

L. C. J. Well, Answer that? when he discoursed to you of the King's landing, did he name the late King *James*? or did he say the late King *James*?

Jurym. Was he mentioned in the Discourse?

Sweet. He never used to mention King *James* to me, but only the King, which I understood always of King *James*.

Mr. Att. Gen. Pray what time was it that he spoke of the King's landing?

Sweet. It was about *Christmas*.

Mr. Att. Gen. Therefore no other King could be meant but King *James*, for there was no other King to land at that time; and he said he had the King's Word for it. I suppose he can't pretend he had King *William's* Word for it.

Parkyns. I hope, to talk of the King's landing is no Treason; it is but Words: If I tell an idle Story of what I think may come to pass, shall that be reckoned Treason? Then for him to say, I had it from the King's own Mouth, it is impossible to be true, and is no Overt Act, being only Words, and cannot be reputed Treason. And then as to the other two Parts of the Charge, the Consultations with my Lord of *Ailesbury*, and those other Persons, there is but one Witness; no Body but *Porter*; neither is there any more but he for the Assassination; his Evidence is but a single Proof, and there ought to be two positive Witnesses, by the Law, to each Overt Act.

L. C. J. Holt. No: There ought to be two Witnesses to each Species of Treason, that's all.

Parkyns. There ought to be two Witnesses to both these Parts of the Treason.

L. C. J. Holt. I must tell you, Sir *William Parkyns*, if any Person does design and contrive that the Realm should be invaded, or the King deposed, and another set upon the Throne, that conspiring to invade the Realm, or depose the King, are Overt Acts of High-Treason, within the Statute of 25 *Ed. 3.* and the same Species of Treason as designing to assassinate him is. It is compassing, deligning, imagining his Death and Destruction. Now the Question is, whether there is not another Witness, besides Captain *Porter*, to prove another Overt Act of this Design?

Parkyns. I don't find there is, for all the rest is only Discourse.

L. P. J. Holt. Yes, for what, do you think providing Arms for that Purpose, is only Discourse?

Parkyns. The Witnesses don't say for what Purpose the Arms were bought.

L. C. J. H. Nor do you tell us of any other Purpose.

Parkyns. My Lord, it does not appear when they were bought.

L. C. J. Holt. Ay, but what Occasion had you for such a Quantity of Arms?

Parkyns. My Lord, I did not buy them after all. I found them. If I had had Liberty to have sent down for Witnesses, I could have proved that these Arms were in Boxes all rusty in my House when I first came to it.

L. C. J. Holt. Ay: But why were they buried, just at the Time when the Plot was broke out, and the whole Design discovered?

Parkyns. I can't tell, my Lord, how to help it, if they will make an ill Interpretation.

L. C. J. Holt. What Interpretation would you have us make?

Parkyns. My Lord, it is very easy to imagine,

People don't care to be found with Arms at such a Time; but, however, the Having of Arms is no Treason. They are as much a Commodity as any thing else.

Mr. Att. Gen. And then the Horse coming to Town just at such a Time, and the Saddles.

Parkyns. I have not bought a Horse this two Years, and I travelled in no other Manner than I used to do. So the Groom tells ye, I used to come to Town with three or four Horses always. I never kept less than six or seven Horses this twenty Years; sometimes a great many more; and they were very little Horses, Pads, no Way fit for the Service they are presumed to be for.

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

Parkyns. I hope, my Lord, as to the Assassination I am clear: Perhaps the World would imagine, I have had some Inclinations to King *James's* Service, and perhaps they may not think amiss; but I never did any thing, nor had an Opportunity to do.

L. C. J. Holt. God be thanked you had no Opportunity.

Parkyns. And I hope my Life shall not be taken away without Proof; I hope it will be rather thought, that every one should be taken to be innocent; and it would better please the King, that I should be acquitted, than to let me be found guilty upon slight Grounds, and Imaginations, of which little or nothing can be made.

L. C. J. Holt. No question of it: It will please the King and every Body else, that you should be found innocent.

Parkyns. Then, I hope, my Lord, you will not strain the Law to take away my Life; according to the Rule, That it is better five guilty Men should escape, than one innocent Man suffer: For the Blood of a Man may lie upon every Body, if it be causelessly shed; and it is very severe to strain the Law to take away any Man's Life.

L. C. J. Holt. Look ye, Sir *William Parkyns*, I must tell you, you may be under a very great Mistake: You may think it necessary to have two Witnesses to every Overt Act, but that is not so; for if there be one Witness to one Overt Act, and another Witness to another Overt Act of the same Species of Treason, that is all that the Law requires.

Parkyns. Here are two Species of Treason, levying War is one Species, and Assassination is another.

L. C. J. Holt. Your Design was, originally, the restoring of King *James*, and in order to that the dethroning of King *William*.

Parkyns. That appears but by one Witness, which is not according to Law, which requires two.

L. C. J. Holt. One Way of effecting your Design was by Assassination, the other by Invasion, or by Force.

Parkyns. Still, my Lord, here is the same Witness, and that is but one.

L. C. J. Holt. Yes, there are two.

Parkyns. None but Capt. *Porter*.

L. C. J. Holt. What, not as to the Restoring of King *James*, which tends to the Dethroning King *William*?

Parkyns. In what Particulars, my Lord?

L. C. J. Holt. Your providing Arms, and going to *Leicestershire*, and sending *Charnock* on that Errand into *France*. As to the Assassination, indeed,

deed, there is but one positive Witness, besides other Circumstances, which have their Weight; but as to the other, you said the King would come——

Parkyns. It was my Opinion, that's all.

L. C. J. But you said you had his Word for it.

Parkyns. Does not that answer it self, my Lord? Is it possible it should be true, that I who was in *England*, should have the Word of one that is at such a Distance beyond Sea?

L. C. J. And then your buying of Saddles, for what Purpose were they?

Parkyns. My Lord, does he say it was in order to it? I am sure he does not, and I hope I shall not be presumed out of my Life.

L. C. J. When you talk'd of the King's Landing, and said, you had his Word for it; you likewise said, your Troop was made up of old Soldiers, besides Volunteers that had been Officers.

Par. Still there is nothing done; he does not say there was one Man raised.

L. C. J. And your going into *Leicestershire* upon such an Errand, as you told him you went upon.

Par. Well, my Lord, I must leave it to your Lordship. I hope you will consider well of it.

L. C. J. We must do that which is right between the King and his Subjects.

Par. And, I hope, my Lord, the Conversion of Subjects is more acceptable than the Destruction of them; and the Government is more concern'd to save the Innocent, than to stretch the Law to punish the Guilty.

L. C. J. It will be more acceptable, and indeed, the King and Kingdom are very much concerned in this Matter, and at this Time, *Sir William*; and the Government ought to take Care to preserve itself. Have you any more to say, Sir? if you have pray speak it.

Par. I have no more. I submit it to your Lordship: I think there is but none Witness, and all the other is but Conjecture and Nonsense; and one Witness is not sufficient, by the Law of *England*, for by the Statute there must be two.

L. C. J. I have told you my Opinion.

Par. Besides, your Lordship has known me this many Years, and you know that my Education was not to War, and Fighting, but the Gown; and your Lordship knows how peaceably I have lived.

L. C. J. I have known you heretofore, *Sir William*, while you kept your Profession and your Gown.

Par. And now in my old Age, my Lord, I am grown lame, and have lost the Use of my Hands with the Gout, and scarce able almost to go on my Feet. Therefore it cannot in Reason be thought probable, that I should engage in such a Business as this; and therefore I hope you will interpret all Things in a milder Sense, in Favour of Life, rather than for the Destruction of it, and the Ruin of a Man's Fortune and Family.

L. C. J. I tell you, You have had my Opinion concerning the Number of Witnesses. I suppose my Lord and Brother will declare theirs.

L. C. J. Treby. My Lord Chief Justice, it seems, does please to have us deliver our Opinions; I think we ought to be very tender in a Case of Blood: I think the Life of *Sir William Parkyns* is at Stake, and we ought to be careful that he have no Wrong done him. But I think in the Cases of Treason, especially of this Nature, the Life of

the King; and the Lives of all the innocent People of the Kingdom are also at Stake; and we must be indifferent in this Case, and by the Grace of God we will be so. The Question that *Sir William Parkyns* proposes, is, Whether there are two Witnesses upon this Evidence, to this Matter of which he is indicted, which is, the Compassing and Imagining the King's Death. One Witness, at least, does positively prove, That you *Sir William Parkyns* did agree to the Design of Assassinating the King's Person, and promise to provide and contribute Horses and Arms to that Purpose. Now suppose this is prov'd but by one Witness, and the Evidence had gone no farther, then your Objection would have had a very good Ground; that this could not be a legal Proof of Treason; but I must tell you, That this Treason of Compassing and Imagining the King's Death may be made evident by other Overt Acts, besides that of Assassination: To conspire with a Foreign Prince, to invade the Realm, to provide Arms; to join with Invaders, and to make an Insurrection against the King, these are Overt Acts of Imagining the King's Death. For it cannot be supposed, but that he that would have an Invasion and an Insurrection against the King's Person, does intend the Destruction of the King; he that would take away all his Defence, which he might have by the Assistance of his Subjects, and leave him exposed to his mortal Enemies, cannot but be presumed to design the King's Ruin and Murder. Therefore, *Sir William*, such Things being in their Nature a Compassing and Imagining the King's Death; your providing Arms and a Troop are Evidences and Overt Acts of this Treason; and so will your going up and down and meeting People in order to rise, if that were your Business in *Leicestershire*, &c. as it seems by the Evidence it was.

Par. But that is not said, my Lord, I humbly beg your Pardon for interrupting you; it is not said, That I met them to rise, by no Evidence whatsoever; and therefore, pray my Lord, do not enforce it beyond what the Evidence has proved; he said, I went to meet my Friends: Was there any thing said it was in order to a Rising?

L. C. J. Treby. I think you mistake your own Words, as you spoke them to the Witness, if I did take them, as I think I did, right, for they were several Times repeated. I will do you no Wrong, *Sir William*, I assure you. You went into *Leicestershire*, and you say, It was to meet your Friends; the Witness says, It was to meet the King's Friends; by the King, it is very plain, you meant not King *William*, but King *James*; for you spoke before of the King's Landing, which was at *Christmas* last, when every body knows King *William* was in *England*. These coupled together——

Par. I beg your Pardon, my Lord; those two Things are not both to be join'd together, the Discourse of the King's Landing was at *Christmas*, as he says, the other thing, my Journey into *Leicestershire*, was a Month afterwards, and therefore they cannot be coupled together.

L. C. J. Treby. The Coupling of them, that I meant, was only to shew who was understood to be spoken of by you, when you named the King; so the Question is, Whether you did not mean the same Person in *January* that you meant in *December*, by the Word King, especially since as a Discovery you had made, you said farther, that
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the *West* was as well inclined to the King's Interest as the *North*, and a Lord's Brother was concerned in it. If by the King you had meant King *William*; how impertinent and insensible had been all this Discourse, that the *West* was as well inclined as the *North*, and that a Lord's Brother was concerned in it; concerned in what? In being inclined to King *William*; to what Purpose could that be said?

Par. It may as well be interpreted that Way as the other.

L. C. J. Treby. I must leave that to the Jury. And I confess, if there was not somewhat more in the Case, you might the better argue upon this, as to the Interpretation. But laying aside the Consideration of your Riding into *Leicestershire*, &c. here is this Providing of Arms, proved by four or five Witnesses, and the Serving of them in that Manner; and there is no Account given by you; that they were provided for the Service of the Government, or that you were employ'd so to do. Certainly it is not lawful to provide Arms, especially for a whole Troop, as for ought I perceive here was, though indeed I am not skilful enough in those Businesses, to know how many make up a Troop; but it's plain here was an Insurrection intended, when the Invasion was made; and that is an Evidence, that these Arms were to be employ'd upon that Account, for no other Use was to be made of them, nor is pretended. If you had found those Arms in your House (as you say) it had been your Duty to have deliver'd them up, or disposed of them to the Use and Service of the Government, which Service too, could only be when you had a Commission from the Government, and not of your own Head. And then, besides all this, you acknowledg'd that you had a Troop of old Soldiers.

Par. It is but slidingly that, for he only tells you, that a Troop would be compos'd of old Soldiers.

L. C. J. Treby. How can that be? when he says, he repeats your own Words, My Troop consists of old Soldiers; can any Body say, that his Troop consists of old Soldiers, without having a Troop?

Par. Pray, Mr. *Sweet*, speak; my Life is at Stake, Did I say to you, it did consist, or it was to consist? recollect your self, and consider well before you speak.

L. C. J. What was it that he did say? it did consist, or it would consist?

Sweet. He said, his Troop was compos'd all of old Soldiers.

Par. But does it appear by any Evidence, that I had a Troop; if I had, who were they? none of these Men do appear. Does this Troop consist of Men in the Air? that I should list Men that are all in *Nubibus*, and not one of them to be known. Suppose I should tell him a Lye, or make some Brags, is this Treason? here is no Person proved to be listed or named.

L. C. J. But Arms were found in your House for a Troop.

Par. But where they were bought, and when they were bought, and made ready, it does not appear; and I affirm to your Lordship, if you would give me but one Day's Time, I would prove, that they were at my House in *Warwickshire*, when I first came down thither, which is two Years ago. And I'll fully make it out to your Satisfaction, or I'll be crucify'd, or any thing

in the World. I can prove it by a great many Witnesses, by my Friends, and all the Servants that belonged to me, they were there long before this Discourse was had or thought of.

Mr. Just. Rokeby. If your Lordship expects that I should deliver my Opinion, I am ready to do it. As to this Matter of Law that Sir *William Parkyns* has propos'd, he says, There are not two Witnesses to the same Overt Act, and therefore no Evidence of Treason; truly, I take it, and always did, that the Law is, there need not be two Witnesses, to the same Overt Act; but if there be two Witnesses, one whereof speaks to one Overt Act, and another to another Overt Act of the same Species of Treason, these are two Witnesses within the Law. Now, I think, there are two Overt Acts in the Indictment of this Treason. The Treason is Compassing the Death of the King; the Overt Acts are first, the particular Design of the Assassination upon his Person, and the other is, the bringing in of a foreign Force, and preparing Horses and Arms to meet that foreign Force here: All to the same Intent and Purpose, the Compassing and Imagining the King's Death. Now besides that of the Assassination, there are a great many Witnesses that prove there were Arms prepared; for there were found a great Quantity, when they opened the Boxes, which Boxes, it is plain, he himself sent down to *Haywood's* House: For tho' *Charnock* writ a Letter, yet it was by his Direction, as he own'd to *Haywood*, when he was here in Town. And then his Servant fetched them away from this Place, and this I take to be another Overt Act, and proved by several Witnesses. Sir *William Parkyns* speaks of his being a Gown-Man, but I do not know what a Gown-Man has to do with such a Quantity of Arms.

Par. If you will give me Leave to send for some People, I will demonstrate it to you as clear as the Sun, that they were in the House two Years ago, when I came first thither.

Mr. Just. Rokeby. There were Preparations two Years ago, it appears, for the Destruction of the King and Kingdom; however, the Men that were accus'd of it, had the Luck to escape and be acquitted.

Par. My Lord, I hope I shall not be interpreted out of my Life, I desire the Statute may be read.

Mr. Just. Rokeby. What Statute do you mean?

Par. The 25th of *Edw.* III. and the new Statute too, let them both be read to the Jury, that they may consider of it.

The Statute of the 25th of Edw. III. was read.

Par. There is nothing of two Witnesses there.

L. C. J. No, but there is another Statute of the 5th of *Edw.* VI. cap. 11. that may be more for your Advantage; Will you have that read?

Par. Yes, if you please, I know there is another Statute that does direct it, and I expected to have found it in this Statute.

Cl. of Ar. This is an Act made in the 5th and 6th Years of King *Edw.* VI.

The Statute was read to these Words, Unless without Trial he shall confess the same.

Par. There's enough.

L. C. J. You have heard the Statute read, would you infer any thing from it?

Parkyns. I infer that there ought to be two Witnesses, and here is but one.

L. C. J. There are two Witnesses.

Park. Not direct to the same Thing.

L. C. J. I shall leave it to the Jury, whether this Evidence does not prove an Overt-Act, to demonstrate a Design against the King; if the Design be to depose him, and that's manifested by two Overt-Acts, undoubtedly that is Treason within the Statute of 25 of *Edw.* 3.

Par. That I agree, but yet there must be two Witnesses of it.

L. C. J. Suppose Dethroning the King be the main Design that strikes at his Life, and you resolve it shall be done one Way or other. One Way by Assassination, the other by Insurrection; or by Invasion and joining with a foreign Army.

Par. My Lord, I conceive there ought to be two Witnesses for each.

L. C. J. No, no; for that very last Act that is to take Effect in a few Days, declares it is sufficient, if there be one to one Overt-Act, and another to another; but still it must be of the same Head or Species of Treason; and deposing the King and assassinating of him, and preparing to raise an Army against him, or to excite an Invasion, are but one Sort of Treason.

Par. It may be so, if they were Overt-Acts of one Sort of Treason; but rising in Arms, and Assassination are as different Things as can be in the World, and therefore there ought to be two Witnesses to each of them.

Mr. J. Rokeby. That which I deliver'd as my Opinion was, that one Witness proving one Overt-Act, and another Witness proving another Overt-Act of the same Sort of Treason, are two good Witnesses, according as the Law requires. And I am the more fully confirm'd in it, by the Clause that is in this new Act of Parliament, made for Trials in Cases of Treason, that a Man shall not be convicted of Treason, but by and upon the Oaths and Testimony of two lawful Witnesses, either both of them to the same Overt-Act, or one of them to one, and the other of them to another Overt-Act of the same Treason.

Par. Of the same Treason, aye.

Mr. Just. Rokeby. And here it is the imagining the Death of the King, that is the Treason.

Par. Then you may say every Thing else is so; but if you please to let the whole Statute be read.

L. C. J. You shall have it read if you will; but this is all that is in it concerning this Matter. Now a Design to depose the King, which is manifested by some Overt-Act, is an Overt-Act to prove the Design of the Death of the King.

Par. Then it must be manifest, and not by Interpretation; and all these Things are by Interpretation, except it be what *Porter* swears.

L. C. J. If by Overt-Act it be proved, that you designed his Deposition, that is an Overt-Act to prove your Design of his Death.

Par. They are very different Things, Death and Depositions. We have seen a King deposed, and yet he is alive.

L. C. J. Treby. I am sure we have seen a King agreed to be assassinated, and yet, God be thanked, he is still alive.

L. C. J. It is not the Succeeding in the Design, but the Design itself that is the Treason. God forbid that it should have Success to make it Treason.

L. C. J. Treby. But whenever People will agree together to bring in foreign Forces, or to prepare Men and Arms against the King that is in Possession, this is reckoned an Overt-Act of a Design against his Life, and has always been reckoned so by my Lord Chief Justice *Hales*, my Lord Chief Justice *Coke*, and by all those Men that have been

reputed the most tender in Cases of this Nature: For any Act that expresses an Intent of dethroning the King, by Means of an Invasion by a foreign Force, and an Insurrection against the King, is a proper Proof of a Design of his Destruction; and if not, then agreeing to shoot him is not an Overt-Act. Men may say also, that there need be actual Shooting to make out the Overt Act in that Case.

Par. If your Lordship pleases to have the Act read, I shall submit to your Lordship's Judgment.

L. C. J. Let it be read.

Par. If you please to read the Act, the Preamble of it.

Cl. of Ar. This is an Act made in the 7th Year of our Sovereign Lord the King: Is that the Act? It is an Act for Regulating of Trials in Cases of High-Treason, and Misprision of Treason. Is that the Act?

Par. Yes, yes. (*The Act was read.*)

Mr. J. Rokeby. I believe if you look into the great Case in Parliament, the Case of my Lord *Stafford*, you'll find it was declar'd for Law, that one Witness to one Overt-Act, and another Witness to another Overt-Act of the same Treason, they were two Witnesses within the Law, and this was a solemn Resolution in Parliament in the House of Lords.

Par. I believe it has been done; but here is a beneficial Law made, which if my Trial had been put off a few Days, I should have had the Benefit of it.

L. C. J. It would have been the same Thing as to this Matter, for this Act declares the very same Thing, as to the two Witnesses.

Par. And then, my Lord, I could have had Witnesses to have taken off a great Part of this Evidence, and the Law comes to take Effect within one Day, and it turns here upon this Matter of *Sweet*, who is not a good Evidence; for it is manifest he has contradicted himself, and it is manifest he has sworn what cannot be true.

L. C. J. Wherein?

Par. That I should say the King would land here, for I had his Word for it.

Mr. Just. Rokeby. You might have his Word, and not delivered by his own Mouth; there are other Ways to convey a Man's Word besides speaking.

Par. But then we don't call it his Word, that's Hearsay.

Mr. Just. Rokeby. If a Man write his Note that he will do such a Thing, we may very well say, we have his Word for it.

L. C. J. It is not impossible but that you might speak with him.

Par. It is impossible I should speak from hence to *France*.

L. C. J. You might have been over with him, I believe a great many others have, and it's proved *Mr. Charnock* went over.

Mr. J. Rokeby. If any Man should have said at the latter End of the last Month, I believe that there was an Assassination intended against the King, because I have his Word for it, meerly from reading his Speech to the Parliament, wherein he affirms that he had several Proofs of it, that had been a proper Expression, though he did not hear the King speak it.

Par. Yes, if he had the Speech to produce.

Mr. J. Rokeby. Then if it come by Letter, or Message, or common Fame, he might send you Word by particular Messenger.

Par. Yes, if there was any such Authority as that it were true. But he has manifestly contradicted himself, and *Capt. Porter* swears for his own Life, and I must leave it to you, whether they are to be believed.

Mr,

Mr. J. Rokeby. Capt. Porter's Testimony has been sufficiently confirm'd by the Acknowledgment of dying Persons.

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

Parkyns. No, my Lord, I submit it to your Lordship's Direction.

L. C. J. Then what say you to it, Mr. Attorney, or Mr. Solicitor?

Mr. Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am of Council for the King in this Matter, and it is my Turn to sum up the Evidence against the Prisoner at the Bar: He stands indicted for compassing the Death of the King, for designing to depose the King, for promoting a foreign Invasion, for intending an Insurrection here at home, and for aiding and abetting the King's Enemies, and for doing what he could to procure the Subjection of his own Country to Foreigners and Strangers.

Gentlemen, some of these Crimes run into one another; designing the Death of the King by Assassination, and designing to depose the King, amount to one and the same Thing with compassing and imagining the Death of the King.

My Lords the Judges have given you their Opinion in that Point of Law, and I think it is agreeable to all the Resolutions that have been since the Making of the Statute of 25. of *Edw.* 3d. I think that it has been explained so in the Time of *Richard* the Second; but this I am sure of, that it was so resolv'd in the Time of *Harry* the Fourth, when there was a Design to set up *Richard* the Second again, and it was adjudged to be High-Treason in compassing and imagining the Death of the King. For deposing the King, is destroying him in his politick Capacity, as much as Assassination and Murdering of him is destroying him in his natural Capacity, and the Conspirators in such Cases know what the great End is they aim at, to subvert the Government as it is established by Law, whereby every Man enjoys his own Property, and the Freedom of his Person, and those that will be quiet may have their Liberty and Property preserved entire to them; but some People are so very impatient of submitting to the Law, that they cannot be content to be in Servitude themselves, but they must needs do all they can, to bring it upon their Fellow-Subjects. And it were very well if that those who are in Love with Slavery, would but go to some other Places, where they may have enough of it, and not bring it upon those who are so little desirous of such a Thing, as we are, and I hope always shall be.

Gentlemen, to prove Sir William Parkyns Guilty of this Treason, whereof he stands indicted, we have produced several Witnesses; and first there is Mr. Porter, and he tells you Sir William Parkyns told him he had seen a Commission from King James, written with his own Hand, for making War against the Person of King William.

Parkyns. Sir, I beg your Pardon for interrupting you, but there was not one Word of that said; here is Mr. Porter, pray ask him, if ever I saw a Commission from King James.

L. C. J. Porter did say so, if I remember any Thing Porter said, you told him you had read the Commission, and it was written with his own Hand.

Par. All that I heard of it was, that when I was desired to make one in the Assassination, I refused it because I said I was busy about the Matter of my Regiment.

Mr. Att. Gen. Pray call Porter again. (Capt. Porter came in.)

Mr. Sol. Gen. Pray Capt. Porter, will you give the Court and the Jury an Account what you heard Sir William Parkyns say about the Commission that came from King James?

Capt. Porter. I ask'd Mr. Charnock why I might not see the Commission, and he told me he had never seen it himself, but Sir William Parkyns had. I did ask Sir William Parkyns, whether he had seen it, and he told me he did see it, and read it, and it was to raise War against the Person of the Prince of Orange.

Mr. At. Gen. Whose Hand was it in, did he say?

Capt. Porter. It was written with King James's own Hand.

Par. This was my Mistake, I thought he had said I told him I had a Commission for a Regiment.

Mr. Mountague. Did he give any Reason, why it was written with King James's own Hand?

Capt. Porter. We used to say amongst ourselves, it was, because he would not trust any of his Ministers with it.

Mr. Sol. Gen. I would not do Sir William Parkyns any Wrong, but only sum up what is material in the Evidence given against him. I remember very well Mr. Porter said, Mr. Charnock told him Sir William Parkyns had seen the Commission, but I would not offer that as Evidence against the Prisoner what another told him, but he says besides that Sir William Parkyns told him himself, that he had seen it, and that it was written with King James's own Hand. He says that they had several Meetings together, Sir William Parkyns, and a great many others; and he names the Places, the *Nagg's-Head* in *Covent-Garden*, the *Sun Tavern* in the *Strand*, and the *Globe Tavern* in *Hatton-Garden*; he tells you particularly, that it was agreed that King (who was executed) and *Knightley*, and himself should go and view a Place that should be proper for the Assassination, and to give a Report to the Prisoner, and the rest of the Conspirators, what they thought the most proper Place; and that accordingly they did view the Place, and came home at Night, and met the Company, whereof Sir William Parkyns was one; and they gave an Account how the Place was viewed, and which was thought most proper, and then all the Company agreed to it. He says indeed, that Sir William Parkyns was not one that was to execute it in his own Person, but one *Scudamore* was to be the Man employed by him, and he did say it was a Thing that was very necessary to be done, and would facilitate the Introduction of King James, and the bringing him back again: And there is likewise this concurring Evidence of Mr. Porter's with what I shall observe by and by, that Sir William Parkyns was to procure five Horses, three whereof he was to mount himself, and two he was to send Captain Porter to mount, and if there were further Occasion he could procure more from Mr. Lewis, Gentleman of the Horse to my Lord *Feversham*, and accordingly we have produced to you two Witnesses, *Freeman* and *Turton*, the one a Tapster, the other an Hostler that lived at the *George-Inn* in *Holbourn*, who give you an Account that upon Friday before the first Day that was designed for the Assassination, there did come three Horses to Town, for Sir William Parkyns, but it being put off upon the Disappointment, they were sent out of Town again. Upon the Friday afterwards, the Day before the Discovery, then there were four Horses brought to Town, and a 5th was of Mr. Lewis, which was a Roan Gelding.

Parkyns.

Parkyns. Pray, Sir, will you please to observe what Sort of Horfes they were; and particularly the Heighth of them, that it may be known how fit they were for this Business.

Mr. Sol. Gen. I will do you no wrong Sir *William*, if I can help it. The Jury have heard the Evidence; and by and by they will hear my Lord's Directions: But they do say there were 4 brought to Town, and a 5th was sent, a Roan Gelding; first the Witness said the Horfe came from *Mountain House*, but then presently he recollected himself, and acknowledged the Mistake; and afterwards said it was from *Somerset-House*. So there were the 5 Horfes, 3 whereof Sir *William Parkyns* was to mount, and 2 Captain *Porter*, as he himself says; and these Facts I instance in as making a concurring Evidence, and very near to two Witnesses to prove this Part of the Conspiracy.

Then, Gentlemen, Captain *Porter* goes further, and says, that he had heard (but Sir *William Parkyns* did not tell him so himself) that Sir *William Parkyns* had a Commission to raise a Regiment of Horfe, and was preparing so to do, against the Time of the Invasion, to join with the Forces that were to come from abroad. To confirm which, we have called Mr. *Sweet* to give you an Account that he had been acquainted with Sir *William Parkyns* for three Years, and that he had often talkt with him about the King, that is his present Majesty, whom he called the Prince of *Orange*, and the little Gentleman; and about King *James*, whom he used to call always King; and he said the King was to land very speedily, and that he had a Troop which consisted of old Soldiers, and that there were several Volunteers that were Officers; he said he was to take a Journey into *Leicestershire*, and accordingly he went; and when he returned back again he said, the West and the North were very well inclined to the King's Interest, or to that Purpose. And to strengthen his Evidence we prove, that he did go accordingly into *Leicestershire*, and we prove it by his Servant that went with him, where he met with several Persons, particularly one *Tarborough*, and a Parson; what they did transact the Servant cannot prove, but he is a concurring Witness to prove, that he went into *Leicestershire*; and we have all the Reason in the World to believe that he went on that Errand that he spoke of before, that is to meet the King's Friends, as he called King *James*. And then there is a further concurring Evidence of his having a Regiment, or a Troop, it is not material, whether it be one or the other; and that is the Matter of the Arms, 4 Dozen of Swords, 32 Carbines, 35 Cases of Pistols, that were hid in the Garden of his House: And these Arms we have traced further, he sent them from his House to *Haywood's* House, there he thought they would not lie safe, and therefore Sir *William Parkyns* sends for them privately; they were to come away at Night, and be brought back to his House, and they were accordingly brought back in the Night to his House, and there they were buried; and the same Person saw them taken up afterwards, which brought them to Sir *William Parkyns's* House, and proves they were the same Boxes that were buried, and which upon Opening proved to be these Arms, that were first sent to *Haywood's*, and afterwards brought back to his own House.

So that this, Gentlemen, is a concurring Evidence both to what *Sweet* says, and to what *Porter* says, and those are the Two Witnesses to this Part

of the Treason, that there was a Provision of Arms and Men for this Purpose, which he said he had a Commission for.

Now, Gentlemen, against all this he makes but a very small Objection. As to the Matter of two Witnesses to every Overt-Act, that has been overruled by the Court; and as to the Arms, he says he found them at his House when he first came to it; and then they were old rusty Arms, but of this he gives you no Manner of Evidence. But if they were there when he came to the House, how came he at this Time of Day to hide them, and secrete them? Why might they not be as publick now as they were before he came, which he has had Time enough to prepare to prove since the Finding of them? And he does not give you so much as any colourable Reason why he so secreted them. And therefore 'tis a most just and violent Suspicion, that they were for the Purposes that the Witnesses have given you an Account of; and you have Reason to believe they were provided for to arm that Number of Men, which he was to raise to assist the *French* when they came to land here. So that if you believe what the Witnesses have sworn, you cannot say but that he is guilty of the Treason charged upon him; and we doubt not you'll find him so.

Mr. Cowper. May it please your Lordship, and you Gentlemen of the Jury; I am of the same Side of Council for the King. Sir *William Parkyns* has given us a good Caution, which I shall take care to observe: And that is, not to strain either Fact, or Law, to his Prejudice. But, my Lord, When such a Matter as this, a Crime of this Nature, is so far proved against the Prisoner at the Bar, that no Body can in his private Judgment reasonably acquit him; then I think it a good Piece of Service to the Publick to make the Matter so plain, that it may be put beyond all Manner of Doubt, both for the Ease of the Jurors, and for the Satisfaction of all others that hear this Trial.

My Lord, Sir *William Parkyns* has truly divided his Indictment into two Parts, the one that accuses him of being concerned in the Assassination, and the other that accuses him of being concerned in Inviting the *French* into the Kingdom, and In-gaging to meet them with an armed Force.

My Lord, As to the first Part, I must do Sir *William Parkyns* that Right, that there is but one positive Evidence as to the Assassination; but that Evidence tells ye he agreed to it at several Meetings; nay, that he was one who said it was necessary to be done, in order to the other Design he was engaged in, the facilitating the Landing of the *French*, and King *James* his Descent and Restoration. There is, I say indeed, but one Witness of that Matter, but the Evidence of that one Witness is confirmed by many concurring Circumstances; by his sending for Horfes to Town the Day before the first *Saturday*, when this execrable Treason was to have been executed; by sending them out of Town again that Day upon the Disappointment; by sending for them again the *Friday* before the second *Saturday* that the King was to have been assassinated; by his having more Horfes than were usual with him that Day; by his taking care then of three Horfes that were none of his own, and one of them brought very suspiciously from *Somerset-House*; and that all these eight Horfes should be immediately hurried and carried away upon the Disappointment the second

Saturday, and nothing ever heard of them afterwards. I say one of them was brought very suspiciously; for, my Lord, you observe it came from *Somerset-House*, and was sent by *Lewis* according to the Prisoner's Promise to Capt. *Porter*, which *Lewis*, it is apparent by all the Witnesses of this Matter, was privy to this Design.

My Lord, There is another Circumstance besides this, which, I think, has not been observed; and that is, his sending for *Sweet* up to Town before the second time that the King was to have been Assassinated; he came up indeed before both the times: The first time he was told by the Prisoner, he had once designed to have used him in a Business; but upon second Thoughts he had Compassion for his Family. And when he came the second time, he was first ask'd what Condition he had left his Family in, whether he had provided them Money. He said, No; and thereupon he was chid: And the Prisoner said, he might then as well have staid at home. All these Circumstances, besides the one positive Evidence, favour strongly of his having a great Hand in the Design of Assassinating the King.

But then, my Lord, As to the other Part; his Inviting the *French*, and preparing to meet them, that is positively proved by two Witnesses. Capt. *Porter* tells you, That the Prisoner was at the two Meetings in *Leadenball-street*, and *St. James's-street*, where it was expressly resolved by all that were present, and the Prisoner among the rest, to send *Charnock* over to invite the *French* to invade this Kingdom, and to promise to meet King *James* at his Landing with Two thousand Horse. He swears, That *Sir William Parkyns* did particularly agree to what was so resolved upon at both the Consults. And *Sweet* tells you that he had prepared for the same Design; for that *Sir William Parkyns* told him, the King would land, he had his Word for it; and he himself had a Troop of old Soldiers. *My Troop does consist* (he spoke it in the present Tense; for it being a Doubt, *Sir William Parkyns* did himself that Right as to examine the Witness again, and he repeated it as his Words, *My Troop consists of old Soldiers, or is composed of old Soldiers.* And he was to have several Volunteers that had been Officers.

My Lord, These two positive Witnesses are Evidence that goes to the same Species of Treason, nay to the same Design, the raising a Rebellion, and the Deposing the King, which is Killing him in his politick Capacity; I say, these Two go home to the same Design.

And, my Lord, This Evidence upon this Branch of the Indictment, is corroborated too by very strong Circumstances. There is a Journey to *Leicester*, which *Sweet* speaks of, that *Sir William Parkyns* told him he would undertake: This Journey it is proved by his Servant that he did undertake; that he met there with several Persons, and came back and made his Report to *Sweet* of the Success of his Journey, and how well disposed the King's Friends were, by which Name he always meant King *James*; for when he spoke of our present King, he called him the *Little Gentleman*, or sometimes King *William*, and sometimes, as the Witness at last said positively, the Prince of *Orange*: But when he spoke of the King, without any thing else, he always meant King *James*; and besides, he spoke of a King that was beyond Sea at *Christmas* last, which could not be King *William*, who was then, and had been in *England* so long before.

My Lord, the Prisoner in his Defence says, That this Servant of his that went with him into *Leicestershire*, had been formerly *Charnock's* Servant, and was sent by *Charnock* with the Message to *Kensington*, and not by him. Yet I must observe, that the Evidence swore positively he was sent by *Sir William Parkyns*, his Master, and brought the Note in the Almanack back to the Person to whom he was directed to carry it, who lodged at the Confectioner's House; and when he had so done, that the Person that lodged at the Confectioner's did not remit him to *Charnock*, but to his Master *Sir William Parkyns*, with a Message that he would be at Home, and stay there ready, whenever he should have Occasion for him; and this was upon the very *Saturday* the King was to have been assassinated.

My Lord, *Sir William Parkyns* has complained, that if he could have had his Evidence here, he could have proved the Arms had been two Years in his House, and that he found them there when he came thither first. If we should admit that Matter, we might confess, and avoid it; for it is apparent, that these Arms were on this Occasion put up in a suspicious Manner in Boxes, and sent to *Haywood's*, (who is a suspicious Person, by Reason of his Relation to *Charnock*, upon whose Letter and Recommendation they were received) and concealed till the Plot was disappointed; and then they were carried away from that Place, and buried in *Sir William Parkyns's* own Garden. This was just after the Breaking out of the Plot; and they were buried for the better securing them as choice Goods. And whereas the Prisoner says they were old and rusty when he found them, it now appears they were clean and new-furbished Arms, and the Hiltts were off the Swords, and packed together.

My Lord, he has Recourse to another Argument in the last Place, the most moving, I must confess of all, and that is the Argument of Pity: He has spoke of his Education in the Profession of the Gown, of his Infirmities, his Age, and his Family. Arguments of Pity I am very unfit to give an Answer to, and should be very unwilling to extinguish any Motions of it; but this I must observe even by Way of Answer to that Argument, That the Time was when he should have pitied himself, and not engaged in such an abominable and merciless a Design; That he should have had Pity upon his Country, which he plotted to bring under the greatest Confusion and Desolation; That he should have had Pity upon the best of Kings, and the best of Men; but then there was no Pity, when they thought they had laid their Designs so that they had him in their Power, but they resolved barbarously to murder him, and persisted in the Resolution of Assassinating him after they were once disappointed; That, it seems, did not discourage them, but they undertook it a second Time, and it does not appear that they ever had any Remorse at last for it; but the Plot broke out, and so their whole Design was frustrated.

My Lord, This is the Sum, I think, of his Defence; I have as well as I was able given an Answer to the Objections made to it, and I must now leave it with you, Gentlemen of the Jury: And tho' these Considerations that I have mentioned may not quite remove all Compassion, yet they may serve to confirm you in a Resolution of doing the King, and Kingdom, and yourselves Justice; and that is all we ask of you.

L. C. J.

L. C. J. Gentlemen of the Jury, Sir *William Parkyns* is indicted of High-Treason, for Designing, Imagining, and Compassing the Death of the present King. There have been several Witnesses produced that have given Evidence upon this Indictment; the first of them is Mr. *Porter*, who has been a Witness heretofore against several upon the like Occasion; and he gives you this Account, That about the latter End of *May*, or the Beginning of *June* last, there was a Meeting of divers Persons at the *Old King's Head Tavern* in *Leaden-ball-street* in the City, where they dined together, and there was Sir *William Parkyns*, Captain *Porter* himself, Sir *John Fenwick*, Sir *John Freind*, and divers others that he has mentioned to you. At that Meeting they did consult together, which Way the late King *James* might be restored, and it was thought very necessary that there should be a *French* Force sent over hither to join with others for his Restoration. And they did among themselves agree, and determine what Number of Forces might be convenient for that Purpose, they did propose 10000, 8000 Foot, 1000 Horse, and 1000 Dragoons: And that a Message should be sent over to King *James*, to persuade him to solicit the *French* King, to furnish him with such a Number of Men to be sent over into *England*. Mr. *Charnock*, that was then in the Company, was the Person agreed upon among them to be the Messenger to be sent upon this Errand, which Employment he did undertake, upon their Promise, that they would raise among themselves 2000 Horse for to meet the late King at his Landing.

This being at that Time determined, and Mr. *Charnock* having accepted this Employment, he did make Preparation to go upon this Errand. In some Time after, (a Week or a Fortnight, or thereabouts) there was another Meeting at which were several of the same Persons, that were present at the former, and among them Sir *William Parkyns* was one: And this Meeting was at one Mrs. *Mountjoy's*, that keeps a Tavern in *St. James's-street*, where they did discourse of what they had formerly agreed upon, and did again consider whether they should proceed to send Mr. *Charnock* with that Message; to which they all agreed, that Mr. *Charnock* should go, and he accordingly went; and Captain *Porter* met him about five or six Weeks after the Meeting at Mrs. *Mountjoy's*, and *Charnock* told him he had been in *France*, and that since his Return he had been with the several Persons who had sent him, and had acquainted them with the Answer of K. *James*, which was, That at that Juncture of Time the *French* King had such Occasion for his Forces, that he could not spare them, or furnish him with so many to come over here. This is the first Matter that *Porter* gives you an Account of.

But then Captain *Porter* tells you farther, how the Design of Assassinating the King was set on Foot about the latter End of *January*, or the Beginning of *February* last. About which Time Sir *George Barclay* was sent over with a Commission from the late King *James*; which seems to have given great Encouragement to that Party of Men: For Sir *George Barclay*, Captain *Porter*, and Sir *William Parkyns*, with divers others, had several Meetings at the *Globe Tavern* in *Hatton Garden*, the *Nagg's-Head Tavern* in *Covent Garden*, the *Sun Tavern* in the *Strand*, and other Places. And at these Meetings they entred into Consideration,

what was the best Way to restore the late King *James* to the Throne; and it was agreed among them, that the best Means for the Effecting that Restoration, would be to kill King *William*, which they resolved to undertake; and at these Debates and Resolutions, Sir *William Parkyns*, the Prisoner at the Bar was present. Captain *Porter* being asked whether Sir *William Parkyns*, at these Consults, did consent to the King's Murther, he said they did all agree to the Assassination of the King, and Sir *William Parkyns* said, he thought it was very necessary to be done, to facilitate the Restoration of the late King.

Gentlemen, This Design of Assassinating the King being thus resolved upon, the next Thing considered among them was, how it might be effected; there were several ways proposed: One was by an Ambuscade; for the King having a House in the Country by *Richmond*, his Majesty used to go once a Week a Hunting thereabout, and to return at Night; and therefore an Ambuscade on that side of the Water, near the House, was proposed. Then another Proposal was made to fall upon the Guards on this side the Water, and at the same Time that the King's Coach was to be set upon. And these two Places being proposed, there was some Difference of Opinion among them, whereupon it was agreed that some Persons should be sent to view the Ground on both sides the Water, which Persons were Captain *Porter*, King that was executed, and one *Knightley*; and so some Days before the 15th of *February* they did go on both sides the Water; and viewed the Ground, and returned in the Evening to the *Nagg's-Head Tavern*, according to Agreement, where were met together Sir *George Barclay*, Mr. *Charnock*, and the Prisoner at the Bar, Sir *William Parkyns*. And there they made their Report of their View of the Ground, upon which both the Proposals were debated, and at last they did all agree that the Attack should be made upon the King on this side of the Water, in a Lane that was between *Brentford* and *Turnham Green*; and the Attack upon the Guards was likewise to be made thereabouts.

Sir *William Parkyns* was to furnish five Horses, whereof three of them were to be mounted by Men of his own providing, the other two were to be mounted by Men of Captain *Porter's* providing; Mr. *Porter*, Mr. *Charnock*, and one *Rookwood*, were to be principally engaged in Attacking the Guards. The Number of Men agreed upon for the whole, were about Forty or few more, and Sir *George Barclay* was to have a Party out of them all, of about Eight, and as those others went to fall upon, and charge the Guards, Sir *George Barclay*, with his Party of Men, was to attack the King in his Coach, and by shooting into the Coach to kill the King and all that were with him.

The Time agreed upon for putting this Design in Execution was on *Saturday* the 15th of *February*. That Day it was expected the King would go a Hunting. And two Men were planted at *Kensington* to give Notice when the King went, and upon such Notice, these Men were to march out in small Parties, and to lodge in the Inns, and publick Houses about *Brentford*, and *Turnham Green*, upon Notice of the King's Return from the other side of the Water, and Sir *George Barclay* was to be in Readiness to set upon the Coach in the Lane; and the other Party to attack the Guards.

But this horrid Design was very happily discovered, which prevented the King's going Abroad on that Day; and though they were disappointed for that Time, yet the Design was not at an End: But their Resolutions continue to make the like Attempt when they could have another Opportunity. And for that Purpose there was another Meeting, as Captain *Porter* tells you, upon the *Friday* following at the *Sun Tavern* in the *Strand*, at which *Sir William Parkyns*, *Sir George Barclay*, *Rookwood*, and *Charnock*, and Captain *Porter*, were present, and they did agree to attack the King and the Guards, the next Day, in the same Place and Manner that they had formerly agreed upon. But by good Providence the King had Notice of it, so that he did forbear to go Abroad that Day, whereby these Conspirators were totally disappointed of their barbarous and villainous Design which they had resolved upon, and had made such Preparations to compass.

It is true, Captain *Porter* does tell you, *Sir William Parkyns* was not to be one that should be actually present at the Assassination; but he was to furnish five Horses, three of them to be mounted by Men of his own Providing, and two by Men that Captain *Porter* was to provide. And you are told positively that Captain *Porter*, at this last Meeting, did complain that two of his Horses were fallen lame, and acquainted *Sir William Parkyns* with it, and he promised to help him to two more by the means of one *Lewis* that was Gentleman of the Horse to my Lord *Feversham*.

Then you are told, that *Sir William Parkyns* sent to *Sweet* to come to Town the 11th of *February*, and *Sweet* comes to Town accordingly, on *Wednesday* the 12th of *February*, and then he had Discourse with *Sir William Parkyns* at his Lodgings, where *Sir William* told him, that because of his Family, he would not imploy him in the Business he intended for him, and therefore bid him go home again; and withall, directed him to return to Town the *Friday* following, and order his Groom to bring his Horses to Town; he mentioned three Horses which should be the strongest he had; the Groom brought up the three Horses, and *Sweet* came to Town with him, and staid till *Saturday*. *Sir William Parkyns* said he thought to go out of Town in the Afternoon, but did not, but staid till *Monday*, when he went out of Town.

But upon the *Friday* following, the Horses of *Sir William Parkyns* were brought to Town again, which now were Four, and were set up at the *George Inn* in *Helbourn*; and it appears that Mr. *Lewis* furnished one Horse, for there were five Horses upon the Account of *Sir William Parkyns*, of which a Roan Horse was one which came from *Somerset-House*. This is proved by the Hostler; and that *Lewis* himself came in on *Saturday* in the Afternoon to inquire for *Sir William Parkyns*, but he was gone and the Horses were taken away, and he once came with *Sir William Parkyns* to the Inn. These are Circumstances that do concur with, and confirm Captain *Porter's* Evidence concerning the providing Horses for this Design.

Then there is another Particular of Captain *Porter's* Evidence concerning the Commission from King *James*, which is remarkable: It was told you, that he askt *Charnock* whether he had seen the Commission: He said, No, but *Sir William Parkyns* had: And *Sir William Parkyns* was askt by *Porter*, as they were sitting by the Fire-side, whether he had seen the Commission; and *Sir William*

Parkyns answered, that he had seen it, and had read it, and it was written with King *James's* own Hand; and that the Substance of it was to make War upon the Person of the Present King, who was called in the Commission, as you may suppose, the Prince of *Orange*. So that, Gentlemen, as to the Design of the Assassinating the King, and of this Commission which was understood by them to be for that Purpose, this is the Sum and Substance of *Porter's* Evidence so attended with, and confirmed by these Circumstances, as you have heard.

Besides the other Witness, *Sweet*, who was a great Acquaintance of *Sir William Parkyns*, tells you, That about *Christmas* last, he was informed by *Sir William Parkyns*, that the King would come, which he understood to be meant of King *James*. He asked *Sir William Parkyns* how he knew it? and he said, He had his Word for it; and that his Troop consisted of Old Soldiers, and he had thirty Saddles; and besides, there would be some Volunteers, which were Old Officers. Then he said, He was to go into *Leicestershire*, and he did go with one *Scudamore*; and this was in *January*, about the latter End, as I remember. They lay that Night at *Stony-Stratford*, and the next Night at *Leicester*, and *Scudamore* went with him; and afterwards one *Tarborough*, and a Parson, came to him out of *Yorkshire*: And when he came back he said, He found all there to be very well; and the West was as well inclined to the King's Interest, as the North; and a Lord's Brother was concerned.

Then in the next Place you are told, That at *Michaelmas* last, Mr. *Charnock* did write a Letter to one *Haywood*, who had married his Sister, and lived near *Sir William Parkyns* in *Warwickshire*, to desire him to receive some Goods into his House that were to come from *Sir William Parkyns's*, and lay them up very carefully; for they were choice Goods, which *Sir William* durst not leave in his own House, because he had left it. And accordingly there were these Boxes and Chests sent to *Haywood's*, and received by him into his House, where they continued till the latter End of *February*. *Haywood* about this Time, when the Design of the Assassination was on foot, met with *Sir William Parkyns* in Town, and asked him how he would dispose of those Goods? Thereupon *Sir William Parkyns* sent his Servant into the Country; and Notice was given on *Asp-Wednesday*, the *Wednesday* after the first Proclamation that issued upon the Discovery of this Conspiracy, that these Goods should be removed: And a Man, in the Evening, went to *Haywood's* House with a Cart and Horses, and removed these Chests; they were three in Number; and those being opened, there were eight lesser ones taken out, and carried away about Nine or Ten a Clock at Night, to *Sir William Parkyns's* House in *Warwickshire*, where they were buried in the Garden, and afterward were dug up, which was at the Searching *Sir William's* House upon the Breaking out of the Plot; and when they were opened, it did appear what sort of Goods they were: They were Arms, a considerable Quantity of them; Four Dozen of Swords without Hilts, Twenty-five Pair of Pistols, and a great Number of Carbines, Thirty-two as I remember, and a Parcel of Hilts pack'd up in a Box by themselves. This, Gentlemen, is sworn to you by the Persons that were present at the Digging them up, and Opening the Boxes.

Then, Gentlemen, you are told, That though *Sir William Parkyns* pretends they were Arms that

he found in the House when he came thither, yet they were not old rusty Arms, as he pretends, but they were very bright, and fit for Use and Service.

There is one Circumstance more that seems to affect Sir *William Parkyns*, about the Business of the Assassination; and that is proved by *Eubank*, Sir *William's* own Servant. There was a Note sent upon *Saturday*, the 22d of *February* in the Morning, to one *Brown* at *Kenington*, by Sir *William Parkyns's* Man; and this *Brown* writ in the Servant's Almanack, that he would be in Town himself in a little Time, and bid him carry it to a Man that lodged at a Confectioner's over-against *Grays-Imm Gate* in *Holbourn*: Sir *William Parkyns's* Man accordingly goes to this Confectioner's, and speaks with the Person there that he was directed to go to; and he says he was a *Scotch* Man, and talked broad like a *Scotch* Man, and he bid him go and tell his Master, That he would stay within for him till he came; and he did accordingly.

Gentlemen, This is the Sum and Substance of the Evidence that is given against Sir *William Parkyns*. Now you are to consider what Sir *William* says for himself: He does admit, and agree, That what *Porter* says is very positive and full; but that is but the Evidence of one Witness: For, says he, by the Law no Person ought to be convicted of High-Treason, upon the Testimony of one Witness. As to the Matter of Law he is in the right; No Man ought to be convicted of Treason upon the Testimony of a single Witness. Now first suppose the Design to assassinate the King had not been proved; consider then whether there be not Two Witnesses besides. *Porter* proves, That *Charnock* was sent into *France*, by Sir *William Parkyns*, and others, upon that Errand; to which, if you add the Testimony of *Sweet*, that swears, That Sir *William Parkyns* told him the King would come, and he had a Troop, and had bought Saddles; and what is said concerning his going into *Leicestershire*, and his having a Quantity of Arms: If all which be understood in Pursuance of the Design against his present Majesty, then there are at least Two Witnesses of several Overt Acts of the same Treason.

For, Gentlemen, I must tell you, tho' there had been no Evidence of a Design to Assassinate the King, but the Design and Purpose had been to Depose him, and set the late King upon the Throne, or join with a Force to invade the Realm, that is High-Treason within the Statute of 25 *Edw.* the Third, as being a Designing the Death and Destruction of the King. There hath been a full Proof by Two Witnesses, if what *Sweet*, and the other Witnesses besides *Porter* say, to prove Sir *William Parkyns* to be concerned in that Design, which shall be considered further of by and by.

But in the next Place, suppose that the Meetings at the *King's-Head* in *Leadenball-Street*, and at *Mountjoy's*, had not been proved; but the Design to Assassinate the King is proved by one Witness, and the providing Men and Arms to fight against him is proved by one other Witness; this is a Proof of the same Treason: For though the Overt Acts be several, yet they both tend to the same End, the Destruction of the King, though in a different Manner; and though the Law requires two Witnesses to the same Sort

of Treason, yet it does not require two Witnesses to any one Overt Act. For if one Witness prove one Overt Act at one Time, and another Witness prove another Overt Act at another Time, these are two Witnesses within the Meaning of the Law; and so it has been always practised, and never denied to be Law that I know of.

Besides it is observable upon this Point, which my Brother has mentioned, That this new Act of Parliament, which does not yet take Effect, provides, that there shall be either two Witnesses to one Overt Act, or one Witness to one, and another to another of the same Species of Treason; and you have had the Opinion of all of us now that are here, that these are Overt Acts of one and the same Species of Treason.

But then Sir *William Parkyns* objects, That *Sweet* does not prove any Overt Act. Now for that, you are to consider the Force of *Sweet's* Evidence, who tells you the Discourse of Sir *William Parkyns*, about *Christmas* last, of the King's Coming, of his Saddles, and of his Troop consisting of old Soldiers, and Volunteers that were old Officers, But says Sir *W. Parkyns*, this is only Words, and Words are not Treason. But then consider, that they are Words that relate to Acts and Things. You hear he had a great Quantity of Arms, beyond what he, as a private Man, could have Occasion for, or would use. He does not give you any Account what he was to do with those Arms, or to what Purpose he should keep them, nor why he caused them to be removed in the Night, after they had lain privately in *Haywood's* House, and caused them to be carried back to his own House, and buried them in the Ground, and at such a Time when there was a Plot, and after the Plot was discovered, and a Proclamation out for his own Apprehension.

Sir *William Parkyns's* Discourse with *Sweet*, of King *James's* Coming, and his Troop consisting of such Men, plainly shews what those Arms were for. For, Gentlemen, Men's Discourses and their Words explain their Actions; and an indifferent Action in itself may be so explained by Words, that it will be unlawful. It is lawful for a Man to buy a Pistol; but if it can be plainly proved from his Words or his Speeches, that the Design of Buying it was to use it against the Person or Life of the King, that will be an Overt Act. Now when Sir *William Parkyns* said, The late King would come, and that he had a Troop which consisted of such Soldiers; then these Arms being found in that Manner, I must leave to your Consideration whether it is not a Proof, for what Purpose he did provide them, and to what Use he intended to put them; especially since he gives you no Account, what Use or Occasion he had for them. He says, indeed, he found them in the House two Years ago, how probable that is, you may consider.

Then there is another Thing, his Going into *Leicestershire* with *Scudamore*, and his Meeting there with *Yarborough*, and other People in that private and hasty Manner. He went out on the *Thursday*, and came Home again upon *Monday* Night; and then he meets with *Sweet*, and tells him that all was well; and the West was as well inclined to the King's Interest as the North. What King must he mean? he had no Commission from King *William* to go into *Leicestershire* to discourse with People, to see how they stood affected to his Interest. *Sweet* comes and tells you, that when Sir

William Parkyns spoke of the King, he understood he meant King *James*. I must leave it to your Consideration, how you will interpret these Words.

It is true, Gentlemen, it is not fit there should be any strained or forced Construction put upon a Man's Words or Actions, when he is tried for his Life. You ought to have a full and satisfactory Evidence to convince you, that he is Guilty, before you pronounce him so; but however, you are to consider the Nature of Things, and the Circumstances that attend them. If you can suppose that he went into *Leicestershire* to King *William's* Friends, and that he was of Opinion, the West was as well Affected to King *William*, as the North; then you make a different Construction from *Sweet*, who tells you, that always when he spake of the King, he understood it of King *James*; and at *Christmas*, when he spoke of the King's Coming, it must be meant King *James*; for King *William* was here before, and he pretends not he had any Authority to raise a Troop for King *William*.

So that, Gentlemen, I must leave it to you upon the whole Matter; if you are satisfied, that Sir *William Parkyns* is guilty of the Matters of which he stands charged, you will find him guilty; you have heard the Evidence, and will consider of it; and if, upon the Whole, you are not satisfied, that he is guilty of the Matters charged in this Indictment, then you are to acquit him.

Then an Officer being sworn to keep the Jury according to Custom, they withdrew to consider of their Verdict, and in less than Half an Hour, returned into Court.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names. *William Northey*,——

Mr. Northey. Here.

(And so of the Rest.)

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

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Sir *William Parkyns*, hold up thy Hand, *(which he did.)* Look upon the Prisoner; how say ye, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty, my Lord.

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

Foreman. None to our Knowledge.

L. C. J. Jaylor, look to him, he is found Guilty of High-Treason.

Cl. of Ar. Then hearken to your Verdict as the Court has recorded it. You say that Sir *William Parkyns* is guilty of the High-Treason whereof he stands indicted, but that he had no Goods or Chattels, Lands, or Tenements, at the Time of the High-Treason committed, or at any Time since, to your Knowledge, and so you say all?

Jury. Yes.

Cl. of Ar. Gentlemen, the Court discharges you, and thanks you for your Service.

While the Jury was withdrawn to consider of the Verdict, Sir John Freind was brought from Newgate to the Bar, in order to his being called to Judgment, and after the Verdict, he address'd himself to the Court thus,

Freind. My Lord, I humbly beseech your Lordship to give me leave to read this Paper.

(To which the Court gave no Answer.)

Freind. My Lord, will your Lordship give me Leave to read it.

L. C. J. Ay, if you will.

(Reads.)

Freind. My Lord, I humbly move in Arrest of Judgment, that I am not convicted of Treason by Two Witnesses, as I ought to have been within the Statute of the 25th of *Edward* the Third: For *Mr. Porter* swears, That I, with others, in *May* or *June* last, sent to the *French* King to invade *England*; he is the only Witness to that Matter. *Mr. Blair* swears, That I shewed him a Commission in *Surrey-street*, about two Years since, sign'd by King *James*, and countersign'd *Melford*, to be a Colonel of Horse, and that I gave him some Moneys for the Cherishing of the Men. My Lord, here is no Levying of War, sworn by *Mr. Blair*; and Conspiring to levy War not being Treason, I am convicted by one Witness, and therefore I pray Council may be assigned me, to plead this Matter.

L. C. J. Sir *John Freind*, that which you move now, is not in Arrest of Judgment, it is Matter that does arise upon the Evidence, and what you now say, arraigns the Verdict, and the Proceedings upon your Trial. There were Two Witnesses against you, that is plain. You were not indicted for Levying War, but for Compassing and Imagining the Death of the King; and we told you the Design of the Invasion, and Conspiring to depose the present King, and restore the late King, was an Overt Act of that High-Treason. The Commission was not so much stood upon, but the Advancing Moneys upon this Account, to *Blair* your Lieutenant Colonel, to give to the Men, that was a plain Overt Act, and so there were certainly Two Witnesses against you.

Freind. My Lord, I hope, I can clear my self: I thank God, I am as Innocent as the Child unborn, of the Assassination of the King. I would not have the People think, that I am such a Man.

L. C. J. But you remember, it was sworn you knew of it, and we have told you, that the Design of Restoring the late King by Force, and Deposing the King, are Overt Acts of imagining his Death, if such an Intention be proved, as it was in your Case, and the Jury have found it so.

Freind. My Lord, I humbly beseech you, because I do not understand Matter of Law, and am advis'd to move this in Arrest of Judgment; I desire my Council may be heard to it.

L. C. J. We cannot hear Council, but upon a Matter that arises upon the Record itself, that is, the Indictment. We cannot enter into any Examination of this Matter, that you now speak of, you had a long Trial Yesterday.

Freind. My Lord, I am sorry to give your Lordship any Occasion of Trouble; but I humbly beseech you, if it may be, that I may be heard by my Council, for the Satisfaction of the World; pray, my Lord, hear what they can say.

L. C. J. They cannot say any Thing; no Council in the World that understand themselves, can argue any Thing against what has been so often settled and always practised.

Freind.

Freind. My Lord, if it be to be granted, I beseech your Lordship to grant it.

L. C. J. It cannot be granted; besides the Matter you now move upon, is improper; it was all considered upon your Trial. It was told you, we did all agree, that a Conspiracy to levy War to depose the King is Treason, or to invade the Realm is Treason. All this was consider'd at your Trial, and that is now over.

Parkyns. My Lord, if your Lordship pleases, I desire I may have the Liberty of some Friends and Relations, and a Minister to come to me.

L. C. J. Yes, yes, by all Means.

Parkyns. If your Lordship pleases, that they may come and be private with me, and pray let me have a Rule of Court for it, otherwise I shall not have any Benefit of it.

L. C. J. Yes, yes, it is very fit you should have it; there shall be an Order of Court for it: See that the Keeper take Care it be done with Safety.

Freind. My Lord, I desire the same Liberty of a Minister, and my Relations and Friends to come to me; that for what Time I have to live, I may make the best Use I can of it for my Soul, which I hope God will enable me to do.

Then the Court was adjourned until Five a Clock on the Afternoon, and about Six the Justices returned, and the Court was resumed.

Cl. of Arr. Set Sir John Freind to the Bar: (*Which was done.*) Sir John Freind, hold up thy Hand; (*which he did.*) Thou standest convicted of High Treason, for traiterously Compassing and Imagining the Death of our Sovereign Lord King William the Third. What canst thou say for thy self why the Court should not give thee Judgment according to the Law?

(*Then being made to kneel, he afterwards stood up.*)

Freind. I have said already, what I have to say in Arrest of Judgment.

Mr. Com. Serjeant. Sir, you have heard the Judgment of the Court, as to what you have said; if you have nothing else to offer, the Court must proceed to Judgment.

Cl. of Arr. for Middlesex. Sir William Parkyns, hold up thy Hand; (*which he did*) Thou standest convicted of High Treason in Compassing and Imagining the Death of the King, and adhering to the King's Enemies. What canst thou say for thyself, why the Court should not give thee Judgment to die, according to the Law?

(*He was made to kneel, and rise up again.*)

Parkyns. I have nothing more to offer.

Cl. of Arr. Then Cryer, make Proclamation.

Cryer. O yes; all Manner of Persons are commanded to keep Silence, while Judgment is in giving, upon Pain of Imprisonment.

Which Proclamation was made on both Sides the Court; and then Mr. Common Serjeant sitting with the Rest of the Court upon the Bench, pronounced the Sentence.

Mr. Com. Serj. You the Prisoners at the Bar, Sir John Freind, and Sir William Parkyns, you have been indicted for High Treason, in Compassing the Death and Destruction of the King: For

your Trial, you have put your selves upon the Country, which Country has found you Guilty. The Offence is the greatest in the Judgment of the Law, that a Man can commit; and it is justly and reasonably so. For Robbery and Murder are Injuries to private Persons, but Compassing the Death of the King, is Compassing the Destruction of the Father of your Country, and letting in Rapine, Death, and Desolation upon Thousands of People. And even this, the heinoufist of Offences, is capable of Aggravation; for there have been always Excuses, and sometimes Justifications for Rebellion: And as to Murder and private Revenge, there may be somewhat said in Mitigation from the Violence of Men's Passions. But to sit, and conspire, and consult, and debate the Destruction of a Prince; no Man yet ever had the Confidence to make an Excuse for it. I would not add to your Affliction; I am sensible of the severe Judgment that is to follow, and which you have brought upon your selves, and cannot but pity you for the great Burden of Guilt, that you have laid your selves under. I only say this to offer it to your serious Consideration, in the few Moments you have to prepare for another World, and another Judgment. All that remains for me, is to pronounce the Judgment of the Law in these Cases, and the Court does Award it.

That you, and each of you, go back to the Place from whence you came, and from thence be drawn on a Hurdle, to the Place of Execution, where you shall be severally Hanged up by the Neck, and cut down alive; your Bodies shall be ript open, your Privy-Members cut off, your Bowels taken out, and Burnt before your Faces; your Heads shall be severed from your Bodies, your Bodies respectively to be divided into Four Quarters, and your Heads and Quarters are to be at the Disposal of the King: And the Lord have Mercy upon your Souls.

Then the Prisoners were carried back the Newgate.

On Fridry April 3. 1696. Sir John Freind and Sir William Parkyns were drawn on Sledges from Newgate to Tyburn, where they deliver'd the following Papers to the Sheriffs.

Sir JOHN FREIND's Paper.

KNowing that I must immediately give an Account to God of all my Actions, and that I ought to be especially careful of what I say in these last Hours, I do solemnly profess, that what I here deliver is from my very Soul, with all the Heartiness and Sincerity of a dying Christian.

The Cause I am brought hither to suffer for, I do firmly believe to be the Cause of God and true Religion, and, to the best and utmost of my Knowledge and Information, agreeable to the Laws of the Land, which I have evermore heard do require a firm Duty and Allegiance to our Sovereign; and that as no foreign, so neither any domestick Power can alienate our Allegiance. For it is altogether new and unintelligible to me, that

the

the King's Subjects can depose and dethrone him on any Account, or constitute any that have not an immediate Right in his Place. We ought, I think, not to do this; and surely, when it is done, to assist him in the Recovery of his Right, is justifiable, and our Duty. And however Things may seem at present, I do believe, I am sure I heartily pray, that he shall be one Day restored to his rightful Throne and Dominions.

As for any sudden Descent of his Majesty upon these his Dominions, in order to the Recovery of them, I declare I had no certain Knowledge of it; nor can I tell what Grounds there was to believe it, so little Reason had I to be in a present Preparation for it. I suppose it is not expected I should here endeavour to clear myself of the *Assassination*, which was not the Thing alledged against me; however, it was mention'd, through what Means I know not. As it was insinuated to my Disadvantage, I forgive such as were therein instrumental; and I do also, from the very Bottom of my Soul, freely forgive, and beg of God to do so too, such as were any ways accessary towards the taking away my Life, which I really look upon to be their Misfortune more than mine.

I profess myself, and I thank God I am so, a Member of the Church of *England*, though, God knows, a most unworthy and unprofitable Part of it; of that Church which suffers so much at present for a strict Adherence to Loyalty, the Laws and Christian Principles; *For this I suffer, and for this I die.*

Tho' I have a perfect Charity for People of all Professions, and do heartily wish well, and would endeavour to do so to all my Fellow-Subjects, of what Persuasion soever. And indeed I have met with a great deal of Uprightness and Sincerity among some People of very different Opinions in religious Matters.

And I hope and desire it may not be taken as an uncharitable Censure, or undue Reflection, that I objected to the Legality of Popish Evidence, being advis'd so to do for my better Security, upon the Foundation of a Statute-Law.

Having owned myself a Member of the Church of *England*, I must take this Opportunity, and I do it for God's Glory, to apply myself to you that are Royalists of that Church, and of the same Faith and Principles with myself: And I beg of you, for God's sake, and the Love of your Souls, to be very constant and serious in all religious Offices, and holy Duties, of divine Worship and Service, which I have too much neglected, as I own to my great Sorrow: Let no Excuse, no Dangers, prevent or hinder you in these most necessary and serious Matters; and be, I beseech you, very careful and circumspect in all your Actions, Behaviour, and Conversation, as I earnestly exhorted all that came to me.

I have, I thank God, a great deal of Satisfaction in my present Sufferings, and have found it so ever since I have been under them: And

blessed be God it doth continually increase upon me. And I do now lay down my Life with all Cheerfulness and Resignation, in sure and certain Hope of a Resurrection to eternal Life, through our Lord Jesus Christ; through whose Merits alone I hope for the Pardon of my Sins, and the Salvation of my Soul.

And so, O Lord! into thy Hands I commend my Spirit; for thou hast redeemed me, O Lord! thou God of Truth.

JOHN FRIEND.

Sir WILLIAM PARKYNS's Paper.

IT hath not been my Custom to use many Words, and I shall not be long upon this Occasion, having Business of much greater Consequence to employ my Thoughts upon. I thank God I am now in a full Disposition to Charity, and therefore shall make no Complaints, either of the Hardships of my Trial, or any other Rigours put upon me. However, one Circumstance I think myself oblig'd to mention. It was sworn against me by Mr. *Porter*, That I had own'd to him that I had seen and read a Commission from the King to levy War upon the Person of the Prince of *Orange*. Now, I must declare, that the Tenour of the King's Commission, which I saw, was general, and directed to all his loving Subjects, to raise and levy War against the Prince of *Orange*, and his Adherents; and to seize all Forts, Castles, &c. which, I suppose, may be a customary Form of giving Authority to make War; but I must confess I am not much acquainted with Matters of that Nature: But as for any Commission particularly levell'd against the Person of the Prince of *Orange*, I neither saw nor heard of any such.

It's true, I was privy to the Design upon the Prince, but was not to act in it; and am fully satisfied that very few, or none, knew of it but those who undertook to do it.

I freely acknowledge, and think it for my Honour to say, that I was entirely in the Interest of the King, being always firmly persuaded of the Justice of his Cause; and I look'd upon it as my Duty, both as a Subject, and an *Englishman*, to assist him in the Recovery of his Throne, which I believe him to be depriv'd of contrary to all Right and Justice; taking the Laws and Constitutions of my County for my Guide.

As for Religion, I die in the Communion of the Church of *England*, in which I was educated.

And as I freely forgive all the World, so whoever I may any ways have injur'd, I heartily ask them Pardon.

WILLIAM PARKYNS.

Jeremy Collier, a Nonjuring Minister, publickly absolv'd them at the Gallows.

After which they were executed according to their Sentence.



CLVI. *The Trial of AMBROSE ROOKWOOD, for High-Treason, the 21st of April, 8 Will. III. 1696. At the Sessions of Oyer and Terminer for the County of Middlesex sitting in the Court of King's-Bench at Westminster.*

THE Court being sat, at which were present the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, Mr. Justice *Nevil*, Mr. Justice *Powell*, and Mr. Justice *Eyre*; the Court proceeded in this Manner.

Cl. of Ar. Cryer, make Proclamation.

Cryer. Oyez, Oyez, Oyez: All Manner of Persons that have any Thing more to do, at this Sessions of *Oyer and Terminer*, holden for the County of *Middlesex*, draw near and give your Attendance. *God save the King.*

Then the Grand Jury were called over, and the Appearances marked, and Witnesses being sworn in Court, to give Evidence to them upon a Bill of Indictment against Alexander Knightley, they in a little Time after withdrew to bear the Evidence.

Then the Keeper of Newgate was order'd to bring his Prisoners to the Bar; (which he did.) to wit, Robert Lowick, Ambrose Rookwood, and Charles Cranburne; who were thus arraigned.

Cl. of Ar. *Robert Lowick*, hold up thy Hand. *(which he did.)*

Ambrose Rookwood, hold up thy Hand. *(which he did.)*

Charles Cranburne, hold up thy Hand. *(which he did.)*

You stand indicted in the County of *Middlesex*, by the Names of *Robert Lowick* of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Gentleman; *Ambrose Rookwood* of the same Parish, Gentleman, and *Charles Cranburne* of the same Parish and County, Yeoman; for that you, together with one *Christopher Knightley*, of the same Parish and County, Gentleman, not yet taken; not having the Fear of GOD in your Hearts, nor weighing the Duty of your Allegiance, 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, King of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. your supreme, true, rightful, lawful, and undoubted Lord, the cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King that now is, towards him our said Lord the King should bear, and of right ought to bear, withdrawing, and utterly to extinguish intending and contriving, and with all your Strength resolving, designing, and conspiring the Government of this Kingdom of *England*, under him our said Sovereign Lord the King that now is,

of Right, duly, happily, and well establish'd, altogether to subvert, change, and alter, as also our said Lord the King to Death and final Destruction to put and bring, and his faithful Subjects, and the Freemen of this Kingdom of *England*, into intolerable and most miserable Servitude to *Lewis* the *French* King to subjugate and inthral, the 10th 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 of *St. Paul Covent-Garden*, aforesaid, in the County aforesaid, falsely, maliciously, devilishly, and traiterously, did compass, imagine, and contrive, resolve, design, and intend, our said Lord the King that now is, to kill, slay, and murder, and a miserable Slaughter among the faithful Subjects of our said Lord the King, throughout this whole Kingdom of *England*, to make and cause, and the same your most impious, wicked, and devilish Treasons, and traiterous Compassings, Contrivances, and Purposes aforesaid, to fulfil, perfect, and bring to effect, you the said *Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, together with the said *Christopher Knightley*, and very many other false Traytors, to the Jurors unknown, afterwards, to wit, the same 10th Day of *February*, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, and divers other Days and Times, as well before as after, there and elsewhere in the same County, Falsely, Maliciously, Advisedly, Secretly, Traiterously, and with Force and Arms, did Meet, Propose, Treat, Consult, Consent, and Agree, him our said Lord the King that now is, by lying in wait, and Guile, to Assassinate, Kill and Murder; and that execrable, horrid, and detestable Assassination, and Killing the sooner to execute, and perpetrate, afterwards (to wit) the same Day and Year, and divers other Days and Times, at the Parish aforesaid, in the County aforesaid, Traiterously did Treat, Propose, and Consult, of the Ways, Manner, and Means, and the Time and Place, where, when, how, and in what Manner, our said Lord the King, so by lying in wait, the more easily you might kill; and did consent, agree, and assent, that forty Horsemen, or thereabouts, whereof the said *Christopher Knightley*, you the said *Robert Lowick, Ambrose Rookwood, and Charles Cranburne*, should be four; and every one of you traiterously took upon himself to be one, with Guns, Muskets, and Pistols, charged with Gunpowder and leaden Bullets, and with Swords, Rapiers, and other Weapons, being Armed, should lie in wait, and lie in Ambush, our said Lord the King in his Coach being, when he should go abroad, to invade, and that a certain and competent Number of those Men, so armed, should set upon the Guards of our said

Lord the King then attending him, and being with him, and should fight with them, and overcome them, whilst others of the same Men so armed, our said Lord the King should assassinate, slay, kill, and murder; and you the said *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, together with the said *Christopher Knightley*, the Treason, and all the traitorous Intentions, Designs, and Contrivances aforesaid, to execute, perform, fulfil, and bring to Effect, afterwards (to wit) the aforesaid Tenth Day of *February*, in the seventh Year aforesaid, at the Parish aforesaid, in the County aforesaid, divers Horses, and very many Arms, Guns, Pistols, Swords, Rapiers, and other Weapons, Ammunition, and warlike Things, and military Instruments, falsely, maliciously, secretly, and traiterously did obtain, buy, gather together, and procure, and cause to be bought, obtained, gathered together, and procured with that Intention, then in and about the detestable, horrid, and execrable Assassination, Killing, and Murder of our said Lord the King that now is, as aforesaid to be used, employed, and bestow'd; and the same Premises the more safely and certainly to execute, do, and perform, the aforesaid *Christopher Knightley*, with one *Edward King*, late of High-Treason, in contriving and conspiring the Death of our said Lord the King that now is, duly convicted and attainted, by the Consent and Agreement of divers of the Traytors and Conspirators aforesaid, the said Tenth Day of *February*, in the seventh Year aforesaid, went and came to the Place proposed, where such intended Assassination, Killing, and Murder of our said Lord the King by lying in wait, should be done, performed, and committed, to see, view, and observe the Convenience and Fitness of the same Place for such lying in wait, Assassination, and Killing, there to be done, performed, and committed: And that Place being so viewed and observed, afterwards (to wit) the same Day and Year, their Observations thereof to several of the said Traytors and Conspirators did relate and impart, (to wit) at the Parish aforesaid, in the County aforesaid: And you the aforesaid *Charles Cranburne*, the same Day and Year there, in order the said execrable, horrid, and detestable Assassination, and Killing of our said Lord the King, by the Traytors and Conspirators aforesaid, the more readily and boldly to execute, perform, and commit, advisedly, knowingly, and traiterously did bring and carry between divers of those Traytors and Conspirators, forward and backward, from some to others of them, a List of the Names of divers Men of those who were designed and appointed our said Lord the King so as aforesaid by lying in wait to kill and murder; against the Duty of the Allegiance of the said *Christopher Knightley*, you the said *Robert Lowick*, *Ambrose Rookwood*, and *Charles Cranburne*, and against the Peace of our said Lord the King that now is, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

How say'st thou, *Robert Lowick*, Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Lowick. Not Guilty.

Cl. of Ar. Culprit, How wilt thou be Try'd?

Lowick. By God and my Country.

Cl. of Ar. God send thee good Deliverance.

How say'st thou, *Ambrose Rookwood*, Art thou Guilty of the High-Treason whereof thou standest Indicted, or not Guilty?

Rookwood. Not Guilty.

Cl. of Ar. Culprit, How wilt thou be Try'd?

Rookwood. By God and my Country.

Cl. of Ar. God send thee good Deliverance.

Charles Cranburne, How say'st thou? Art thou Guilty of the High-Treason whereof thou standest Indicted, or Not Guilty?

Cranburne. Not Guilty.

Cl. of Ar. Culprit, How wilt thou be Try'd?

Cranburne. By God and my Country.

Cl. of Ar. God send thee good Deliverance.

Cranburne. My Lord, I desire your Lordship would grant me the Favour for my Wife to come to me in private, and that I may have Pen, Ink, and Paper.

L. C. J. Pen, Ink, and Paper, you must have; but as to the other, we must consider of it. *Sir John Holt*, Keeper of *Newgate*, What has been usual in those Cases?

Keeper. My Lord, we let no Body come to them in private, but their Council.

L. C. J. That's provided for by the Act that allows them Council: But has it been usual heretofore to permit any Body else to be with them in private; the Wife, or any other Relations?

Keeper. It has not.

L. C. J. It is very dangerous if it should; therefore let him have his Wife come to him in the presence of the Keeper.

Cranburne. And Pen, Ink, and Paper, I hope, my Lord?

L. C. J. Yes, yes, that you shall have.

Cranburne. You don't deny me, my Lord, that I may have my Wife come to me?

L. C. J. No, we don't, but she must not be in private with you, for fear of an Escape.

Rookwood. I beg the same Favour, my Lord, to have my Brother come to me, and Pen, Ink, and Paper.

L. C. J. You shall have the same Rule; but you, Keeper, must have especial Care whom you do permit to come to them, and be private with them; for it is still at your Peril if any ill Accident happens by your Indulgence to them: And yet it is fit they should have all that is reasonable for preparing for their Defence at their Trials.

Lowick. And I desire, my Lord, I may have my Sister come to me, and the Liberty of her being in private with me.

L. C. J. Your Friends may come to you at reasonable Times, in the presence of the Keeper; you shall have any thing that is reasonable, but the Safety of the Government must be look'd after. Therefore, Keeper of *Newgate*, take back your Prisoners, and bring them here this Day sevensnight at seven a Clock in the Morning, without any other Order.

They staid at the Bar about half an Hour, the Judges consulting among themselves about the Precept for the Petty Jury upon a late Act of Parliament which has appointed six Days for the Jury to be summon'd before they appear to try any Cause, and upon the last Act in Regulating Trials in Cases of High-Treason; which requires that the Prisoner shall have a Copy of the Pannel of the Jury duly return'd, at least two Days before his Trial.

Then the Prisoners were carried away, and the Grand Jury withdrew to consider of the Evidence against Knightley, and in a Quarter of an Hour came back, and being called over, delivered in a Bill to the Court.

Cl. of Arr. Gentlemen, you are content the Court shall amend Matter of Form, or false *Latin* in this Indictment, without altering any Matter of Substance without your Privity.

Jury. Yes.

Cl. of Arr. Then, Gentlemen, you may go for this Time; and you are to take Notice if there be Occasion at any Time to call you together, you shall have sufficient Warning given to you beforehand. This is *Billa Vera* against *Alexander Knightly* for High-Treason.

Then the Judges resumed the Debate among themselves, and at last resolved that there should go three several Venires for the Petty Jury, returnable this Day sevennight; one to try between the King and Robert Lowick, the second to try between the King and Ambrose Rookwood, and a third between the King and Charles Cranburne; because, though the Indictment be against them jointly, yet it was a several Offence in every one of them, and they might sever in their Challenges, and that would be troublesome, and therefore it was thought best to sever them in their Trials; and therefore the Court adjourned for an Hour or something more, while the Precepts for the Jury were preparing, and according to the Adjournment met, and signed and sealed the Precepts, and then adjourned the Sessions of Oyer and Terminer until this Day sevennight, at Seven in the Morning.

Die Martis Vicesimo primo Aprilis, Anno Regni Regis Willielmi Tertii Octavo, Annoq; Dom. 1696.

THE Court sit about Eight a Clock, at which were present a great Number of Noblemen, and Persons of Quality, who were in the Commission, and Seven of the Judges; to wit, the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, Mr. Justice *Newl*, Mr. Justice *Powel*, Mr. Justice *Eyre*, and Mr. Baron *Powis*.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, O yes, O yes. All Manner of Persons that have any Thing more to do at this Sessions of Oyer and Terminer, adjourned over to this Day, draw near and give your Attendance. And God save the King.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, Sheriffs for the County of *Middlesex*, return the Precepts to you directed, upon Pain and Peril will fall thereon.

The Under-Sheriff returned the Precept.

Cl. of Arr. Mr. *Baker*, pray, Whom do you intend to begin with?

Mr. *Baker.* With *Ambrose Rookwood*.

Cl. of Arr. Cryer, make Proclamation.

Cryer. O yes, You good Men of the County of *Middlesex*, summoned to appear here this Day, to try between our Sovereign Lord the King,

and the Prisoners that are, and shall be at the Bar, answer to your Names, as you shall be called, every one at the first Call, and save your Issues.

The whole Pannel was called over, and the Appearances of those that answered recorded; and the Defaulters were again called over.

Cl. of Arr. Keeper of *Newgate*, set *Ambrose Rookwood* to the Bar. (Which was done.) You the Prisoner at the Bar, *Ambrose Rookwood*, those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death; if therefore you will challenge them, or any of them, your Time is to speak unto them as they come to the Book to be sworn, before they be sworn.

Sir *B. Shower*. If your Lordship pleases, We have a Doubt or two to propose to Your Lordship, in respect of the Trial this Day: But before I offer it, we beg Your Favour for a Word in behalf our selves.

My Lord, We are assigned of Council, in Pursuance of an Act of Parliament, and we hope that nothing which we shall say in Defence of our Clients, shall be imputed to our selves. I thought it would have been a Reflection upon the Government and Your Lordship's Justice, if being assigned we should have refused to appear; 'twould have been a Publication to the World, That we distrusted Your Candour towards us in our future Practice upon other Occasions. But, my Lord, there can be no Reason for such a Fear; I am sure I have none; for we must acknowledge, we who have been Practisers, at this Bar especially, that there was never a Reign or Government within the Memory of Man, wherein such Indulgence, such easiness of Temper, hath been shewn from the Court to the Council, as there always hath been in this. Never was there such Freedom and Liberty of Debate and Argument allowed to the Bar, and we thank Your Lordship for the same.

My Lord, We come not here to countenance the Practices for which the Prisoner stands accused, nor the Principles upon which such Practices may be presumed to be founded; for we know of none, either Religious or Civil, that can warrant or excuse them. But the Act of Parliament having warranted the appearing of Council for Persons accused to make Defence for them, we hope Your Lordship will give us Leave to make what Objections we can on their Behalf.

L. C. J. Holt. Look ye, Sir *B. Shower*, go on with your Objections; let us hear what you have to say.

Sir *B. Shower*. My Lord, It appears to be a Doubt to us, upon this Act of Parliament, whether this Cause can be tried this Day: And if it be a Doubt, we hope, though it should not have that Weight with the Court, that we apprehend it has; yet Your Lordship will excuse us, and settle it according to your Judgment. The Act requires, That all that shall be Accused and Indicted for High-Treason, whereby any Corruption of Blood may, or shall be made to any such Offender or Offenders, or to any the Heir or Heirs of any such Offender or Offenders, or for Misprision of such Treason, shall have a true Copy of the whole Indictment; and afterwards shall have Copies of the Pannel of the Jurors who are to try them, duly

returned by the Sheriff and delivered unto them. And every of them so Accused and Indicted respectively two Days at the least before he or they shall be Tried for the same. Now if your Lordship will please to cast your Eye upon this *Venire facias*, and it will appear to be returned but this Day, and that is not according to the Intent of this Law. And it is impossible then, if it be as we apprehend it, and put it, that this Trial should go on at this Time; and that this Construction should be so as we say, not only the Words, but as we take it, the Intent and Meaning of the Act of Parliament too are for us, that there ought to have been a Copy of the Pannel after the Return two Days before the Trial. For in the first Place, My Lord, the Words are plain: It must be a Copy of the Pannel duly returned by the Sheriff. Now though it be a Copy of the Array of the Pannel which we have delivered to us, yet it is not a Copy of the Pannel of the Jurors returned; for it is no Return till it come into Court. And the King's Council must admit, that in the Case of all Writs returnable, it cannot be said that there is a Return, where there is a Writing upon the back, or a Label annexed, till it be actually returned into Court. As in the Case of a *Hieri Facias*, or a *Mandamus*, an Action for a false Return cannot lie till the Writ be actually returned. For such Action must be brought into the County of *Middlesex*, where the Court resides, before whom the Return is made, and not in the County where the Sheriff lived that made the Return; for it is not a Return till filed in Court. Now here the Words of the Act are; *He shall have a Copy of the Pannel of the Jurors who are to try him, duly Returned by the Sheriff two Days before the Trial.* Now we humbly insist that the Words duly Returned must be antecedent to the having the Copy, or else he cannot be said to have a Copy of the Pannel duly Returned. The Act of Parliament does not say which shall be duly Returned; and therefore there does arise a Doubt, whether your Lordship will not direct us to have a Copy after the Return made, which is but this Day.

Mr. *Phipps*. If your Lordship pleases to spare me a Word of the same side: We take it, that by this Act of Parliament the Jury must be duly returned before the Pannel is delivered to us. Now the Return is the Answer that is Indorsed upon the Writ with the Pannel annexed, and deliver'd into Court; for the Return is to the Court, and till it be delivered into Court, it cannot properly be said to be a Return. We acknowledge the Copy of this Pannel has been delivered unto us, two or three Days ago. But the *Venire* being not returned till to Day, we think we have not a Copy of the Pannel within the Intent of, and according to the Act of Parliament. And I desire to put your Lordship this Case: This Act of Parliament does likewise provide, that the Prisoner should have a Copy of his Indictment five Days before his Trial, to enable him to consult with his Council how to plead and defend himself; suppose then a Copy of a Bill that is intended to be presented to the Grand Jury, be deliver'd to the Person accused five Days before the Grand Jury are to meet, and they afterwards meet, and find it, and the Party is brought immediately, and arraign'd upon it: This is a true Copy of the Indictment, yet certainly the Intent of the Act of Parliament is not

answered, for it was not a true Copy of the Indictment at the Time it was deliver'd. And I take this Case to be under the same Reason. This is not a Pannel duly returned, till now; and therefore by Consequence we have not that Advantage that this Act of Parliament intended to give us; for which Reason we humbly apprehend we ought not to be tryed to Day; which we submit to your Lordship.

L. C. J. What say you to it, Mr. Attorney.

Mr. *All. General*. My Lord, with Sir Thomas Submission, this Objection will receive Trevor. a very plain Answer. If I understand it aright, they say that they ought to have a Copy of the Pannel after it is returned, and that it cannot be said to be duly delivered, according to the Provision in this Act of Parliament, till after the *Venire facias* be duly returned into the Court, and then they are to have it two Days before they are tried. They say the *Venire facias* is returned but to Day, and so the Copy delivered to them, is not pursuant to the Act of Parliament; and so they cannot be tried to Day: This I take to be the Objection. But with Submission, My Lord, it will be plain both by the Words of the Act, and the Reason and Intention of it, that there is no Occasion at all, nor no Necessity of having the Writ returned before the Copy of the Pannel be delivered. The Words of the Act of Parliament are these; *That every Person and Persons who shall be accused, indicted, and tried for Treason, or Misprison of Treason; after the 25th of March, 96, shall have Copies of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them two Days before they be tried.* Now, first, My Lord, I think it is apparent what the Meaning and Design of the Act of Parliament was, that the Prisoner should know two Days before the Trial, who were the Jury that were to pass upon him, that he might have an Opportunity to consider how he should make his Challenges as he thought fit, and Time to enquire into the Qualifications of them, that if there were any particular Ground of Challenge, he might not lose that Benefit; so that if he has a Copy of the Pannel array'd by the Sheriff, which is afterward returned by the Sheriff into Court, and there is no Variation of that Pannel afterwards; then certainly the End and Intent of the Act is entirely pursued: For by that Means the Prisoner has the Names of all the Jury returned, and are afterwards called, and has a full Opportunity of making such Challenges as he thinks fit. And as the Reason and Intent of the Act is answered by this Construction, so the very Words of the Act are answered: For it is not said in the Act, that he shall have a Copy of the Pannel after it is return'd, but it is said a Copy of the Pannel duly returned by the Sheriff; that is, when the Sheriff has arrayed a Pannel, then he is to have a Copy of that Pannel; and if afterwards the Sheriff return the same Pannel into Court, is not this a Copy of the Pannel duly return'd? With Submission it is, and sufficient to answer both the Words and Intention of the Act of Parliament. It is true, My Lord, if the Act of Parliament had said he should have a Copy of the Pannel after it was return'd, then we cou'd not have said but that the Objection wou'd hold. But when the Words are general, and it is most reasonable to be interpreted that the Copy is to be delivered when the Array is made, because that answers the Intent and End of the Act of Parliament,

Parliament, which was to enable the Prisoner to make his Challenges, we take that to be sufficient; and if another Interpretation shou'd be made, it wou'd render the Trial in such Cases liable to all the Mischiefs in the World, and make it impracticable that any Person shou'd be tried; at least it wou'd introduce a new Method of Proceedings that never was practised, nor ought to be introduced, unless this Act of Parliament by exprefs Words, had appointed and constituted such a new Method; and we suppose your Lordship will never make any such Construction, that the Act intended a new Method, unless expressly declared; for if it were, as they would have it, that the Copy of the Pannel was not to be delivered till after the Return of the Writ, then the Prisoner cannot be tried upon the Return of the Writ; for upon the Return of the Writ, the Jury must be brought to the Bar, the Prisoner must be brought to be Bar, and adjourned over to a further Time, that in the mean Time a Copy may be deliver'd to them. I believe that they can never shew any Precedent that there was such an Adjournment of a Jury of Life and Death, over to another Day, for a Person to have a Copy of the Pannel, to enable him to his Challenges; and either that must be the Consequence, or else the Jury must not come upon the Return of the *Venire facias*, but there must go a *Habeas Corpora*, and the Prisoner tried upon that *Habeas Corpora*: For first there must be the Return of the Writ, then the Copy of the Pannel delivered, then the *Habeas Corpora* returnable another Day; and upon that the Trial must be had: But I believe there can be no Instance given of a Trial for Treason upon a *Habeas Corpora*. Now if the Parliament had intended that they would not have the Copy of the Pannel deliver'd till after the Return of the *Venire facias*, they would certainly have express'd and provided how the Method of Trial should have been; that is, that either the Jury should have been adjourn'd over till another Day, or else brought to the Bar upon a *Habeas Corpora*; which is the only way that can be thought of. Indeed, *My Lord*, I do agree, that if the Sheriff should give a Copy of the Pannel, and afterwards should vary that Pannel, tho' but in one Name, that would not answer the End of the Act of Parliament, because the Prisoner is deprived of the Opportunity of knowing the Name of the Person that he is altered, in Order to his making his Challenges against him: But if the Sheriff do return the same Persons that are in that Copy delivered to the Prisoner, then we do, to all Intents and Purposes, answer the End of the Act of Parliament, and avoid the absurd Construction that they would make of this Act for the Changing the Method of Trials, and no Body can well tell what Method shou'd be pursued: But certainly if the Act of Parliament intended a new Method shou'd be pursued, they wou'd have described and settled what it shou'd be.

Sir John Hawles. Mr. Solicitor General, If your Lordship pleases to spare me a Word of the same side; *My Lord*, this is an Objection that has been foreseen, and I think has been prevented; for, with Submission, I take it, the Act has been sufficiently answered both as to the Words, and as to the Intent of it in the Prisoners having the Copy of the Pannel before the Jury be returned; there must be such a Thing as a Pannel array'd before the Jury be summon'd, and therefore it is suffi-

ent that the Prisoner have a Copy of that Pannel so many Days before his Trial; which was only intended for that particular Reason, that he might be provided sufficiently to make his legal Challenges. Certainly within the Intent of the Act of Parliament it is well enough if he had but a Copy of the Pannel two Days before the Return of the Writ, provided the Jury was not alter'd that was array'd, nor any other Names put in but those that he had a Copy of before: Now, *my Lord*, I think this Act of Parliament must be taken according to the Intent and Meaning of it, or else it will bear hard upon the Prisoner, and harder sure than it was designed it should: This Act says, he shall have a Copy of his Indictment so many Days before his Trial; now I would fain know whether they would have it construed, that the Copy does not need to be delivered till after Issue joyn'd, which must be if their Doctrine hold true, that the Act is to be construed according to the strict Letter of it, for Trial is the Trial of the Issue; what if the Indictment be delivered five Days before the Trial, tho' after Issue joyn'd, it is well enough according to such an Exposition, for the arraignment of the Prisoner is no Part of the Trial, and yet it was the Intent of the Parliament that he should have a Copy of the Indictment five Days before he was arraigned, and that for this Reason, because he might have several Pleas to plead and Objections to make before he pleaded the General Issue; he might have Pleas in Abatement, which after Plea pleaded of Not guilty he could not have the Advantage of, nor could he afterwards move to quash the Indictment, which he might otherwise have good Reason for, if he had the Copy before he was put to plead; so that I take it the Act is to be interpreted every where according to the Intention of it, and the Prisoner at the Bar, according to the Intention of the Act, has had a Copy of this Indictment five or six Days before his Arraignment, and therefore we have acted according to the Purpose and Meaning of the Parliament, and likewise he has had a Copy of the Pannel of the Jurors that are to try him, which is duly returned by the Sheriff, which is likewise according to the Act of Parliament. As for what they say that even a Copy of the Indictment before it be found would not be good according to this Act; that's true, but the Case is not the same, nor the Reason of the Case alike between that and the Pannel of a Jury, because it is sufficient in Law to make it a good Pannel if it be array'd by the Sheriff before the Jury be summoned, for the Sheriff must array and compleat his Pannel to let his Bailiff know who must be summoned; but in the Case of an Indictment, tho' a Bill be first form'd by the Clerk, yet it is not look'd upon as a formal Indictment in point of Law, till it be found by the Jury as their Verdict, and preferred to the Court; and it is not necessary that this Indictment should be formed for the Jury before they find it, for they are properly to make their own Presentments themselves; and the ancient Practice was, that they only presented the Fact, and the Matter was put into Form afterwards by the Court, and in many Cases it is so at this Day, as we have had some Instances lately; but as to the arraying of a Pannel it always was so, and always must be so array'd by the Sheriff before the Jury summoned, and there's the Difference between the giving a Copy of an Indictment

Indictment and the Copy of a Pannel, the one is taken Notice of in Point of Law to be necessary, the other is not. This giving a Copy of the Pannel, my Lord, we say is within the Intent of the Act, which was only to enable Persons accused to make their just Challenges, and that they may as well do when a Copy is delivered after it is array'd by the Sheriff, as, when it is return'd by the Sheriff, and being so done, with Submission, it is well done within the Words, and within the Intent of this Act of Parliament.

Mr. *Conyers*. My Lord, the Words of this Act of Parliament, are, that they shall have a Copy of the Pannel of the Jurors who are to try them, duly returned by the Sheriff, and delivered to them, and this, two Days before the Trial: My Lord, that this is the Pannel of the Sheriff of the Jurois that are to try them, as soon as it is array'd, has been observ'd already; now it would be a forc'd Construction to construe these Words that follow, duly returned by the Sheriff, to be meant, that a Copy should be delivered after the Jury is returned, because that would be a Delay of Justice, and keeping off the Trial longer than was intended by this Act of Parliament, and more than will answer the End of this Law; for the End of it was to give the Prisoner all Benefit and Advantage of Exceptions against any of those that were to try him, and if he has this Pannel two Days before his Trial, he has that Benefit the Law intended him. Now, my Lord, as to what has been said of an Indictment, which by this Law he is to have a Copy of too, that is plainly quite another Case; for it is not an Indictment till it be found, and so answers not the Words nor Intention of the Act till found by the Grand Jury; till then it is not a Copy of his Charge, and therefore by no Construction can it be called a Copy of the Indictment. I think I need not trouble Your Lordship any further in this Matter, because this Objection was foreseen, and has been already considered of by the Court upon the Prisoner's Arraignment.

Sir *B. Shower*. My Lord, in Answer to what Mr. Solicitor has said, that there is as much Reason to expect that the Copy of the Indictment should not be delivered till after Plea pleaded, as that the Pannel should not be delivered till after the Jury return'd, because in the Case of the Indictment it is said so many Days before the Trial, and the Trial cannot be till Issue joyn'd, there can be no Weight in that Objection at all; for the Words of the Act are quite differently penned in the Case of the Indictment, from what they are in the Case of the Pannel; for tho' it be said it should be done five Days before the Trial, yet it is added, in Order to the advising with Council how to plead, which must be before Plea pleaded, and therefore it must be absolutely necessary to be done before the Arraignment. My Lord, I have propos'd my Doubt, it may have Consequences on the one Side and the other, we submit intirely unto your Lordship's Judgment; it is a new Law, and never has received any Opinion; the Words of it are, *duly return'd by the Sheriff*, and the Question is, Whether a Copy of the Pannel upon the Array before it be return'd be a Copy of the Pannel duly return'd, tho' the same Pannel be afterwards duly returned.

Mr. *Phipps*. My Lord, Mr. Attorney General owns, that the Pannel after it is arrayed may be

amended and altered by the Sheriff, and it was never intended by this Act of Parliament, that any Copy of the Pannel should be delivered to the Prisoner but of those Men that were really returned; so that we take it we ought to have it two Days after the Return and before the Trial; for certainly it must be a Copy of the Men returned, which if the Sheriff may alter at any Time before the Return, the Intent of the Act of Parliament can never be answered by any Copy but what is a true Copy of the Return. Mr. *Conyers* would answer the Objection that I made about a Copy of the Indictment by this, that it is not an Indictment till it be found by the Jury; but I think it is no Answer to our Objection at all, though it be but a Copy of the Bill intended to be presented to the Grand Jury, yet if the Grand Jury afterwards find it, it is as true a Copy of the Indictment, as this is a Copy of the Jury intended to be returned, and afterwards returned. As to what they say, that this will introduce a new Method of Trial, contrary to all Form or Proceedings, that can be no Objection neither; for if it be so, we can't tell how to help it, the Parliament have thought fit to have it so, and we must submit to take it as the Law has made it: If there be a Necessity for a *Habeas Corpus* upon the Provision made in this Act, so it must be, for we must take the Law as it is. We submit our Objection to your Lordship; we think we have not had the Benefit of this Law.

Mr. *Cropper*. Surely, my Lord, what Mr. *Phipps* has now said has no Weight in it; that because the Sheriff had it in his Power to alter the Pannel before it was returned, that therefore this is not now a true Copy of the Pannel of the Jurors who are to try the Prisoner, duly returned by the Sheriff; which are the Words in the Act. It is true, if the Sheriff had in fact altered the Pannel from what it was, and return'd it so altered into Court, no doubt of it the Prisoner would be very well intitled to make this Objection, that he had not a Copy of the Pannel, or the Names of the Jurors that were summoned to try him; but now we can aver, that we have pursued this Act of Parliament literally; for in Answer to their Objection, we may ask this Question of them upon the Words of the Act, Have you not had a true Copy of the Names of those that are to try you, and are duly returned by the Sheriff for that Purpose; and was not that Copy delivered unto you above two Days ago? They cannot say they have not had it so, and if they cannot say so, then both the Words and Meaning of the Act of Parliament are in every respect answered; if when the Jury come to be called the Prisoner finds the Pannel to be altered, he has Reason to object, and will have the Benefit of the Objection, that he has not that Advantage which the Law intended him, but till that prove to be the Fact, we think here is a full Compliance with this Law.

Mr. *Sol. Gen.* Sir *Barth. Shower* mistakes my Objections about the Copy of the Indictment; for we say, if the Intent of the Act of Parliament be complied with, it is sufficient, especially where the Words are any way doubtful; according to the Words of this Act of Parliament, a Copy of the Indictment need to be delivered but five Days before the Trial; but it appearing that the Intention of these Law-makers was, that he should have a Copy of the Indictment to enable him

him to plead to it if he had Cause, therefore tho' the Words be before the Trial, we have taken it that he should have a Copy five Days before his Arraignment, and so we have complied with the Meaning of the Law in that point, as we have also in this, which was, we take it, only to enable the Prisoner to make his Challenges, and if that be done two Days before his Trial, with Submission, it fully answers this Law.

L. C. J. Have you done Gentlemen?

Counc. Yes, my Lord.

L. C. J. Then look you, Sir *B. Shower*, as to this Point that you now insist upon, we have had it under Consideration heretofore; we were here this Day seven-night, and then we did consider in what Method we should proceed, so that the Prisoner might have the Benefit intended him by this Act of Parliament: The Act of Parliament does design in the first place, that every Prisoner that is to be tryed for High-Treason should have a Copy of his Indictment, at least five Days before the Trial, that I think was all that the Makers of this Act of Parliament intended at the first; but then there being subsequent Words, which shew the Reason why they gave him the Copy so long before the Trial; which is, that he might advise with his Council what to plead; these Words we conceive have given the Prisoner a further Time than what was originally intended, therefore we have thought it necessary that the Prisoner should have a Copy of his Indictment five Days before he be arraigned, which is five Days before he was put to plead; and your Client, the Prisoner at the Bar, has had the Benefit of this Act in that respect before we arraigned him; then after he has pleaded, the Question was, when he was to have a Copy of the Pannel: Now the Design of this Act of Parliament was, That the Prisoner should have a Copy of the Pannel two Days before his Trial, in Order that he might consider of the Persons that were to try him; that he might inform himself of their Qualities, Tempers, and Dispositions; that so he might make use of the Benefit the Law gives him of Challenging Five and Thirty, without shewing any Cause, if he did not like the Men, and as many more as he should think he had good cause to challenge: Now in this Case, the whole Design of this Act of Parliament is answered, for he has had a Copy of the Pannel, as you your selves acknowledge, two Days before the Day of his Trial, so that he has the full Benefit that the Act of Parliament intended; he is by this Copy as well enabled to make his Challenges as the Law design'd he should be, and has had the same Time allowed him that the Act of Parliament meant he should have; then supposing the Design of this Act of Parliament be fully answered and complied with in the Case, The next Question is, whether the Words of the Act are satisfied, for we would be very loth, in a Case of this Nature, where an Act of Parliament intends a Favour to a Prisoner that stands at the Bar for his Life, to abridge him of any Part of that Favour which the very Words of the Act would allow him, tho' the Intent of the Act of Parliament were answered otherwise: Now in the first place it is observable, that the Act of Parliament does not say, that the Prisoner shall have a Copy of the Return, nor does it say, he shall have a Copy from the Court, but

he shall have a Copy of the Pannel of the Jurors duely returned that are to try him; now if the Sheriff array his Pannel several Days before the Trial upon the *Venire facias*, and does give him a Copy of that very Pannel, which Pannel is afterwards returned in Court, has not he then a Copy of the Pannel duely returned? Does not this answer all the Words of the Act? For you yourselves say that it is not said in the Words of the Act, that the Copy shall be delivered after the Pannel returned, nor does there need a Copy of the very Return. Surely we must not carry it farther than the Words, if the Meaning be complied with, and we think this answers both Words and Meaning: It is a Copy of the Pannel, and a Copy of that Pannel that's duely returned. Now to make another Construction would indeed not only alter the usual Course of Trials, but be contradictory to the very Process it self. We are by the Course of Law to award Process to summon a Jury to appear at a certain Time, to try the Issue joined between the King and the Prisoner; and yet when we have done this, and the Jury thereupon are summoned and do appear, they may go as they came; for the Issue cannot be try'd, because after the Return, the Prisoner must have a Copy of the Pannel two Days before he can be tried. I do think the Design of the Act of Parliament, and the very Words of the Act are fully satisfied in giving a Copy of the Pannel two Days before the Return. We had this Matter under our Consideration before, and upon Debate among our selves, we did think fit to award the Precept returnable this Day, and resolved to try the Prisoner this Day, unless better Reasons were offered us to alter our Opinion, and we are not satisfied, that any such better Reason has been given, but that this Trial ought to go on, the Prisoner having the full Benefit that was designed him by this Act of Parliament. And the Giving a Copy of the Pannel that is return'd, tho' before the Return, sufficiently satisfies the Words of the Act: No other Construction can be made without great Absurdities: This is my Opinion.

Sir B. Shower. My Lord, I hope we shall be excused for our Client, we have another Doubt to propose to the Court.

L. C. J. You have had my Opinion upon this Point, if my Lords and Brothers are of another Opinion, they will tell you.

Judges. No my Lord, we are all of the same Opinion.

L. C. J. My Lord Chief Justice of the Common Pleas, and my Brothers are all of the same Opinion.

Sir B. Shower. My Lord, we say we have another Doubt to propose upon this Act of Parliament: It is a new one, and never put in Practice till now, and therefore we hope your Lordship will please to excuse us, if we offer our Objections, because there has yet never been a Determination about it, and we are assigned of Council by your Lordship.

L. C. J. Never make Apologies, Sir *Bartholomew*, for it is as lawful for you to be of Council in this Case, as it is in any other Case where the Law allows Council. It is expected you should do your best for those you are assigned for, as it is expected in any other Case that you do your Duty for your Client.

Sir B. Shower. My Lord, our Exception is this, we say that this Trial cannot go on at this Time,

upon

upon this Act of Parliament, because we have no true Copy of the whole Indictment; it does not appear, in the Copy we have delivered to us, before whom it was taken, or whether it was taken at all, or in what Place it was taken; it says only *Middlesex* in the Margin, and then *Juratores pro Domino Rege presentant*: That might be before the Justices of the Peace at the Quarter-Sessions, or it might be at the Monthly-Sessions at *Hicks's-Hall*, or it might be at the Sessions at the *Old-Baily*, or it might be before Commissioners of Oyer and Terminer, as perhaps it really was; but *non constat* where it was taken, nor how it comes hither: It might be before Your Lordship here, as we believe it was, but this Copy not letting us know where and how it was taken, we think we have not the Benefit of this Law; for the Party accused is by this Act of Parliament to have a Copy to advise with Council, that he may be enabled to plead. And that is the Reason why the Words of this Act are so penned, that he shall have a Copy of the whole Indictment, which we cannot plead to, unless we know where it was taken, if we should have Occasion to plead any special Matter. And besides, My Lord, there is another Reason why we should have the whole Indictment to enable us to plead, because if we had the *Caption*, it might perhaps appear, that the Indictment was taken before the Time of the Fact alledged in the Indictment, and then that would make it vicious; it might be before the 9th of *February*, when this Treason is said to be committed, and then we ought not to be brought to Trial. Now the Design of this Act of Parliament, in giving the Prisoner a Copy of the Indictment so long before the Trial, was not only to enable him to make his Defence upon the Trial, but also to advise with Council to plead; for so the Words are, the better to enable him to plead. Now we say to answer this End, it is necessary we should have a Copy of the whole Indictment, as it stands before Your Lordship's Court. And another Reason is this, it is no Indictment, unless it be presented by the Jury, as their Inquisition upon Oath, unto some Court that has Jurisdiction of the Matter: What we have delivered to us is only a Copy of a Bill, as to be delivered to a Grand Jury, to be found; *non constat*, that it is found. Now the Intent of the Act of Parliament being to give the Prisoner this Advantage to enable him to plead, he may have several Pleas, of which he might take a legal Advantage if he had a Copy of the whole, which he knows not how to come at now; and in truth it is very necessary, because if he be tried upon an Indictment found in another Country, then these Commissioners have not a legal Authority to try him; and if the Tryal should go on, and he be acquitted, he is subject to be indicted and tried again, and never can relieve himself by the Acquittal upon such an Indictment before Persons that had no Authority to try him. I doubt he can never plead the Acquittal, because he cannot make out that he was duely tried and acquitted: And for these Reasons we humbly submit it to your Lordship, whether we have had the Benefit of this Law, in having a Copy of the whole Indictment to enable us to plead; and if we have not, till we have that Benefit, we humbly conceive this Trial ought not to go on.

Mr. *Phipps*. My Lord, the Question is whether the Style of the Court, the Persons before whom it was taken, and to whom the Presentment is

made, the Time when it was taken, and the Place where, ought not to appear in the Indictment. This Law requiring that the Prisoner should have a Copy of the whole Indictment to enable him to plead; for if it should happen, that the Indictment was taken before Persons that had no Jurisdiction, then I believe it will not be denied but that the Prisoner might plead to the Jurisdiction, and there might be several other Pleas that he might take Advantage of. I would desire to know of the King's Council, whether ever they saw a Copy of an Indictment given in Evidence, or pleaded without the *Caption*. It is not a true Copy without it; there ought to be the Time, the Place, and the Style of the Court before whom it is taken.

Mr. *At. Gen.* Truly, my Lord, I think I need say no more to this Objection, than that it does not come at a proper Time; for with Submission, if the Prisoner will upon this Act say he has not had a Copy of his Indictment to enable him to plead, he ought to have taken the Advantage of it before he did plead, that is the proper Time for him to object this Matter to the Court; for if, after he has had such a Copy as this Prisoner has had, he does submit to plead, with Submission it is too late to come at his Trial and make this Objection, he cannot be received to make it after.

L. C. J. That is a full Answer, Mr. Attorney.

Mr. *At. Gen.* I think it is, my Lord, with Submission, not that we would wave giving other Answers to it, if it were in a proper Time; but the Method of proceeding must be, and we think we have no Occasion at this Time to say any Thing more to this Objection.

L. C. J. No, no, that is a full Answer in this Point; for look ye, you that are of Council for the Prisoner, when once you have pleaded, you admit you have had a Copy; for the Copy was given you to enable you to plead, and when you have pleaded, you have pass'd by all Advantage that you could have from the Copy, as to any Plea that you can make: For it's taken for granted ye had a Copy to enable you to plead, and to advise with your Council about it; since you did plead, and did not insist upon it at the Time of your Arraignment that you had not such Copy.

Sir *B. Shower*. My Lord, we have proposed one Doubt, and we humbly submit it to the Court.

Mr. *Sol. Gen.* It was their own Fault that this Objection was not made in Time.

L. C. J. That Doubt of yours may serve at another Time, but now certainly it is quite out of Time.

Mr. *Sol. Gen.* Nay, my Lord, even upon the Arraignment that would not serve their Turn neither.

L. C. J. We will not enter upon that now, pray go on to swear the Jury.

Cl. of Ar. You the Prisoner, look to your Challenges, as I told you before. Cryer, call Sir *Jeremy Sambrook*.

Cryer. *Vouz ceuz.*

Sir *B. Shower*. Mr. *Rookwood*, you are to make your own Challenges.

Rookwood. I do not challenge him.

Cl. of Ar. Then hold Sir *Jeremy* the Book.

Sir *Jer. Sambrook*. My Lord, I am incapable of serving upon this Jury, for I have been deaf
this

these several Years, these Dozen Years; I cannot hear what is said in Court, though I am now so near the Court, I could not hear what your Lordship said; nor what was said at the Bar. I have a Certificate here, if your Lordship please to have it read; and most of the Persons of Quality here about the Court know it to be true.

Mr. At. Gen. My Lord, I am afraid it is so.

L. C. J. Nay, if it be so, it is not fitting that he should be upon the Jury, when he can't hear what's said: You must excuse Sir *Jeremy Sambrook*. Go on to the next.

Cl. of Ar. *George Ford*.

Cryer. *Vous avez*.

Cl. of Ar. Look upon the Prisoner.

Rookwood. I challenge him.

L. C. J. Mr. *Ford*, you must not go away, for you are upon another Pannel, wherein you may be employed, tho' you are now challenged.

Cl. of Ar. *William Underbill*.

Rookwood. I challenge him.

Cl. of Ar. *William Withers*.

Rookwood. I challenge him.

Cl. of Ar. *Samuel Powell*.

Rookwood. I do not except against him.

Cl. of Ar. Then swear Mr. *Powell*.

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

Cl. of Ar. *Thomas Trench*.

Rookwood. I challenge him.

Cl. of Ar. *John Wolfe*.

Rookwood. I challenge him.

Cl. of Ar. *James Bodington*.

Rookwood. I challenge him.

Cl. of Ar. *John Raymond*.

Rookwood. I challenge him.

Cl. of Ar. *Richard Marsh*. (He did not appear.)

Cl. of Ar. *George Haws*.

Rookwood. I challenge him.

Cl. of Ar. *Francis Barry*.

Rookwood. I challenge him.

Cl. of Ar. *Arthur Baily*.

Rookwood. I except not against him. (He was sworn.)

Cl. of Ar. *John Webber*.

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

Cl. of Ar. *Thomas Glover*.

Rookwood. I challenge him.

Cl. of Ar. *Dormer Sheppard*.

Rookwood. I challenge him.

Cl. of Ar. *George Tredway*.

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

Cl. of Ar. *Matthew Bateman*.

Rookwood. I challenge him.

Cl. of Ar. *Timothy Thornbury*.

Rookwood. I challenge him.

Cl. of Ar. *James Partherich*.

Rookwood. I challenge him.

Cl. of Ar. *Thomas Freeman*.

Rookwood. I challenge him.

Cl. of Ar. *Joseph Blitbit*.

Rookwood. I challenge him.

Cl. of Ar. *Timothy Lemoy*.

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

Cl. of Ar. *John Harris*.

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

Cl. of Ar. *John Billers*.

Rookwood. I challenge him.

Cl. of Ar. *Richard Bourne*.

Rookwood. I challenge him.

Cl. of Ar. *George Garter*.

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

Cl. of Ar. *Francis Chapman*.

Rookwood. I challenge him.

Cl. of Ar. *Alexander Forth*.

Rookwood. I challenge him.

Cl. of Ar. *Thomas Playsted*.

Rookwood. I challenge him.

Cl. of Ar. *William Etley*.

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

Cl. of Ar. *John Marsh*.

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

Cl. of Ar. *Samuel Hooper*. (He did not answer.)

L. C. J. Did Mr. *Hooper* appear?

Cl. of Ar. Yes, my Lord, he is mark'd as appearing.

L. C. J. Then you ought to call him again, and set a Fine upon his Head.

Cl. of Ar. Cryer, call *Samuel Hooper*.

Cryer. *Samuel Hooper*, come into Court and give your Attendance upon Pain of ten Pound, for the Court has recorded your Appearance.

Cl. of Ar. *John Hall*.

Rookwood. I challenge him.

Cl. of Ar. *Nicholas Roberts*.

Rookwood. I challenge him.

Cl. of Ar. *William Partridge*.

Rookwood. I challenge him.

Sir B. Shower. How many has he challenged Mr. *Hardesty*?

Cl. of Ar. I will tell you Sir *Bartholomew*,—he has challenged 24.

Sir B. Shower. Well then, go on, Sir.

Cl. of Ar. *Peter Laveane*.

Rookwood. I challenge him.

Cl. of Ar. *Thomas Moody*.

Rookwood. I challenge him.

Cl. of Ar. *Richard Bealing*.

Rookwood. I challenge him.

Cl. of Ar. *Thomas Evans*.

Rookwood. I challenge him.

Cl. of Ar. *Thomas Rammage*.

Rookwood. I challenge him.

Cl. of Ar. *Edward Townshend*.

Rookwood. I challenge him.

Cl. of Ar. *William Gunston*.

Rookwood. I challenge him.

Cl. of Ar. *Samuel Freebody*.

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

Cl. of Ar. *Philip Wightman*.

Rookwood. I challenge him.

Cl. of Ar. There are now Thirty-two challenged.

John Wyberd.

Rookwood. I challenge him.

Cl. of Ar. *William Strowd*.

Rookwood. I challenge him.

Cl. of Ar. *Daniel Byfield*.

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

Cl. of Ar. *Benjamin Noble*.

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

Cl. of Ar. Cryer, count them. *Samuel Powell*, —

Cryer. One, &c.

Cl. of Ar. *Benjamin Noble*.

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

The Names of the Twelve sworn were these.

<i>Samuel Powell,</i>		<i>George Carter,</i>
<i>Arthur Bailey,</i>		<i>William Atley,</i>
<i>John Webber,</i>		<i>John Marsh,</i>
<i>George Tredway,</i>		<i>Samuel Freebody,</i>
<i>Timothy Lennox,</i>		<i>Daniel Byfield, and</i>
<i>John Harris,</i>		<i>Benjamin Noble.</i>

L. C. J. Look ye, Mr. *Phipps*, your Objection upon the Indictment slipt me, and therefore I would speak to it now: You said it might be as well a Copy of the Indictment before it be found, as well as this a Copy of the Pannel before it be returned. Now that can't be, for an Indictment is not an Indictment till it be found, it is only a Writing prepared for the Ease of the Jury, and for Expedition; it is nothing till it is found, for the Jury make it an Indictment by finding it, they may alter what they please, or refuse it absolutely. And if the Jury, upon examining the Witnesses, would only present a Matter of Fact, with Time and Place, the Court might cause it to be drawn up into Form, without carrying it to the Jury: Again, There needs no *Billa vera*; for that is only the Jury's Owing that which the Court has prepared and drawn up for them: But a Pannel is a Pannel when it is arrayed, before it be returned, and a Copy of the Pannel given before it be returned, is a Copy of the Pannel returned, if it be afterwards returned, as it must.

Sir Barth. Shower. But, my Lord, that Notion strengthens our Objection that we last made, that makes it necessary that we should have a Copy of the *Caption*, as well as the other Part, to make it a true Copy of the whole Indictment.

L. C. J. That's another Thing, we will talk of that another Time; but I speak of this only as to his Objection which slipt my Memory, because I would have nothing remain unanswered.

Mr. Phipps. My Lord, when the Bill is found, the Copy that we delivered before is as much a true Copy of the Indictment as our Copy of the Pannel is a Copy of the Jury returned.

L. C. J. A Pannel is a Pannel when it is arrayed, but a Bill is not an Indictment till it be found; one cannot say a Man *indictatus existit*; till it be found; all that we say of it before it be found, is that there was *quedam Billa* preferred to the Grand Jury, and if the Jury bring it in *Ignoramus*, whereby they disown the Presentment, it is cancelled, and there is no Record of it, nor nothing, only a *Memorandum* in the Clerk's Book perhaps, that such a Thing was. Well, go on.

Cl. of Ar. Cryer make Proclamation.

Cryer. O yes, If any one can inform my Lords the King's Justices of Oyer and Terminer, the King's Serjeant, the King's Attorney General, before this Inquest to be taken, of the High-Treason whereof *Ambrose Rookwood*, the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard; for now the Prisoner

stands at the Bar upon his Deliverance, and all others that are bound by Recognizance to give Evidence against the Prisoner at the Bar, let them come forth, and give their Evidence, or else they forfeit their Recognizance.

Cl. of Ar. *Ambrose Rookwood*, hold up thy Hand. (*Which he did.*) You that are sworn look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Ambrose Rookwood*, of the Parish of *St. Paul Covent-Garden*, in the County of *Middlesex*, Gent. for that he, together with *Christopher Knightley*, not yet taken, *Robert Lowick*, and *Charles Cranburne*, and divers others, false Traytors, &c. — *prout* in the Indictment, *mutatis mutandis* — and against the Form of the Statute in that Case made and provided. Upon this Indictment he hath been arraign'd, and upon his Arraignment hath pleaded not guilty, and for his Trial hath put himself upon God and his Country, which Country you are; your Charge is to enquire, whether he be guilty of the High-Treason whereof he stands indicted, or not Guilty; if you find him Guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High-Treason committed, or at any Time since: If you find him not Guilty, ye are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him Guilty; if you find him not Guilty, nor that he did fly for it, you are to say so and no more: And hear your Evidence.

Mr. Mountague. May it please your Lordship, and you Gentlemen of this Jury, this Indictment that has been read to you, does charge the Prisoner with High-Treason for Compassing and Imagining the Death of the King, for endeavouring to subvert the Government, and to subject the People of *England* to the Slavery of *Lewis* the *French King*; and for this End the Indictment sets forth, that the Prisoner at the Bar did privately meet with several false Traytors, to consult how they might compass the Death of the King, and commit those other Treasons; and that the 10th of *February*, at *Covent-Garden*, in this County, it was agreed among them, that they should get together Forty Horsemen whereof the Prisoner at the Bar was to be one, and they were to lie in Ambush, and set upon the King in his Coach upon his Return from going abroad; some were to attack the Coach, others to attack the Guards, and there were some to kill the King in the Coach: And the Indictment does likewise charge the Prisoner with gathering together Horses, and providing Arms for this Purpose. To this Indictment, Gentlemen, he hath pleaded not Guilty; we shall call our Witnesses, and prove the Fact, and when we have so done, we do not at all doubt but you'll do your Duty.

Sir B. Shower. My Lord, before the Witnesses are called we have a Doubt to propose to your Lordship upon this Act of Parliament, and that is, whether we are to take our Exceptions to this Indictment before the Evidence be opened or given?

L. C. J. It should properly be before the Jury is sworn.

Sir B. Shower. The Words of the Act, my Lord, is before the Evidence given.

L. C. J. That Act provides, That if you do not take the Advantage of it, before the Evidence

given, you shall not move that in Arrest of Judgment.

Sir B. Shower. It only says before Evidence given, and no Evidence has yet been given.

L. C. J. But you are certainly very irregular in point of Practice, no Body ever took Exceptions to an Indictment after the Jury was sworn.

Sir B. Shower. If your Lordships please to let the Words be read of the Act of Parliament, they are these: That no Indictment shall be quash'd, unless Exception be taken in the Court where the Trial shall be, before any Evidence given in Court upon that Indictment. Which, we say, strongly implies that the Law-makers thought it might be done at any Time before the Evidence was given in open Court, besides that the Law takes Notice that after Conviction it should be of no Avail; it would have been a very improper Expression before Evidence given in open Court, if it had meant before the Jury were sworn and charged; for the Word Evidence supposes the Trial commenced; If they had intended it otherwise, that is, that it should be before the Jury is sworn, they would have express'd it to be done at the Arraignment; but mentioning it to be done in the Court where the Trial is to be, before Evidence given, that supposes the Indictment to be at Issue before the Party needs to make his Exceptions. Therefore, my Lord, we hope we are regular in offering our Exceptions now.

L. C. J. Pray, what say you to it, Mr. Attorney?

Mr. Att. Gen. Truly, my Lord, I think they are no Way regular; for, with Submission, I take it, that though this Act of Parliament has indulged them in several Things which were not allowable by Law before, yet as to this Part they are not allowed to take Exceptions to the Indictment, otherwise than they could before this Act was pass'd: Nay, so far from that, that if your Lordship looks into the Act, you find they are restrain'd in this Point from an Advantage that they had before, that is, they shall not move any such Things as are there mentioned, after Verdict, in Arrest of Judgment: So that this Part is restrictive to the Prisoner, and takes away some Advantage that he had before; which was, moving in Arrest of Judgment after Verdict; but it leaves the making Exceptions as to any Time before the Verdict, as it was before, which was before Plea pleaded, but not after the Jury sworn: For it cannot be denied that in point of Practice, such a Thing as this that is now offered could not have been done before the Act. I would be glad to know whether they can shew any Precedent of any such Thing as they now contend for. They say, the Words of the Act are, Exception must be taken before Evidence given; but that must be taken at such a Time as they might by the Course of Law do it before: For when the Jury is sworn, they must give a Verdict, and I do not know how they can be discharged without giving a Verdict; therefore unless the Act had given Directions for a particular Manner of Proceeding in this Matter, which if has not done, your Lordship will not, I presume, do it in any other Manner than as it was before the Act made; and if there be no Precedent to be shown of any such Thing as this, of taking Exception to an Indictment after the Jury sworn and charged with the Prisoner; then there is no

Power in this Act of Parliament, given to them to take Exceptions to this Indictment at this Time; we take it the Motion is very irregular upon all Accounts.

Mr. Sol. Gen. My Lord, we first say, that it is not proper for them to make any such Motion as this upon this Act of Parliament, till they tell us what their Exception is, that we may see whether it be within the Words and Meaning of this Act of Parliament. The only Thing now that is proper for us to consider, is the Issue joined, and the Inquiry whether the Prisoner at the Bar is Guilty of the High-Treason of which he is Indicted, to which Indictment he has pleaded not Guilty: That's the Thing that is now before your Lordship to be tried, they have Room for Exceptions to the Indictment afterwards, for some Exceptions I mean, (I do not know what their Exceptions are) but if they be such as may be taken after the Verdict, then I am sure they are irregular now in their Motion, and they can shew no Precedent, when it was done after Plea pleaded and Issue joined, as it is in this Case.

Mr. Conyers. The Advantage that the Act gives the Prisoner, of having a Copy of his Indictment so long before Trial, is to enable him to plead, or to take Exceptions to quash it; but I never heard a Motion to quash an Indictment after a Jury is charged to hear the Evidence. Certainly they ought to do it before Plea pleaded, and not now to come to make a Motion to quash the Indictment, after they have pleaded, and the Jury sworn: Therefore we submit it, upon the constant Practice in like Cases, to the Judgment of the Court.

Sir B. Shower. In Answer to that which Mr. Attorney has said, That it is an improper Time; I thought truly I had moved it for the Advantage and Ease of the King's Council, that they might not proceed upon this Trial, when perhaps after all their Trouble, the Foundation, which is the Indictment, may fail. I have a great many Exceptions to the Indictment; they say we should name what our Exceptions are: I will acquaint them with them, as fast as I can, if your Lordship please, the Indictment is very loose and uncertain.

L. C. J. Certainly the Motion is irregular in point of Practice.

Sir B. Shower. My Lord, we were afraid we should be excluded from taking these Exceptions after the Evidence given.

L. C. J. So you are by the express Words of the Act.

Sir B. Shower. Then certainly we may do it before the Evidence given.

L. C. J. But the Act does not say, Ye shall do it any Time before the Evidence given, especially in such an irregular Manner, after Issue joined, and the Jury sworn. Suppose Mr. Attorney had given some Evidence.

Sir B. Shower. Then, my Lord, I agree we had been without the Words; therefore I now move it before the Evidence, because the Act of Parliament has given me a Liberty to do it before the Evidence given: For the Law having given this Liberty to the Prisoner, to make such Exceptions within such a Time, your Lordship will not restrain us from making Use of that Liberty further than the Law has restrained, but we may make Use of our Exceptions before the Evidence given,

either to induce your Lordship to quash the Indictment, or the Jury to find us not Guilty, as we hope your Lordship will direct them to do: For what is more common upon Indictments after the Jury are sworn, than if Facts appear upon the Record not to be sufficiently alledged, the Court will direct the Jury to find the Party not Guilty. We think this Act does give us this Liberty, otherwise I know not to what Purpose it was made, the very Meaning seems to be, that the Exceptions of the Council for the Prisoner might be of Prejudice to the King; and therefore it says, After the King's Evidence given, and the Fact discovered, no such Exception shall be made: Therefore we must make it before the Evidence given, otherwise this Act of Parliament that was designed in Favour of the Prisoner, will prove a very great Hardship upon him, especially in Case of an imperfect Indictment, as we apprehend this is, and he will be in a worse Condition than ever he was; he must take his Exceptions now or not at all. The Act says, He is not to take it after Evidence given; and by Construction the King's Council would have it, That he should not give it before: And consequently he has no Time at all to give it.

L. C. J. Have not you had Time to do it before now, *Sir Bartholomew Shower*, certainly you had? You had Time this Day Seven-night, when you were arraign'd; you have had your Opportunity if you would have taken it; the Jury are now charg'd, the Indictment is opened, they have been told what they are to enquire of, and now you would break in and take Exceptions to the Indictment.

Sir B. Shower. My Lord, This is a new Act of Parliament, it says we shall take our Exceptions before the Evidence given; which we take it, is any Time before the Evidence given; and if your Lordship will not allow us to do it now, it may be we may lose the Benefit of it absolutely.

L. C. J. It is one Question whether we shall allow it or no, and another Question whether you can claim it or no: Certainly it is an irregular Motion, and the like of it was never offered in any Case before, be it Criminal or Civil: For if it be a Criminal Case that is not Felony or Treason, when the Issue comes to Trial upon an Indictment, Did you ever know any Exception taken to the Indictment after the Jury were charg'd? Certainly it is contrary to all Practice; and it is not fair, the Court is not well dealt with, you have had an Opportunity before, and will you now put the Court and the Jury to so great deal of Trouble, to stay till the Jury be called over; the Prisoner called to his Challenges, he has challenged Thirty-four, the Jury is sworn, the Indictment is read to them, the Charge given them, the Council have opened the Indictment, and now when the Business is only to try the Issue with which the Jury are charg'd, you come to turn us quite round, by taking Exceptions to the Indictment.

Mr. Phipps. My Lord, We take it the Act gives us this Time to do it in.

L. C. J. You know you had another Time more proper to do it in.

Mr. Phipps. My Lord, If we have not Time now, then this Clause, with humble Submission, signifies nothing at all.

L. C. J. The Clause was made in this Respect, to your Disadvantage, because you should have a

Copy of the Indictment; whereby you might have an Opportunity to advise with Council, that they might instruct you how to plead, and to take any manner of Exception before Plea pleaded, it ought to be before the Trial, and now because of this Advantage, it provides that you shall take your Exceptions before the Trial, and not move them in Arrest of Judgment; that is the Meaning of the Act.

Mr. Phipps. Then, my Lord, there needed no Time at all to be mentioned in the Act, but have left it as it was at Common-Law.

L. C. J. Yes, yes, there did need a Time to be limited, for this Clause was made I say in your Disadvantage, in depriving the Prisoner of the Benefit of such kind of Exceptions in Arrest of Judgment, because of the Advantage that was given in the former Part of the Act, where you had Time given you to make your Exceptions, for which End you are to have a Copy of the Indictment five Days before you are called to plead.

Sir B. Shower. We could not come before, my Lord, as we apprehend, because the Words of the Act are before Evidence given.

L. C. J. But I tell you, this Clause was not for your Benefit, but for your Disadvantage.

Sir B. Shower. My Lord, What we press, arises from the very Words of the Act of Parliament, if the Meaning of the Law-makers was as the King's Council now contend to have it; they would never have used those Words before Evidence given in open Court, but have said they should have had no Advantage of the Exception, unless it were before Plea pleaded; it does not say it shall be after the Verdict, or before the Verdict, but before the Evidence given: Now if they had meant what these Gentlemen say, they would have appointed it to be before the Verdict, which would have included the Trial; because then it had been like the Penning of other Acts of Parliament, the Statutes of *Jeofailes* and the like, which say, That after a Verdict, such and such Exceptions shall not Arrest a Judgment: But if they can shew me any Statute that is penn'd like this, they give me an Answer: All those Statutes are, That no Judgment shall be arrested or delay'd upon such or such Exceptions after a Verdict: But here it says, They shall not arrest Judgment, unless the Exception be taken before Evidence given in open Court. My Lord, We submit it to you, we think the Law-makers did intend somewhat by that particular Way of Expression, different from all other Acts of Parliament; and truly if it be not as we offer to your Lordship, we think it can have no Meaning at all.

Mr. Att. Gen. Truly, my Lord, we think it is very plain what the Parliament meant, by this Clause in this Act; the Design was, to restrain the Prisoner from moving in Arrest of Judgment, for Mis-spelling, or false Latin, or little Matters of Form, if he did not move it in a proper Time, having such a Liberty allow'd him, as to have a Copy of the Indictment so many Days before he was compelled to plead: They insist upon it, that the Words are, Before Evidence given; It is so: But what can be the Meaning of that? It must be at such Time as the Law allows; it is not making a new Method of Trial; you shall take Exception before the Evidence, that is, before the Trial, for it can never be intended, that they

they meant to alter the Course, and let the Council break in between the Time of the Jury's being sworn, and the Evidence given, that by no Law could ever have been done before.

Sir *B. Shower*. Pray, Mr. Attorney, when would you have us do it?

Mr. *Att. Gen.* Regularly before Plea pleaded, at least-wise before the Jury be sworn.

L. C. J. Undoubtedly this is not regular, it is contrary to all the Course of Practice, it is not fair Dealing with the Court. But then there is another Consideration in the Case, that I would have you think upon: If so be this had been at a Trial by *Nisi Prius*, then the Judge of *Nisi Prius* is only to try the Issue; but now here the very Record is before us, and we are Judges of the Record, as well as we are to assist the Jury in Trying the Issue. Now take it in any other Case of the like Nature, Suppose a Trial at the Bar in any Civil Cause, though this be contrary to Practice, and the Court not fairly dealt with, yet when we have the Record before us, and find an Error in the Record, cannot we quash the Indictment and discharge the Jury. That is the Question, Mr. Attorney, though I must confess, I do not know that it has been practicable.

Mr. *Att. Gen.* No, my Lord, in a Case of Treason, where the Jury are once charg'd, they are to give a Verdict, they must either Acquit or Convict.

Sir *B. Shower*. It was done in *Whitebread's Case*.*

Mr. *Att. Gen.* But I know what has been usually thought in that Case, and I believe they cannot shew me another.

L. C. J. Nay, that this is a very irregular Motion, is very plain.

Mr. *Sol. Gen.* Certainly, my Lord, you must take it as the Law was before this Act, for this Clause does nothing for the Prisoner, but is against him.

L. C. J. I know it is not for the Advantage of the Prisoner, therefore I put it as a Case in an Action, or an Indictment, as the Law was before, whether this being a Trial in the same Court where the Indictment was found, and we find an Insufficiency in the Record before us, whether we cannot quash the Indictment.

Mr. *Sol. Gen.* Your Lordship mentions Civil Actions, with Submission, nothing of that kind could be done after once the Cause came to Trial, but in Criminal Causes according to the Course of Practice, which will always be the Law till particularly altered: I believe no Body can pretend, that after Issue joyn'd, and a Jury charg'd, any one can move to quash the Indictment. I think I have heard it often said in this Court, that in Capital Cases, as High-Treason, you may put in a Plea in Abatement of, but not a Motion to quash an Indictment; I am sure it was disallowed where I moved to quash an Indictment of Murder, let them but show any Precedent of this Nature.

Sir *B. Shower*. We will show you, tho' this is the first Case upon this Act of Parliament, therefore to show any Practice upon it would be very hard to require of us.

L. C. J. But can you show it before this Clause in this Act of Parliament, which, as I told you, is not for your Advantage, it does not give that Liberty that you desire.

Sir *B. Shower*. All the Clauses in this Act of Parliament show'd their Intention was this, that

the Sense of the Law-makers was, that we should have this Liberty at any Time before Evidence given, for if there be such Words as show'd they thought it might be quash'd at any Time, tho' they were mistaken in the Practice, yet we shall have the Liberty that they intended us, and the Word-ing of this Act shows, that the Parliament thought it might be done after the Trial begun before Evidence given, because they restrain us from taking those Exceptions after the Evidence given; and it is no Prejudice to the King at all really, it is rather for the Advantage of the Prosecution, because there is none of the Evidence disclosed, and therefore if the Indictment should be found faulty, still the Evidence remains undiscovered upon another Indictment; and I have often heard it said at this Bar in Cases of Indictments for Felony or Treason, as Murder, or the like; if any one did come as *amicus curie*, and acquainted the Court, that they were going to proceed upon an erroneous Record, or give an erroneous Judgment, or do any other erroneous Act, he ought to be received with Kindness, because he would prevent a Wrong doing.

L. C. J. That is in the proper Time, not to interrupt the Trial when the Jury is once sworn.

Sir *B. Shower*. We are ready to offer our Exceptions, and we hope it is no Prejudice at all to the King before the Evidence of the Fact is given.

Mr. *Phipps*. My Lord, I perceive that this Clause, as they would have it, is intended to prevent us from moving that in Arrest of Judgment, which we could have moved before, and ties us up to do it before Evidence given; now I would fain know, if we could not before this Act move in Arrest of Judgment, for mis-spelling, or false Latin, or improper Latin.

Mr. *Att. Gen.* You might, no Doubt of it.

Mr. *Phipps*. They say we might; why then, if we could have a Time to move it after the Verdict, and that Time is abridg'd by the Act of Parliament, which directs that it shall be before Evidence given in open Court, sure we may take any Time before the Evidence given, and shall not be restrain'd further than the Letter of the Law has restrain'd us; for this Act was intended for the Benefit of the Subject, and ought to be construed as much in their Favour as the Letter of it will permit.

Mr. *Att. Gen.* No doubt of it, it is to be done before Evidence given; but the Question is, at what Time it must be before the Evidence given, whether it must not be at such Time as by the Course of Practice and Usage of the Law it should have been done before; if you will satisfy my Lord and the Court that ever such an Exception was taken, or an Indictment quash'd between the Swearing of the Jury and the giving the Evidence, ye say something; but I believe not one Instance of that Nature can be given, and therefore it is very irregular for them to do it.

L. C. J. They don't pretend to it, for ought I hear, for I would put them upon it, to show me whether they could do it before.

Sir *B. Shower*. I don't question, my Lord, but it might be, with Submission.

Mr. *Conyers*. Did you ever know it before that any one undertook to inform the Court as *amicus curie*, but it was to prevent a wrong Judgment, and for that you have your proper Time either before

* See Trial 75. Vol. II. p. 711.

before Plea pleaded by Motion to quash the Indictment, or after Verdict to arrest a Judgment; this Act of Parliament has restrain'd you in particular Instances that are mention'd from doing it after Verdict in Arrest of Judgment; but having given you a Copy of the Indictment before you pleaded, you have had a proper Time to make these Exceptions, and if you have laps'd your Time you come too late to do it now, for sure no Body ever made a Motion to quash an Indictment after Issue joyn'd and the Jury sworn.

Mr. *Sol. Gen.* My Lord, I would only mention one Case, and that was of Sir *Richard Mansell*, upon an Indictment of Murder, for Killing the Apothecary in *Holbourn*; I did my self move to quash the Indictment, because it was not express'd in what Year of the King the Fact was done; but the Court was of Opinion we could not move to quash an Indictment for that, or any such notorious Crime, till after the Fact determined.

L. C. J. No, we were always of that Opinion, never to allow Motions to quash Indictments for Perjury, Murder, or any great Offence, but it must be moved in Arrest of Judgment afterwards.

Mr. *Cowper.* My Lord, these Gentlemen seem to beg the Question upon this Act of Parliament, as if it had appointed this to be the Time of making Exceptions to the Indictment; the Act of Parliament does not say you shall make your Exception immediately before the Evidence given in open Court, as if it had pointed out and directed to them that particular Time, that then they should take their Exception and no other Time: The Act has only set a Bound, that they shall not do it afterwards, but as to the particular Time, it is left as it was before, to the regular Course and Method of Proceedings, which is before Plea pleaded.

Mr. *Phipps.* My Lord, they do not answer my Objection; it is, it seems, a Restriction of a Liberty that we had before of moving in Arrest of Judgment; if so, we ought not to be restrained further than we are by the Words of the Act of Parliament, which say, before Evidence given, that is at any Time before Evidence given, as well after as before Plea pleaded.

Sir *B. Shower.* I would ask these Gentlemen, whether the Law-makers intended that we should have no Advantage of excepting against false Spelling and improper Latin.

Mr. *Conyers.* Yes, they did, but that you should do in your proper Time.

Sir *B. Shower.* Then the Time for doing it must be that which the Words of the Law say, before the Evidence given in open Court, and that's now.

Mr. *Conyers.* No, you might have come at the Day of Arraignment, and have taken the Advantage of it then before you had pleaded.

L. C. J. Ye have had my Opinion what I think of it, my Lords and Brothers, I suppose will tell you theirs.

L. C. J. Treby. My Lord Chief Justice has delivered his Opinion in this Matter, and he thinks fit that we should deliver ours. I think this Motion of the Prisoner's Council to quash this Indictment after the Jury sworn, is irregular and quite out of Season; the Intent of this Clause in this Act of Parliament, certainly was not in

Favour of the Prisoner; it abridgeth him of a Liberty he had before, but gives him nothing: For the Law-makers did think they had given the Prisoner an extraordinary Favour in the foregoing Part of the Act, in giving him a Copy of the Indictment five Days before he should plead, and a Copy of the Pannel two Days before he should be tryed, and allowing him Council; and all these Advantages were to enable him to quash the Indictment, or the Process returned, for the Clause extends to both; the Words are, *That no Indictment nor Process or Return thereupon, shall be quash'd on the Motion of the Prisoner or his Council for Mis-writing, Mis-spelling, false or improper Latin, unless Exception concerning the same be taken and made in the respective Court where such Trial shall be by the Prisoner or his Council assign'd before any Evidence given in open Court upon such Indictment, nor shall any such Mis-writing, &c. after Conviction be any Cause to stay Judgment:* Therefore they made this extraordinary Provision to restrain the Prisoner, in Part, by this Clause; as much as to say you have an Advantage of the Copy of the Indictment, and you may make use of that to quash it by Motion, if you think fit, as you may also the Process, but it shall be *before Evidence given.* 'Tis true, those are the Words, but the using that Term, *viz. quashing* such Indictment or Process, shows it must be done in such a Way and Time as is proper for quashing; and the very Words are, that it shall be *upon Motion.* Now we are to expound those Words. And I say, a *Motion to quash* an Indictment, must be understood a Motion in the proper Season, which I think is before Plea pleaded; but at least before the Jury is sworn. There were three Times when the Prisoner might have had the Advantage of a Fault in the Indictment before this Act: 1. By Motion to quash it before Plea pleaded. 2. Then afterwards in Arrest of Judgment: And 3. After that by Writ of Error. Now this Clause of this Act takes away the Privilege of moving in Arrest of Judgment for Mis-writing, &c. but saves the Advantage upon a Writ of Error, and upon a Motion to quash the Indictment. We are to consider what is a proper Time for a Motion to quash an Indictment, the Motion is to be made to the Court, and to them alone. It is not to be made to the Court and the Jury. When the Jury is sworn, all Application is to be made to the Court, as having a Jury present which they are to assist in the Trial and Determination of the *Fact* only. What Use then is there of the Jury, when you make this Motion, which consists only in Points of *Law*? They must stand by and be out of Office all the while this Motion is making: And it is not reasonable, nor certainly ever was intended that after a Jury is sworn to try a Matter of *Fact*, they should stand idle, while you move a Thing which you should have moved before they came to the Bar: Suppose you should now move some Exception to the *Venire*, and the Return thereupon, should we, when we and you also have admitted the Jury to be sworn, quash the Process whereby they are return'd? And yet we may as well do that as this. For, the Act provides in the very same Words concerning *Quashing Process and Indictments.* But, when the Jury is sworn, and ready to receive their Evidence, sure, then it is out of all Season to make such a Motion; therefore I do not think the Par-

liament intended by this Clause (which was a kind of Exception to the Favour the Prisoner receiv'd by having the Copy of the Indictment) to institute a new Method of Proceedings for Motions to quash Indictments, even when a Jury is at the Bar and sworn to try the Issue, and there is nothing proper to be proceeded upon, but only to hear the Evidence produc'd for the Proof of that Issue, till the Jury is discharged. But still this I would say; this is a new Case, and upon a new Statute. I am truly of Opinion, that the Motion is altogether unseasonable and irregular, and it should have been made before, and you had a full Opportunity to make it this Day Seven-night before Plea pleaded, and you might likewise to Day before the Jury was sworn; therefore when the Jury are now at the Bar actually enter'd into, and employ'd upon the Service, the Court ought not to be interrupted by such a Motion. Yet nevertheless I would propound this, that, seeing it is a new Case and upon a new Statute, the Court would forgive the Irregularity, (for I think it does need Forgiveness) and if the King's Council will consent to it (to prevent any Error or any Pretence of Hardship upon a new Law) that we should hear their Exceptions.

Sir Edward Ward. L. C. Baron. This Act of Parliament, as it has given a Benefit to the Prisoner that he had not before, in allowing him a Copy of his Indictment, in Order to his making Exceptions; so it has restrained him as to the Time of making those Exceptions: That he should have Time, there is no Doubt; the Time limited for it, as this Act says, must be before Evidence given, because they thought it unreasonable that there should be any Quashing of the Indictment after such Time as the King had given any Evidence whatsoever in the Case; for that would be a Discovery of the King's Evidence, and great Inconveniencies would ensue thereupon; but the Question is at what Time this is to be done; Whether it may be at any Time before Evidence given or no; it did intend surely that the Motion to quash the Indictment and the Exceptions to it might have their proper Effect, and that must be before the Trial; for it was not the Intent of the Act to alter the Method of Proceedings, and it is to no Purpose after the Jury is sworn, for then their proper Office is to determine the Fact; now if before this Act of Parliament it never was allow'd to take any such Exception as this after the Jury sworn, it will be consistent with the Words of the Act of Parliament, which are, *That it shall be done before Evidence given*: If then it be in the regular Time for Motions, which is before Plea pleaded or Jury sworn, that is, before Evidence given; for it is not said, as *Mr. Cowper* observed, that it should be immediately before the Evidence given, I think sure such an Exposition as was formerly made ought to be made in this Case, the Time not being precisely fix'd by this Act; if there were a certain Time determin'd when Men should take their Exceptions, as we know it has been in Practice before Issue joyn'd, then after the Jury is sworn it is an improper Time then, I think, to make such Exceptions: I do not suppose this Act, as to the Method of Proceedings —, than it was before, but this Exception ought to be taken before Plea pleaded: Truly it is a new Act of Parliament, and this is so far within the Words of the Act that it is before Evidence gi-

ven, as the Council for the Prisoner say. If this can be govern'd and ruled by Proceedings and Practice in former Times in Cases not of Felony or Treason but only in Criminal Cases: If no Body should suffer by any Interpretation, I should think it ought to bear a conformable Construction to what the Practice was before, I take it you have lost the regular Time for making your Exception, and you invert the whole Method of Proceedings upon Trials: For to what Purpose is it to take Exceptions to quash the Indictment when the Jury are once charged with it: If it be an Indictment that ought to be quash'd, the Jury ought not to be charged, you have had two Times, and they are both of them elaps'd, for this Matter, that is, at the Arraignment, and before the Jury sworn; yet I would propose it to the King's Council as my Lord Chief Justice of the Common Pleas has done, it being a new Case, that it should be better consider'd of and agreed upon, that in these Cases we may go on upon a certain Rule that it may be establish'd for all Time to come.

Mr. J. Nevile. I would begin with the Proposal, because, I believe, I may not be so clear in my Opinion, otherwise I must deliver my Thoughts according to my Judgment, but I would have the King's Council consider of the Proposal.

Mr. At. Gen. My Lord, for us to consent to that in such a Case as this, where the Court thinks it not regular, would be pretty hard to desire of us; if any Thing of Advantage should happen on the other Side, I verily think the Council for the Prisoner will not be so ready to consent to wave any such Advantage, nor any I for asking them to do it; this Clause goes only to some Faults in the Indictment; Mis-spelling, Mis-writing, false and improper Latin, that is all that they are restrain'd from moving in Arrest of Judgment; any Thing else, any Uncertainty or other Matter, that is not comprehended under these Particulars, they may take Advantage of to move in Stay of Judgment after a Verdict; this Clause does only abridge them from moving in Arrest of Judgment for Mis-writing, Mis-spelling, false or improper Latin: therefore if your Lordship should think it reasonable we should consent to let them in to make any Exception now, it must be confin'd to those particular Objections of false and improper Latin, there can be no Colour to make the Liberty larger, because for any Thing else they are not restrain'd from moving it in Arrest of Judgment, for there can be no Hardship in that Case, as I think, they have no Reason to complain that there has been in any other Part of the Case; but for those Particulars that there may be no Complaint of Hardship, if your Lordship thinks it reasonable we should consent, it may be we may be prevail'd upon to do it, though whatever Hardship does happen it is their own Fault, and the Prisoner may thank his own Council for that Hardship: If we assist them now to let them in, it ought to be taken as a great Kindness; and truly, my Lord, I am unwilling to do any Thing that your Lordship and the Court should think hard upon the Prisoner. Certainly it is the Fault of their own Council, now the Law has allow'd the Prisoner Council, not to take the proper Time, and pursue the usual Methods; and it is a Strain beyond what is usual, that we must help their Faults by our Consent; how-

however, if the Court think it reasonable, I shall not be against it, but then I am sure the Court will take Care they shall be confin'd to those Particulars that are mentioned in the Act.

L. C. J. No Doubt of it: Therefore Sir *Bartholomew Shower*, are your Exceptions for Mis-spelling, Mis-writing, or false or improper Latin? for if they be such Things as you may move in Arrest of Judgment, and have that Advantage, then there is no Colour that we should break through all the Rules of Proceedings to admit such an irregular Motion as this.

Sir *B. Shower*. My Lord, in the Case of the Life of a Man I will not take upon me to say what is Mis-spelling, Mis-writing, or false or improper Latin, or what is substantial; but all that I say is, I have Five Exceptions, every one of them imports a Doubt, as I take it, worthy the Consideration of the Court, and some of them effectual enough to quash the Indictment; but for me, when a Man's Life is at stake, and it partly depends upon me as his Council, to say what is proper or improper Latin, or to admit it to be Matter of Substance, and then to Morrow to have it come and told me, you should have mov'd this to Day, then I am sure they would have Reason to say, it was the Fault of the Prisoner's Council; for he would have chosen very ill Council, in me, I confess, if I should consent to put any such Disadvantage upon him. I beg the Favour that I may have the Liberty to propose my Objections, which I think are worth Considering of; it is for the Advantage of the King for us to take our Exceptions all together, because, else if any of them prove material, the Trouble of the Trial will be but Mispence of Time.

L. C. J. No, we cannot hear all your Objections, but those that are mention'd particularly in the Act of Parliament; for such as are not mentioned in the Clause, you have a proper Time to move them in Arrest of Judgment.

Sir *B. Shower*. Then we will put those that are within the Act.

Mr. *At. Gen.* If we do any Thing by Way of Consent in this Matter, we must insist upon it, that they be confin'd to the Particulars in the Act; we desire they may open their Objections to the Court, and if the Court shall think they are properly under those Heads, then they will consider of them, if the Court be of another Mind, then they must be reserv'd till the proper Time.

L. C. J. Do you consent then, Mr. *Attorney*, that they shall now take those Exceptions that are mentioned in the Act of Parliament?

Mr. *At. Gen.* If the Court think it reasonable upon those Terms, I do.

Mr. *J. Powys*. Let them open them if your Lordship please, and let us keep the Power in our own Hands to do as our Discretions shall direct.

L. C. J. Truly I do not know whether we can do any Thing in this Matter, I question much whether it be Discretionary in us to break through all the common Method of Proceeding, and admit of such Irregularities.

L. C. J. Treby. I have a great Inclination to hear them, that we may get rid of these pretended Exceptions, which I am apt to think will, when opened, disappoint the Expectations that may be rais'd by this mentioning them in general; for, I have that Opinion of the Ability and Circumspection of the Council, that I believe if

they had had Exceptions sufficient to quash the Indictment, we should have heard of them at a Time more proper than this now between the Swearing the Jury and giving Evidence to them. But, possibly, the Council may think fit to make an Essay, and try what can be got out of this unusual Expression in this new Act.

L. C. J. No, no, I know this is a Piece of Art, and the Court is not well dealt with in it.

L. C. J. Treby. Indeed I am very willing to hear them for that Reason.

L. C. J. I look upon it only as meer Trick, and a Piece of Art to take the Opinion of the Court.

Sir *B. Shower*. My Lord, it was my Mistake then; for I take it, if the Act of Parliament had intended otherwise they would have express'd it otherwise.

L. C. J. Does the Act of Parliament give you another Liberty, and a greater than you had before? Does it not design to abridge you of a Liberty that you had before? Certainly it never intended that the Court should admit of any irregular Proceedings.

Mr. *J. Powell*. You should have tim'd your Motion better, for certainly now the Jury is charg'd they must give a Verdict either of Acquittal or Conviction; and if you move to quash the Indictment, and your Exceptions are material, the Jury cannot proceed; you see what a Pass your Motion has brought it to, 'tis certainly a mighty irregular Motion.

L. C. J. Treby. What Judgment would you have us give? I would ask you that: If any Exception were mov'd before the Jury were sworn, and it proved material, the proper Judgment were, that the Indictment be quash'd; but now they are sworn, what Judgment must we give? Must we not expect the Verdict of the Jury first upon the Fact? And must we then give Judgment upon your Exception?

Sir *B. Shower*. I know not whether your Lordship may not give Judgment first to quash the Indictment, and then discharge the Jury.

L. C. J. Treby. And what if we do not find Cause to quash it, then you'll say, we must go on with the Evidence, as we were going before this Interfering? Are we to be doing two Things at once. I am pretty certain you can show me no Precedent for any like Proceedings in any Case: It is confounding the Offices of the Judge and Jury.

Mr. *Phipps*. If your Lordships try'd the Validity of our Exceptions, and find Occasion to quash the Indictment, there will be no need of a Jury.

L. C. J. Upon the Statute of *Jeofailes* in a civil Cause, suppose at a Trial at Bar, it appears upon the Face of the Declaration, that there is such a Mistake as will be cured by the Verdict; but if the Party had demurred, and shown it for Cause, it would have been fatal. Do you think when he has wav'd the Benefit of Demurrer and pleaded to Issue, that you shall move this and help your self by such a Motion, because it will be helpt after a Verdict?

Sir *B. Shower*. If this Act had been worded as that Statute of *Jeofailes* is, it may be we might not.

L. C. J. Why, it is not said, in the Statute of *Jeofailes*, that it shall be good after Issue joined, before the Jury is charg'd or sworn, but that it shan't be good after the Verdict.

Sir *B. Shower*. It is before the Evidence given.

L. C. J. Could he do so in any Case before this Act, and does the Act enlarge your Liberty or abridge it?

L. C. J. Treby. Sir *Bartholomew Shower*, you insist upon Part of the Words of the Act of Parliament; it says, no Indictment or Process shall be quash'd upon the Motion of the Prisoner or his Council, unless it be made before any Evidence, &c. Now, I suppose, the Parliament use that Expression, *upon the Motion*, in the same Sense as it is used in Law, *viz.* for such a one as should be in the Time when Motions for quashing the Indictments are properly to be made; now, when is that? It is plain, it was always before the Jury come to the Bar, nay before the Plea of the Party. If that be the proper Time to make such a Motion, then that Expression in this Act of a *Motion to quash the Indictment* will very well help to construe the other Part of the Clause that you insist upon: For if the Motion be made before Plea pleaded, it is certainly before the *Evidence given* in your Sense. And I conceive, that under that Expression [*Evidence given*] which signifies the main Part, the Parliament intended to comprehend the whole Proceeding to Trial, beginning, if not from the Pleading *Not Guilty*, at least, from the *Swearing* the Jury. *Before Evidence given in Court*, may reasonably be expounded, *Before the Prisoner hath fully entered into that Contestation of the Fact, which is to be determined only by Evidence in Court*. I attended the Court of *King's-Bench* a long Time, and I believe that I have heard it said a hundred Times, upon Motions to quash Indictments of great or odious Offences: No, try it, says the Court, we will not quash it, plead to it, let the Fact be tried, you may then move it in Arrest of Judgment. Those Expressions shew'd that the proper Time for a Motion to quash an Indictment was before Plea, tho' they, in their Discretion, would not grant a Motion to quash, in Cases of such great Offences. But sure they did not think that when a Jury came to the Bar, it was a tolerable Time to move to quash an Indictment, there was no Expectation of hearing of such a Motion then. And certainly this Clause which is made wholly against the Prisoner, should not be construed to help him to such a new extraordinary and absurd Liberty.

Sir *B. Shower*. My Lord, with Submission, that Practice goes upon another Reason, the Court would not quash it at all upon a Motion; this Act of Parliament supposes that you will quash upon a Motion at any Time before Evidence given; We never heard of a Motion to quash an Indictment for Felony or Treason, but still the Court would always say, Demur, or Plead, or move in Arrest of Judgment, but by this Law it seems the Sense of the Parliament was, that it might be quash'd upon a Motion.

Mr. *Sol. Gen.* Sir *B. Shower* is come to what I said, that in Truth there is no such Thing as quashing an Indictment for Treason or Felony, as I mentioned in Sir *Rich. Mansel's* Case, and I think the Rule that was given in that Case will serve now in this Case; I am for consenting if they be kept within the Limits of the Act of Parliament, but I must desire the Opinion of the Court before we do consent.

L. C. J. Holt. Aye, aye, Go on Brother *Nevile*.

Mr. *J. Nevile*. I must confess I cannot but doubt, as this Act is, there were two Times that they had Liberty of taking these Exceptions to Indictments; but indeed, in Murder and Treason they were seldom admitted, till they came to move in Arrest of Judgment; but still there was always a Privilege, and a Time given to the Prisoner, be the Crime what it would, to take that Advantage which the Law gave him, to prevent Judgment against him. Now I agree, it is irregular and unseasonable to offer it now, and quite different from all former Practice; you might have done it before now, the Act says expressly it must be done before Evidence; but you might have taken Advantage before the Jury was sworn, nay before you had pleaded, but you have lapsed your Time. Yet truly, notwithstanding you have lapsed your Time, I cannot satisfy my self to take away the Liberty that the Law has given the Prisoner sometime or other, to except against the Indictment. It is plain that before this Act after Verdict he might have moved in Arrest of Judgment, now he cannot do so, whether the Fault be in the Council I cannot tell, but the great Prejudice is to the Person that is to be try'd, who will not be wholly precluded from making any Advantage of the Exceptions he has to the Indictment, because by the Act he cannot move in Arrest of Judgment. This seems a strong Implication that the Parliament intended he must have some Time or other, but before Evidence given, to offer his Exceptions. I say this only to those particular Things that are mentioned in the Act, Mis-writing, Mis-spelling, False or Improper Latin; as to these four particular Things which the Party is barr'd from moving in Arrest of Judgment, I cannot satisfy my self but that he should have one Time or another to take this Advantage before the Evidence given, and therefore I think he should have it now: It is true, it is altogether irregular, the Jury being sworn, and it ought to have been done before; but I hope if it be admitted now, it will be with such Observation, that no Body will ever offer at it for Time to come. As this Case is before us, and the Act of Parliament, which perhaps may have led the Council into that Mistake, that it might be any Time before Evidence given, tho' they know the proper Time, and the regular Method in other Cases; yet I doubt it is hard to put such a Construction upon this Act on the sudden, quite to debar the Prisoner of the Benefit of his Exceptions to the Indictment.

Mr. *J. Powell*. I have already declar'd my Opinion, that the Prisoner has had his proper Time for making his Exceptions, but he has lapsed that Time; but I am not against that Motion in a Case of Life, upon an Indictment for so great a Crime as Treason is, and where the Consequence is so great, if it may consist with the Rules of Law, and it be the Sense of the Court, and the King's Council consent to let them be heard, I submit to it, nay I would Second or Third that Motion that they may be heard.

Mr. *J. Eyres*. Truly I am of the same Opinion, I think we ought not to alter the ancient Course of Law by Words of Implication, nor go any further than the Act of Parliament does express. The Act appoints that a Copy of the Indictment should be delivered to the Prisoner so many Days before, to enable him to make his Exceptions, and therefore deprives him of the Benefit of those Ex-

ceptions after Conviction in Arrest of Judgment. I see no Words in the Act of Parliament that do alter the Course of Proceedings, as to this Matter, from what it was in all Civil and Criminal Causes before; Persons must take their Advantage of Excepting in their proper Time, but when it comes to Issue, the next Thing to be done is the Trial; and truly I must needs say the Council are to blame, that knew this so very well, that if they have any Advantage of Excepting, they did not take that Advantage sooner, it is their Fault; but seeing it is so, I am of Opinion not to foreclose the Prisoner, as the Case stands. I would be tender of Life, but at the same Time I declare my Opinion upon this Act of Parliament as the rest of my Brothers have done, to prevent the Objection for the Time to come; yet seeing there is this Misfortune, and there would be a Hardship upon the Prisoner by the Default and Neglect of his Council in the Case of a Man's Life, I would be so tender as to indulge them to make their Objections now.

Mr. *B. Powys*. I am of the same Opinion the Prisoner has laps'd his Time, for I take it this Clause of this Act of Parliament has not altered the common Course of Proceedings; nay, I take it, it signifies very little in this Case; for certainly it was intended to disable the Prisoner, and not enable him at all; and therefore, as the Case is, I think it very Irregular and Impracticable to introduce so great a Novelty, as to admit the Motion for quashing the Indictment, when the Jury is sworn, and when the Fact is the only single Point to be determin'd and every Thing else ought in legal Course to come before or after; but for us to confound Time, one Time for Pleading, another Time for Trial, and another for Arrest of Judgment, all at once, and to have a Jury attending merely to hear Council at the Bar moot Points of Law, which might be determin'd either before or after the Trial, is so very irregular, that it really introduces nothing but Confusion, which Courts of Justice ought to avoid above all Things, and ought to keep to the proper Seasons that the Law allows. Therefore, truly I think in Strictness of Law we ought not to allow it; but it being in a Case of Life, and it being a new Case upon a new Act of Parliament, if the King's Council thinks fit to Consent, I shall be for it, if not, I think in Strictness of Law we cannot allow it.

Mr. *At. Gen.* My Lord I am very unwilling to deny the Prisoner any Advantage, that he might have had by this Act of Parliament, though his Council have slipt the proper Time; if Sir *Bartholomew Shower* will say his Exceptions are to any of the four particular Heads mentioned in this Clause of the Act of Parliament, for we must confine them to that, then we do consent that he should make them now.

L. C. J. Truly Mr. Attorney, if you do consent that they take their Exceptions now, we may consider of it whether it can be; but I know not how we could admit them to that Liberty otherwise, for if there be any Thing material, they may move it in Arrest of Judgment.

Mr. *At. Gen.* And I believe they won't say their Objections are so slight, as to be only Matter of Form, they say they are Substantial, and then your Lordship will hear them in a proper Time.

Sir *B. Shower*. I don't know whether I am mistaken in the Law, I am sure you are mistaken in the Indictment.

L. C. J. Well, do you consent to let them make their Objections, as to those four Heads in the Act of Parliament.

Mr. *At. Gen.* Yes, my Lord; if it be any Matter of Substance, that is out of the Case at present, for the Provision of the Act of Parliament is only for meer Matter of Form, and I should be very unwilling in any Point that is material, to make a Precedent in such a Case as this.

L. C. J. I confess if you had consented farther, I do not know how we should have admitted of it.

L. C. J. Treby. I tell you how I thought it might be done, you might have committed an Irregularity, for which in a Case of Life, and upon a new Law, I believe and hope we should have been forgiven.

L. C. J. Well, for my Part I will not commit any Irregularity upon any Account whatsoever; I cannot see how by Law they can take any Exceptions to the Indictment; Mr. Attorney cannot consent, and if he did, I think it could not be, unless he did also consent to discharge the Jury; but I see they will not offer any Objections according to your Consent, Mr. Attorney, and therefore pray go on to open the Evidence.

Mr. *At. Gen.* May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, *Ambrose Rookwood*, stands Indicted for High-Treason, in Compassing and Imagining the Death of his Majesty. Gentlemen, the Overt Acts that are laid in the Indictment to prove this Treason, are; that He, together with divers Others, had frequent Meetings and Consultations, in order to Assassinating His Majesty's Royal Person, and did provide Horses and Arms for that purpose.

Gentlemen, the Evidence that you will hear, to prove these Facts that are thus laid, will be of this Nature; you will hear by the Witness, That there has been for some Years a Design carried on to Murder the King's Person; that this was discoursed of, and several Debates and Consultations were had about it the last Year, some Time before the King went to *Flanders*; there was several Meetings, where were Sir *William Parkyns*, Captain *Porter*, and *Charnock* that was Executed, and several others, and there they did consider in what way to take off the King at that Time; and you will hear they did expect a Commission to authorize it from the late King *James*; but then the Commission did not come, they had not any such at that Time; but they did think fit to put it in Execution without any such Order and Authority, and therefore they endeavour'd to have got a Vessel to have carry'd them off after they had Executed this bloody Conspiracy; but it happen'd His Majesty went to *Flanders* sooner than they Thought, and they could not provide Themselves of a Security for a Retreat, and so at that Time the Design was laid aside.

But Gentlemen, you will hear this Conspiracy was renewed, and set on Foot this Winter; and in Order to the Accomplishment of it you will hear, that about *Christmas* last there were several Persons sent from *France* by the late King *James*, on purpose to put this horrible Design in Execution. Sir *George Barclay* was to be at the Head of it, he was a Lieutenant in one of the late King *James's* Troops of Guards in *France*, he was sent over with a Commission, and Mr. *Rookwood*, the Prisoner at the Bar, was a Bri-

gadier in the Guards there; these came over, and several other Troopers of the late King *James's* Guards, by two or three at a Time, that they might not be observ'd; particularly you will hear, that when Sir *George Barclay* was come over, several Troopers were sent to by King *James* himself to come to him at *St. Germain's*, and there he told them he had a Piece of Service for them to do in *England*, and that they should observe Sir *George Barclay's* Orders and Directions. More particularly there was one *Harris* and *Hare*, two Troopers in the Guards, were sent for by the late King *James* into the late Queen's Bed-Chamber at *St. Germain's*, where Colonel *Parker* was present; they were told by the late King, He was sensible they had served him faithfully, and He would advance them, and he had now a Piece of Service for them to do, which would enable him to do it; He told them they must go over into *England*, and be sure to obey Sir *George Barclay's* Directions, and they were order'd to endeavour to find out Sir *George Barclay* when they came into *England*; and were told by him, that they would meet Sir *George Barclay* twice a Week in *Covent-Garden Square*, in the Evening, and the Token by which they shou'd know him, was, he would wear a white Handkerchief out of his Pocket; this they were told by the late King, when he sent them upon this Errand. Colonel *Parker* was by at the same Time, and being there he was ordered to go to Mr. *Carol* Secretary to the late Queen, who had order to furnish them with Money, to bear the Charges of their Journey into *England*, and if they were detained by contrary Winds, they had Letters of Recommendation to Monsieur *Latour* the *French King's* President at *Calais*, to furnish them with Money, to bear their Charges over into *England*, and accordingly they went; but being detained at *Calais* for want of Wind, they were furnished by the *French* President; and by the Beginning of *February*, they came over.

But I omitted one Thing, Gentlemen: Before they came over, the late King when they were with him took a List out of his Pocket of Names, and told these two, *Harris* and *Hare*, what Names they should go by in *England*; *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiny*, and accordingly they came over in a Boat, and landed in *Kent*, and when they came to Town they endeavour'd to find out Sir *George Barclay*: The first Time I think they did not find him; but the second Time they did find him; and he saluted them, and told them he was glad to see them come over, and he would furnish them with Money, and he sent Major *Holmes* to them, and accordingly he did come, and give them Subsistence Money.

Now Gentlemen, you will hear that Sir *George Barclay* being come over with these Troopers and many others, to the Number of Sixteen, that at several Times were sent upon this Conspiracy, I say, after they were come, Sir *George Barclay* had frequent Meetings and Consultations with several other Persons that were to be engaged in the same Design; and they met at several Places, sometimes at Captain *Porter's*, sometimes at the *Nag's-Head* in *Covent-Garden*, at another Time at the *Sun Tavern* in the *Strand*; and you will find by the Evidence, that the Prisoner at the Bar, Mr. *Rookwood*, was present at most of those Meetings, and there they did consult of

the best Ways and Methods for putting this Conspiracy in Execution; sometimes they thought of doing it by an Ambush, laid on the other Side of the Water, by Persons on Foot, in a little Wood there near *Richmond*, where the King was to pass by, whilst others on Horse-back were to take Notice of their Firing, and then to Attack the Guards. This was propos'd, but there was another Proposal to do it on this side the Water; and therefore to settle the Matter, one of the Conspirators, *King*, was sent to view the Ground on the other Side of the Water, and he did glory that he had found a very proper Place, and thought it a very convenient Method, but yet they were not all satisfied, and at the *Nag's-head Tavern* in *Covent-Garden* they did debate the Matter again, and it was resolv'd to have the Ground viewed again, and *Porter*, and *Knightley*, and *King* that was executed went to view the Ground on both sides the Water, to see which was the most convenient Place; this was about the 12th of *February*, they did take an Account of the most convenient Places on either Side, and when they had done it, they came back in the Evening to give an Account what they had done, to several others of the Conspirators, who met for that Purpose, and I think the Prisoner at the Bar, Mr. *Rookwood*, was present there at this Meeting; and you will hear, the Place agreed upon was the Lane that leads from *Turnham-Green* to *Brentford*, that they thought the most convenient Place because there were several Inns in and about *Turnham-Green* and *Brentford*, where they might place their Men by two or three in an Inn, that they might not be liable to Observation: This was the Place that was approved of.

Then next, the Manner of doing it was to be considered and adjusted, and that was thus: That the whole Number, should be divided into three Parties, one Party to be commanded by Sir *George Barclay* to attack the Coach, and kill the King, and all that were in it, while at the same Time the two other Parties to be commanded by Captain *Porter*, and Mr. *Rookwood* the Prisoner at the Bar, were to set upon the Guards; and the Time agreed upon to put it in Execution was the Fifteenth of *February* on *Saturday*, that being the usual Day the King went to *Richmond* a Hunting, and you'll find that on *Saturday* Morning they met in several Parties, not all together, but under the several Heads of the Parties in order to be ready, if the King had gone out that Morning, to have Assassinated him.

Gentlemen, I say, you will hear of several Meetings that Day; there was one Meeting at Mr. *Charnock's*, where were present Mr. *Porter*, Sir *William Perkins*, and several others; and another Meeting you will hear of where the Prisoner at the Bar was present, at the Lodgings of one *Counter*, another of King *James's* Friends, that came over for this purpose, and there was Sir *George Barclay*, and there was the Prisoner at the Bar; and those that were to be under Sir *George's* Command met that *Saturday* Morning in order to make ready, in Case the King had gone abroad, to have attack'd him: You will find by the Evidence that the Prisoner was there, and *Harris*, that was one of the Troopers sent over from *France*, was sent for, and came in and found them in a great Hurry, for *Harris* was not acquainted at *St. Germain's* with the immediate Design of

Assassinating the King, but finding them in a great Hurry, he ask'd them what was the Matter? And they told him they were to make ready immediately upon the Design. He wonder'd at it, and ask'd what it was, and then they told him they were to go to attack the Prince of Orange to assassinate him; and *Rookwood* the Prisoner at the Bar told him, if he would go to *Counter*, he should have particular Orders and Instructions from him what to do. Accordingly *Harris* went to *Counter*, he told him where his Horse, and *Hare's* Horse, and *Hungate's* Horse were; and there Horses happen'd to be placed in *Somerset-House*, by Mr. *Lewis*, in a Stable there recommended by him, to the Care of my Lord *Feversham's* Servants, who were to take Care of them, and of two or three more that were placed there, in all, six of these Conspirators Horses by the Recommendation of Mr. *Lewis* were lodged in that Stable in *Somerset-House*, and look'd after by my Lord *Feversham's* Men; and thither *Harris*, *Hare*, and *Hungate*, were directed by *Counter* to go for their Horses.

But it happen'd by very good Providence, that his Majesty did not go abroad that Day; and *Durance*, one of the Orderly Men that lodged at *Kenington* to give Intelligence, came from thence and acquainted them, that the King did not go out that Morning, so there was nothing more done; but *Harris* was told that he should have his Horse at that Time, and take it away, and in the mean Time till they were to go upon their Design, they were to ride out upon their Horses, as they had Opportunity, to make them fit for Service, or else it would be thought the Rider's Fault, if, at the Time of the Attack, they did not come up in good Time and Order to join with the rest, and it would be thought Want of Courage in the Rider; and accordingly Major *Holmes*, another of those Conspirators, went with *Harris* and *Hare* to *Somerset-House* to take away their Horses, and they carried them to a Stable in *Soho*; but for several Nights they had been kept at *Somerset-House*.

You will find, Gentlemen, that Mr. *Rookwood*, the Prisoner at the Bar, was concern'd in all these Consultations and Meetings, in making Preparations for the Assassination; they intended, as I said, to do it on the 15th of *February*; but that not taking Effect at that Day, between that and the *Saturday* following, Mr. *Harris* was frequently in the Company of Mr. *Rookwood*, and Mr. *Lowick*, and others, where they did discourse of this Assassination, and they did think it a very barbarous Thing; but however they resolv'd they would do it, for they had Orders to obey Sir *George Barclay*: And this was expressly declared by *Lowick* and the Prisoner, that they had Directions to obey Sir *George*, and what he would have them to do they would do: They must and would obey Orders; that was their Resolution even upon discouraging of the Heinousness of so bloody and barbarous a Design.

You will likewise hear, Gentlemen, by the Evidence, that the next *Saturday* being the Two and Twentieth of *February*, they resolv'd to put it in Execution again; and accordingly there was a Meeting on the *Friday* before at the *Sun Tavern*, where were present Sir *G. Barclay*, Mr. *Porter*, and others; and there they did resolve upon it, tho' they had at first some Apprehension the Thing was discovered; but they were soon satisfied there

was no such Thing, because they said among themselves, that if it had been so they should have been taken up, and not have been permitted to meet there: Therefore they resolv'd the next Day to put it in Execution, and accordingly they met at several Places, and got ready in the Morning in Case the King had gone abroad; the Prisoner met that Morning at *Porter's* Lodging, with several other Troopers, to make ready for the Enterprize, and there the Prisoner at the Bar did, at that Time, give a List of the Names that he was to command, for he was to have one Party of those that were to attack the Guards, of whom *Harris* was one, and *Hare* was another, and *Richardson* was another, and *Blackburne* was another, and his own Name was Chief, and he order'd *Harris* to go and see to get them ready, for they must go out that Morning: Accordingly *Harris* did go, and got them ready, and came back and gave an Account of it. His Majesty did not go abroad that Day, as it happened very fortunately by Reason of the happy Discovery; so that News being brought back again, though they had made all Things ready, those Preparations were put off, and they did nothing that Day, and quickly after the Discovery was fully made, and made publick by the Apprehension of the Conspirators.

Gentlemen, you will have this Matter fully proved to you by several Witnesses, that I think there can be no Room to doubt the Truth of it, that there was such a Conspiracy, and that the Prisoner was as highly concerned in it, as those who have suffer'd the just Punishment of the Law. We will call our Witnesses to prove this, and I believe they will be able to give you an Account of the whole Affair, better and more fully than I can do, or can pretend to open it.

Mr. *Sol. Gen.* Call Mr. *Harris* and Mr. *Porter*.

Sir *B. Shower*. We oppose the Swearing Mr. *Porter*: I must beg the Favour of the Court to hear us in it; if my Instructions be true, we insist upon it, that he is not capable of being a Witness, he stands convicted of Felony: Here we have the Record, and we desire it may be read.

Capt. *Porter*. I know nothing of the Matter; that there is any such Thing standing out against me.

Sir *B. Shower*. Then sure we are mistaken in the Man. Pray let us hear it read.

Cl. of Ar. (*Reads the Record.*) This is an Indictment of Murther against *George Porter*, for the Killing of Sir *James Hacket*, Knight.

Mr. *At. Gen.* Do you know any Thing of this, Mr. *Porter*?

Capt. *Porter*. I came off with Manlaughter, and pleaded the King's Pardon in Court.

Mr. *At. Gen.* Pray, read what was done upon it.

Cl. of the Crown. Here's the Jury's Verdict. *Quod predictus Georgius Porter est culpabilis de felonica Interfectione predicti Jacobi Hacket, & non culp.* as to the Murder. Here is a *Curia advisare vult*, and I suppose there was a Pardon afterwards.

Mr. Justice *Powell*. Was he not burnt in the Hand?

Capt. *Porter*. No, I pleaded the King's Pardon.

L. C. J. And there are several Acts of Pardon since.

Mr. *Cowper*. See the Time when the Indictment was.

Cl. of Ar. It is the Eighth of December in the Thirty Sixth Year of King Charles the Second.

Sir B. Shower. We agree that he did plead the King's Pardon, and then the Case is no more than this, a Man is convicted of Manslaughter, and the King pardons him, he still remains unqualified to be a Witness; we say, this has been the Case that has been much debated in *Westminster-Hall*, and upon Debate it has been resolved.

Mr. J. Powell. It has been so, but always against you.

Sir B. Shower. It was in the Case of my Lord *Castlemaine* at this Bar; one of my Lords the Judges went to the Court of *Common-Pleas* to ask their Opinion, and these Cases were put: In Case a Man be out-law'd of Felony and pardon'd; in Case a Man be convicted of Felony and had the Benefit of his Clergy; and in Case a Man was convicted and not attainted, but pardoned upon the second Case; they were of Opinion, that the Receiving the Punishment of Burning in the Hand, had purged the very Guilt, and did set him upright by the Statute of the 15th of Queen *Elizabeth*, they thought it did operate to that Purpose; but in the Case of a Pardon of a Man attainted or convicted, it was agreed he was not qualified to be a Witness; and *Dangerfield*, against whom the Objection was made, being burnt in the Hand, was received to be a Witness; and it was only made use of against him to take off his Credit. The Record of that Case is in this Court, and I looked upon the Print of the Trial this Day. We say, that there is a Case in 1 *Brownlow* 47. a Man attainted of Felony cannot be of an Inquest, though pardon'd; and we think, he that cannot be a Juryman, sure cannot be a Witness; there is the same Exception to his being a Witness as there is in the Case of a Juryman; for the one ought to appear as free, and stand as clear and unsuspected, in Respect of his Probity and Verity as the other, as the one is sworn to try and determine upon Oath, so the other is sworn, and his Oath is to sway and determine the Jury, and in Consequence it is all one, and upon these Reasons we hope he is not a good Witness.

L. C. J. Where is that Case in *Brownlow*?

Sir B. Shower. It is 1 *Brownlow* 47. and then there is 11 *H. IV.* 41. 2 *Bull.* 154. there my Lord *Cook* says, if a Man be convicted of Felony, and pardoned, he cannot be a Juryman; for though the Punishment is pardoned, the Guilt remains, so that he is not *probus & legalis Homo*, and every particular Person has an Interest in it, that they have free and clear Persons to be Jurymen and Witnesses.

Mr. Phipps. My Lord, that is the Distinction we go upon, which was taken in *Dangerfield's* Case, upon the Trial of my Lord *Castlemaine*, where the whole Court were of Opinion, that a Pardon from the King only, would not make him a good Witness; but if he were burnt in the Hand, that by the Statute of *decimo octavo Elizabethæ*, amounted to a Statute Pardon, and set him right to all Intents and Purposes: And there they did take Notice of that Book that *Sir Bartholomew Shower* cited of 11 of *Hen. IV.* that a Man attainted could not be a Jury-man, though pardoned by the King: It was objected he might be a Witness; but *Mr. Justice Jones* said, it was the same Reason if he be not fit for a Jury-man, he is not fit for a Witness; they ought to be both *probi & legales Homines*, thus the Case stood there. And that other Book

of *Bullstrode* is the same, it was in the Case of 2 Prohibition for a *Modus Decimandi*, where the Suggestion is to be prov'd by two Witnesses, it was objected he had not prov'd it by two Witnesses, because they were both attainted of Felony, and though they were Pardoned, yet that did not make them good Witnesses in the Opinion of the Court.

L. C. J. This is quite another Case, it does not come up to your Point, here is no Attainder, and here is Pardon upon Pardon, by Act of Parliament.

Mr. Phipps. As to that we think the Parliament Pardon is out of the Case; for if the Pardon from the King be a good Pardon, there is no Guilt for the Act of Pardon to work upon.

Sir B. Shower. My Lord, this we think to be a good Distinction as to that Matter, a Man that is actually pardon'd the Punishment by the King's Pardon, and afterwards an Act of Pardon comes and pardons all Offences, that we say does nothing, for he is not a Subject of Pardon, for he was discharged of his Punishment before.

Mr. At. Gen. Sure these Gentlemen are not in earnest when they make this Objection.

Sir B. Shower. When the King has once pardon'd him he is not an Offender within the Meaning of the Act of Parliament; and therefore the Act works nothing as to him, and so he stands as much disabled from being a Witness; as he was before.

Mr. J. Powell. In the Case of *Cuttington* in *Hobard*, there it is said the Pardon takes away *tanti Reatum quam Pœnam*, &c. an Action being brought for calling a Man Thief, who had been indicted for Felony, and convicted, and pardon'd, the Court adjudged, that he ought not to be called so; for he was no Thief, for the Pardon had washed him entirely clean, and he was discharged both of the Guilt and the Punishment, and all the Consequences of it.

L. C. J. Those Cases that have been put are no Authorities at all in this Matter; for where there is a Conviction of Manslaughter; and the Party is pardon'd, we think that Pardon of the King works in a Way of Discharge as much as the Burning in the Hand. I take it, it is the same Thing: They admit, that will discharge him to all Intents and Purposes, and so we think does this as effectually; for having his Clergy, and being burnt in the Hand, works by Way of Statute Pardon: For the Case of a Jury-man, I take it not to be the same with this Case; but even in that Case, I do not think that the Party convicted, after the King hath pardoned him, is disabled from being of a Jury; but supposing that to be so, yet there are many Cases wherein a Man may be a Witness; that cannot be a Jury-man. It is true, the Credit of such a Witness is left to the Jury, but it is no Objection against his being a legal Witness; and it is a very strange Argument to me, that because he was pardoned by the King, if that should be deficient, that therefore, the Act of Pardon should have no Effect. Truly, that is to say, that the King's Pardon works so, as to have nothing left for the Parliament Pardon to work upon, and certainly it sets him so right, that to all Intents and Purposes he is as good a Witness as ever he was; and if any Thing remained to be done, the Act of Parliament has done it, and supplied the Defect; but I think the King's Pardon is sufficient.

Mr. At. Gen. My Lord, I suppose they do not insist upon it, as thinking there is any great Weight

in it, but only for Objection sake; but we hope that notwithstanding this Objection Mr. *Porter* shall be sworn.

Mr. *Sol. Gen.* My Lord, they take this Exception at an improper Time, for they speak to his Credibility.

L. C. J. No, they except to his being a Witness.

Mr. *Sol. Gen.* If so, your Lordship remembers a Case that was before your Lordship not long since, but in *Easter Term* last, when one was try'd at this Bar for Treason, and *Aaron Smith* was produced as a Witness, and the Prisoner took Exception against him as no good Witness, because he had stood in the Pillory, and your Lordship and the Court did say, that the Act of Pardon did restore him to all Intents and Purposes *ad liberam Legem*.

Mr. *Conyers.* In the Case of the Earl of *Castlemaine*, both the Courts of *King's-Bench* and *Common-Pleas*, held *Dangerfield* a legal Witness, tho' burnt in the Hand for Felony, and so was the Opinion of *Rolls*: In *Stiles Reports* 388, one that hath been burnt in the Hand for Felony, may notwithstanding be a Witness.

Sir *B. Shower.* My Lord, in answer to that Case that was put, that after the King's Pardon for one convicted of Felony, another Man has not the Liberty to call him Thief, that was an Objection in my Lord *Castlemaine's* Case, that may stand as good, and our Notion that we contend for, be good too; he cannot be impeach'd, or have Guilt imputed to him, when once the King has forgiven him, and yet that may not restore him to his entire Credit, as was my Lord Chief Justice *Scrogg's* Distinction in the Case of *Dangerfield*; and as to the Case of *Aaron Smith*, that was very different: The Reason in that Case was, because the Crime for which Mr. *Smith* was indicted, did not import any such scandalous Offence for which his Credit could be impeached.

L. C. J. No, no, we did not meddle with that, we went upon the Pardon.

Sir *B. Shower.* But in that Case, they did not insist upon it that he had a Pardon antecedent to the Act of Pardon, so that he was *Subiectum capax*, for the Act to work upon, he was an Offender that needed a Pardon, whereas Mr. *Porter* being pardon'd before, could not be an Offender needing a Pardon, and consequently not within the first Words of the Act of Indemnity, because he was pardon'd by the King before, but he was not by that Pardon, say we, restor'd to his Credit to make him a good Witness, and the Act of Parliament did not affect him, he being not *subiectum Materiae*, as not being an Offender.

Mr. *Phipps.* As to Mr. Solicitor's Case of *Aaron Smith*, we agree the Act of Parliament did restore him, because he never was pardon'd before by the King, so there remained an Offence for the Parliament Pardon to work upon.

L. C. J. Do you agree that, then you may agree the other; for the Act of Parliament pardons none but those that the King can pardon generally.

Mr. *Phipps.* It is true, my Lord; but we say that an Act of Parliament Pardon, removes those Disabilities which the King's Pardon does not, for every one is in Law a Party to an Act of Parliament, and therefore no Person shall be permitted to alledge in Disability of another, any Crime which he himself hath pardon'd, for that is to

aver against his own Act, but 'tis otherwise in the Case of the King's Pardon.

L. C. J. Why, the very Parliament Pardon comes from the King; the King has a full Power of Pardoning, and where he does pardon under the Great Seal, it has the full Effect of the Parliament Pardon. A Pardon before Attainder, prevents all Corruption of Blood, so that tho' a Man forfeits his Goods by Conviction, yet after a Pardon he is capable of having new Goods, and shall hold them without any Forfeiture whatsoever, for the Pardon restores him to his former Capacity, and prevents any further Forfeiture. Indeed if he had been attainted whereby his Blood was corrupted, no Pardon, whether it were by the King or by the Parliament, could purge his Blood without Reversal of the Attainder, by Writ of Error, or Act of Parliament, or express Words in the Act to restore Blood; but either Pardon makes him a new Creature, gives him new Capacity, and makes him to all Intents and Purposes, from the Time of the Pardon, to be *probus & legalis Homo*, and a good Witness. Indeed this Crime might be objected against his Credit, but it is not to be urged against the Sufficiency of his Evidence, that is, his being a Witness.

Mr. *Att. Gen.* My Lord, we desire he may be sworn. (*Which was done.*)

Mr. *Sol. Gen.* Now, Mr. *Porter*, do you give my Lord and the Jury an Account, what you know of this intended Assassination, how it came to your Knowledge, and what Share the Prisoner at the Bar had in it.

Capt. *Porter.* My Lord, the first Account that I had of this Assassination, was from Mr. *Charnock*, who brought to me Sir *George Barclay* and Major *Holmes* to my Lodging in *Norfolk-street*, where I was sick of the Gout. Sir *George Barclay* did not then particularly acquaint me with the Business, but said, he would leave it to Mr. *Charnock* to tell me what it was.

L. C. J. Who told you so?

Capt. *Porter.* Sir *George Barclay*; and after that we had several Meetings, at which the Prisoner at the Bar was present, particularly at the *Globe-Tavern* in *Hatton-Garden*, where it was consulted of the best Ways and Means to assassinate the King as he came from *Richmond*: Some were of Opinion that it was best to be done on the other Side of the Water; others were of Opinion that it should be done on this Side, by a Party of Men on Horseback: Upon this Difference of Opinion, there were Persons appointed to go and view both Places; I was appointed for one to go with Captain *Knightley*, and Mr. *King* went along with me, and we did view the Ground on both Sides, and when we came back, we gave an Account to Sir *George Barclay*, and those that sent us, and upon our Report, Sir *George Barclay's* Mind was chang'd, who was for the other Side of the Water before. And he agreed to do it in the Lane that leads from *Turnham-Green* to *Brentford*. Afterwards there was a Meeting at the *Globe-Tavern* in *Hatton-Garden*, and there it was agreed that the King should be attack'd on *Saturday* the 15th of *February*, by Sir *George Barclay* and his Party; and Mr. *Rookwood*, the Prisoner at the Bar, was to command a Party of Men that came over from *France*, who were to assault the Guards on one Side, and I and Mr. *Charnock* were to set upon

the Guards on the other Side. Sir *George Barclay*, with four Men out of each Party, was to attack the King in his Coach, and to kill him and all that were there in it.

L. C. J. Who were at that Meeting?

Capt. Porter. There were Sir *George Barclay*, Captain *Charnock*, Sir *William Parkyns*, My self, Major *Holmes*, Captain *Rookwood*, and Captain *King*.

L. C. J. Where was this?

Capt. Porter. At the *Globe Tavern* in *Hatton-Garden*, upon *Saturday* Morning the 15th, we having two orderly Men that lay at *Kensington* to give Intelligence, had Notice brought us first that the King would go out; *Durance*, who was one of them, used to go every Morning to Court to get us what Intelligence he could, and Sir *George Barclay* told me upon the *Friday*, that he should give me an Account as soon as ever he could the next Morning; and the next Morning at my Lodging in *Little Rider-street* in *St. James's*, he came to me, and told me, the Advance Guards were gone out, and the King's Kitchen was gone, and all was preparing for the King's going abroad, and there went a great many Noblemen and Gentlemen a Horse-back with him, and therefore he thought there would be no Opportunity of effecting the Thing; said I, that's no Objection at all, nor any Reason for putting it off, because when the Sport is over, all the Company goes away, and the King comes only in his Coach with the Guards; he said, he would give Sir *George Barclay* an Account of it, and he came back with Sir *George Barclay* and Mr. *Rookwood* to my Lodging, and upon repeating that Objection, and my giving the same Answer, it was agreed if the King had gone out that Day to have put the Design in Execution.

Mr. Att. Gen. Was the Prisoner at the Bar there at that Time when that was agreed upon?

Capt. Porter. Yes, he was.

L. C. J. Where do you say was that Meeting?

Capt. Porter. At my Lodging in *Little Rider-street*.

L. C. J. Had you that Discourse with Sir *George Barclay*, in the Presence of the Prisoner?

Capt. Porter. Yes, Sir *George* said, he doubted we could not do it, because there would go so many with the King; but I objected against that, that after the Sport was over, all the Company went away, and the King came back in his Coach; then it was agreed to go on, there was Sir *George Barclay*, *Durance*, and the Prisoner at the Bar and my self, in the Room.

L. C. J. This you say was *Saturday* the 15th, in the Morning.

Capt. Porter. Yes, my Lord, but I cannot say I saw the Prisoner at the Bar at any Meeting after that.

Mr. Att. Gen. Pray, tell my Lord and the Jury, what Method you were to take in putting this Design in Execution.

Capt. Porter. There were to be so many Horsemen armed and prepared for the Purpose. Sir *George Barclay* told me, we should be about 40 or 45 Horse-men, and they were to be divided into two Parties, and Sir *George Barclay* was to have four Men out of each Party, and his Business was to attack the King, and all that were with him in the Coach. Captain *Rookwood* was to command those that were come out of *France* to serve under Sir *George Barclay*, and Captain *Charnock*

and I were to command the other Party, and both Parties were to set upon the Guards at the same Time that Sir *George Barclay* attack'd the King's Coach.

Mr. Att. Gen. If the Prisoner will ask him any Questions, let him.

Sir B. Shower. Pray, Captain *Porter*, when was that first Meeting at the *Globe-Tavern*?

Capt. Porter. It was one Day in the Week before the 15th.

Sir B. Shower. Was Mr. *Rookwood*, the Prisoner at the Bar, there that Day?

Capt. Porter. Yes, he was.

Sir B. Shower. How long before the 15th?

Capt. Porter. One Day that Week; but I cannot tell what Day.

Sir B. Shower. He says it was agreed so, and so I desire to know what Words Mr. *Rookwood* uttered at that Time.

Capt. Porter. It was discoursed by every one round, which was the best Way and Method. I heard Mr. *Rookwood* say, indeed, he believed it a very desperate Thing, and he was not very willing to engage in it; but when Sir *George Barclay* told him he should command his Party, he replied in *French*——

Mr. Sol. Gen. What's the Meaning of that?

Capt. Porter. There's an End of it.

Mr. Att. Gen. You say the Prisoner was at your Lodging *Saturday* the 15th, in the Morning, What Discourse had you there?

Capt. Porter. He was there upon *Saturday* in the Morning, the 15th of *February*, and *Durance* brought an Account that the King's first Guards were gone, and the King's Kitchen was gone before, and it was expected that the King would go about Eleven a Clock, but it was said, that there were a great many were preparing to go with him, and therefore it would not be convenient to do it that Day; said I, that is no Objection at all, for the Nobility and Gentry go out of the Field as soon as the Sport is over, and the King used to go with a few People to Mr.—— House at *Richmond*, and therefore it might be as well done at that Time, as any Time: *Durance* made that Objection at first himself, and when I made him that Answer, he went to Sir *George Barclay*, and he came back with Sir *George Barclay*, and the Prisoner was there by at the same Time, and Sir *George Barclay* made the same Objection; it was at my Lodging in *Little Rider-street*, and when I told them my Reason against the Objection, as I had done before, they all agreed to do it that Day.

Mr. Phipps. At that second Meeting, did Mr. *Rookwood* make any Proposal there?

Capt. Porter. I only say he came with Sir *George Barclay*, and what I heard, I tell you Sir *George Barclay* made that Objection, and I gave it that Answer.

Mr. Phipps. But what did he say?

Capt. Porter. I cannot say that I heard Mr. *Rookwood* say any Thing in particular, but they all agreed to do the Thing that Day.

Sir B. Shower. You remember nothing that he said?

Capt. Porter. Sir *George Barclay* said, we will go and prepare, and he went away with him.

Sir B. Shower. Pray, when did Sir *George Barclay* come into *England*?

Capt. Porter. Truly, Sir, I don't know that; the first Time that I saw him after he came,

Mr.

Mr. *Charnock* brought him to my Lodging in *Norfolk-street*, but before that, Mr. *Charnock* told me, he was come into *England*.

L. C. J. Hark you, Mr. *Porter*, when you came back from Viewing the Ground before the first *Saturday*, and you said you made your Report, and then it was agreed that it should be done at such a Place; Do you say the Prisoner was there?

Mr. *Att. Gen.* No, my Lord, he does not say so. Do you say Mr. *Rookwood* was there at that Time?

Capt. *Porter*. No, my Lord, I don't say so.

Sir B. *Shower*. I am sure he did not say so before; and besides, your Lordship will observe there is no such Overt Act as that laid in the Indictment against the Prisoner, that Mr. *Porter* made his Report upon the View, that only concerns Mr. *Knightley*.

L. C. J. No, that is not an Overt Act, I agree it; but I only ask the Question, whether the Prisoner was there.

L. C. J. *Trelcy*. If it were an Overt Act laid in the Indictment, it would not affect the Prisoner, because the Viewing of the Ground, and making the Report, is Captain *Porter's* Act, and it must be the Consulting and Debating afterwards that must affect the Prisoner, if he be concern'd.

Mr. *Coyers*. The Meetings and Consultations that are laid in the Indictment are the Overt Acts.

Mr. *Soll. Gen.* Well, if they have done with Captain *Porter*, we desire Mr. *George Harris* may be sworn.

Sir B. *Shower*. My Lord, we beg Leave to oppose Mr. *Harris's* being sworn; here was a Proclamation that did take Notice of this barbarous Conspiracy to assassinate the King, and the Proclamation did signify, That the King had received Information of several Persons concerned in that Conspiracy; and for the Encouragement of taking those so accused, he did promise a Thousand Pounds Reward for the taking of any of the Conspirators; and in the Conclusion of the Proclamation there is a Clause, *That if any of the Conspirators should discover or apprehend any of the other Persons that were therein named, as that they should be brought to condign Punishment, such Conspirator so discovering should receive a Thousand Pounds Reward for any of the other Persons apprehended, and his own Pardon.* My Lord, we have a Witness here ready to prove that this was Mr. *Harris's* Case; he was himself in the Proclamation, he did actually discover Mr. *Rookwood*, the Prisoner at the Bar, and was instrumental in the taking of him; and consequently upon this Clause of the Proclamation, if he be brought to Justice, then is Mr. *Harris* intitled to this Reward and his Pardon; and consequently he has such an Interest and Advantage to himself as will prevent his being a Witness. It is true, indeed, where it is at the King's Suit, in a capital Case, it is pretty hard to say that a Man has an Interest; but we think, as this Case is circumstantiated upon this Proclamation, that the same Objection lies against him as would do if this were a civil Cause; if we shew how he is to have an Advantage by the Event of this Cause, then he is not to be admitted a Witness.

L. C. J. Did he apprehend any Body upon the Proclamation?

Sir B. *Shower*. Yes, he apprehended Mr. *Rookwood* himself, or was the Cause of it, and thereby is intitled to the Reward and his Pardon.

Mr. *Phipps*. That upon which we ground our Objection is the different Penning of the Procla-

mation; for if any one that is not a Conspirator do but discover and apprehend any of the Persons named in the Proclamation, he is entitled to the Thousand Pounds; but the Conspirators themselves must go further; for a bare Discovery and Apprehending any of their Accomplices will not entitle them to the Reward mentioned in the Proclamation, but they must discover and apprehend their Accomplices so as they be brought to Justice before they can be entitled to the Reward: And to be brought to Justice for any Crime, is in common Understanding to be brought to such Punishment as the Law inflicts for the Offence. Now Mr. *Harris's* Case is this, he discovered Mr. *Rookwood*, and went with the Guards to the Compter and seiz'd him: And if Mr. *Rookwood* ben't convicted, Mr. *Harris* is not to have any Thing for his Pains; but if he be convicted, Mr. *Harris* is entitled to the Thousand Pounds and his Pardon. And therefore surely Mr. *Harris* cannot be admitted an Evidence against Mr. *Rookwood*, since he is to receive so great a Benefit by his Conviction. Upon an Indictment for an usurious Contract, the Person whose Deed it is cannot be a Witness, because 'tis to avoid his own Act: So in an Indictment for Perjury, on the Stat. 5. *Eliz.* the Party injured by the Perjury cannot be a Witness, because he is to have half the Forfeitures.

Mr. *Att. Gen.* I suppose they will make out their Objection before they expect an Answer from us.

Sir B. *Shower*. I hope your Lordship will not put us to prove a Copy of the Proclamation from the Inrolment, but that we may have the same Favour as in the Case of the Statute-Book, that the Print of it may be allow'd for Evidence.

Mr. *Att. Gen.* My Lord, we will not stand with them for that, we know they are mistaken throughout, we consent the Proclamation should be read.

Cl. of Arr. Reads,

By the King a Proclamation.

William R.

WHEREAS His Majesty has received Information upon Oath, that the Persons herein after named, have with divers other wicked and traitorous Persons entered into a horrid and detestable Conspiracy to assassinate and murder His Majesty's sacred Person, for which Cause several Warrants for High Treason have been issued out against them, but they have withdrawn themselves from their usual Places of Abode, and are fled from Justice: His Majesty has therefore thought fit by the Advice of his Privy Council to issue his Royal Proclamation, and His Majesty does hereby command and require all His loving Subjects to discover, take, and apprehend James Duke of Berwick, Sir George Barclay, Major Lowick, George Porter, Capt. Stow, Capt. Walbank, Capt. James Courtney, Lieutenant Sherborne, Brice, Blair, ——— Dinant, ——— Chambers, ——— Boise, George Higgins, and his two Brothers, Sons to Sir Thomas Higgins, ——— Davis Cardell, ——— Goodman, ——— Cramburne, ——— Keyes, Pendergrofs, alias Pendergrafs, ——— Bryerly, ——— Trevor, Sir George Maxwell, ——— Durance, a Fleming, Christopher Knightley, Lieutenant King, ——— Holmes, Sir William Parkyns, ——— Rookwood, wherever they may be found, and to carry them before the next Justice of Peace or chief Magistrate, who is hereby required to commit them to the next Gaol, there to remain until they be thence delivered by

by due Course of Law. And His Majesty doth hereby require the said Justice, or other Magistrate, immediately to give Notice thereof to Him or His Privy Council. And for the Prevention of the going of the said Persons, or of any other, into Ireland, or other Parts beyond the Seas, His Majesty does require and command all His Officers of the Customs, and other His Officers and Subjects of and in the respective Courts and Maritime Towns and Places within His Kingdom of England, Dominion of Wales, and Town of Berwick upon Tweed, that they and every of them in their respective Stations and Places, be careful and diligent in the Examination of all Persons who shall pass or endeavour to pass beyond the Seas, and that they do not permit any Person whatsoever to go into Ireland, or other Places beyond the Seas, without a Pass under His Majesty's Royal Sign Manual until further Order. And if they shall discover the said Persons above-named or any of them, then to cause them to be apprehended and secured, and to give Notice as aforesaid. And His Majesty does hereby Publish and Declare to all Persons who shall conceal the Persons above-named, or any of them, or be aiding and assisting in the Concealing of them, or furthering their Escape, That they shall be proceeded against, for such their Offence, with the utmost Severity, according to Law. And for the Encouragement of all Persons to be Diligent and Careful in endeavouring to Discover and Apprehend the said Persons, We do hereby further Declare, That whosoever shall discover and Apprehend the Persons above-named, or any of them, and shall bring them before some Justice of Peace, or chief Magistrate, as aforesaid, shall have and receive as a Reward, the Sum of One Thousand Pound; which said Sum of One Thousand Pounds, the Lords Commissioners of His Majesty's Treasury are hereby Required and Directed to pay accordingly. And if any of the Persons above-named shall Discover and Apprehend any of their Accomplices, so as they may be brought to Justice, His Majesty does hereby Declare, That every Person making such Discovery, shall have His Majesty's Gracious Pardon for his Offence, and shall receive the Reward of One Thousand Pound, to be pay'd in such manner as aforesaid.

Given at our Court at Kensington, the 23d Day of February, 1695-6, in the Eighth Year of our Reign.

GOD SAVE THE KING.

Mr. Phipps. My Lord, The different Penning of the Clauses is not only in that Proclamation, but it is the Language of every Proclamation that has gone out for the Apprehending any of the Conspirators.

Mr. Att. Gen. My Lord, All that we say in Answer to this Objection, is, That Mr. Harris is not nam'd in that Proclamation.

L. C. J. What say you to that Sir Bartholomew Shower? He is not named in the Proclamation: And so if he hath discovered and apprehended the Prisoner, he has earn'd his Money, whether he be Convicted or nor, because Rookwood's Name is in the Proclamation, tho' his is not.

Mr. Phipps. Then, my Lord, with humble Submission, here is another Proclamation wherein he is nam'd, we desire that may be read.

Mr. Soll. Gen. And when it is read, it will be as little to your Purpose as the other.

Mr. Att. Gen. Let them read what they please, we need say nothing at all to it.

L. C. J. Certainly upon this Proclamation, there's no Objection; for he is intitled to his One Thousand Pound already, tho' Rookwood be never convicted.

Mr. Phipps. But is he not by this Proclamation which mentions his Accomplices, intitled to his Pardon? If so, he swears to secure himself.

L. C. J. By the Apprehending and Discovering, he's intitled to his Pardon.

Mr. Phipps. But not without he be brought to Justice; that is to say, till he be convicted; therefore he cannot be an Evidence to convict him.

L. C. J. That is, as to any that are there named, if any of them discover and apprehend one another, it must be so as that they be brought to Justice; But if any Person that is not named there does apprehend any that is, he is intitled to the One Thousand Pound, barely by the Apprehension.

Mr. Phipps. Then there is another Proclamation where they are both named, as Mr. Rookwood tells me.

Sir B. Shower. My Lord, We will set this Matter right; we will show the other Proclamation, in which, if I am rightly inform'd, for I have not read it, Mr. Harris is nam'd.

Mr. Att. Gen. If you have not read it, I would advise you not to trouble the Court with it; for you will find the latter Part is restrain'd to three or four particular Persons, of which he is none.

Rookwood. I am named in the Proclamation.

Mr. Att. Gen. Ay, but read the latter Part of it; and you will find you are not nam'd in the Clause that they referr'd to: You need not read the former Part of the Proclamation, we agree the Prisoner is named there; but only look towards the bottom, which is the Clause that they refer to.

Cl. of Ar. (Reads) And we do hereby further declare, &c.

Mr. Att. Gen. They have not considered the Proclamation, and therefore make an Objection of they don't know what.

Sir B. Shower. We are in your Lordship's Judgment.

L. C. J. For what? See if you can make or state a Case for our Judgment.

Sir B. Shower. Mr. Rookwood is mention'd in the first Proclamation, and Harris is not, but there are the Word Accomplices: He is likewise mentioned in the last Proclamation, but not in the last Clause of it. I confess, if he had, it had been plain it would have taken off his Testimony, but now we must submit it to you, whether he is not an interested Person, and consequently no good Witness.

L. C. J. Truly I do not see any Colour for the Objection. Is he not as well intitled to his One Thousand Pound, tho' Mr. Rookwood had never been try'd, by the bare Apprehending of Mr. Rookwood, as if he was convicted?

Sir B. Shower. No, my Lord; because the Words are so as he may be brought to Justice.

L. C. J. That is not so, as to any Person that apprehends one mentioned in the Proclamation, if the Person that apprehends be not mention'd in it, and named himself; if any one that is not mention'd apprehend one that is mention'd, he is intitled, by the Apprehension, to the One thousand Pound. If any one that is mention'd apprehend another, then he is to bring him to Justice; now Mr. Harris is not named in this Proclamation, and so as to the One thousand Pound, he stands in the same Condition as any other Person

son that discovered or apprehended one of the Persons there nam'd.

Sir *B. Shower*. But it seems he was one of the Conspirators, because he is himself described in another Proclamation.

Mr. *Att. Gen.* If it were so, it would not be material, nor any Manner of Objection; but as they have made their Objection upon these Proclamations, we think there is nothing for us to give an Answer to.

Mr. *Cowper*. Nay, my Lord, if it were so, will Sir *Bartholomew Shower* say his Client is not brought to Justice, unless he be convicted? I am sure the Words *Convicted* or *Attainted*, are not in the Proclamation.

L. C. J. There is nothing in it; you must swear Mr. *Harris*: (*Which was done accordingly.*)

Mr. *Sol. Gen.* Will you give an Account to my Lord and the Jury, what you know of this Conspiracy against the King's Life, from the first Time you were acquainted with it, and what Hand the Prisoner at the Bar had in it.

Mr. *Att. Gen.* Pray give an Account of the whole Thing, your Coming over, and who sent you, and upon what Errand, and the whole that you know of this Conspiracy.

Capt. *Harris*. Upon the 14th of *January* last, the *French* Stile, New Stile, I was at *St. Germain's*, where I was sent for by King *James*, and was ordered to wait his Dinner till it was over, and accordingly I did wait till his Dinner was over, and then I came in, and Col. *Parker* was with him, and one Mr. *Hare*, who is also mentioned in the Proclamation, was there also: The King told me he was sensible I had served him well, and now he had an Opportunity of doing something for me; he told me he would send me into *England*, where I should be subsisted, and I was to follow the Orders of Sir *George Barclay*, and accordingly he order'd me ten *Lewidores* to be paid by Mr. *Carroll*, who is Secretary to the late Queen, and Col. *Parker* went along with me, and Mr. *Hare*, to *Carroll*, and told him he came from the King, and we had the *Lewidores*, and we went to *Calais*, in Order to our coming over hither: But we were told if we were wind-bound, that the Money we received would not bear our Charges; there was Orders given for our further Subsistence at *Calais*; to the President there. Accordingly we came to *Calais*, and the Wind did not serve us for eight or nine Days; and while I stay'd there, the Money that I spent at *Calais* was paid by the President of *Calais*, Monsieur *Lattour*. Afterwards I landed in *England*, near *Romney Marsh*, as I was told, and I came to the House of one *Hunt*, and he provided me and my Comrade with a couple of Horses; and coming from thence, I came in the first Place to one *Tucker's* an Apothecary in *Sandway*, and next from thence we came to *Rochester*, to *Charles Crofts's*, and from thence in a Coach to *Gravesend*, and from thence by Water to *London*: That Night we lay in *Grace-Church street* at an Inn, it being Night, the Night-Tide, and something late. The next Day I came to a Lodging at an Acquaintance's of my Comrade's, Mr. *Hare*, at the *Unicorn* in *Brownlow-street*, one Mr. *Wateman's*. The next Night I went to look for Sir *George Barclay*, whom the King told me I should certainly find by such a Sign of a white Handkerchief hanging out of his Pocket, on *Mondays* and *Thursdays*, in *Covent-Garden*, where his Walk was to be in the Even-

ing, because he was not to appear in the Day-Time openly. It happen'd that upon *Monday* Night after I came to *Town*, I went there, and did not find Sir *George Barclay* according to the King's Direction, which I admired at; but there was one Mr. *Berkenhead*, who told my Comrade, a Day or two after, That Sir *George Barclay* would needs speak with me, and accordingly I met with him; and he asked me how the King, Queen, Prince, and Princess did, and I told him they were very well; I told him I was appointed to attend him, and obey his Orders. He told me he had no Money at present, but in two or three Days he would send some; and so he did, by Major *Holmes*. I had five Shillings a Day for Subsistence, and I had no Horse; and when I had a Horse, it was six Shillings a Day; after which rate I had Subsistence for a Month at five Shillings a Day, *Guineas* going then at Thirty Shillings. Major *Holmes* paid me the Money by Sir *George Barclay's* Order, as he told me, and he afterwards gave me a *Guinea*; and that was the first *Saturday* when the Assassination was design'd; for that we told him we wanted Money, and it was not reasonable we should take our Horses out of the Stable before we paid for them: And I met Sir *George Barclay* several Times at *Covent-Garden*, and he told me it was a suspicious Place, and desired me not to come any more there; but when he had any particular Orders to give me, he would give me Notice of it where I shou'd meet him; and accordingly I did meet him several Times.

Mr. *Att. Gen.* Now, Sir, will you tell what you know as to the Prisoner at the Bar.

Capt. *Harris*. As to Mr. *Rookwood*, the *Saturday* that the Assassination was design'd to be, the first Time that I knew of it, I met Mr. *Rookwood*, at one Mr. *Burck's* Lodging, where he was up, and I saw him in a great Hurry and some Consternation, and in came M. *Bernarde*; I ask'd him the Meaning of it, and what they were going about; and Mr. *Rookwood* told me, if I wou'd go down to Captain *Counter* I shou'd know; accordingly I went, and to the best of my Remembrance, he gave me a little Note to Captain *Counter*, but that I am not positive in. I went to Captain *Counter*, and as soon as ever I came, he told us, We must be immediately ready to go to *Turnham-Green*.

Mr. *Att. Gen.* Where was that?

Capt. *Harris*. At the *Woolpack*, that was the Sign ——— as near as I remember. Mr. *Hare* and I were ordered together to come there, and there was Mr. *Hungate*, who had been there some Time, and when I came in, Sir *George Barclay* did declare Laughing, *These are my Janisaries*: And he talk'd something of bringing the Garter, and of attacking the Coach; but he went out of the Room, and afterwards he came in and declared, *We were all Men of Honour, and that the Business we were going about, was to attack the Prince of Orange*; but *Lurant* came in after that, and said, *The Prince of Orange did not go out that Day*. When he talk'd of attacking the Prince of Orange, I was very much startled, not knowing any Thing of it before; and I came the next Morning to Mr. *Rookwood*, and ask'd him if we were to be the Murderers of the Prince of Orange, says Mr. *Rookwood* to me, *I am afraid we are drawn into some such Business; but if I had known it before I came over, I should have begg'd the King's Pardon at St. Germain's, and not have come over hi-*

ther; and said I, *This is very fine, we have serv'd to a very good Purpose, to be sent over upon such an Errand and Account.* After this Mr. Rookwood, and Mr. Lowick, and I, had a Meeting at *Red-Lyon-Fields*, where we did discourse about the Matter. I did often declare against it, That it was so barbarous a Thing, that no Man of Honour almost would be guilty of it; but Major Lowick answered, That we were to obey Orders, for sure Sir George Barclay wou'd not undertake a Thing of that Nature without Orders.

Mr. At. Gen. Pray what said Mr. Rookwood?

Capt. Harris. He own'd it was a barbarous Thing; but he was sent over to obey Sir George Barclay's Orders, which he had several Times declared he was resolv'd to do; upon that we parted: so afterwards I came to Mr. Rookwood's Lodging; it was the *Saturday* Morning I came to him, and so went to Sir George Barclay's; while he was there, Mr. Rookwood gave me a Note, naming so many Names, particularly Mr. Hungate, Mr. Hansford, Mr. Hare, and his own Name at Top, not the Name that he is arraigned by here; but a sham Name that he had, as the rest of us all had sham Names, which at that Time we went by.

L. C. J. What was your Name?

Capt. Harris. My Name is Jenkins.

L. C. J. Who gave you that Name?

Capt. Harris. King James at *St. Germain's*, and he gave Mr. Hare the Name of Guiney, and Mr. Rookwood's Name was Roberts. King James told us in his Bed chamber, We were to go by those Names.

Mr. At. Gen. Pray Sir, what did Rookwood say to you, when he gave you that List?

Capt. Harris. He told me, he was to go to *Turnham Green*, and I was to go along with him, and says he to me smiling, *You shall be my Aid de Camp*; and get the Rest of the Gentlemen ready, and accordingly I went to look for several of the Persons — particularly for Mr. Blackburne: When I came back again, I found him lying on his Bed, and that Sir George Barclay had told him the Prince of Orange did not go out that Day, and from thence we went to Dinner, where Major Lowick din'd with us, and Mr. Bernarde and Major Lowick seeing me in a Heat, ask'd me, Why I was in such a Sweat? I told him I were getting those Men ready for Mr. Rookwood, who had made me his *Aid de Camp*: Says Major Lowick to me, You may very well do it, for you have Six Shillings a Day allow'd you, and I have nothing; I bring two Men at my own Charge. Said I, Major Lowick, I wonder you don't apply your self to Sir George Barclay, and then I believe, you may be subsisted too. He answer'd me, He did not think it worth the while to trouble him, since he had never spoke to him of it before: and Rookwood, and Bernarde, and Lowick, and my self, several Times met in *Red-Lyon-Fields*, and talk'd of attacking the Prince of Orange.

Mr. At. Gen. Who did?

Capt. Harris. Rookwood, Bernarde, Lowick, and my self.

Mr. At. Gen. Pray Sir, let me ask you one Question. Where was your Horse at first?

Capt. Harris. At first it was at my Lord *Feverham's* Stables, as they told me, in *Somerset-House*.

Mr. At. Gen. Where were the other Persons Horses?

Capt. Harris. There was Mr. Hungate's and Mr. Hare's Horses in the same Place, at the same Time, as they told me.

Mr. At. Gen. How came you by your Horse there?

Capt. Harris. Maj Holmes did deliver my Horse, and committed it to my Care, and I carry'd it thence to another Place.

Mr. At. Gen. Did you observe there was any more Horses there?

Capt. Harris. I believe there was Five or Six, as near as I can guess.

Mr. At. Gen. Do you know where Rookwood was to have his Horse?

Capt. Harris. He had a Horse; but whence he had it I don't know.

Mr. At. Gen. Had you any Arms delivered you?

Capt. Harris. Yes, I had by Capt. Counter.

Mr. Conyers. Were you at no other Place together that *Saturday* Night, the 22d of *February*, because you say you din'd together.

Capt. Harris. Yes, we were at the *Bear Tavern*.

Mr. Conyers. What Discourse pass'd between you there?

Capt. Harris. They were talking about the *Assassination*; but what any particular Person said, I cannot tell.

Mr. Conyers. Pray who were there?

Capt. Harris. There was Mr. Knightley, Captain Rookwood, and Mr. King; and Knightley went out, and came in again, and declared, we must have a great deal of Care of our selves, or we should be taken up: and he whisper'd at first, and afterwards I ask'd him what it was; and he told me, and said, *We must have a Care of our selves.* Says Mr. King, staring this Way with his Eyes, *Surely God Almighty is on our Side*; and so we parted.

L. C. J. When was this?

Capt. Harris. This was the Night of *Saturday* the 22d, when it was discover'd; for some of them were taken up the next Day.

Mr. At. Gen. Was Rookwood there at that Time at the *Bear Tavern*?

Capt. Harris. I cannot positively say whether he was or not.

Mr. At. Gen. What Discourse had you there?

Capt. Harris. We talk'd of *Assassinating* the King; but what it was in particular, I cannot tell.

L. C. J. Was Rookwood there?

Capt. Harris. Yes, I believe he was; but I cannot positively say.

L. C. J. You say it was the last *Saturday* that the King was to go abroad, that you apprehended you were discovered.

Capt. Harris. Yes, we apprehended we were discovered before that; for Mr. Lowick told me, that three or four Days before, in that Week, that his Name, and one *Harrison's*, were given into the Council, and another, and another, Two or Three of them, as he told me; I think Three or Four; and upon that Account Major Lowick, went from his Lodging, and did not lie at his Lodging the Night before; and I came to Major Lowick, and he told me the same Thing at the *King's-Arms Tavern*.

Mr. At. Gen. Can you remember what Discourse you had that *Saturday* Night?

Mr. Cowper. You say that on *Saturday* the 22d, Mr. Rookwood gave you the List.

Capt. Harris. I do not say it was the 22d, for I cannot swear to the Day of the Month; but it was the second *Saturday* that we were to have gone about this Business.

Mr. Cowper. You say he gave you a List of Names: Pray, when he gave you that List, what Discourse happened in the Room, just before, or after the giving of the List?

Capt. Harris. Sir, I think I told the Court that before.

Mr. Cowper. Sir, I desire you would repeat it.

Capt. Harris. My Lord, I humbly desire to know whether I am to answer that Gentleman that Question?

L. C. J. Yes, you are to answer, being upon your Oath, and to tell the whole Truth.

Mr. Cowper. I asked him the Question so fairly, what Discourse introduced the giving of the List, and what followed upon it, that I perceive this Gentleman does not know which Side I am of.

Capt. Harris. Mr. Rookwood said we were to go to *Turham-Green*; and he told me, that I was to be one of his Party, that we were to attack the Prince of Orange.

L. C. J. You say you were to be one of his Party; pray was it there that he told you, you should be his *Aid de Camp*?

Capt. Harris. Yes, he did tell me I was to be his *Aid de Camp*.

Mr. Phipps. Whose Hand-writing was that List?

Capt. Harris. I cannot tell, I had it from that Gentleman.

Mr. Phipps. But whose Writing was it?

Capt. Harris. Indeed I know not his Hand-writing, and therefore cannot tell whose it was: He is for his Life, but I believe he cannot deny any Thing that I have said, I suppose not: I should be very sorry to accuse Mr. Rookwood of any Thing that was not true.

Mr. Phipps. Pray whose Names were in that List?

Capt. Harris. I have mention'd Mr. Hare, Mr. Hanford, Mr. Blackburne, my self, and you Mr. Rookwood, had your own Name at Top.

Rookwood. What is that Blackburne?

Capt. Harris. He is a *Lancashire* Man.

Rookwood. It's a very strange Thing I should give you a List with a Man's Name that I don't know, I declare it, I know no such Person.

Capt. Harris. Mr. Rookwood, I believe you are very sensible I do not accuse you of any Thing that is not true.

Mr. Phipps. When did you see that List last?

Capt. Harris. He gave it into my Hands, and had it from me again, or I threw it away afterwards.

Rookwood. But you that were to be an Evidence ought to have kept it to justify your Evidence.

Capt. Harris. Truly I did not intend to have been an Evidence at that Time.

Mr. Att. Gen. If they will ask him any Questions, let them.

Sir B. Shower. No, indeed, I will ask him no Questions.

Mr. At. Gen. Then, my Lord, we have another Piece of Evidence which we would offer to your Lordship, which is not direct Evidence against the Prisoner, but only to prove a Circumstance or two of what has already been sworn:

We do acknowledge, my Lord, it does not affect Mr. Rookwood, but only to strengthen and confirm what they have sworn.

Sir B. Shower. With Submission we hope it will not be Evidence fit to be given as to the Prisoner at all; for because a Man may swear true in the particular Circumstance of a Thing, that therefore he swears true what he swears against the Prisoner, I think is no Consequence in the World.

L. C. J. It is a Thing distinct and foreign to the Matter, as to Mr. Rookwood.

Mr. Att. Gen. My Lord, we do not say it directly affects Mr. Rookwood; but when your Lordship has heard it, we shall submit it to you, how far it confirms even the Evidence given against him.

Mr. Conyers. My Lord, we say the Prisoner was to have his Horse from *Somerset-House*; and that there were Horses plac'd there for that Purpose we are going to prove.

Mr. Att. Gen. My Lord, it is one entire Conspiracy, in which every one had his Part; one was to have his Horses and his Party in one Place, and another in another: Now that there were at such Time such Horses at *Somerset-House*, and those Horses were delivered out from *Somerset-House*, is certainly a Confirmation of the Truth of what the Witnesses have said.

L. C. J. It is so. If that be it you offer, it is very material.

Mr. Conyers. We shall prove, That upon the Disappointment on the first *Saturday*, the 15th of *February*, they were to be ready against the 22d; and you will hear how the Horses were dispos'd of in the mean Time. Call *Chamberlain*, *Maskel*, and *Allen*.

Mr. Att. Gen. Call any one of them, I believe it is enough.

Mr. Chamberlain appeared, and was sworn.

Mr. At. Gen. Pray will you give my Lord, and the Jury an Account what you know of any Horses that were brought to *Somerset-House* about *February* last, and how long they stay'd there?

Chamberlain. There was six Horses.

Mr. At. Gen. Who brought them in.

Chamberlain. They were sent in by some Persons in Mr. Lewis's Name.

Mr. At. Gen. Had you any Direction to take Care of them?

Chamb. Mr. Lewis sent in a Note to take Care of them for a Night or two.

Mr. At. Gen. Who carried them away?

Chamb. I cannot tell: Some People came to see 'em that I never saw before, and they took care of them; I know not who they were, and I never saw them since.

Mr. At. Gen. What Time was it that they came for them?

Chamb. It was about the middle of the Day.

Mr. At. Gen. What Month was it in?

Chamb. I think it was much about the latter End of *February*, to the best of my Remembrance.

Mr. At. Gen. How long was it before the Plot was discover'd.

Chamb. It was about a Week, or a small Matter, before the Plot was discover'd, to the best of my Knowledge.

Mr. At. Gen. How long staid the Horses there at *Somerset-House*?

Chamb. Three of them staid a Night or two; but the other three of them about a Matter of a Week or ten Days.

Mr.

Mr. At. Gen. Who own'd those Horses?

Chamberlain. They were sent in, in Mr. Lewis's Name; but who own'd them I cannot tell indeed.

Mr. Conyers. Then swear John Allen. (Who was sworn.)

Pray tell my Lords and the Jury, what you know concerning any Horses about the Time of the Breaking out of the Plot.

Mr. At. Gen. We mean in Somerset-House Stable.

Allen. There was seven Horses came in.

Mr. Conyers. Who brought them?

Allen. There was Six in the first Place; one came in afterwards in the Evening.

Mr. Conyers. By whose Order were they brought there?

Allen. By Mr. Lewis's Order.

Mr. At. Gen. How long did they stay there?

Allen. Some of them staid there several Days; Three of them went away the next Day; as I think.

Mr. Conyers. Do you remember about what time those Horses were brought thither?

Allen. They were brought there, I believe, about seven or eight Days before the Plot broke out.

Mr. At. Gen. My Lord, We only call these Witnesses to confirm the Testimony of the others, that there were such Horses there at that time, and for the present we rest it here.

L. C. J. Then, Gentlemen, what say you to it for the Prisoner?

Sir B. Shower. If your Lordship please, we are of Council for the Prisoner; and that which we are to insist upon is this, which we submit to your Lordship's Judgment. In the first place, whether here be two Witnesses against the Prisoner to prove this Treason according to the Statute of *Edw. 6.* which requires two Witnesses in High-Treason, and lawful Ones; but that in the first Place we say there are not two Witnesses at all, at least not to any Overt-Act that is laid in this Indictment. As to what Captain Porter says of what pass'd between him and *Durance*, the Dialogue between them where *Rookwood* was present, we are in your Lordship's Direction; and we doubt not but the Jury will take it into their Consideration, how far that affects the Prisoner; that he shall not be concern'd in any Transaction between Mr. Porter and any other Persons; none of their Declarations, none of their treasonable Practices, can be imputed to or affect him in any way whatsoever. Now all that Captain Porter says of Mr. *Rookwood*, is, that he was once at the *Globe Tavern*, and there was a Discourse about this Matter; and then he tells your Lordship of a Dialogue between him and *Durance*, and an Account of what pass'd between them; but he does not say any Thing of Mr. *Rookwood* being any Ways concern'd in the Matter, but only that he dropped this Expression, It was a desperate Adventure, a dangerous Enterprize, and he seem'd against it, but in the End he concluded with something in *French*, which what they are, and what they mean, we must submit to your Lordship and the Jury; he interprets it, when Sir *George Barclay* said he must have a Share in it, then *Rookwood* replied, There's an End of it. But there is not one Word of Agreement sworn to, that Mr. *Rookwood* spoke to shew his Consent. There is but one Time more that Mr. Porter swears to, about

the Prisoner at the Bar, and that is, at his Lodgings in *Little Rider-street*; for as to the other Consults, Mr. *Rookwood* was not present there: It seems there was a Discourse about the Affair, but that *Rookwood* said nothing, but went away; there was not so much as the least Intimation of an Agreement to any such Design, or Approbation of what was agitated in the Company, and we insist upon it as to this in Point of Law, that it amounts to no more than Misprision of Treason at most. My Lord, I will not now contend about Notions, nor will I argue whether Consulting and Agreeing be Evidence of an Overt-Act; I submit to your Lordship's Directions, notwithstanding the Variety and Difference of Opinions that have been.

L. C. J. Sir *Bartholemew Shower*, I know not what Variety of Opinions you mean; there have been some Discourses in Pamphlets I agree, but it was always taken and held for Law, that Consulting and Agreeing was an Overt-Act.

Sir B. Shower. Here is no Evidence of any Agreement.

L. C. J. Pray let us hear what you say to that.

Sir B. Shower. It is not the being present where Traytors do consult and conspire the Death of the King, unless they actually agree; nor is it Evidence sufficient to guide or prevail upon a Jury's Conscience, to affirm upon their Oaths, that such a one is guilty of High-Treason, because such a one was there and said nothing at all; for the not discovering afterwards, nor accusing is no Evidence at all against Mr. *Rookwood*. As to Mr. *Harris*, he gives you an Account of a great deal that does not affect Mr. *Rookwood*, neither all that past at *St. Germain's*, nor in their Journey into *England*, for all that may be true, and yet the Prisoner no way concern'd in it. As to what he affirms of the Prisoner, we shall submit it to your Consideration: What it amounts to, and all that his Deposition comes up to, is, That Mr. *Rookwood* complain'd that he was to obey implicitly Sir *George Barclay's* Orders; and *Harris* gives an Account but of one particular Time that Mr. *Rookwood* undertook or did agree to be concern'd in this Matter; it was but once, and that was, when he gave him the Note of those that were to go to *Turnham-Green*, and that he was to be his *Aid de Camp*: And as to that, we shall give you an Account by Witnesses whom we shall call, that these two Witnesses ought not to be believed as to what they have sworn, tho' they do not come up to make two Witnesses according to Law upon this Indictment: What they have said as to this Man is not credible, tho' they may speak true as to others; and no Doubt there was a barbarous Conspiracy; it appears there was such, beyond all Exception and Contradiction; and the Persons that have been condemn'd as Conspirators have acknowledg'd it: But, my Lord, that which is now before your Lordship and the Jury, is, to enquire whether the Prisoner is concern'd in this Affair at all, and how far; and we hope the Jury will be of Opinion he is not concern'd. The Heinousness of the Crime, and the Aggravations of it, being to be abhorred by all Mankind, we think ought not to sway with the Jury, nor Influence their Judgments to believe a Witness ever the sooner in accusing any other Person; it ought rather to have a contrary Allay; for the greater the Crime is, and the farther off from having any tolerable Opinion in the World, they ought to expect

expect the greater Proof; and no one is to be presum'd guilty of such an Act, without very sufficient Evidence of it; and the greater the Crime, the Proof ought to be the more positive and undeniable: It is not their being plainly positive that is sufficient, but whether it is such that is good in Law, and about that we are sure your Lordship will give true Directions in point of Law: and whether the Witnesses be credible or no, must be submitted and left to the Jury, after we have call'd some Witnesses, who will give you an Account of their Reputation.

Mr. *Phipps*. My Lord, we humbly insist there are not two Witnesses, such as the Law requires, to prove the Charge upon this Indictment against the Prisoner: The two Overt-Acts that touch Mr. *Rookwood*, are first Consulting and Agreeing how to kill the King; the other is the finding Arms and Horses for that purpose: But as to this latter, the finding Arms and Horses, there is not one Evidence that comes up to it: And as to the former, the Consultations, whether there be sufficient Evidence that comes up to that, is very much a Question with us: But we say, with Submission, there are not two Witnesses in that Case; for Mr. *Porter* says only what he was told by Sir *George Barclay*, that Sir *George* propos'd this Matter; but withal he tells you, that when Sir *George Barclay* propos'd it, and Mr. *Rookwood* was inform'd what the Design was, he was so far from Conspiring, Consulting, or Agreeing to do it, that he said it was a barbarous Act, and he recoil'd at it. Then at last says Sir *George Barclay*, *You must command a Party*.

L. C. J. Well, and what said *Rookwood* then?

Mr. *Phipps*. *Porter* says, he then said, *There's an End of it*. Now, my Lord, what Evidence is this of a Consultation and Agreement? And this is all that *Porter* says. As to what Mr. *Harris* says, we are to consider whether the List given to him be an Overt-Act; and there the Point in Question is, Whether that List can be given in Evidence against Mr. *Rookwood*, upon this late Act of Parliament, as an Overt-Act, it not being laid in the Indictment? There is indeed an Overt-Act of a List laid in the Indictment, as given to *Cranburne*, but none as given to Mr. *Rookwood*.

L. C. J. Pray take the Evidence right: First, What will you make an Overt-Act? What do you think when there is a Debate among divers Persons about killing the King?

Sir *B. Shower*. With Submission that will be no Overt-Act, if there be a Debate of such a Matter, tho' he be present.

L. C. J. Aye; but when there is a Consult, and upon Debate a Resolution is formed, and tho' he does at first dislike it, yet when he is told he must command a Party, he says he is content, or there's an End of it; What do you make of that?

Sir *B. Shower*. He said he did not like it, it was a barbarous desperate Design.

L. C. J. It's true, but when Sir *George Barclay* said he shou'd command a Party, he acquiesced, and said there was an End of it: There was a Discourse about Cutting off the King, and that was agreed upon in the Company at that Time; and tho' at first he did not like it, yet he might afterwards agree to it.

Sir *B. Shower*. {My Lord, that is it which we deny; we say there is no Proof of his Agreement to it.

L. C. J. Capt. *Porter* says, he did declare that he said he look'd upon it as a desperate Design,

and was averse from being engaged in it, but afterwards did agree to it; Whether is not that such an Overt-Act, as is laid in the Indictment?

Sir *B. Shower*. My Lord, We must beg Leave for the Prisoner in a Case of this Nature, that it may be recollected what the Evidence did say. Mr. *Porter* did not take upon him to affirm that Mr. *Rookwood* consented to it, but only said, *There was an End of it*. Now we must leave that to the Jury, what they can make of such a doubtful Expression.

L. C. J. Call Mr. *Porter* in again.

Mr. *Conyers*. My Lord, the first Meeting Mr. *Porter* speaks of, where the Prisoner Mr. *Rookwood* was, is at the *Globe-Tavern*, where this Discourse was; the next Meeting that he speaks of, was on the *Friday Night*, before the first *Saturday* when the Business was to be done, and afterwards he met at *Porter's Lodgings*, on *Saturday Morning*, in *Rider-street*.

Then Capt. *Porter* came in again.

L. C. J. Hark ye, Mr. *Porter*, the first Time that this Matter was propos'd, when Mr. *Rookwood* was present, you say was at the *Globe Tavern*.

Capt. *Porter*. Yes, my Lord, it was.

L. C. J. And you say he dislike'd it, and did not care to be concern'd in it.

Capt. *Porter*. Yes, my Lord, he did so.

L. C. J. Well, What said Sir *George Barclay*?

Capt. *Porter*. Sir *George Barclay* said he ought to obey his Orders, for he had such a Commission for such a Thing, and he drew out a Scheme how it was to be done; and when Sir *George Barclay* told Mr. *Rookwood* he shou'd command his Party, he replied in *French*,

There's an End of it.

L. C. J. This was at the *Globe-Tavern*, Was it not?

Capt. *Porter*. Yes, my Lord, it was.

Mr. *At. Gen.* Pray then, Capt. *Porter*, let me ask you another Question, Was he afterwards with you at any other Meeting, and when and where?

Capt. *Porter*. He was with me upon *Saturday* the 15th, at my Lodging in *Little Rider-street*, where was Sir *George Barclay* and others.

Mr. *At. Gen.* What Discourse happen'd then, I pray?

Capt. *Porter*. They did there discourse the whole Matter, and Sir *George Barclay* was not for going at that Time, because there was so many People that went with the King; that there wou'd not be a good Opportunity to effect the Design: But I told him they would go off after the Hunting was over, and so it was agreed upon to go on with the Undertaking.

Mr. *At. Gen.* Pray, at that Time did Mr. *Rookwood* pretend to dislike the Affair, or refuse to be any Way at all concern'd it?

Capt. *Porter*. No, my Lord, I can't remember that he spoke one Word.

L. C. J. Was Mr. *Rookwood* there?

Capt. *Porter*. Yes, there was Mr. *Rookwood*, Sir *George Barclay*, and Mr. *Durance*.

Mr. *At. Gen.* And had you Discourse at that Time about this Business?

Capt. *Porter*. Yes, my Lord, there was that Objection made of so many People going with the King, and I made that Answer that I tell you.

L. C. J. Why then, suppose at the *Globe Tavern*, such an Expression had not dropt from the Prisoner, but a Man is present at two Consults that are held about the Death of the King, but says nothing either at the first or second, What wou'd you make of that Case?

Sir B. Shower. My Lord, I confess this is a Case of a very barbarous Nature, of which I hope my Client will acquit himself: But I think we have the Authority of Parliament on our Side, that this does not amount to a Proof of Treason. It seems they lay a Stress upon this, that Mr. Rookwood came to Captain Porter's Lodgings on the Saturday Morning the 15th: But then take the Case as it is; for ought that does appear upon the Proof, he knows not, upon what Account the Meeting is, beforehand. I think that is the Case of my Lord Ruffel, upon which the Reversal of his Attainder went, that the Evidence came short, and that it was but Misprision; for the Evidence was, That he was present at the supposed Declaration's reading, but said nothing at all to it.

L. C. J. But I speak of two Meetings; there was but one.

Sir B. Shower. My Lord, I do not know whether there were two Meetings or one then: But this is the Ground we go upon, there ought to be two Witnesses: And if there be two Meetings upon such a Design, the second may be accidental, and it does not appear to be a design'd Meeting; and there was no Appointment of Mr. Rookwood to be there, nor any Negotiation by way of Mesfage or otherwise, to that Purpose. Is this, my Lord, an Overt-Act? Suppose a Man be present at a Consult about treasonable Practices, and he uses Words that are indifferent; it is true, in the Case of a Wager it amounts to an Assent, but it hardly will come to that when People meet by Accident, or for they don't know what.

L. C. J. How is this by Accident?

Sir B. Shower. It does not appear that it was by Design or Appointment.

L. C. J. They were Acquaintance.

Sir B. Shower. He had no Acquaintance with him but in Sir George Barclay's Company.

L. C. J. But besides, there was an express Consent at the *Globe Tavern*, when Rookwood said, *There is an End of it.*

Sir B. Shower. That is as much as to say, I will not do it, I will not go with you—

Mr. Sol. Gen. Sir G. Barclay was the Person whom they were to obey; and Harris tells you he told them what they were to do, and six Horses were first plac'd, and three of them afterwards remov'd.

Sir B. Shower. That won't affect him what Sir George Barclay said, any more than Lewis's appointing of the Horses.

L. C. J. Then here is another Thing, Why did he give a List to Mr. Harris? the List that was given had Mr. Rookwood's Name at Top, as he was to command the Party, and there was Harris's Name and Hare's Name as of his Party; that is, their feign'd Names: M. Roodwood's feign'd Name was Roberts that was at Top, and they were to go to *Turnham-Green*, and Rookwood told Harris, he should be his *Aid de Camp*.

Sir B. Shower. My Lord, for that I think we have a Point of Law, that we apprehend will turn off all that Evidence, and sure we may take that Exception now: The Words of the Act are, That

no Evidence shall be given of any Overt-Act that is not expressly laid in the Indictment. Now cannot I shew upon this Indictment, that there is no Overt-Act in such a positive direct Manner as they now urge about this List? Will not that satisfy your Lordship's Judgment to set aside all this Evidence? To make the Indictment good for Treason, there ought to be a Compassing of the Death of the King laid, and an Overt-Act laid declaring that Compassing; but no Evidence is to be given of any Overt-Act that is not laid in the Indictment.

L. C. J. You are not to take Exceptions to the Indictment now, but only to the Evidence.

Sir B. Shower. I have this one Exception more; there is never a *Quodque*, nor a *Juratores ulterius presentant*.

L. C. J. There does not need; but that is a Fault, if any, in the Indictment, and is not to be stirr'd now.

Sir B. Shower. If there be not a Presentment by the Jury, then there is no Overt-Act alledged: And if there be no Overt-Act alledged, or no such Overt-Act, then we are within the Words of the Act, That no Evidence shall be given of any such Overt-Act but what is alledg'd; and it is, if not expressly alledg'd, as if it were not alledg'd at all: Now here it is very loose, &c. *idem Christophorus Knightley*, and so it goes on with the rest, did so and so. There is a Presentment at first, that they did compass and imagine the Death of the King; and then the Indictment comes farther, and says, that Forty Men should do this Business, and of those Forty these four should be some; and then the *idem* bought Horses and Arms, and so it must go to the last Antecedent, and then there is no express alledging of any Overt-Act, and then it is as if no Overt-Act at all was alledg'd.

L. C. J. This Exception is not to the Evidence, but to the Indictment: It begins, *Juratores presentant quod*; Does not that relate to all?

Sir B. Shower. No, my Lord; and I can tell you a Reason why not: If it be not so well alledg'd as it should be, it is in an Indictment as if it were never alledg'd at all; and so within the Words of the Act of Parliament this is not an Overt-Act alledg'd, and therefore they cannot give Evidence upon it.

Mr. Sol. Gen. Truly, my Lord, I can't imagine what they are doing, they are moving in Arrest of Judgment before a Verdict given: They say the Overt-Act is not expressly laid; Is that an Exception to the Evidence, or to the Indictment?

Sir B. Shower. If my Lord will please to give us the Liberty, we would shew there can be no Verdict given upon this Indictment.

L. C. J. Certainly this is an irregular Proceeding; this is not a Time of Exception to the Judgment.

Mr. Phipps. Then, my Lord, we are in your Judgment, as to the Proof that has been given: If a Man be present at a Meeting of several Persons, and there is a treasonable Debate about killing the King, and this Man is only present, but neither assents, nor makes the Proposal how it shall be done, whether the bare being silent, and saying nothing, is such an Overt-Act as shall convict a Man of Treason.

L. C. J. I tell you, Consenting to a traiterous Design is an Overt-Act of High Treason, if that Consent be made to appear by good Proof: Now the

the Question is, What is a good Proof and Evidence of this Consent? A Man is two or three Times at a treasonable Consult for killing the King, and though perhaps at the first he did not, yet at the second he did know that the Meeting was for such a Design, (suppose for the Purpose there was but two Meetings) and at the second it is determined to go on with the Design; Is not that an Overt-Act, tho' it cannot be proved that the Prisoner said any Thing?

Mr. Phipps. If the first Meeting is not a Consent, or an Overt-Act, neither will a second or a third be, if there was no more done than at the first, but they are like so many Cyphers without a Figure.

L. C. J. The first Meeting possibly might be accidental, he might not know what it was for, though that will go a great Way if he does not dissent or discover; but when he meets again with the same Company, knowing what they had in Design; Does not that prove a Consent? That was the Case of Sir *Everard Digby* in the Powder Plot.

Mr. Phipps. But where it may be uncertain, my Lord, whether it were with a good Design, or a bad Design, that he met with that Company, it ought to be taken most favourably for the Prisoner: This Man might be present in Order to a Discovery.

L. C. J. But besides, that is not this Case; you are mooted upon Points that are not in the Case. When Mr. *Harris* came to Mr. *Rookwood*, and finding them in some Disorder, and being inquisitive what was the Occasion, he was sent to Counter; and when he discovered what they were to go about, he afterwards meeting Mr. *Rookwood*, says to him, Are we sent over to murder the Prince of *Orange*? says *Rookwood*, if I had known of this Design before I came from *France*, I would have begged the King's, that is, King *James's* Pardon, and desir'd to have been excused. Hereby he expresses his Knowledge of the Design, and what he was to do; and though he disliked, yet would obey Orders.

Mr. Phipps. There is no Doubt, my Lord, but he knew of it; but whether your Lordship will construe his Silence as a Consent, in Treason, is the Question.

L. C. J. A Man is at frequent Consults about Killing the King, and does not reveal it, it is a great Evidence of his Consent.

Mr. Phipps. But it is not prov'd that he did actually consent to it.

Mr. *Soll. Gen.* My Lord, we must submit it to your Lordship, whether this is not totally improper and irregular at this Time; they are arguing how far the Evidence is to be believ'd, before the Time proper for such an Argument comes.

Mr. *Att. Gen.* If they will call their Witnesses, let them; or if they say they have none, then they may make their Observations upon the Evidence; but else we desire we may be kept to the usual Method of Proceedings.

Mr. Phipps. With Submission, we thought it fit to know the Opinion of the Court first, if there be two Witnesses against the Prisoner; for if there be not two Witnesses, as the Law requires, we need not trouble the Court with our Evidence.

Mr. *Soll. Gen.* Then, my Lord, we must desire that the Record may be read of Captain *Porter's* Conviction of Manslaughter; a Man that has been guilty of doing such an Act, feloniously, malici-

ously, and voluntarily, as that is, sure is not a competent Witness.

Cl. of Ar. It has been read already.

Mr. *Att. Gen.* I thought we had been over that Objection before.

Sir *B. Shower.* We think it is proper for us to move it now again; for though it is no Objection to his being a legal Witness, yet we hope it will influence his Reputation as to his Credit; for he that has been guilty of killing a Man in such a Manner as the Indictment lays it, will find but little Credit, we hope, with a Jury of Countrymen. But since it has been read, and your Lordship and the Jury have taken Notice of it, we will call some other Witnesses as to Mr. *Porter's* Reputation and Behaviour, we think they will prove Things as bad as an Attainder. I shall not open them to your Lordship, but beg Leave to call our Witnesses, who will acquaint you what they have to say.

Mr. *Att. Gen.* Certainly, my Lord, you will not think fit to let them do so. I desire they would not usher in any Thing of Evidence without acquainting the Court what they call them for: For that were the Way to let them in to call Witnesses to Things that are not proper.

L. C. J. Nay, without doubt it is not regular to produce any Evidence, without opening it.

Mr. *Att. Gen.* For if it be for any Crime that a Man may be presented for, and there is no Conviction; I think that ought not to be given in Evidence to take away a Witness's Credit: If it be only to his general Reputation and Behaviour, so far they may go, and we can't oppose it. Therefore I desire Sir *Bartholomew Shower* will open to the Court of what Nature his Evidence is.

Sir *B. Shower.* Well, I will tell you then what I call them to.

L. C. J. You must tell us what you call them to.

Sir *B. Shower.* Why then, my Lord, if Robbing upon the Highway, if Clipping, if Converting with Clippers, if Fornication, if Buggery, if any of these Irregularities, will take off the Credit of a Man, I have Instructions in my Brief, of Evidence of Crimes of this Nature, and to this Purpose against Mr. *Porter*; and we hope that by Law, a Prisoner standing for his Life is at Liberty to give an Account of the Actions and Behaviour of the Witnesses against him. I know the Objection that Mr. *Attorney* makes, a Witness does not come prepar'd to vindicate and give an Account of every Action of his Life, and it is not commonly allowed to give Evidence of particular Actions; but if those Actions be repeated, and a Man lives in the Practice of them, and this Practice is continued for several Years, and this be made out by Evidence; we hope no Jury that have any Conscience, will upon their Oaths give any Credit to the Evidence of a Person against whom such a Testimony is given.

Mr. Phipps. We are speaking only, my Lord, to the Credit of Mr. *Porter*, and if we can shew by Evidence that he is so ill a Man as to be guilty of those Crimes that we have open'd, according to the Instructions in our Brief; we hope the Jury will not think him fit to be a good Evidence against us in this Matter.

L. C. J. What say you to this Mr. *Attorney*?

Mr. *Att. Gen.* My Lord, they themselves know, that

that this Sort of Evidence never was admitted in any Case, nor can be, for it must tend to the Overthrow of all Justice and legal Proceedings; for instead of trying the Prisoner at the Bar, they would try Mr. *Porter*. It has been always deny'd where it comes to a particular Crime that a Man may be prosecuted for, and this it seems is not one Crime or two, but so many and so long continued, as they say, and so often practis'd, that here are the whole Actions of a Man's Life to be ript up, which they can never shew any Precedent when it was permitted, because a Man has no Opportunity to defend himself. Any Man in the World may by this Means be wounded in his Reputation, and Crimes laid to his Charge that he never thought of, and he can have no Opportunity of giving an Answer to it, because he never imagined there would be any such Objection: It is killing a Man in his good Name by a Side-wound, against which he has no Protection or Defence. My Lord, this must tend to the preventing all Manner of Justice; it is against all common Sense or Reason, and it never was offer'd at by any Lawyer before, as I believe, at leastwise never so openly; and therefore I wonder that these Gentlemen should do it, who acknowledge, at least one of them did, that as often as it has been offer'd it has been over-rul'd; and I know not for what End it is now offer'd, but to make a Noise in the Court: They know that it is irregular as much as any thing that could be offer'd.

Mr. *Sol. Gen.* Indeed, my Lord, if the Prisoner at the Bar had offer'd this Matter, it had been excusable; but, that Gentlemen of the long Robe, and who are so well acquainted with the Practice of the Courts of Law, should pretend to do such a Thing, is unaccountable. There was somewhat like this that was offer'd at *Manchester*, but that was by the Prisoner, to prove that one *Lunt* who was a Witness had two Wives, and they brought a Copy of an Indictment upon which there was no Process; after that they endeavour'd to prove him guilty of several Robberies; but all that Sort of Evidence was refus'd. I only give them this Instance to shew, that where the Prisoner has attempted it, it has been always rejected; and I am sure they cannot shew me that ever it was allowed, even to the Prisoner himself, to give any Thing of this Kind in Evidence; and this I must say, they can never shew me any one particular Instance, when Council ever endeavour'd to do it, before this Time.

Sir *B. Shower*. My Lord, I mentioned the particular Crimes, the Faults which I had in my Instructions to object against the Credit of the Testimony of Capt. *Porter*, in Answer to Mr. *Attorney's* Desire, that I would open the Particulars of the Evidence, that I would call my Witnesses to the Truth of it; I was loth to repeat the Words, I think the Things themselves so abominable; but we conceive with Submission, we may be admitted in this Case to offer what we have offered. Suppose a Man be a common, lewd, disorderly Fellow, one that frequently swears to Falshood for his Life: We know it is a common Rule in Point of Evidence, that against a Witness you shall only give an Account of his Character at large, of his general Conversation; but that general Conversation arises from particular Actions, and if the Witnesses give you an Account of such disorderly Actions repeated, we hope that will go to his Discredit, which is that we now are labouring

for, and submit it to your Lordship's Opinion whether we may not do it.

L. C. J. Look ye, you may bring Witnesses to give an Account of the general Tenour of his Conversation, but you don't think sure that we will try now at this Time, whether he be guilty of Robbery or Buggery.

Sir *B. Shower*. My Lord, we will give you an Account that he us'd to have a private Lodging; and come in with his Horse tir'd, and several other such Things, as that he us'd to go out in Disguises, and the like.

Mr. *Phipps*. My Lord, I cannot imagine why a Man that has been guilty of any such Crimes, and is not taken, should be of greater Credit than a Man that has been taken and punish'd.

L. C. J. What is that you say Mr. *Phipps*?

Mr. *Phipps*. My Lord, I say 'tis the Crime that renders a Man infamous, and I do not know why a Man that has had the good Fortune not to be taken and punished for great Crimes by him committed, should be in a better Condition as to the Credit of his Testimony, than one that is taken and undergoes the Punishment of the Law.

Mr. *Sol. Gen.* Mr. *Charnock* urg'd that as far as it would go, but we are oblig'd, it seems, to hear Things that have been over-ruled over and over; but I desire to know of them, whether they can shew he has been guilty of a greater Crime than he has confess'd himself guilty of in Court, I mean of the intended Assassination.

Mr. *Phipps*. No, we agree we can't; but pray let us prove him guilty of as many Crimes as we can.

Mr. *Sol. Gen.* But, my Lord, I hope you'll keep them to the general Question of the common ordinary Tenour of his Conversation.

Sir *B. Shower*. Call Mr. *Oldfield*, Mr. *Nicholas*, Mr. *Milford*, *Black Will*.

(*Mr. Milford appeared.*)

Cryer. Lay your Hand on the Book. The Evidence that you shall give on behalf of the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God.

Sir *B. Shower*. Pray will you give my Lord and the Jury an Account whether you know Captain *Porter*, and how long you have known him.

Milford. I have known him about Four Years.

Sir *B. Shower*. What Reputation is he of?

Milford. I never knew any Hurt by him in my Life.

Sir *B. Shower*. Pray what is your Name?

Milford. *Frederick Milford*.

Sir *B. Shower*. But the Name in my Brief is *John Milford*, that is my Man.

L. C. J. But you see this Man knows him.

Sir *B. Shower*. Call Mr. *Oldfield*.

(*Which was done, and he appear'd accordingly.*)

Mr. *Phipps*. Do you know Captain *Porter*?

Oldfield. Yes I do.

Mr. *Phipps*. How long have you known him?

Oldfield. I believe about Twenty Years.

Mr. *Phipps*. Pray will you give my Lord and the Jury an Account of his Life and Conversation.

Oldfield. I can say nothing, he was always civil in my Company, but he was lewd in his Discourse.

Sir *B. Shower*. What do you mean by being lewd in his Discourse?

Oldfield. Why he would be talking very extravagantly.

Mr. Phipps. What do you mean in talking, was it of what he had done himself, Sir?

Oldfield. No otherwise than that he had whor'd, and those kind of Things.

Sir B. Shower. What other Things beside Whoring?

Oldfield. I know no other Part of it.

Sir B. Shower. Where is *Edward Bowchey*?

(He did not appear.)

Mr. Phipps. Call *William O Bryan*.

(He did not appear.)

Sir B. Shower. Where is *Mr. Page*, and *Mr. Hardiman*.

(None of them appeared.)

Cryer. There is not a Man of them here, Sir.

Sir B. Shower. *Mr. Webber*, Do you know where they are, for the Court stays for them.

Mr. Webber. Indeed I do not, they were summon'd to be here.

Sir B. Shower. Where is black *Will*?

Cryer. Black *Will*.

(He appear'd, and was a Moor.)

L. C. J. Ask him if he be a Christian.

Cryer. I have ask'd him, and he says he is a Christian.

(Then he was sworn.)

L. C. J. Well, What do you ask him?

Rookwood. *Will*, Pray give an Account of your Master, and of his Life and Conversation.

Mr. Phipps. You are sworn to tell the Truth, Sweet-heart.

Will. I served him almost Eight Years, and he has been a very good Master to me, my Lord.

Sir B. Shower. What do you know him to be guilty of?

Will. Nothing at all.

Sir B. Shower. I believe they have put in these Men to confirm his Reputation.

L. C. J. Indeed, I think the King's Council should have called these Witnesses, if there had been Occasion.

Sir B. Shower. We submit it to your Direction, how far this Evidence will affect him; there is nothing said, as we apprehend that will amount to Treason: If the Prisoner has a Mind to say any Thing himself, we hope your Lordship will please to hear him.

L. C. J. Ay, if he will, let him.

Rookwood. My Lord, *Mr. Porter* does not say, that I consented to command a Party.

L. C. J. Is that all you have to say? Then, Gentlemen, will you sum up?

Mr. Conyers. My Lord, we are agreed, we submit to the Court on both Sides.

L. C. J. Then Gentlemen of the Jury, the Prisoner at the Bar, *Mr. Rookwood* is Indicted for High-Treason, in Compassing, Imagining, and Intending the Death and Destruction of the King, by a most barbarous and wicked Assassination; you have had an Account of this Design from Two Witnesses that have been produced, the One is *Captain Porter*, and the Other is *Mr. Harris*, who swear they were both concerned as Actors in it.

Captain Porter tells you, about the latter End of *January*, or the Beginning of *February* last, *Sir George Barclay* came over into *England* from *France*; and there was a formed Design to mur-

der the King; and after several Meetings and Conferences among the Conspirators, they came to a Resolution that he should be assassinated; but which way to effect it, admitted of a Dispute among them; for the King, as you have heard, going frequently, about once a Week a Hunting, on the other side the Water near *Richmond*, the Design was first to assassinate him at *Richmond Park*, or thereabouts, as he returned from Hunting, and Preparation was made accordingly; but that not being so fully agreed upon, the Conveniency of the Place held still some Debate; for some were of Opinion, that it was better to make the Attempt on this side the Water, than on the other; therefore as *Mr. Porter* tells you, to determine that Difficulty, there were several Men sent, whereof he was one, *Knightley* another, and *King* a Third, to view the Ground on both sides the Water, and to make their Report; the Ground being view'd and the Report made to some of their Accomplices, who to receive it met at the *Nagg's-Head* in *Covent-Garden*, which was about the Tenth or Twelfth of *February* last; it was then agreed, that the King and his Guards should be attack'd on this side the Water about *Turnham-Green*.

Mr. Porter has told you, that at several Meetings for the carrying on this Design, the Prisoner *Mr. Rookwood* was present, more particularly at the *Globe-Tavern* in *Hatton-Garden*, where were also *Sir George Barclay*, *Mr. Charnock*, *Sir William Perkins*, himself, and others, and there they did enter into a Consult how they might assassinate the King; and it being proposed, *Mr. Rookwood* did not like it, as *Mr. Porter* says, but said it was a desperate Attempt, and thereupon *Sir George Barclay* pulled out a Scheme that he had, and shew'd it at that Time to *Mr. Rookwood*, and said you are sent over from *France*, and are to obey my Orders, and you are to command a Party; and then *Mr. Rookwood* made an Answer in French, *there's an End of it*, which, as he says, imports a Consent.

Then at another Time, which was the *Saturday* Morning the 15th of *February*, they met at *Captain Porter's* Lodging, and there was a Discourse about going on to put the Design in Execution; and one *Durant*, one of the Men that was to watch the King and the Guards going out at *Kensington*, came in, and the Question was, whether they should go that Day upon the Design; they had Discourse about it, and *Mr. Rookwood* the Prisoner was there present, and there did not appear any Dissent in him to the Prosecution of the Design, but it seems it was readily agreed among them, to pursue it according to the former Determination.

Then the next Witness that is produc'd is *Mr. Harris*, who gives you a large Account of the Beginning of his Knowledge, and of his being concern'd in this Matter; he tells you he was in *France*, and at the Court of *St. Germains*, where the late King then was, and that he spoke with him, and where was also *Colonel Parker*, and *King James* took Notice of him and of his faithful Service, and told him, he always design'd him a Kindness, and then had Opportunity of doing it, and said he would send him over into *England*, where he should be subsisted, and directed him to obey the Orders of *Sir George Barclay*; and there being one *Hare* by, who was to come

come over with him, King *James* gave them both Names of Disguise, which they were to go by in *England*, and, as it seems, others that came over did also assume; for *Mr. Rookwood* went by the Name of *Roberts*, *Harris* was to go by the Name of *Jenkins*, and *Hare* by the Name of *Guiney*; they were directed to apply themselves to *Sir George Barclay*, and had Directions how they should find him, which were to go into *Covent-Garden* in the Evening, upon a *Monday* or a *Thursday*; and if they saw a Person that had a white Handkerchief hanging out of his Pocket, they were to take Notice of him to be *Sir George Barclay*, and they had Ten *Lewis d'Ores* a-piece for their Journey's to carry them off; and you have heard from whom they had them; and they were told, that if at *Calais* they were kept longer than they expected, whereby their Money was spent, Care was taken that they should be supplied from the Governor of *Calais*, the President there; and it seems *Mr. Harris* and *Mr. Hare* went together to *Calais*, and lay a considerable Time for want of a Wind, whereby their Money fell short of defraying their Expences; but they were afterwards supplied by the Governor of *Calais*, according as was promised at *St. Germain's*.

Gentlemen, he tells you, that after they came into *England*, the first Time they went to seek *Sir George Barclay*, was upon the *Monday* Night, but they did not find him at that Time, but afterwards they met with him, and *Mr. Harris* had Subsistence-Money from him, according to King *James's* Promise, which was at the Rate of 5 s. a Day when he had no Horse, and afterwards when he had a Horse at 6 s. a Day; this is the Account he gives you how he came over, and of his Journey and Meeting with *Sir George Barclay*.

And now he comes to speak particularly concerning the Prisoner at the Bar, *Mr. Rookwood*: He tells you that on *Saturday* Morning the 15th of *February*, the first Day when this Assassination was designed to be committed, he went to the Lodging of one *Burk*, where *Mr. Rookwood* was, with others, and he found them all in a great Disorder; and thereupon he ask'd them, What was the Matter, and what they were going to do? And *Rookwood* bid him go to one *Counter*, and he should know of him what was the Matter: Accordingly he went to his Lodging, and *Counter* told him and those who were with him, That they must get ready to go to *Turnham-Green*; and at the same Time and Place he met with *Sir George Barclay*, and after some Discourse of attacking the Coach, *Sir George Barclay* at the first said, They were his Janizaries; and afterwards going out, he came in again and said, They were Men of Honour, and that they were to go abroad to attack the Prince of *Orange*.

The next Day, or a little Time after, *Mr. Harris* met with *Mr. Rookwood*, and enters into Discourse with him to this Effect: What! are we sent over to murder the Prince of *Orange*? It is a strange Sort of Employment: (for it seems they were not informed in *France* what they were to do here, but they were to put themselves under the Conduct of *Sir George Barclay*, and obey his Orders.) *Mr. Rookwood* said, He was afraid the Thing was so, and that they were drawn in; but said, If he had known of the Design before-hand, he would not have come over but have begg'd the King's Pardon. Which shews not only his Know-

ledge of the Design, but his being engaged in the Prosecution of it.

And then, Gentlemen, you are told further; That upon the Going out upon *Saturday* the 22d, which was the second Time it was to have been put in Execution, there was a List of Men that *Mr. Rookwood* gave to *Mr. Harris* of several Names that he has mentioned to you; he says, *Mr. Rookwood's* Name was at the Top, as one that was to command the Party, and the Name he went by was *Roberts*; and there was *Harris's* counterfeit Name, which was *Jenkins*; and *Hare's* counterfeit Name, which was *Guiney*; and they were to make ready to go to *Turnham-Green*. He told him, There was a List, and that he and *Harris* was to be of his Party, that he was to attack the Prince of *Orange*, and that *Mr. Harris* should be his *Aid du Camp*.

Gentlemen, I forgot to tell you, That between the first *Saturday* and the Second, *Mr. Harris*, *Mr. Rookwood*, and *Mr. Lowick*, walking in *Red-Lyon-Fields*, and there in Discourse among themselves, *Mr. Harris* and *Mr. Rookwood* did express themselves to be much concerned that they were to be employed upon such a Design as this was, which they owned to be very barbarous; but *Mr. Rookwood* and *Lowick* said, They were under Command, and must obey Orders, tho' *Mr. Rookwood* did not like the Design they were engaged in.

Gentlemen, they have told you of Horses that were placed at *Somerset-House* in a Stable there, under the Care of *Mr. Lewis*, my Lord *Feversham's* Gentleman of the Horse, about six or seven Horses, and those six Horses that were there at that Time were afterwards taken away; but that is only a Circumstance.

So that, Gentlemen, this is now the Sum and Substance of this Evidence that has been given you, as far as it relates to the Prisoner: his Council in his Defence have insisted upon several Things; in the first Place, tho' it was last mentioned in Time, yet it ought to have the first Consideration; The Council for the Prisoner have endeavoured to take off the Credit of *Mr. Porter*, and have opened indeed very great Crimes that he should be guilty of, which must render him a Person not to be believed, but they have not proved any Thing; no Witness that they have called against *Mr. Porter* says the least against him to invalidate his Testimony, or to induce you to disbelieve what he has said:

Then they say in Point of Law, There is no Overt-Act proved of any Design against the King's Life that affects *Mr. Rookwood*; now that Matter you are to consider of, Whether or no it does appear by the Testimony of two Witnesses, that *Mr. Rookwood* was concerned in this Design of Assassinating the King; *Capt. Porter* is positive that he was at the Consult at the *Globe* Tavern, where it was proposed, debated, and resolved upon; but *Mr. Rookwood* says, he did dislike it; so says *Captain Porter*, he did not approve of it at the first upon his being acquainted with it; but being sent over to obey the Orders of *Sir George Barclay*, and *Sir George Barclay* producing a Scheme ready drawn, wherein he was to command the Party, telling him, That he must obey Orders. You hear what he said, and the Answer he return'd in *French*, There's an End of it; Whether that does not amount to

a Consent and Agreement to be engaged in this Design, is left to your Consideration, for if it do, it is plainly an Overt-Act.

Then, Gentlemen, you hear further that *Harris* was told by *Mr. Rookwood*, that he should be of his Party, and be his *Aid du Camp*, and go to *Turnham-Green*, to attack the Prince of *Orange*, and he had a List of Men given him by *Rookwood*, and was directed to get the rest ready.

Rookwood. That was not in the Indictment.

L. C. J. But you were at that Meeting, which is laid in the Indictment.

Rookw. My Lord, that List is not in the Indictment; the List in the Indictment refers to *Mr. Cranburne*.

L. C. J. No, but that is an Evidence of your being in the Design; I hope that List of Men will be some Evidence of the Consent and Agreement that *Mr. Rookwood* was to command a Party.

Sir B. Shower. With Submission, my Lord, the Words of the Act seems otherwise, and that no Overt-Act should be given in Evidence, that is not expressly alledged.

L. C. J. But cannot there be one Act, that may be Proof of another Act which is alledged.

Sir B. Shower. Then there is no Advantage of this Law; for my Lord, the End of the Act was, That they should know the particular Crimes that they were to answer to.

L. C. J. That could never be the End of the Law, that all particular Facts that are but Evidence of the Facts alledged should be set forth in the Indictment; it was sufficient before the Act, to alledge any Overt-Act, and any other Overt-Act, though not alledged, and had no Relation to the Overt-Act that was alledged, yet if it were to the same Sort of Treason, might be given in Evidence.

Sir B. Shower. The Law says, ye shall not give Evidence of any Overt-Act that is not expressly mentioned.

L. C. J. It is not urged as an Overt-Act, but as Evidence of an Overt-Act that is alledged; for Instance, the Overt-Act alledged, is, That they did meet and consult, shall not they give in Evidence what was said and done at those Meetings, tho' not alledged? *Sir George Barclay* produced a Scheme at the *Globe Tavern*, shall not the producing of that Scheme be given in Evidence? if it may, why not the giving the List to *Harris*?

Mr. Phipps. My Lord, it is plain it was *Mr. Attorney's* Opinion, it could not be given in Evidence, unless it was alledged in the Indictment; because he has particularly alledged the List in *Cranburne's* Case, in this very Indictment.

Mr. Sol. Gen. I know not what those Gentlemen mean by this Sort of Practice; certainly there never were so many Irregularities committed in any Trial as in this, and now particularly to break in upon the Court in the midst of the Charge.

L. C. J. Nay, nay, if there be any Mistake, let us hear them, that it may be rectified.

L. C. J. Treby. I think we should receive them, to try if they can make it out. But the Objection I do not very well understand yet; for, as I take the Matter to stand, it is alledged in the Indictment, That they had prepared Men, and Arms, and Horses, for the Execution of this Design. Now is it not reasonable, or can there be any Thing more proper, than to give in Evidence, and prove that the Prisoner had, and delivered to some of the Complices, a List of those Men that were to

do it. Why it proves the very Thing alledged; but let us see whether it be so?

Sir B. Shower. My Lord, there is no such Thing alledged.

L. C. J. That is strange. Pray see if it be not in the Indictment.

Clerk of Arraignment. (Reads.) *Conveniebant, proposuerunt, tractaverunt, consultaverunt, consenserunt, & agreaverunt, ad ipsum Dominum Regem nunc ex Infidiis & Dolo percutiendum, Anglice, to assassinate, interficiendum, & murtherandum; & ad execrabilem, horrendam, & detestabilem Assassinationem, Anglice, Assassination, & Interfectionem illam citius exequendum & perpetrandum, postea, scilicet eisdem Die & Anno, ac diversis aliis Diebus & Vicibus, apud Parochiam predictam in Comitatu predicto, proditorie tractaverunt, proposuerunt, & consultaverunt de Viis, Modis & Mediis, ac Tempore & Loco, ubi, quando, qualiter & quomodo dictum Dominum Regem sic ex Infidiis facilius interficerent; & consenserunt, agreaverunt & assenserunt, quod quadraginta Homines equestres aut eo circiter, quorum iidem Christophorus Knightley, Robertus Lowick, Ambrosius Rookwood & Carolus Cranburne forent quatuor, & quilibet horum proditorie super se suscepit esse unum, cum Bombardis, Sclopis & Sclopetis, Pulvere bombardico & Globulis plumbeis oneratis, & cum Gladiis, Ensisibus & aliis Armis armati insidiati forent, & essent in Subseffu, Anglice, in Ambush, ad eundem Dominum Regem in Rheda sua, Anglice his Coach, existentem, quando foris iret invadendum; quodque quidam & competens Numerus de Homibus illis sic armatis in Satellites, Anglice the Guards, ipsius Domini Regis cum tunc attendentes & secum existentes aggressi forent, et eos expugnarent & devincerent, dum alii eorundem Hominum sic armatorum ipsum Dominum Regem percuterent, interficerent, occiderent & murtherarent.*

Mr. Conyers. And my Lord, there is Evidence of some of these Forty Men, whose Names were given in a List by *Rookwood* to *Harris*.

Mr. Phipps. But now in *Cranburne's* Part, the List is expressly alledged as an Overt-Act.

L. C. J. Never talk of *Cranburne*, we have not him before us now, but what do you say to this of the List given by *Rookwood* to *Harris*?

Sir B. Shower. My Lord, we say this is not Evidence of an Overt-Act, according to this Act of Parliament; which says, No Evidence shall be given of any Overt-Act, that is not expressly alledged in the Indictment; now the Indictment says, they did agree that Forty Horsemen armed, of which the Four named were to be Four, and every one undertook to be one, who should lie in wait to set upon the King in his Coach, and a competent Number should set upon the Guards; and then it says, in order to fulfil this, they did prepare Horses and Arms, and one of them by the Consent of all the rest, did carry forward and backward a List, that is, *Cranburne*; and that particular List is a particular Overt-Act alledged in the Indictment, which makes it plain, they thought it necessary to be particularly alledged by this Act of Parliament, or they could not give any Evidence of it; now the List that Evidence is given of, is supposed to be delivered by the Prisoner to *Harris*. Now first we say, it is not Evidence that Forty should do it, for they may do it without a List; and next it is not Evidence of the List that

that they have mentioned, for that is alledged to be carried about by *Cranburne*, and as the Prisoner himself has observed, this List given to *Harris* is not in the Indictment, and therefore no Evidence can be given of it.

Mr. Conyers. It is an Evidence of that Overt-Act which is expressly alledged in the Indictment, that they met together to consult how to effect this Treason.

Mr. Cowper. My Lord, we are in a very strange Case here, if we be not very proper in this Part of our Evidence; the Overt-Act laid, is, That the Prisoner met together with others to consult how to assassinate the King, and there the Prisoner among the rest did agree it should be done so and so. 'Tis admitted the Prisoner was there; but, say they, if you only prove that he sat by, while there was a general Discourse of such a Matter, but do not prove that he said or did any Thing, expressing his Assent, that will not amount to a Proof of the Overt-Act laid; and yet, if we go about to prove further, any Act done that manifests his Assent, then they say you go too far, and prove an Overt-Act that is not mentioned in the Indictment: Thus they grant, the Agreement is a sufficient Overt-Act, but object, that being present barely is not a sufficient Proof of his Agreement; then when we go to make Proof of any Thing that is a sufficient Proof of his Agreement, they tell us it is not proper upon this Act of Parliament, because not laid in the Indictment, though his Agreement be laid in the Indictment: And so they would amuse us, rather than make any solid Objection to our Evidence. This Doctrine is certainly very odd, my Lord, and we doubt not will have little Weight with the Court or the Jury.

Mr. Att. Gen. According to this Doctrine all the Evidence must be put in the Indictment.

L. C. J. They ask you what this giving this List does prove?

Mr. Att. Gen. His Agreeing at that Meeting to the Conspiracy, and the Execution of it, by giving that List of the Names of them that were to be of his Party, and his own Name as Commander of that Party, this he gives to one that was to be of the Party, and particularly was to be his *Aid du Camp*, in order to get them ready for the Execution; is not this an Evidence of the Agreement, which is the Overt-Act? No Man in the World can be convicted of Treason, if this Doctrine be true.

Mr. Sol. Gen. My Lord, they have not express'd something in the Indictment that has been read, which will make it plain that this is the most proper Evidence of the Overt-Act laid in the Indictment. The Indictment says, they agreed there should be forty Men or thereabouts armed, of which a certain Number should make an Assault upon the King's Coach, while another Part should set upon the Guards: Now the Proof we make is, that *Mr. Rookwood* the Prisoner, was to command a Party that was to set upon the Guards, and in order to it, he gives a List of his Men to *Harris* who was to be his *Aid du Camp*, and bids him get those Men ready; and this was upon the Day that this Matter was to be acted: So that it proves very plainly that Overt-Act that we suggest in the Indictment, that a certain Number of those Men were to assault the King's Person, and another Part the Guards. And therefore they needed not to have interrupted your Lordship; for this List

that *Harris* speaks of, is a very good Proof of the Overt-Act that is laid in the Indictment.

L. C. J. Then, Gentlemen, as to this Matter which they have objected, that this List given on the Day of the intended Assassination, ought not to be allowed as Evidence to prove the Treason, because it is not specially laid in the Indictment, but is by the late Act of Parliament excluded from being proved to convict the Prisoner; now tho' the Act doth exclude the giving in Evidence of any Overt-Act that is not laid in the Indictment, yet it doth not exclude such Evidence as is proper and fit to prove that Overt-Act that is laid in the Indictment. Therefore, the Question is, whether this giving of the List does not prove some Overt-Act that is alledged in the Indictment? There is in the Indictment an Agreement laid to kill the King, and if that be proved, that's an Overt-Act of this Treason; now when the Consent and Agreement of *Mr. Rookwood* to that Design is proved, surely the Proof of his giving a List of Men is a further Proof that he did agree to it, and then it is very proper to be given in Evidence; for if by the new Statute no one Act can be given in Evidence to prove another, then must not only the Overt-Act, but also the Evidence of that Act be expressed in the Indictment.

Gentlemen, you have heard the Witnesses what they say concerning this Matter. In the first Place, if you do believe that there was such Consults and Meetings, where this intended Assassination of the King was debated and resolved upon, and that *Mr. Rookwood* was present and did agree to it, that is an Overt-Act; and again, if you are satisfied that there was an Agreement to prepare and provide a Number of Men to set upon the King and his Guards, in the Manner you have heard, and he was concerned in making this Provision, and was to have a Post, and command a Party in that Attack, that is a further Proof of that Consent and Agreement, that is laid in the Indictment.

Gentlemen, I must leave it to you, upon the Evidence that you have heard; if you are satisfied, upon the Testimony of these two Witnesses that have been produc'd, That *Mr. Rookwood* is guilty of this Treason of which he is Indicted, in Compassing and Imagining the Death of the King, then you will find him Guilty: If you are not satisfied that he is Guilty, you will acquit him.

Cl. of Arr. Cryer swear an Officer to keep the Jury.

(Which was done.)

L. C. J. Now if you have any Thing to move on Behalf of your other Clients pray do it.

Sir B. Shower. Yes, we have an Exception, but never a one of false Spelling.

L. C. J. If so be it be any such Matter as you can move in Arrest of Judgment, it had best be reserv'd till after the Verdict.

Sir B. Shower. Our Exceptions will serve if Occasion be for *Mr. Rookwood* in Arrest of Judgment, and they will serve for the others also to prevent the Trouble of the Trial, if we have your Lordship's Opinion that they are good Exceptions.

Then the Jury withdrew to consider of their Verdict, and after a Quarter of an Hour's staying out return'd, and gave in their Verdict.

Cl. of Arr. Gentlemen of the Jury, Answer to your Names. *Samuel Powel*.