get the King's Money?

L. C. J. I'll tell you why he was willing to go with *Captain Porter*; because he had not a Mind that the Discovery he had made, should be any Way known to have come from him; for you see how unwilling he was to name Names, and so kept *Captain Porter* Company still, as his Friend, resolving not to be an Evidence against him.

Char. Well, my Lord, after all, I hope, what he saith cannot be look'd upon as any Evidence against me; because whatsoever he saith relating to me, is about the Notes and Messages that he saith were brought to *Captain Porter*, and all of it can amount at the utmost to Hear-say from other Peoples Mouths. My Lord, the last Evidence that I apprehend relates any Way to me, is that of *Mr. Bertram*, and he talks of what I should say to him upon the ninth of *February*, that I should take him into a back Room into my Lodgings, and there tell him, That there was something in Hand for the Restoring King *James*, but there was somewhat to be done first to take off the Spark, or I do not know what, nor do I believe any Body else doth know how to make any thing of it. It is a very improbable Thing, that this Matter which was to be so great a Secret, and which I should say, was not fit to be communicated to above three People at once, I should send for a private Trooper, for he was no otherwise, to communicate so great a Matter to him; besides that, I cannot, nor, I believe, can any Body else tell what to make of the Words, *Taking off the Spark*, how to construe that to make it an Evidence of an Intention to kill the King. It

might be probable I might say there was a Noise that King *James* would come, for it hath been in the *Gazettes* and the publick Prints, that there was such an Expectation, and Preparation for it on the Coast of *France*; but it is not probable, I am sure it is not true, that I should say there was something to be done first, for the *taking off the Spark*. Evidence of a Thing of this Nature ought to be plain and clear, and distinct: He doth say nothing that I talk'd to him of killing the King, or of Assassinating him, or of my asking him to be one in any such Thing, and that I furnish'd him with Arms, and an Horse on any such Design, but only that he might ride out, and take the Air, and there he should meet with some of his Acquaintance: What unaccountable loose Stuff is all this? It is very strange, my Lord, that if I liked the Man so well, as I must do if I would send for him to communicate a thing of this Nature to him, that I should not put it into a Method, that he might be one with us in the Execution of it: But there cannot be any Thing inferred of that Nature, for which we stand accused, from any Words that he saith were spoken. My Lord, he doth say indeed that he told me, that he had disposed of himself otherwise; but that is no more certain, nor can be referred to any particular Thing, than the rest. He might dispose of himself to a Friend, he might dispose of himself to his Wife; but what is all that to this Purpose? And he might indeed, if King *James* came, dispose of himself to assist him, or to oppose him, or to let it alone; but all this is nothing to the Business for which we are here to be try'd; it's all loose, idle, impertinent Talk, and not at all to the Purpose. And then he saith, that afterwards, I met him at *Lincoln's-Inn* back Gate, and took him into *Lincoln's-Inn*, and told him, there were Warrants out, and we had as good do the Business presently. My Lord, I do remember I met him at *Lincoln's-Inn* Gate, and it was upon *Saturday* the Day before I was taken up, and it was about twelve a Clock at Noon, and I did hear there were Warrants out, but there never was that Intimacy between him and me, that I should desire him to come to my Lodging, or that I should support him in any Sort. My Lord, I have made a few Remarks to your Lordship and the Jury, upon the Evidence; I am sensible I have given the Court a deal of Trouble; but I hope you will consider it is for my Life, and my All; and I hope you will be of Opinion, that the Evidence produced against me is frivolous and weak; and that the Witnesses have a very bad Cause of it, since all that they talk of, if it were true, is only a Discourse, and they are forced to supply in Words, what they want in Fact.

L. C. J. Have you any more to say, Sir?

Char. Yes, my Lord, I desire to take Notice to the Court and the Jury, that the Business of bare Words was never look'd upon in Law as an Overt Act to prove a Man guilty of High-Treason, nor that several Persons met together doth prove a Conspiracy. These Persons proving that I met with them doth not prove that I was concerned in the Assassination, nor that I consented to any such Thing; besides, my Lord, I am taxed in the Indictment with buying Arms and Horses for this Business; but there is not one Word of it proved, or of my riding out to view the Ground, nor any thing, that I was to be concern'd about this villainous

villainous Act. My Lord, if I had bought any Arms, that had not been an Overt Act of itself; it must be proved first that I bought them with such an Intent to employ them about such a Business; and it neither is, nor can be proved, that I furnish'd any Body with Horses or Arms: And therefore the bare Buying of Arms of itself, as far as I am informed of the Law, would be no Proof of an Overt Act. To prove an Overt Act of Treason by the buying of Arms it must be prov'd that I declar'd some way that I bought them with such an Intent, or else it is no Proof at all; but now if you have no Evidence that I bought any Arms at all, I look upon it, that there is no Possibility to make that an Overt Act. If you please, my Lord, to bear with me to give you the Trouble of reading some short Notes, which I have taken out of some Law-Books about Overt Acts.

L. C. J. No, the Court won't think it any Trouble: Make your Defence as well as you can, and take your own Way.

Char. My Lord, I hope you will allow what hath been collected out of the Books of Law as to Overt Acts: There is *Hales's Pleas of the Crown* is positive in it, That an Overt Act must be alledged in every Indictment, and proved; That compassing the Death of the King by bare Words, is no Overt Act. Now if bare Words be no Overt Act, why then all the Conspiracy that is here proved, supposing all to be true that is said, it is no Overt Act; for it is all but Words still. And bare Conspiring is no Overt Act, according to my Lord *Coke's* Opinion in his *Third Institutes*; and the utmost of all that any of them prove against me is, that I did say so and so, which is but bare Conspiring. Pray, my Lord, let me know upon what Law it is that I am indicted and try'd, I suppose it is upon 25 *Edw.* 3.

L. C. J. Yes, you are, and only upon that Statute.

Char. My Lord *Coke*, in his *Third Institutes*, saith, The open Act must be manifestly proved. If divers conspire the Death of the King, and the Manner how, and thereupon provide Weapons, Powder, Poison, send Letters, or the like, for the Execution of the Conspiracy, or Preparation be made by some Overt Act to depose the King, or take him by Force, or by strong Hand, or imprison him; these are sufficient Overt Acts, to prove the Compassing the King's Death. But by this it is plain, that bare Conspiring is not Treason, as wanting a sufficient Overt Act to declare the Intention. Now, my Lord, I say, that in all this Evidence that hath been given against me, there is not one Overt Act proved of my providing Arms, or sending Letters, or the like. And the same Page of the same Book, the *Third Institutes*, Chap. *High-Treason*, upon the Words *provable Attaint*, it must be by Overt Act, it must be upon direct and manifest Proof, not upon conjectural Presumptions or Inferences, or Strains of Wit; So that the strongest Presumptions upon the whole Earth will never be able to make any Overt Act, without plain and manifest Proof. And, my Lord, I do insist, here is not plain and manifest Proof, or any Overt Act, but only Presumptions in the whole Scene of the Thing. I must beg the Favour of the Court as to one particular Thing: Your Lordship, no doubt, knows the Law very well. I am here an ignorant Man, unable to defend myself by the Forms of Law; but I hope your Lordship and the Court will not let me suffer any Damage

upon that Account. You are always presumed to be of Council for the Prisoners; and I look upon it as assured, that you will do that Justice to Persons in our Circumstances, as truly to instruct the Jury how they shall behave themselves in Relation to this Matter that is now upon Enquiry before them. Particularly, my Lord, I desire they may be told plainly and truly, what is Proof of an Overt Act, and what is not; and when your Lordship sums up the Evidence, you will tell the Jury directly and plainly, what is Legal Evidence, and what is not; and then what is sufficient Proof of any one Overt Act or Species of Treason; and that you would not leave it to the Apprehension of the Jury, what they do believe, but inform them really and truly what is Legal Evidence, and what of that Sort hath been given to Day. My Lord, here is a strange Sort of Thing, a Conspiracy, which, consider'd in the general, hath neither Head nor Tail; how many there were to be is uncertain. In the Indictment is said, there were forty Men to do this Fact upon the King in his Coach, and for attacking the Guards. Can it be supposed, that any Man in his Senses would do such an Act as this, without Respect to have Security for himself and his Family, or those he is concerned for? I know not how great Wits these People be in other Things, but I am sure they shew no Wit in this, I look upon it to be so desperate a Thing. The Guards are at least treble the Number, and better appointed; and that forty should go to assault treble the Number, and in divided Bodies too, that were only to mix Fury and Malice with Resolution, to be torn in Pieces by the Mob upon an apparent visible Disappointment. And when we had done this, and made this Attempt, where were we to go? We had no *Asylum* that we can hear of, nor Castle or Fort to retire to, nor none that were to back or assist us; and I am sure no Man in his Wits would undertake a desperate Attempt without Assurance of a Retreat. If I was resolved to kill any Man, I would propose to myself some Place, to which I might repair for Shelter and Safety when I had done. If then we were in our Senses, it cannot be imagined we should ever engage in so apparently destructive a Design. We ought rather to have been confin'd to *Bedlam*, than any other Place, if we could be thought guilty of so much Rashness and Folly. My Lord, I pretend not to make any particular Reflections upon these Gentlemen that have given Evidence here; but only I must take leave to say in general, that there are none of them, but that if they have had any Fortunes in the World, their Circumstances as to that Matter are now much altered; and if any Persons will be Evidence against others for their Lives in Hopes to repair those Fortunes, and concerning Matters in which they were engaged themselves in, as they do acknowledge, and if it be true, it must be thro' the Desperateness of their Fortunes, it is the most barbarous and inhuman Sort of Evidence that ever was given by any that ever had any Sense of Honour, and must be a base Reflection upon any who pretend themselves to be Gentlemen: And I hope the King will think them upon that Account very little deserving Credit. My Lord, I hope your Lordship will please to consider, that what I have offer'd is but what my own sudden Thoughts could suggest to me out of the confused little Remarks

marks I have been able to make upon the Evidence; and it is the more confused and immethodical, because I could have no Council to assist me. I would only put your Lordship in Mind once more, of what I earnestly desire and insist upon from your Lordship, that you would tell the Jury plainly and truly what Evidence it is the Law requires to convict any Person of the Crime for which I stand accused; what Things are necessary to make up that Evidence, what is a Legal Proof of an Overt Act, and what Overt Acts have been plainly and manifestly proved against me in this Case, and not leave the Construction of the Evidence to the Apprehension or Inclination of the Jury. This is all the Favour that I have to beg of the Court, and I hope I need not doubt the Justice of the Jury.

L. C. J. Have you done, Sir?

Char. Yes, my Lord.

L. C. J. Then what say you, Mr. King?

King. My Lord, I must insist upon a great many Things that Mr. *Charnock* hath said. But as to what relates to myself, Captain *Porter* saith, I went with him and Mr. *Knightley* to view the Ground where this Design was to be executed. Truly, my Lord, I did go abroad with Captain *Porter* and Mr. *Knightley*; but it was merely to take the Air, and no other Thing. Truly, my Lord, I have not taken any Notes of the Evidence, nor have I had any Council to assist me, and so I am not very capable of making any Defence.

L. C. J. Well, have you any more to say?

King. As to Mr. *De la Rue*, he doth not pretend to say, I did ever tell him of any thing of a Design of destroying the King: And as to the Sword he speaks of, he knows I always wore one, and ever had one.

L. C. J. Well, is this all you have to say?

King. And as to Mr. *Pendergrafs*, he saith, he saw me at the *Rose-Tavern* in *Covent-Garden*, where we discoursed something of the Matter; but he tells you not what that Matter was, nor what the Discourse was. And as to Mr. *Boysé*, he doth not tax me with any Design of killing the King: Nay, he saith, I did not mention any such Thing to him. And as to the Matter of an Overt Act, what is an Overt Act and what not, and what is good Proof of it, and what not, I must refer to your Lordship and the Court.

Char. My Lord, I beg your Pardon, there is one thing I forgot to offer to your Lordship; there is no Place laid in the Indictment, nor no set Number of Men ascertained.

L. C. J. At present you are out of Time, for that you might have spoke to it before the Evidence was given, or you may speak to it after the Verdict is brought in, if there be Occasion.

Char. My Lord, I am ignorant in the Forms of Law.

L. C. J. If you will observe any thing out of the Evidence, you may; now is the Time.

Char. My Lord, I think the Evidence is inconsistent with the Indictment: for the Indictment doth say positively, that there were Horses and Arms bought and provided. Now if this be an essential Overt Act, as I apprehend it is, according to my Lord *Coke*, to prove the compassing the King's Death, then there hath been no Evidence to support this Indictment; for there is no Proof of the buying of any Horses or Arms.

L. C. J. They tell you there were forty provided.

Char. My Lord, I have taken some Notes, as well as I could, upon reading of the Indictment; and in the first place it is said, that it was agreed there should be forty Horsemen armed of us, *Robert Charnock*, *Edward King*, and *Thomas Keyes*; which I take to be Nonsense and impossible.

Mr. Att. Gen. But there is, *And others* in the Indictment too.

Char. It is *Quadraginti Homines equestres de ipso Roberto Charnock*.

L. C. J. And divers others, to the Jurors unknown. May not they make forty? thirty-seven and you three will make forty.

Char. That *divers others* is so uncertain, that no one can tell whether it be five or five thousand; and I know not what will make an Indictment void, if Uncertainty will not.

L. C. J. But your Time of Exceptions to the Validity of the Indictment is not now; we are now only upon the Trial of the Fact.

Char. My Lord, I was advis'd by my Council that if I could find a Flaw in the Indictment, I must mention it, and take the Advantage of it before the Summing up.

L. C. J. You were not well advis'd; for after the Jury is sworn, we are only to have Regard to the Fact, and we are now upon the Trial of the Fact; and the only Thing we have under Consideration upon the Fact and the Evidence is, Whether upon this Evidence that hath been given, you are guilty or not of the Fact that is charged upon you in the Indictment?

Char. My Lord, I crave your Pardon, and I hope you will take no Advantage of my Ignorance, not being use to these Proceedings.

L. C. J. As to what you said at first, that there was an Overt Act proved because there is no Proof of buying Horses or Arms; it is true, that is one Overt Act laid in the Indictment, and there is some Evidence given of it; but what that Evidence will amount unto will be a farther Consideration by and by.

Char. There was another Observation, my Lord, that I have made upon the Indictment, that it is uncertain upon the Word *tunc*; there is no Time assigned, nor no Place: Pray what Time doth this *tunc* refer to?

Mr. Sol. Gen. When the King went out.

L. C. J. But these things are not proper now, I tell you we are upon the Fact. Mr. *King*, have you any more to say? because Mr. *Charnock* interrupted you.

King. My Lord, if there be any Objection that Mr. *Charnock* hath made, would be of any Advantage to me, I hope you will let me be heard by my Council, that I may have the Benefit of it.

L. C. J. I tell you, that is not proper now; you may have the Benefit of any Objection of that Nature, if there be an Occasion, after the Verdict: Now we are only considering the Evidence upon the Issue, Guilty or not Guilty; and you are now to apply yourselves to that.

King. My Lord, I think I have answered all the Evidence.

L. C. J. Well then, Mr. *Keyes*, What have you to say for yourself?

Keyes,

Keyes. My Lord, all that I have to say is, I was a Servant to Captain *Porter*, and I did nothing but by his Order.

L. C. J. Is that all you have to say?

Keyes. Yes, my Lord.

L. C. J. Then I must tell you, no Man is such a Servant that the Commands of his Master can excuse him for committing High-Treason.

Keyes. I did but obey his Commands.

L. C. J. But I tell you again, no Man is so much under the Command of his Master, as that he ought to obey him, if he command him to commit High-Treason. It is proved you bought Horses, and he told you upon what Design, and you engaged in it.

Keyes. I did not hear any thing of it, my Lord. My Master was pleased to jest with me several times, and he might say a great many things that I did not much regard.

L. C. J. You were by when your Master, as you call him, promised Mr. *Pendergrafs* his Musketoon, and Mr. *King* told *Pendergrafs*, he hoped he would not fear breaking the Glass Windows.

Keyes. Indeed I do not remember any such thing.

L. C. J. And there are several other Particulars sworn against you: But have you any thing more to say?

Keyes. Nothing, but that I did what my Master order'd me to do.

L. C. J. Have you all done then? If you have any more to say, you must speak it now, because you cannot speak after the King's Council have summed up; they must have the last Word: Have you any Witnesses to call, or any Thing more to say?

Char. No, my Lord, we have nothing more to say, but leave it to your Lordship entirely.

Mr. Soll. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council in this Case for the King against the Prisoners at the Bar, and I think the Matter hath been fully proved as Mr. Attorney at first opened it; that there was a Design of an Invasion on this Kingdom from *France*, and of an Insurrection within this Kingdom, to abet that Invasion, and as an Inducement to both, of a barbarous and abominable Assassination upon the Person of the King, and that the Prisoners at the Bar had an Hand in this Conspiracy.

Now, Gentlemen, I must tell you, that for the two first Parts of this Design, the Invasion and the Insurrection, we have given you no other Evidence now, but some short Hints, that such a Thing was intended; and we did it purposely for this Reason because the Prisoners, tho' they were concerned too in those other Parts of this Plot, yet they are not now indicted for that Matter, but only for a direct Conspiracy to murder and assassinate the King: We have abundance of Witnesses to prove the other Parts at several Times against a great many as well as them; but we confine ourselves now to this Particular, as it stands charged against these Persons in the Indictment.

Gentlemen, There is an Overt Act alledged in the Indictment, as it by Law is necessary to do, to prove the Treason; which is, Compassing the Death of the King; and it is by Law a good Overt Act, That they did at such a Place, that is to say,

the Parish of *St. Clements* in the County of *Middlesex*, on the tenth of *February* last, consult and agree to carry on such a Design: Now it is not material, as my Lords and Judges will tell you, in Point of Law, to prove all the several Consultations to be in that Parish, nor to have been upon the Day alledged in the Indictment; for if it be any Day before or after the Times specified in the Indictment, so it be before the Indictment preferred, and if it be at any Place within the County wherein the Indictment is laid, it is sufficient; the thing that is material to be proved, is, Whether they did meet upon such a Design before the Indictment, within this County.

This Design, Gentlemen, we in Law call High-Treason; the highest Crime that our Law, or the Law of any other Government, takes Notice of: And it very well deserves to go under that Name; for it tends to subvert the very Foundations of the Government, without which no Subject is safe, and to bring all into Confusion and Desolation, by taking away the Life of the King, who is the Head of this Government; which Life the Law makes sacred above all others, because without that be safe, there can be no Safety to any particular Person.

Gentlemen, We have proved this bloody Conspiracy most fully against all the Prisoners at the Bar: I will not take up so much of your Time, as to repeat every Particular of the Evidence that hath been given; but only shortly remind you of what hath been materially said against each of them by the Witnesses that have been produced.

Against Mr. *Charnock*, there is first Mr. *Porter*, who hath sworn, That he and others met, and consulted about this Design, agreed upon it, and on the Ways and Methods for carrying it on; and he names the Places where, and the Times when those Consultations were had: Then there is Mr. *De la Rue*, who saith, he ask'd Mr. *Charnock*, how the Affair went on? and he answered, he was afraid it would come to nothing; that shews he was willing it should come to something, though perhaps he might be fearful whether it would take Place or no. Mr. *Pendergrafs* saith, Mr. *Charnock* sent a Note to Mr. *Porter* to countermand the Orders for the 15th, subscribed by the Name of *Robinson*; but that is only a concurring Evidence to that of Captain *Porter*, who said before, he had such a Note; but *Bertram* tells you, That he ask'd him if he would be one in the Design to take off the Spark? And that after he heard Warrants were out, he would have had him joined in the putting it in immediate Execution, and assured him there would be Safety in so doing.

Against Mr. *King*, there are the same Witnesses, Mr. *Porter*, and Mr. *De la Rue*, who tell you of the Discourses at Captain *Porter's* Lodgings, where Mr. *Pendergrafs* was likewise, who tells you the Times, viz. the 15th and 22d of *February* last, the Days when this wicked Design was to have been put in Execution, and there they consulted about carrying it on. Mr. *Boyse* likewise tells you of the Discourse he had with *King*; he would not indeed directly tell him, what the Design was, but Mr. *Boyse* did suspect what it might be; for Mr. *King* told him Sir *George Barclay* was come, and Mr. *Boyse* should have a Horse, and make one, and it would soon be over.

Then for *Keyes*, there are three positive Witnesses against him; there's his Master, as he calls him, Captain *Porter*, who swears, That *Keyes* knew of it, and consented to it. Mr. *Pendergrafs* saith, *Keyes* was one that met at Captain *Porter's* the 15th of *February*, to put the Design in Execution that Day. *De la Rue* tells you, *Keyes* was in the Chamber at that Time, and in other Places consulting about it, and so must needs know of it, and consent to it. So that, Gentlemen, if you believe these Witnesses, as I see no Reason offered to the contrary; we have most manifestly proved upon them all three, the Matters charged in the Indictment.

As to what they speak of the Witnesses being Trappers, and swearing them out of their Lives to save their own; it is plain the Prisoners designed to trapan the King out of his Life, and some the Prisoners would have trapan'd to have join'd with them in that Design, who honestly and honourably discover'd it, and now the Prisoners Danger is a Safety to the Nation.

Gentlemen, They argue against the Belief of this Conspiracy, from the Improbability that any Person should be so desperate to engage in so wicked a Design. Truly had this been a Matter that had been only talked and discoursed of once, that might have been the better alledged; but when there have been so many Meetings at several Times and Places, and such Methods taken for the putting this Conspiracy in Execution, and after a Disappointment one Day, put off to another; nay, and as it hath been prov'd, it hath been a Project that hath been transacting for several Years, from one Year to another, and all this made as manifestly evident, as Proof by Testimony can make it; the Objection of Improbability will soon vanish into nothing; and I hope you will think, as I believe all the World doth, or will after this Trial, That there hath been such a barbarous, bloody Conspiracy, as in the Indictment is alledg'd, and that these Persons are guilty of it, and that you will give your Verdict accordingly.

Mr. *Conyers*. My Lord, I would only add to what Mr. Solicitor hath said, some few Observations that have been omitted of the Evidence that hath been given against the Prisoners.

The Treason charged, is a Design of Assassinating the King's Person, the Overt Acts laid in the Indictment are several Meetings and Consultations in order to the bringing it to effect, and the providing Men and Horses to put it in Execution.

This Charge we have fully proved against the several Prisoners at the Bar, by two Witnesses at the least, and it is manifest that they were all concern'd in the several Meetings and Consultations for the carrying on that Design.

As for Mr. *Charnock*, Mr. *Porter's* Evidence is very full as to his providing Arms and Horses; and there is besides, Mr. *De la Rue*, who though he met him at the Tavern, and not being admitted at first, took it ill, yet afterwards at two Meetings he did discourse with him about it; and *Bertram* gives an Account, how he would engage him in it.

As to Mr. *King*, there is not only Captain *Porter*, who testifies, that he dined with him the 14th of *February*, where they did discourse of this intended Assassination, but *De la Rue* likewise, that said, there was a Meeting appointed for *Porter*

and *King*, and another, to go and take a View of the Ground; and the Prisoner himself owns he did ride out with them, but he would have it only to take the Air; Captain *Porter* tells you, it was to see which was the most convenient Place, and that the Place pitch'd upon was the Lane between *Brentford* and *Turnham-Green*.

And for *Keyes*, there are two positive Witnesses Capt. *Porter* and Mr. *De la Rue*, that he was at the *Blue Posts*, and at Mr. *Porter's* Lodgings when this Matter was consulted of, and particularly that he came and gave an Account of the Disappointment the second Day, upon the Guards coming back.

Besides, Mr. *Porter* gives an Account in general, of several that were to provide Arms, Horses, and Men; and Mr. *Bertram* proves that Mr. *Charnock* told him, the Design was to take off the Spark, and then the Time would come, that King *James* would come back quietly Mr. *Boyse* swears, *King* told him on the 14th of *February*, that he was to go out upon a Design the next Day, and that he should have a Horse provided, which next Day, the 15th, is by all the Witnesses agreed to be the first Time appointed for the Assassination; and Mr. *Bertram* adds that he met with *Charnock* the 22d, who told him Warrants were out, and it was best to go and do the Business presently, and desired him to come to his Lodgings, and he went to his Lodgings, and found several Persons there--
Char. He does say no such thing, Sir.

Mr. *Att. Gen.* He does say that Mr. *Charnock* desir'd him to come to his Lodgings.

Mr. *Conyers*. As I apprehend him, he says, he went thither in the Evening on the 22d.

Mr. *Att. Gen.* He says, Mr. *Charnock* would have had him come, but he did not; the Time that he was at his Lodging, was before.

Mr. *Conyers*. My Lord, if I mistake, I beg Pardon of the Court, and of the Prisoner too.

L. C. J. As I take it, there is no coming to his Lodging at all, but the 9th or 10th of *February*.

Mr. *Att. Gen.* He says the ninth of *February* he met with *Trevor*, who carry'd him to *Charnock's* Lodgings, and than he would have engaged him in the Design of Taking off the Spark; the Meeting of the 22d was afterwards in *Lincoln's Inn*, and there was no going to the Lodging that Day.

Mr. *Cooper*. My Lord, I am very loth to take up any of your Time; but I would beg the Favour to observe two or three Passages relating to this Matter, which have not been observed yet; and shall only mention so much as I think has been omitted.

The Defence that has been made, has been principally by Mr. *Charnock*; and upon his Defence, it seems, the rest do depend; therefore I would beg Leave to make some few Remarks upon the Defence that he hath made. He says, That all the Evidence is but Hearsay, as to him, and no Overt Act of his own proved; but, my Lord, I question not, if the Evidence be looked into, it will appear sufficient not only to prove him guilty beyond Contradiction, of all that is charg'd upon him in the Indictment; but particularly, that he was the principal Agent (under Sir *George Barclay*) in carrying on this whole Conspiracy.

For Captain *Porter* tells you, That *Charnock* first acquainted him with Sir *George Barclay's* coming

ing over with the Commission; that *Charnock* brought Sir *George Barclay* to the Lodgings, where they both lay; that they had several Meetings, at which he was always present, and a main Promoter of the Design; That he agreed to find a principal Quota of the Persons that were to be concerned; particularly, That he was to find eight Men, and seem'd always most zealous for the Execution of it.

Then as to Mr. *King*, it is plain, that *Knightley*, and Captain *Porter*, and he, went to view the Ground; and Mr. *De la Rue* tells you, what Report *King* made of that View; that with great Joy *King* acquainted him, they had found the rarest Place in the World for the Execution of their Design, a Wood hard by the King's House at *Richmond*; and then he opens the whole Manner of the Ambuscade, and the Design.

Charnock. It is at the Liberty of any Body to swear what they please; but I hope the Jury will consider the Nature of the Evidence.

Mr. *Cowp*. Mr. *De la Rue* tells you further, something more than Hearsay, as to Mr. *Charnock*; that he ask'd Mr. *Charnock* about the Matter, what was like to come of it? And he answered him, that he feared the Success of it; for that a Thing of such a Nature was not to be trusted to above three. Which could not refer to the intended Invasion and the Insurrection; for as to that, it is plain from the Nature of the Thing itself, that it must be communicated to a great many, or else they could not be ready to assist in it: And therefore it is evident, it was the Assassination which he was in haste to have executed, saying, it had been delay'd too long, and that was as dangerous as communicating it to too many.

My Lord, I shall make my Words good to you, and rather than take up your time in making Repetition of what has been said, I will chuse to break my Method, and omit what might be further observed: It is true, it was a Mistake of the Day as to *Bertram's* Evidence of his going to *Charnock's* Lodging, but that is not material; for it is in Proof he did go to his Lodgings, the 8th or 9th of *February*, and there *Charnock* told him that King *James* was a coming; but there was a Service to be done first, to take off the Spark, and then the King would come in quietly; if that Design took Effect, it would answer his Expectation: He was to ride out to take the Air, and meet some of his Acquaintance, and after all was over, we should be very happy. The Words indeed were something dark, but yet the Intent and Meaning of them are pretty manifest, not only from the Words to take off the Spark, but because this Action, whatever it was, was to precede the Invasion of King *James* with the *French* Forces, and was to be done in order to it, and therefore could not be meant of it, nor of joining with it.

My Lord, I shall trouble you no further but submit to your Direction.

L. C. J. Gentlemen of the Jury, these three Prisoners at the Bar (*viz.*) *Robert Charnock*, *Edward King*, and *Thomas Keyes* stand indicted of High-Treason, for conspiring, compassing and imagining the Death and Destruction of the King, and that in a very bloody and barbarous Manner, by Way of Assassination; and the Indictment charges them, that they did meet and consult with

divers other Traitors unknown to the Jurors, and there did resolve upon this Assassination, and Horses and Arms were prepared and provided for the Execution of it.

The Question, Gentlemen, that you are to try is, Whether these Persons who stand now thus accused; are guilty of this Crime or not? And you have heard a very long Evidence; Five Witnesses have been produced, and they have given upon this Occasion a very large Account of the whole Transaction, which I will observe to you as briefly as I can.

In the first Place, Gentlemen, you are told, how there had been a Design forming, even for some Years, for the Restoring of the late King *James*, and the Depriving and Deposing of this King; it seems it was a Design before the Business of *Cape la Hogue*, which you remember very well was in the Year 1692. about the Time of the burning a great Part of the *French* Fleet by Admiral *Ruffel*; but this Design, though it met with several Disappointments, yet did not die, it had its Ebbings and its Flowings, sometimes it was higher, and at other times lower; and in Winter was twelve Months it began to be more vigorously prosecuted than at any time before, since the *La Hogue* Business, and then there was a Resolution fram'd of attempting the Person and Life of the King, which appears by Captain *Porter's* and Mr. *De la Rue's* Testimony. And great Hopes were conceiv'd amongst them, that it might be effected before the King went over into *Flanders*; but it seems they wanted a Commission from abroad, (which they thought necessary as an Authority for them to act under) which not coming in time, the King went over to *Flanders*, and so for that time the Execution of it was deferred.

Gentlemen, after the King's Return from *Flanders*, the Prosecution of this Design was resumed, and Intimation was given, that a Commission was brought over by Sir *George Barclay* from King *James*, which was to make War upon the Person of King *William*, who was called therein, as you may suppose, the Prince of *Orange*: and you are told by Captain *Porter*, that at that time, he and Mr. *Charnock* lodged together in one House in *Norfolk-street*, and that Mr. *Charnock* told him Sir *George Barclay* was come with such a Commission from King *James*, and imparted to him the Design of Assassinating and Murdering the King, and that would be the readiest Way to bring Home King *James*: He asked Captain *Porter*, whether he would engage himself in the Matter. It seems Mr. *Porter* did freely and readily engage in it, and was in good earnest; and therefore there were several Meetings at several Places, in order to consult and contrive how they might bring it to pass.

Gentlemen, you are further informed, that there were several Meetings at the *Globe Tavern* in *Hatton-Garden*, another at the *Nagg's-head* in *St. James's-street* in *Covent-Garden*, and at the *Sun-Tavern* in the *Strand*, and that two of the Prisoners at the Bar, Mr. *Charnock* and Mr. *King*, with divers others, were at those Meetings, and *Keyes* was at several of them, and there it was agreed and resolved, that the King should be murdered, as the best Way to bring in the late King.

This being settled and resolved upon as fit to be done, the next Consideration was, in what man-

ner it might be effected, and two Ways were proposed, one by way of Ambuscade on the other Side of the Water near the King's House at *Richmond*, the other in the Lane that leads from *Brentford* to *Turnbam-Green*, upon the King's Return from *Richmond*, some Evening; for it seems it is usual for the King to go to a House he has on the other Side of the Water, to divert himself once a Week upon the *Saturday*, and to return in the Evening.

These two Places being proposed, the one on this, the other on the other Side of the Water, there was a Difference in Opinion among the Conspirators, which of the Places would be the best and most proper: And in order to settle that Matter, it was resolved upon, that some Persons should be sent to view the Ground in both Places, and make their Report to the rest; and the Men agreed upon, were Captain *Porter* and Mr. *Knightley*, to whom Mr. *King* added himself, and accordingly they did go out of Town together to take a View of these Places.

Here the Court was interrupted by Mrs. King, the Prisoner's Mother, who in a very outrageous violent Manner, got into the Court; but being removed, the Lord Chief Justice proceeded.

L. C. J. Gentlemen, I was saying that this View was taken by those Persons that undertook it; and the Night of that Day they had viewed the Places, upon their Return, they made a Report to their Accomplices, and thereupon it was resolved to relinquish the Ambuscade, and that the Attack should be made in the Lane that leads from *Brentford* to *Turnbam-Green*.

The Time that was fix'd upon for this Execution was *Saturday* the 15th of *February*: There were two Men that were appointed to lodge at *Kensington*, whom they called orderly Men, a Title that they gave them: these were to give Notice at what time the King and the Guards went out, the one was to give Notice first of the Guards going, the other was to give Notice when the King went: When Notice was brought them that the King was gone abroad, the Conspirators were to be ready to go after in small Numbers, and were to be quartered and dispersed in the several Inns about *Brentford* and *Turnbam-Green*, to be gathered into the several Bodies, upon Notice of the King's Return; when the King came over, then they were to make the Attack in this Manner. Captain *Porter* and Mr. *Charnock*, with one *Rookwood* were to attack the Guards, and Sir *George Barclay*, and his Party, were to come up to the King's Coach, and fire into it, and kill the King, and every one that was in it; and of that Party Mr. *Pendergrafs* was designed to be one, and he was to have had a Musquetoon from Captain *Porter*, that would carry seven or eight Bullets: These Conspirators, and the Persons that were to be concerned, were in all forty, or some few more in Number.

But, by great Providence, this bloody Design was discovered, as was told you, by one of the Witnesses, Mr. *Pendergrafs*, a Day or two before it should have been put in Execution; and so his Majesty did forbear going out that *Saturday* the 15th. But they having Notice that the Guards were gone, and after that receiving an Account that the King did not go, it very much alarm'd

these Conspirators; but notwithstanding this, as you have been told, they were resolved not to lay aside the Prosecution of this Design, but were rather bent upon executing it the next Opportunity that should offer itself, for which purpose diverse of the Conspirators did meet together, and did consult whether it was fit further to proceed, particularly upon the *Friday* the 21st Day of *February* at the *Sun-Tavern* in the *Strand*, divers of them met, and there they had Discourse of the Matter, and were troubled at the Disappointment, and were resolved to pursue it, and for that purpose, agreed to be in a Readiness upon the next Day, and as soon as they should have Notice that the King was gone from *Kensington*, they would prosecute it in the same Manner, in which they had formerly agreed.

It should seem, some of the Men that they had engaged were gone off, and others were provided in their stead, but there was another full Discovery made, before that, by Mr. *De la Rue*, by which their wicked Purpose was a second Time disappointed.

Gentlemen, upon the Discovery of this Design, it was thought very fitting to take all possible Care, for preventing such a dismal Stroke, and for punishing such heinous Offenders; there was a Proclamation issued for the Apprehension of a great many of them that absconded, which had a very good Effect, by the taking of several of them, besides those that were taken up by Warrants before; and these three Prisoners now at the Bar, are indicted for this horrid and traitorous Conspiracy, and for pursuing this wicked Design, and are now upon their Trial for it.

Now, Gentlemen, you have heard the Evidence, which you are to consider of in relation to these Prisoners, and how far they are affected by it. I must tell you, that Captain *Porter*, gives a very full Evidence against all three; he tells you how and in what Manner they were all engaged, and what Parts they had all in the Prosecution of this bloody Enterprize. As for Mr. *Charnock*, he seems to have been a remarkable Person in almost all the Parts of it, a great Carrier-on and Promoter of it, was to be an Actor in it, and provide his Number of Men: and it seems he was a Person much trusted by Sir *George Barclay*, and he spoke to Mr. *Porter*, of a Commission that Sir *George Barclay* brought with him from King *James*, which was to levy War upon the Person of King *William*, which it seems was understood, to authorize them to Assassinate the King. Mr. *King* went to view the Ground, and *Charnock* and he were at the several Consultations, and *Keyes* was at *Porter's* Lodgings, and at divers other Consults, when the carrying on of this Design of assassinating the King, was debated and resolved upon. Mr. *Porter's* Evidence you have heard at large, and I doubt not you take good Notice of it, and the King's Council have repeated the most material Parts of it, therefore I need not do it again. And as to Mr. *Charnock*, you have heard what Evidence is given by *De la Rue* and *Bertram*; for tho' Mr. *Charnock*, says all that is testified by the other Witnesses, is only Talk and Discourse, and that bare Words are not High-Treason, but there must be some Overt Act; therefore you are here to consider particularly what the other Witnesses say against him, and whether another Overt Act is not proved. *De la Rue* (who was one of the Discoverers, and

(as

(as he tells you) he resolv'd so to be so soon as he could get a perfect Knowledge of the whole Design) does inform you, that between the 15th and 22d of *February*, he met Mr. *Charnock*, and enquired of him how the Business went, to which *Charnock* returned answer, That the Design did languish, saying, that People were not so warm as formerly, and did believe the King had Notice, for that he had not been abroad on *Saturday*; that too many were acquainted with it, and therefore thought it might come to nothing: But the main Business, which was the landing of King *James*, would be speedy; and though the Discourse may be reckon'd only Words, yet they do import, at least acknowledge, to the carrying on this Design before that time.

But then consider what you are told by *Bertram*, another of the Witnesses, that he being inform'd by *Trevor*, that Mr. *Charnock* would speak with him, he thereupon went to Mr. *Charnock's* Lodgings, where *Charnock* took him aside into a back Room, and told him that King *James* was a coming, and there were great Hopes of restoring him; but there was something to be done to facilitate it, which he would do well to joyn in: And when he asked what it was, *Charnock* told him, he must go abroad and take the Air, where he would meet with some of his Acquaintance; and there was no way to effect it, but by taking off the Spark; and by doing that Thing, it would most probably be brought about that King *James* should be restored. Now, though it was not directly said, they were to kill the King, yet it is manifest what was meant by it: For the Taking off no one Person in *England*, besides King *William*, could conduce to the Return of the late King. And for his Encouragement, he told him further, that if *Bertram* would undertake the doing of it, it would answer his Expectations. And then you are told again by *Bertram*, that he met *Charnock*, at *Lincoln's-Inn-Gate*, upon that very Day that it was last to have been executed, which was the 22d of *February*, where *Charnock* told him he suspected a Discovery was made, and that there were Warrants out against them; and that therefore the best Way was, to go immediately and take him off, and then all would be well.

Now I must tell you, Gentlemen, that what he says, that bare Words are not Treason, is very true in some Cases; for loose Words spoken, without Relation to any Act or Design, are not Treason or an Overt Act; but Arguments, and Words of Persuasion, to engage in such a Design or Resolution, and directing or proposing the best Way for effecting it, are Overt Acts of High Treason, as much as if two agree together to kill the King, though the Agreement be Verbal only, and not reduced to Writing: Likewise, consulting together for such a Purpose, is an Overt Act of Treason. For it is the Imagination, the Compassing and Designing the Death of the King, that is the Treason. For the Law is very careful of the Person of the King, and hath fully provided for his Safety; and this Treason is the first Species mention'd in the Statute. But there is no Way of discovering those Compassings or Imaginations, in order to punish a Traitor, but by some external Act, that may be sufficient to manifest such an Intention and Purpose; and that which is a sufficient Manifestation of such a Design, is another Overt Act: But there have been proved several

Meetings, and Consultations and Proposals at those Meetings, about the Ways and Methods for bringing about the Design of Assassination. And it was never yet doubted, but to meet and consult how to kill the King, was an Overt Act of High Treason. Besides, Mr. *Charnock's* endeavouring to engage *Bertram* in this Enterprize, and the Argument he used to persuade him to it, that it was a means to restore the late King, and telling him it would answer his Expectation, is another Overt Act. And therefore, how far Mr. *Charnock* is Guilty of the Charge in the Indictment, you are to determine when you have well consider'd the Nature of the Evidence, and what Answer Mr. *Charnock* hath made to it; which shall be open'd to you by and by.

Then, Gentlemen, concerning Mr. *King*, who is the next Man, he has these Witnesses against him: Captain *Porter* says, that he was very frequently at the Meetings, and Consultations, and that he came to him when he and *Knightley* were to view the Ground, and desir'd to be one of them, and they went together, and did view the Ground; this was some Time before the 15th of *February*, in the same Week.

And you may also remember the Evidence given by Mr. *De la Rue*, That Mr. *King* told him about *November* or *December*, that a Major-General would come from *France*, and that Money was to be advanced; and that after Captain *Porter* and Mr. *King* told him, that the Major-General was come. On *Friday* the 7th of *February*, *King* said he was to go out of Town with *Knightley* and *Durant*, to know whether the King went to *Richmond* or *Hounslow*. Being inform'd the King had a Design to go to *Hounslow*; and he return'd, on the *Sunday* following, Mr. *King* did say they had found out the rarest Place, and the fittest that could be for that Purpose, within a quarter of a Mile of the King's House at *Richmond*; and that there was to be an Ambuscade, and asked the Witness whether he would be one in the Ambuscade; but he liked it not, but had rather attack the Guards. He had been at the *Dog-Tavern* with Mr. *King*, and discoursing about this Undertaking, Mr. *King* the Prisoner had told this Witness, that several of the Guards were come from *France*, and that several Conferences were had about taking off the King; and he did not approve of Mr. *Charnock*, in regard he did not talk like a Soldier, and was for an easy Post without Danger; and as for Captain *Porter*, he had another Objection against him, he had as much Fat in his Brains as he had in his Body; and so the one wanted Skill, and the other Wit. But still Mr. *King* owned his being concerned in the carrying on of this Design of Assassination: for after the Design of the Ambuscade was disapprov'd of, and agreed that the Guards should be attacked, and the King in his Coach, at *Turnham-Green*; he by Discourse with *De la Rue*, expresses his Consent to it; besides, he told *Pendergrafs*, who was to be one, and to have *Porter's* Gun to shoot the King, he hoped *Pendergrafs* would not be afraid to break the Glass Windows.

Mr. *Keyes* stands upon it, for his Part, that he was only a Servant to Captain *Porter*, and if he had done any Thing amiss, it was no more than what his Master bid him do; and that he knew of no Design; and that it was a hard Thing that he should be troubled in this Matter; for if a
Master

Master send his Servant to buy Horses or Arms, if he does not know how they are to be employed, afterwards it doth appear they are to be employed in Affassinating the King, that the Servant should be punish'd for obeying his Master. But the Question is, whether *Keyes* knew what the Design was: Captain *Porter* says he did know when he hired the Horses, for what Purpose they were to be used. And he says further, that he was with them at many of the Consults at the *Globe-Tavern* and other Places, where he did eat and drink with them, and was privy to the Design, and concerned in it.

Then, Gentlemen, by the other Evidence it is proved, that he was in Company several times when the Design was discoursed of, and that he was used as a Companion to Captain *Porter*, and used to sit and eat and drink with him and the rest of them at the same Table; and when they drank to the Restoration of the late King, and to the Squeezing of the rotten Orange, *Keyes* was there, and pledged the Health, which shews the Intention of the Man; and this was upon *Saturday* the 22d, and when News was brought that the Design was disappointed by the King's not going abroad that Day, he went out, to get Intelligence, and brought in Word that the Guards were come home, and that all their Horses were in a Foam, and the King's Coaches returned to the *Mews*; all which is Evidence that he knew of the Design and consented to it. So that I must leave it to you upon the whole, though there be a great deal more Evidence than I have mentioned; you are the Judges how far it amounts to prove them Guilty.

But then, Gentlemen, as to what they say, that the Witnesses do testify by Hearsay, that's not Evidence; but what they know themselves, or heard from the Prisoners; and so Mr. *Charnock* insists upon it, that what Mr. *De la Rue* says against him, is mostly what Captain *Porter* told him, and therefore cannot make a Proof, by two: It is true, and therefore I did omit repeating a great Part of what *De la Rue* said, because as to him it was for the most part Hearsay: But whatsoever Evidence has been given of any Fact done within the Witness's own Knowledge, or of any Consult or Discourse of the Prisoners themselves, that you are to take Notice of as good Evidence, and consider of it.

But then there is another thing that is objected against the Evidence, and that is, as to the Fairness and Credibility of it, because the Witnesses, especially Mr. *Porter*, by their own Acknowledgment, are involved in the same Crime, and therefore cannot be good Witnesses against others. Now as to that Objection, I must tell you, first, that Prisoners under those Circumstances are good legal Witnesses, but their Credits, as in all other Cases, are left to your Consideration. But, Secondly, as to the Weight of this Objection against their Credit, you may consider that traitorous Conspiracies are Deeds of Darkness as well as Wickedness, the Discovery whereof can properly come only from the Conspirators themselves; such Evidence has always been allow'd as good Proof in all Ages; and they are the most proper Witnesses, for otherwise 'tis hardly possible if not altogether impossible, to have a full Proof of such secret Contrivances; such Discoveries are to be encouraged in all Governments, without which there can be no Safety: And

though Men have been guilty of such heinous Offences, in being Partakers or Promoters in such Designs, yet if they come in and repent, and give Testimonies thereof by discovering the Truth, great Credit ought to be given to them, for such Evidence was ever accounted good. Besides, as to two of them, *De la Rue* and *Pendergrafs*, which were the first that discovered, before they were apprehended, or suspected themselves to be in Danger, and therefore do not swear to save their own Lives, but resolved upon it to save the Life of the King. And Mr. *Pendergrafs* had not any Design to be an Evidence, who, tho' he discover'd it almost as early as he knew it, yet refused to tell the Names, upon a Principle of Honour, till he had the King's Word that he should not be press'd to come in as a Witness; and he tells you himself the Reason why he refused then, and why he comes in now, because Captain *Porter* was his Friend, to whom he was obliged, and he never intended at first to discover his Name, nor afterwards to be Evidence against him; but upon Captain *Porter*'s being taken, and discovering himself and his Witness, he thought he was absolved from all that Obligation, and therefore resolved to appear as a Witness against the rest: And this does not depend only upon the Credit of *Pendergrafs*, but also upon the Testimony of my Lord *Portland*, and my Lord *Cutts*, who have given you a full Account of the Manner of it.

And Mr. *De la Rue* tells you, That it was his Design at first, even a Year ago, if the Conspiracy had so far proceeded, as to be ready to be put in Execution, he would have endeavoured to have prevented the Mischief, by acquainting the King with it; and he gives you an Account how he revealed it to Brigadier *Lewson*, and to my Lord *Portland*, and after to the King, which is confirmed by my Lord *Portland*; so that these are Witnesses beyond all Exception, and if such Evidence as this be not allowed to be good, the Government can never be secure against such villainous Enterprizes and wicked Machinations.

Gentlemen, This is not trappaning, for it doth not appear by any Evidence, nor have I heard the Prisoners pretend that these Persons did go about to seduce them into the Design, but indeed were endeavoured to be seduced into it themselves; and though they kept them Company afterwards, yet it was only with a Purpose to acquaint themselves with the real Intentions of these wicked Men, which is Lawful and Just in order to the making a full Discovery of their so dangerous a Villainy; and therefore they ought to receive all Countenance for doing so great a Service to the Government, without undergoing the Imputation of being Trapanners.

Gentlemen, there is no more occurs to me at present that is material to be observed or taken Notice of; I leave it to you, you have heard what the Witnesses say against the Prisoners, you have heard what the Prisoners have said for themselves, you are the Judges of this Fact; if you are not satisfied that here has been sufficient Evidence given to prove them Guilty, you will acquit them; but if you are satisfied, that upon the Evidence and all the Circumstances of this Case, that they are Guilty, I suppose you will discharge your Consciences, and give your Verdict accordingly.

Then

Then the Jury withdrew to consider of the Evidence, and in less than half an Hour returned, and found all the three Prisoners guilty of the High-Treason for which they were Indicted, and the Court adjourned 'till six a Clock that Evening.

Post Meridiem eodem Die.

ABout Seven a Clock the Lord Mayor, and the Common Serjeant, with as many of the Court as would make a *Quorum*, came upon the Bench, and by Proclamation in usual Form, the Court was resumed, and the Prisoners called to the Bar to their Judgment.

Cl. of Arraignments. Robert Charnock, hold up thy Hand (*Which he did*) You stand convicted of High Treason, for Conspiring the Death of our Sovereign Lord the King by Assassination, What can you say for yourself, why the Court should not give Judgment upon you to die according to the Law?

The Jaylor first made him to kneel; and then, when he rose up, he spoke as follows.

Charnock. Sir, I have a great deal to say, if I knew when was the proper Time to apply myself to the saying what I have to say.

Mr. Com. Serj. You are now called to, to know what you have to say.

Charnock. Sir, I would put this Question, because I am ignorant in Forms of Law, Whether it be practicable for me to say any thing before Judgment or not? For I have no Pardon to plead to hinder the Judgment; and therefore I would know, if it be practicable to say any thing before Judgment?

Mr. Com. Serj. Yes, Sir, it must be before Judgment; because what you are called to, and asked now, is what you have to say in Arrest of Judgment.

Char. I have many Things to say as to Observations I made out of the Indictment, and upon my Trial, if this be my Time to offer them.

Mr. C. Serj. Yes, Sir, it is your only Time.

Char. Then, Sir, I think the Fact is ill laid: We are indicted here for High Treason, in Conspiring the Death of the King, and no Overt Act is proved against me; I speak for myself, I suppose these Gentlemen will speak for themselves.

Mr. C. Serj. At present you are the only Person that is asked the Question; therefore pray go on, and say what you have to say in Arrest of Judgment. You say the Indictment is ill laid, wherein is it so?

Char. I do find fault with the Indictment, because it is laid for Assassinating the King; and all that is proved against me, was, That I was in Company where such a Thing was discours'd of: Now I am advis'd, and my own Reason tells me, that being in Company is no Proof of my giving my Consent to the Thing; and without my Consenting, there can be no Overt Act to

make me guilty of the Treason. It is said, *that I and my Accomplices*, though there are none named but us Three, *did meet together, and consult of this Matter, and that we bought and provided Horses and Arms*: Which I take to be the only Overt Act. And of all these Things, there is not one Tittle proved; and therefore, with Submission to the Court, the Indictment is naught in that respect. And this, I think, I may speak, not only for my own Sake, but for the Sake of these Gentlemen that stand by me; if there be nothing proved against us of an Overt Act, as laid in the Indictment, we ought not to be condemned.

Mr. Com. Serj. Look you, Mr. Charnock, you move nothing against the Indictments, but only run into the Proof: That Matter is quite at an End, and we cannot enter into any Debate about it; you have had a fair and a legal Trial, and upon that Trial the Jury has found you Guilty.

Charnock. I have not had a fair, and an equal Trial, Sir.

Mr. Com. Serj. Yes, you have had both a fair and a legal, and an equal Trial.

Char. If you please to leave out the Word *Legal*, because it perhaps may be according to the strict Forms of Law: But I say it was not a fair and an equal Trial, because in the last Act of Parliament, which was made for regulating Trials in Cases of Treason, the Equity and Reasonableness of a Prisoner's having that which was denied me, that is, a Copy of the Indictment, and Council, is laid down as the Ground and Reason of making the Act; and without that it had never been made: It is in the Preamble of the Act, which I have look'd upon since I went out of the Court; and though as to the Time of the Commencement, there is a certain Day prefix'd, yet the Equity of the Act is always the same, and that Equity I take myself to be intitled unto; and therefore being denied the Benefit of it, I think I had not an equal and a fair Trial.

Mr. Com. Serj. Sir, you have very unreasonably objected this Matter of this Act of Parliament at your Arraignment, and upon your Trial, and now; but your Objection is of no Moment or Validity in the World: For the Act is to commence *in futuro*, and you are tried according to the Course of Common-Law before that Act can take Place; and it is the Common-Law only that this Court can proceed by, and you be tried by.

Char. Sir, I insist not upon the Law itself, but only upon the Equity of it, and the Reasonableness of the thing.

Mr. Com. Serj. Courts of Justice are to go according to Rules of Law, and that is equal that is according to those Rules: I say again, Sir, you have had a fair, a legal, and an equal Trial, and have been treated with all the Candor and Temper, that I believe was ever shewn to any Persons in your Condition.

Char. I had not Council allowed me to assist me.

Mr. C. Serj. The Law allows it you not; if it had, you should have had it.

Char. Then my Council were ignorant People, to instruct and advise me, that by the Equity of this Act I ought to have it.

Mr. Com. Serj. It was never practicable before, nor can be, 'till the Time that this Act takes Place.

Cbar. Sir, I cannot argue with the Court in Matters of Law; but as to the Evidence, I say, it did not come up to the Indictment.

Mr. Com. Serj. If you have any thing to except against the Indictment, that is very proper for you to do, and if you will propose it, we will hear you.

Cbar. Sir, I find fault with the Indictment in several Particulars; all the Facts are laid in the Parish of St. Clements Danes, and there is not one Fact proved to be done there.

Mr. C. Serj. It is not material that the Facts should be proved to be done in the particular Parish laid in the Indictment; it is sufficient, if they be proved to be done in the County.

Cbar. There is not one Fact proved to be done in that Parish.

Mr. C. Serj. All that is against the Evidence, which we cannot at all take Notice of after the Verdict.

Cbar. I insisted upon several Things, whereby it was impossible that the Evidence could be true, and mentioned several Things, wherein the Indictment was erroneous, and the Evidence not consistent with it, or at least not of such Validity as to affect me; all which Things, if I might have had Council to argue for me in Point of Law, (and I look upon it as a very great Hardship that it was denied me,) as likewise that my Lord Chief Justice over-rul'd what I offer'd about Trapanners, as I take these Witnesses to be, out of Sir Robert Atkins's Book, and what I quoted out of my Lord Hales's Pleas of the Crown, and Coke's Institutes.

Mr. C. Serj. Mr. Charnock, If you please to offer any Point of Law to the Court to stop Judgment, we are ready to hear it; but you ought not to reflect upon the Court.

Cbar. Where a Man is dying, sure he may have Leave to take Notice of what Hardships he has lain under.

Mr. C. Serj. Pray, Sir, hear me; No Men that ever stood in your Place have had more Indulgence and Favour shew'd them, nor, I believe, so much neither. Those of us that are here, and were at your Trial, do think you do very much amiss, to make any Reflections upon the Court, after you were so fairly dealt with. If you have any thing that is material to offer in Arrest of Judgment, pray let us hear it: But we must over-rule all Discourses of this Nature, it is a vain sort of Discourse, and will be of no Use or Service to you at all.

Cbar. Truly, I know not what it is possible for me to urge which you will think to be material, if I cannot urge false Latin and Inconsistencies. There have been heretofore Arrests of Judgment, and that must sure have been upon some Error or other.

Mr. C. Serj. It is true, but you assign none; you abound in Words, but will not offer any thing that is fit for you to offer.

Cbar. Sir, I assign this particularly as an Error, and if it be not, I cannot tell what is: I am upon my last Legs, and stand here for my Life, and ought to be allowed all legal Advantages. One particular thing is this, Whether the Scene of the Fact being laid to be at the Parish of St. Cle-

ment Danes there ought not to be Proof that such Facts were done there; and if so, Whether it be not an Error, that there was no Proof of any one Fact done there? And then the next thing is, we are charged to have bought Horses and Arms in the Indictment, and there was no Proof of any Horses or Arms bought; I am sure as to me there was not.

Mr. C. Serj. I told you before, all this is to no Purpose, you enter into the Evidence, which is Matter of Fact, which is all over, and we cannot enter into any Consideration of it, therefore pray do not spend our Time; but if you have any thing that is an Objection to the Frame of the Indictment, let us hear it.

Cbar. Then I think that the Indictment is uncertain; it says, *quadraginta Homines equestres aut circiter de ipsis* Roberto Charnock, Edwardo King, & Thoma Keyes; this is either not true, or it is Nonsense: For if there be forty Horsemen, or thereabouts, of Robert Charnock, Edward King, and Thomas Keyes, that cannot be true, for they can't make forty; and if you take in the *aliis Proditoribus ignotis*, that will make it uncertain, and that Uncertainty will make the Indictment void.

Mr. C. Serj. I thought my Lord Chief Justice had satisfied you as to that Objection; you repeat but part of the Sentence: It is said, *de ipsis* Roberto Charnock, & *predictis aliis Proditoribus ignotis, ac aliis*, that is certain enough, I thought we should have heard no more of that frivolous Objection, but you had been satisfied with the Judge's Answer to it.

Cbar. I am satisfied in Point of Fact that they construed it so; but these are the Words of the Indictment as they were read to me.

Mr. C. Serj. You shall have the Words read to you again. Read them.

Cl. of Arraignments. *Quod quadraginta Homines Equestres aut eo circiter de ipsis* Roberto Charnock, Edwardo King, & Thoma, Keyes, & *predictis aliis Proditoribus ignotis, ac aliis*.

Mr. C. Serj. You took but Part of the Sentence, or else you could never have made that Objection.

Cbar. Then, Sir, here is *tunc & ibidem*, what is that;

Mr. C. Serj. You can easily tell that sure; it is *then and there*.

Cbar. What, *ibidem*? What Word is that?

Mr. C. Serj. It is the best Word that could be used; what Word would you have had?

Cbar. *Tunc & ibi*, is *then and there*.

Mr. C. Serj. No, *ibidem* is a better Word, and is always used in our Pleadings at Law.

Cbar. Then I have only this in general to say; Whether it be possible for a Man that is ignorant in Forms of Law to defend himself without Council? I must desire Council to look into the Indictment and to assist me.

Mr. C. Serj. That is what we cannot allow by Law, unless you offer something that may be such an Objection, as the Court shall think fit to have argued by Council.

Cbar. But how shall I that am ignorant in the Law, know how to offer you that which you will think fit to hear Council to?

Mr. C. Serj. You may offer any thing that you think is an Exception, and the Court will consider of it; for I think it is my Duty, and every Man's

Man's that has the Honour to sit here by the King's Commission, to lay as much Weight upon any Objection that the Prisoner does offer, as it will bear; but if nothing be offer'd that is of the least Weight or Moment, we being to do our Duty equally between the King and the Prisoner, we cannot allow Council when there is nothing before us to allow it upon.

Char. You will not, it seems, let me have such Assistance as I may offer you something material.

Mr. C. Serj. You know well enough we cannot do it; pray do not spend our Time to no Purpose.

Char. Nay, Sir, if you be in haste, I will not trouble you any longer.

Mr. C. Serj. You have no Reason to say we are in haste; I am sure you have had all the Indulgence and Patience that could be; you are at Liberty to offer any Thing that you can, but to spend the Time of the Court in bare Words is not reasonable.

Char. The Law was never my Practice, Sir, nor Study: I perceive whatsoever I offer signifies nothing; therefore I beg your Pardon for the Trouble I have given you; I shall not attempt to offer any thing farther.

Mr. C. Serj. You may offer what you will, we will hear you.

Char. Sir, I perceive whatsoever I say is unacceptable, and so I had as good let it alone.

Mr. C. Serj. You shall be heard to say whatever you think is for your Interest to say.

Char. I thought these Things were for my Interest to offer; but I see it is to no Purpose; therefore I have no more to say; I have done.

Mr. C. Serj. You may offer what you will, and you shall be heard with all the Patience and Candour imaginable.

Char. I see it is impossible for me to offer any thing that the Court will think material; therefore it is in vain for me to speak, and trouble my self and the Court with what will be of no Use to me.

Cl. of Arraignments. Edward King, hold up thy Hand, (*which he did.*) You stand convicted of the same High Treason; What can you say for yourself, why the Court should not give Judgment upon you to die according to Law?

(*Then he was made to kneel, and rise up again.*)

King. What *Mr. Charnock* has said, all of it I do imagine to be material; and since he is not to be heard, I have done; I can say no more.

Cl. of Ar. Thomas Keyes, hold up your Hand; you are in the same Case with the Prisoner that went last before you: What can you say for yourself why the Court should not give Judgment upon you to die according to the Law?

(*He was made to kneel, and rise again.*)

Keyes. Sir, I have had no Council, nor no Assistance since I have been in Prison.

Mr. C. Serj. That you alledged upon your Trial, and you were then told you might have had Council if you had thought fit; for you had an Order for it, and you come too late to offer any Thing of that Nature now. But the Question that is now ask'd you is, what have you to say for yourself, why Judgment should not pass upon you?

Keyes. I was only a Servant.

Mr. C. Serj. You have been told that will not excuse a Man in such a Case.

Keyes. I cannot help it, Sir, I have done; I hope you will take care of my Wife and Children when I am gone.

Then Proclamation was made for Silence, whilst Judgment was in giving; which the common Serjeant, sitting down upon the Bench, pronounced thus:

Mr. C. Serj. Robert Charnock, Edward King, and Thomas Keyes, the Prisoners at the Bar; You have been severally indicted for High-Treason; you have pleaded not guilty, and put yourselves, for your Trial, upon the Country, which Country have found you Guilty: You have had the Benefit of a fair, lawful, indifferent, and equal Trial, according to the Laws of this Land; those very Laws, which you are charged in this Indictment to have conspired to subvert. It is a Crime of the highest Nature that the Law knows: You are Gentlemen of liberal Education, and I hope this will bring you to some Reflection, both upon the State of your own Case, and the Blackness of your Offence, in the Time you have to live, which I fear is but short: It is certainly the heinouslest Crime that any Persons can be guilty of; the Murdering of a Prince in cold Blood, and involving your Country in Slaughter and Confusion. I have nothing more to do, but to pronounce the Judgment that the Law has provided for such Offenders, and which the Court doth award:

That you go from hence to the Place from whence you came; and that from thence you be drawn upon a Hurdle to the Place of Execution, where you are severally to be Hanged by the Neck, and cut down alive; your Bowels and Privy Members to be cut out from your Bodies, and to be Burnt in your View; your Heads to be cut off, your Bodies respectively to be divided into Four Parts; which Heads and Quarters are to be at the King's Disposal: And God have Mercy upon your Souls.

Char. Sir, I desire we may have the Favour to have our Friends and Relations come to us while we are in Prison.

Mr. C. Serj. You shall have all the Liberty of your Friends and Relations coming to you, that you can reasonably desire.

Char. And I hope we shall have no hard Usage in Prison.

Mr. C. Serj. No, God forbid you should; you may assure yourself you shall have none.

Then the Sessions of Peace for London, and of Gaol-Delivery of Newgate for London and Middlesex, were adjourn'd unto Saturday the 21st of March following.

Accordingly on *Wednesday* the 18th of *March*, 169 $\frac{1}{2}$ they were all three drawn from *Newgate* to *Tyburn* on Sledges, were they deliver'd the following Papers to the Sheriff.