

A
Complete Collection
OF
STATE-TRIALS,
AND
PROCEEDINGS
UPON
HIGH-TREASON,
AND OTHER
CRIMES and MISDEMEANOURS;
FROM
The Reign of King RICHARD II.
TO
The End of the Reign of King GEORGE I.

The FIFTH VOLUME.

With Two Alphabetical Tables to the Whole.


The THIRD EDITION, with ADDITIONS.

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A COMPLETE
COLLECTION
OF
TRIALS, &c.

CLXI.

The TRIAL of Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes, at the Old Bailey, for Felony and Piracy, Octob. 19. 1696. 8 Will. III.

Admir. Angl. ff.

The Sessions of Oyer and Terminer, and Goal-Delivery, held for our Sovereign Lord the King, for the Jurisdiction of the Admiralty of England, at Justice-Hall in the Old Bailey, in the Suburbs of the City of London, on Monday the 19th Day of October, in the Eighth Year of the Reign of our said Sovereign Lord King William the Third, over England, &c. before the Right Honourable Edward Russel, Esq; Henry Priestman, Esq; Sir Robert Rich, Knight and Baronet; Sir George Rooke, Knight; Sir John Houblon, Knight; and James Kendal, Esq; Commissioners for Executing and Exercising the Office and Place of Lord High Admiral of England, respectively assigned and deputed; the Right Worshipful Sir Charles Hedges, Kt. Doctor of Law, Lieutenant in the High Court of Admiralty of England, Commissary-General of our Sovereign Lord the King, and President and Judge of the said Court; the Right Honourable Sir John Holt, Kt. Lord Chief Justice of the King's Bench; Sir George Treby, Kt. Lord Chief Justice of the Common Pleas; Sir Edward Ward, Kt. Lord Chief Baron of the Exchequer; Sir Tho. Rokeby, Kt. and one of the Justices of the King's Bench; Sir Samuel Eyre, Kt. another of the Justices of the King's Bench; Sir John Turton, Kt. another of the Justices of the King's Bench; Sir John Powell, Kt. one of the Justices of the

Common Pleas; Sir Littleton Powis, Kt. one of the Barons of the Exchequer; William Bridgeman and Josias Burchet, Esqrs; Secretaries of the Admiralty of England; Thomas Lane, William King, and John Cooke, respectively Doctors of Laws; and others his Majesty's Justices named in the said Commission.



HIS Majesty's Commissioners being then and there met, the Commission was read, and Proclamation made for Attendance: After which, the Gentlemen of the Grand Jury were called and sworn, and received their Charge from Sir Charles Hedges, Kt. Judge of the High Court of Admiralty, who set forth unto them the Nature of the Commission, the Extent of the Jurisdiction of the Court, and the subject Matter of their Enquiries.

*Then the Witnesses for the King being sworn, the Grand Jury withdrew, and after a little Time returned, finding *Billa vera* against Henry Every, not yet taken, Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes, Prisoners, for feloniously and piratically taking and carrying away, from Persons unknown, a certain Ship called the *Gunsway*, with her Tackle, Apparel, and Furniture, to the Value of 1000*l.* and Goods to the Value of 110*l.* together with 100000 Pieces of Eight, and 100000 Chequins, upon the High Seas, ten*

Leagues from the Cape *St. John's*, near *Surat* in the *East-Indies*. Then *Dawson*, *Forsyth*, *May*, *Bishop*, *Lewis*, and *Sparkes*, were brought to the Bar, and their Indictment was read.

Joseph Dawson confessed that he was Guilty, but the rest pleaded Not Guilty, and put themselves upon their Trials; and thereupon the Petty Jury was called, and the Persons, whose Names follow, were sworn.

<i>William Walker,</i>	}	<i>Benjamin Dry,</i>
<i>John Child,</i>		<i>John Sherbrooke,</i>
<i>Edward Leeds,</i>		<i>Samuel Jackson,</i>
<i>Thomas Clarke,</i>		<i>Thomas Emms,</i>
<i>Nathan Green,</i>		<i>Henry Hunter,</i>
<i>Henry Sherbrooke,</i>		<i>John Hall.</i>

Then the King's learned Council opened the Indictment, &c. and *Dr. Newton* made a Speech; which is as follows.

My Lord, and Gentlemen of the Jury,

THE Prisoners are indicted for Piracy, in Robbing and Plundering the Ship *Gunsway*, belonging to the Great Mogul and his Subjects, in the Indian Seas, to a very great Value.

And the End was suitable to their Beginning; they first practised these Crimes upon their own Countrymen, the English, and then continued them on to Strangers and Foreigners: For the Ship in which this Piracy was committed, was an English Vessel, called the *Charles the Second*, belonging to several Merchants of this City, designed for others Ends, and a far different Voyage, which by these Criminals, with the Assistance of one Every, their Captain, in all these Villanies, was seized near the Groyn in Spain, in May 1694. from which Place, having first, by Force, set Captain *Gibson* the Commander on Shore, they carried off the Ship, and with it committed many and great Piracies, for several Years (as will appear in the Course of the Evidence) in most of the Parts of the known World, without Distinction, upon all Nations, and Persons of all Religions.

Their last Piracy was this in the Indies, the greatest in itself, and like to be the most pernicious in its Consequences, especially as to Trade, considering the Power of the Great Mogul, and the natural Inclination of the Indians to Revenge: But they are now brought hither on their Trial, and, if the Matters they are charged with, shall be proved, to receive that Judgment from you, their Crime deserves; and that is Piracy, which by so much exceeds Theft or Robbery at Land, as the Interest and Concerns of Kingdoms and Nations, are above those of private Families, or particular Persons: For suffer Pirates, and the Commerce of the World must cease, which this Nation has deservedly so great a Share in, and reaps such mighty Advantage by: And if they shall go away unpunished, when it is known whose Subjects they are, the Consequence may be, to involve the Nations concerned in War and Blood, to the Destruction of the innocent English in those Countries, the total Loss of the Indian Trade, and thereby the Impoverishment of this Kingdom.

The Witnesses for the King, viz. *John Dan*, and *Philip Middleton*, were then called and sworn, and in the Opinion of the Court gave a full Evidence against the Prisoners, which was very clearly summ'd up by the Lord Chief Justice *Holt*; the Tenour whereof is particularly set

forth in the following Trials: But the Jury, contrary to the Expectation of the Court, brought in all the Prisoners *Not Guilty*; whereupon the Sessions was adjourned to *Saturday* the 31st of *October* following, and the Prisoners were committed upon a new Warrant for several other Piracies.

Die Sabbati, tricesimo primo Octobris, Annoq; Regni Regis Williclmi Tertii Octavo, Annoq; Domini 1696.

THE Court being sat (at which were present *Sir Charles Hedges* Judge of the High Court of Admiralty, the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, the Lord Chief Baron *Ward*, Mr. Justice *Rookby*, Mr. Justice *Turton*, Mr. Justice *Eyre*, Mr. Baron *Pocock*, Dr. *Lane*, Dr. *King*, and Dr. *Cook*) the Court proceeded in this Manner.

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, draw near and give your Attendance: And you Sheriffs of the City of *London*, return the several Precepts directed to you, and returnable here this Day, upon Pain and Peril that shall follow thereon.

[Then the Grand Jury were called over, and the Appearances mark'd.]

Cl. of Arr. Make Proclamation.

Cryer. O yes, &c. The Lords the King's Justices charge and command all Persons to keep Silence while the Charge is giving.

The Judge of the Admiralty's Charge to the Grand Jury upon this Occasion.

Sir Charles Hedges. Gentlemen of the Grand Jury, **T**HE Opinion which this Court had of the good Intentions, Abilities, and Integrity of the last Grand Jury, was so fully answered at our late Meeting in this Place, that I am confident all good Englishmen, who were Witnesses of their Proceedings, will concur in giving them publick Thanks for the good Services which they then performed: I wish that all others, who were concerned in the Dispatch of that Day's Business, had the like Pretence to have the same; the publick Justice of the Nation would not then have lain under any Manner of Reproach, neither would you have had this farther Trouble. But seeing that it hath so happen'd, it is become absolutely necessary that a farther and a strict Enquiry should be made after those Crimes which threaten, and tend to the Destruction of our Navigation and Trade; and therefore I am assured of your Patience, whilst I shew you briefly,

1. What the Crimes are, which you are to enquire after.
2. How far the Jurisdiction and your Power in making these Enquiries doth extend.
3. What is the Duty incumbent on you in this behalf.

1. As to the Crimes, I shall not repeat what was mention'd touching all the Particulars thereof, at the Opening of this Sessions; but confine my

my Discourse to those, which I find by the Calendar will, at this Time, necessarily fall under your Examination; and those are Piracies.

Now Piracy is only a Sea-Term for Robbery, Piracy being a Robbery committed within the Jurisdiction of the Admiralty. If any Man be assaulted within that Jurisdiction, and his Ship or Goods violently taken away without a legal Authority, this is Robbery and Piracy. If the Mariners of any Ship shall violently dispossess the Master, and afterwards carry away the Ship itself, or any of the Goods, or Tackle, Apparel, or Furniture, with a felonious Intention, in any Place where the Lord Admiral hath, or pretends to have Jurisdiction, this is also Robbery and Piracy. The Intention will, in these Cases, appear, by considering the End for which the Fact was committed; and the End will be known, if the Evidence shall shew you what hath been done.

2. Now the Jurisdiction of the Admiralty is declared, and described in the Statute, and Commission, by Virtue of which we here meet, and is extended throughout all Seas, and the Ports, Havens, Creeks, and Rivers beneath the first Bridges next the Sea, even unto the higher Water-mark.

The King of *England* hath not only an Empire and Sovereignty over the *British* Seas, but also an undoubted Jurisdiction, and Power, in Concurrency with other Princes and States, for the Punishment of all Piracies and Robberies at Sea, in the most remote Parts of the World; so that if any Person whatsoever, Native or Foreigner, Christian or Infidel, Turk or Pagan, with whose Country we have no War, with whom we hold Trade and Correspondence, and are in Amity, shall be robbed or spoiled, in the Narrow Seas, the Mediterranean, Atlantick, Southern, or any other Seas, or the Branches thereof, either on this or the other Side of the Line, it is Piracy within the Limits of your Enquiry, and the Cognizance of this Court.

3. Concerning the Duty incumbent upon you in making your Enquiries, and Presentments, you may consider that there is a great Trust and Authority committed to you; and therefore it will be expected that a suitable Care should be had, and your Power executed according to a well-regulated Discretion: As you are, on the one hand, to take Care that the Court be not troubled, nor any Man put in Hazard of his Life, through any frivolous, or malicious Prosecution; so, on the other Side, and more especially in the Cases of great and publick Offences, you are to use your utmost Endeavours, that Justice, the Support of Government, be not obstructed by any Partial Proceedings.

You are not obliged in all Cases to require a clear and full Evidence, but only to examine till you find, and are satisfied in your Consciences, that there is sufficient and just Cause to put the Party accused upon his Trial. You cannot convict, but may in Effect acquit the greatest Criminals; and therefore, if you do but find Proofs enough to create a Presumption against the Party accused, when the Case seems odious, and is of great Consequence and Importance, your safest Way is to put it in a proper Method for the Petty Jury, who are to receive full Satisfaction from the Evidence that shall be given in the Presence of the Party; and according to that Evi-

dence, have Power to determine whether guilty, or not guilty, condemn, as well as acquit.

And upon this Occasion, seeing many who are upon that Service are present, it seems fit that they should also know that they have no Power to do more or less than what is agreeable to the Evidence: They are not to interpose in Points of Law, or to be swayed by any Consideration whatsoever, but what shall arise from the Proofs judicially made; they are indeed Judges of the Fact, but they are not arbitrary; they are as much restrained by the Dictates of Conscience, informed and convinced by reasonable Proofs, as the Judges on the Bench are by the Rules of Law.

No Man can believe just as he lists; and therefore a Determination, or Judgment at Will and Pleasure, will never be thought to deserve the Name of a Verdict: For whatever may be pretended, the World will not be persuaded that a Jury hath pursued the Dictates of Conscience, unless some reasonable Grounds for its Proceedings shall appear; and therefore, whenever it shall happen that notorious Malefactors escape unpunished, notwithstanding that in the Opinion of most good Men there was a full and sufficient Evidence for their Conviction, it is to be wished, and indeed it seems to me to be necessary, in Cases that relate to the Laws of Nations, that the Reasons which induced such a Determination, should be given for the publick Satisfaction; otherwise, since Foreigners look upon the Decrees of our Courts of Justice as the Sense and Judgment of the whole Nation, our Enemies will be glad to find an Occasion to say, that such Miscreants as are out of the Protection of all Laws, and Civil Government, are abetted by those who contend for the Sovereignty of the Seas. The barbarous Nations will reproach us as being a Harbour, Receptacle, and a Nest of Pirates; and our Friends will wonder to hear that the Enemies of Merchants and of Mankind, should find a Sanctuary in this ancient Place of Trade. Nay, we our selves cannot but confess, that all Kingdoms and Countries who have suffered by *English* Pirates, may, for Want of Redress in the ordinary Course, have the Pretence of Justice, and the Colour of the Laws of Nations to justify their making Reprizals upon our Merchants, wheresoever they shall meet them upon the Seas. If a Jury happens in these Cases to be too severe, there is room for Mercy, and I am confident, that upon a just Representation, the Innocent never failed of obtaining it; but for a Fault, Neglect, or Error on the other hand, there is no Relief for injured Foreigners, but by their carving out, as we may be sure they will, for themselves, such a Satisfaction, upon our Merchants, as they shall think fit, whenever they shall have an Opportunity; and so our whole Nation must unavoidably suffer both in Reputation and Interest, and all as it were through our own Default.

I hope what hath been said upon this unexpected Occasion, will not be looked upon as intended to influence any Jury; I am sure it is far from being so designed: Religion, Conscience, Honour, common Honesty, Humanity, and all Laws, forbid such Methods: There is no Doubt but the Judge as well as the Juryman then best discharges his Duty, when he proceeds without Favour or Affection, Hatred or Ill-will, or any partial Respect whatsoever.

Every Man ought to be extremely tender of such a Person as he has Reason to believe is innocent; but it should be considered likewise on the other Side, that he who brings a notorious Pirate, or common Malefactor, to Justice, contributes to the Safety and Preservation of the Lives of many, both bad and good; of the Good, by Means of the Assurance of Protection, and of the Bad too, by the Terror of Justice. It was upon this Consideration that the *Roman* Emperors in their Edicts made this Piece of Service for the publick Good, as meritorious as any Act of Piety, or religious Worship.

Our own Laws demonstrate how much our Legislators, and particularly how highly that great Prince King *Henry* the 5th, and his Parliament, thought this Nation concerned in providing for the Security of Traders, and scouring the Seas of Rovers and Free-booters. Certainly there never was any Age wherein our Ancestors were not extraordinary zealous in that Affair, looking upon it, as it is, and ever will be, the chief Support of the Navigation, Trade, Wealth, Strength, Reputation and Glory of this Nation.

Gentlemen, our Concern, as our Trade is, ought in Reason to be rather greater than that of our Fore-fathers; we want no manner of Inducements, no Motives to stir us up, whether we consider our Interest or Honour; we have not only the sacred Word, but also the glorious Acts of the best of Kings, which sufficiently manifest to us, that the Good and Safety of this Nation is the greatest Care of his Life. Let every Man therefore, who pretends to any thing of a true *English* Spirit, readily, chearfully follow so good, so great, so excellent an Example, by assisting and contributing to the utmost of his Power and Capacity at all Times towards the carrying on his noble and generous Designs for the common Good, and particularly at this Time, by doing all that he can, to the End that by the Administration of equal Justice, the Discipline of the Seas, on which the Good and Safety of this Nation entirely depends, may be supported and maintained.

Then the Witnesses being sworn in Court, the Grand Jury withdrew to hear their Evidence; and in the mean Time T. Vaughan, J. Murphey, and Tim. Brenain, were arraigned, whom the Keeper of Newgate, by Order, brought to the Bar.

Cl. of Arr. T. Vaughan, Hold up thy Hand; (which he did.) Thou standest indicted, &c.

Art thou Guilty of this High Treason whereof thou standest indicted, or Not guilty?

T. Vaughan. Not guilty.

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

T. Vaughan. By God and this Country.

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

Cl. of Arr. J. Murphey, Hold up thy Hand; (which he did.) Thou standest indicted, &c.

How sayest thou, *J. Murphey*, Art thou Guilty of the High Treason whereof thou standest indicted, or Not guilty?

J. Murphey, Not guilty.

Cl. of Arr. How wilt thou be tried?

J. Murphey. By God and the King.

Officer. You must say, by God and my Country.

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

Cl. of Arr. Bring *Tim. Brenain* to the Bar, (who was brought accordingly.)

Cl. of Arr. Tim. Brenain, Have you any Copy of your Indictment?

Tim. Brenain. Yes.

Cl. of Arr. When had you it?

Tim. Brenain. This Day Se'ennight.

Cl. of Arr. Tim. Brenain, Hold up thy Hand, (which he did.) Thou standest indicted, &c.

How sayest thou, Art thou Guilty of the High Treason whereof thou standest indicted, or Not guilty?

Tim. Brenain. Not guilty.

Cl. of Arr. How wilt thou be tried?

T. Brenain. By God and my Country.

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

Mr. Mompesson. Will your Lordships please that he may be tried now?

L. C. J. Treby. Does he desire to be tried now?

Mr. Mompesson. Yes, my Lord, there is no Evidence against him, and he is sick.

Mr. Sol. Gen. We are not now prepared for the Trial.

L. C. J. Treby. If the King's Council and the Prisoner be agreed, with all my Heart.

L. C. J. Holt, He may be tried with the rest.

Then T. Vaughan, J. Murphey, and T. Brenain had Notice to prepare for their Trials on Friday next, at Two of the Clock in the Afternoon.

Then the Grand Jury came into Court.

Cl. of Arr. Gentlemen of the Grand Jury, are you agreed in your Bills?

Grand Jury. Yes.

Cl. of Arr. *Billa vera* against *Joseph Dawson, Ed. Forseith, W. May, W. Bishop, James Lewis, and J. Sparkes,* for Piracy and Robbery.

Cl. of Arr. Keeper of *Newgate,* set *Joseph Dawson, Ed. Forseith, Will. May, Will. Bishop, Will. Lewis, and J. Sparkes* to the Bar. (Which was done accordingly.)

Cl. of Arr. Joseph Dawson, hold up thy Hand. (Which he did.)

Ed. Forseith, hold up thy Hand. (Which he did.)

W. May, hold up thy Hand. (Which he did.)

W. Bishop, hold up thy Hand. (Which he did.)

James Lewis, hold up thy Hand. (Which he did.)

Jo. Sparkes, hold up thy Hand, (Which he did.)

Then the Indictment was read, and set forth,

That Henry Every, alias Bridgman, Joseph Dawson, Edward Forseith, William May, William Bishop, James Lewis, and John Sparkes, late of London, Mariners, on the 30th of May, in the 6th Year of the Reign of our Sovereign Lord King William, and the late Queen, did, against the Peace of God, and our said Sovereign Lord the King that now is, and the late Queen, by Force of Arme, upon the high and open Seas, in a certain Place, about three Leagues from the Groyne, and within the Jurisdiction of the Admiralty of England, piratically and feloniously set upon one Charles Gibson, a Subject of our said Sovereign Lord the King that now is, and of the late Queen, being then and there Commander of a certain Merchant-Ship, called the Charles the Second, carrying 40 Pieces of Ordnance, belonging

to certain Subjects of the said King, and the late Queen, (to the Jurors as yet unknown); and then and there put the said Charles Gibson in bodily Fear of his Life; and then and there, within the Jurisdiction aforesaid, feloniously and piratically did steal, take and carry away from the said Charles Gibson, the said Ship, called the Charles the Second, her Tackle, Apparel, and Furniture, of the Value of One Thousand Pounds; Forty Pieces of Ordnance, of the Value of Five Hundred Pounds; One Hundred Fusces, of the Value of One Hundred Pounds; Fifteen Ton of Bread, of the Value of One Hundred and Fifty Pounds; and Two Hundred Pair of Woollen Stockings, of the Value of Ten Pounds, in the Possession of the said Charles Gibson then being; the Ship, Goods, and Chattels of the Subjects of our said Sovereign Lord the King, and the late Queen, (to the Jurors unknown) against the Peace of our said Sovereign Lord the King, and the late Queen, their Crown, and Dignities, &c.

How say'st thou, Joseph Dawson, art thou Guilty of this Piracy and Robbery, or Not guilty?

Jos. Dawson. I am ignorant of the Proceedings. *Officer.* He pleads Ignorance.

Cl. of Arr. You must plead Guilty, or Not guilty.

Jos. Dawson. Guilty.

Cl. of Arr. How say'st thou, Ed. Forfeith, art thou Guilty, or Not guilty?

Ed. Forfeith. Not guilty?

Cl. of Arr. How wilt thou be try'd?

Ed. Forfeith. By God and my Country.

Cl. of Arr. How say'st thou, Will. May, art thou Guilty, or Not guilty?

W. May. Not guilty.

Cl. of Arr. How say'st thou, W. Bishop, art thou Guilty, or Not guilty?

W. Bishop. I desire to hear the whole Indictment read again.

L. C. J. Holt. You have heard it just now, and may hear it again if you desire it.

W. Bishop. The former Indictment.

L. C. J. Holt. No, there is no Occasion for that, this is an Indictment for a Fact distinct from that.

Cl. of Arr. This is a new Indictment, not the old one. Art thou Guilty of this Piracy and Robbery, or Not guilty?

W. Bishop. Not guilty.

Cl. of Arr. How say'st thou, James Lewis, art thou Guilty, or Not guilty?

J. Lewis. Not guilty.

Cl. of Arr. How say'st thou, J. Sparkes, art thou Guilty, or Not guilty?

J. Sparkes. Not guilty.

Cl. of Arr. How wilt thou be try'd? (As of the rest.)

J. Sparkes. By God and my Country.

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

Cryer. O Yes, &c. You good Men of the City of London summoned to appear here this Day, to try between our Sovereign Lord the King, and Prisoners at the Bar, answer to your Names as you are called, and save your Issues.

Cl. of Arr. Jo. Degrave, Benjamin Hatley, Jo. Ayres, &c.

L. C. J. Holt. Have you any of the former Jury in this Pannel?

Cl. of Arr. Yes, my Lord.

Counsellor Conyers. We shall except against them for the King.

L. C. J. Holt. If you have returned any of the former Jury, you have not done well; for that Verdict was a Dishonour to the Justice of the Nation.

Cler. of Arr. You, the Prisoners at the Bar, these Men you hear called, are to pass between our Sovereign Lord the King, and you; if therefore you will challenge any of them, you are to challenge them as they come to the Book to be sworn, and before they are sworn.

Then they were called over, and some being challenged for the King, and some by the Prisoners, the Persons sworn in this Jury were these:

<i>J. Degrave,</i>	}	<i>Alex. Pollinton,</i>
<i>J. Ayres,</i>		<i>J. Glover,</i>
<i>G. Broom,</i>		<i>Nath. Carpenter,</i>
<i>T. Hicks,</i>		<i>Jo. Bickley,</i>
<i>R. Meakins,</i>		<i>Nath. Troughton,</i>
<i>J. Shelfwell,</i>		<i>Hum. South.</i>

Cler. of Arr. Make Proclamation.

Cryer. O yes, If any one can inform my Lords, the King's Justices, the King's Serjeant, the King's Attorney General, or his Majesty's Advocate in his High Court of Admiralty, before this Inquest be taken, of the Piracy and Robbery whereof the Prisoners at the Bar stand indicted, let them come forth and they shall be heard, for the Prisoners stand at the Bar upon their Deliverance; and all others may depart.

Then the Grand Jury came into Court again, having found two other Bills against the Prisoners at the Bar, one for piratically taking away a Moorish Ship, and another for committing Piracy on two Ships belonging to Denmark.

And then the Grand Jury was adjourned to Friday next, at two a Clock in the Afternoon.

Cler. of Arr. Ed. Forfeith, hold up thy Hand, (and so of the rest): You that are sworn, look upon the Prisoners, and hearken to their Cause; they stand indicted, &c.

Mr. Whitaker. May it please your Lordships, and you Gentlemen of the Jury, the Prisoners at the Bar stand indicted for Felony and Piracy, for that they, about the 30th of May, in the 6th Year of the Reign of his present Majesty King William, did make an Assault on Captain Gibson, Commander of the Ship Charles the Second, and put him in Fear of his Life, and piratically stole away the Ship and all the Furniture; and this is laid to be against their Duty and Allegiance, and against the Peace of our Sovereign Lord the King, his Crown and Dignity; to which Indictment they have pleaded Not guilty. We shall go on to call our Witnesses, and prove the Charge against the Prisoners at the Bar, and doubt not but you will do your Duty.

Then Dr. Littleton, Advocate General to his Majesty, in his High Court of Admiralty, spake as follows.

Gentlemen of the Jury,

YOU have heard the Indictment opened, and we shall now call our Witnesses, who will relate to you what enormous and horrid Crimes the Prisoners at the Bar have committed in the Prosecution of the Fact laid

laid in the Indictment: Crimes, that the bare Intention, had they not taken Effect, would have merited the highest Punishment: But this is not their Case, for they were not disappointed of their wicked Lusts and Desires; for as their Crimes are great, so have they been consummate as well as voluntary and malicious. I may well say, that their Wickedness has been as boundless and as merciless as the Element upon which their Crimes have been committed; nor is there any Part of the World that hath not been sensible of their Rage and Barbarity.

Therefore, Gentlemen, as you are Lovers of Christianity, as you are Lovers of Honesty, nay, as you are Lovers of your selves, who bear the Character of honest Men, if we prove this Charge against the Prisoners, you must and ought to find them Guilty, remembering that the doing Justice upon wicked and profligate Men, is the greatest Mercy and Protection to the Good and Honest. We shall therefore proceed to call our Witnesses, not doubting but that you will act like honest Men, for the Honour and Welfare of your Country, without having any Respect to the dishonourable Proceedings of the former Jury.

Mr. Whitaker. Call Jo. Gravel. (He appeared and was sworn.) Let him stand up.

* Mr. Sol. Gen. Mr. Gravel, pray will you give my Lords and the Jury an Account of what you know of the Prisoners running away with the Ship *Charles the Second*.

Jo. Gravel. I was Second Mate in the Ship at that Time. There was violent Hands laid on me, I was seized, and a Pistol clapp'd to my Breast, and carry'd away.

Mr. Sol. Gen. Who did it? Begin before.

Jo. Gravel. I was seiz'd by the Carpenter of the Ship; he took me by the Throat, and clapp'd a Pistol to my Breast.

L. C. J. Treby. Begin where the Ship was lying.

L. C. J. Holt. You was a Mate in this Ship: Now pray give an Account of the whole Matter.

Jo. Gravel. I was upon my Watch upon the Deck.

Prisoners. Pray speak up.

Jo. Gravel. And there was a Boat came from the *James Galley*, with People in her: And as soon as the Boat came, the Carpenter seiz'd me, and took me by the Throat, and clapp'd a Pistol to me, and said, if I resisted I was a dead Man. They took me, one by one Arm, and another by the other, and led me to my Cabbin, and one with a Pistol stood at my Cabbin-door, till they were got two Leagues without the *Groyn*. Then *Every* came to speak to Captain *Gibson*, who was then sick, and was guarded on both Sides; and when he had done speaking with him, and was return'd from Capt. *Gibson*, he came to me again, and said, I suppose you do not intend to go with us: I said, I would not. Then I, and the rest that would not go with them, had Liberty to go ashore; and I would have gone to my Coffer, and taken my Clothes, but they would not let me; and told me I should carry no more than the Clothes on my Back.

Mr. Sol. Gen. Did any of the Prisoners at the Bar say so?

Jo. Gravel. That I cannot tell.

Mr. Conyers. Then go on.

Jo. Gravel. Then I went to *Every*, and I had some of my Clothes, he was so kind to give me them; he gave me a Coat and Waistcoat, and his Commission that he left behind him; and *W. May* took me by the Hand and wished me well home, and bid me remember him to his Wife.

Mr. Conyers. Was there Liberty for any of them that would, to go ashore?

Jo. Gravel. Captain *Gibson* told me so, and there were about seventeen went off.

Mr. Conyers. No Matter what Captain *Gibson* told you, you say you went off: Might any one that would, go?

Jo. Gravel. That I cannot tell.

Mr. Conyers. You say there was about seventeen went off; would the Boat hold more?

Jo. Gravel. Yes, Sir.

Mr. Cowper. Did you see any hindered that would have gone off? Were any of the Prisoners at the Bar there?

Jo. Gravel. No.

Mr. Sol. Gen. Do you know *Ed. Forfeith*, &c.?

Jo. Gravel. I know some of them.

Mr. Conyers. Name the Men that you say you know.

Jo. Gravel. *Joseph Dawson*, *W. May*, *J. Sparkes*.

Mr. Sol. Gen. They belonged to what Ship?

Jo. Gravel. To the *Charles*.

Mr. Conyers. Was there not a Boat came from the Ship *James*, before you went away? Was there any of the Prisoners at the Bar that came in that Boat?

Jo. Gravel. There were about twenty-six that we had Account of.

Mr. Conyers. From what Ship did they come?

Jo. Gravel. From the *James*.

Mr. Conyers. Were any of the Prisoners at the Bar any of them?

Jo. Gravel. Indeed, Sir, I cannot tell.

Cler. of Arr. Call *T. Druit*. (Who appeared, and was sworn.)

Mr. Sol. Gen. Mr. *Druit*, was you aboard the Ship called the *Charles the Second*, when she was carried away?

T. Druit. No, Sir.

Mr. Sol. Gen. Do you know any thing of the carrying of that Ship away?

T. Druit. I was not in that Ship; I was Mate of the *James*; and about Nine came one from aboard the *Charles the Second*, and ask'd me for the drunken Boatswain? And I reply'd short; and he went away again, and said the Ship was going to be run away withal. Whereupon I went with ten Men to recover the Ship; and after I had advis'd with the Commander, I order'd the Pinnace to be mann'd; and when I came, the last that went into the Boat was one *Pike*; and I bid them put back, and they would not, but went away to the Ship *Charles*.

Mr. Conyers. How many were there that went away in that Boat?

T. Druit. About Five and Twenty.

Mr. Conyers. Did you know all the Men? Were any of the Prisoners at the Bar there? Look on them.

T. Druit. Yes, my Lord, there was *Ed. Forfeith*, *W. Bishop*, and *Ja. Lewis*.

L. C. J. Holt. What Boat did they go away with, the *James* Boat?

T. Druit. Yes, my Lord.

L. C. J. Holt. Then they came from the *James* to the *Charles the Second*. Name their Names again.

T. Druit. Ed. Forfeith, Ja. Lewis, and W. Bishop.

Mr. Sol. Gen. You saw them go off, did you not?

T. Druit. It was so dark that we could not see them.

Mr. Cowper. Were these three Men sent?

T. Druit. They were sent.

Mr. Cowper. Or did they go of their own Head?

T. Druit. No, I do not say so; but I went to command them back again, and they refus'd.

Mr. Cowper. Did they make any Answer?

T. Druit. No, they only went away damning and sinking.

Mr. Conyers. Were there any Guns sent after them?

T. Druit. Yes.

Mr. Conyers. What was it for?

T. Druit. It was to bring them back again.

Mr. Cowper. And they would not come back?

T. Druit. They did not come.

Mr. Cowper. Then they would not come.

Cler. of Arr. Call *David Creagh.* (*Who was sworn.*)

Prisoner. This Man is a Prisoner for Piracy, my Lord.

L. C. J. Holt. What if he be?

Prisoner. I do not understand Law; I hope your Lordship will advise us.

L. C. J. Holt. I will do you all Right. If he be so, that is no Objection against him; he may be a good Witness for all that.

Cler. of Arr. He is not a Prisoner for Piracy, but for Treason.

L. C. J. Holt. Tho' he be a Prisoner for Treason, he is not attainted. What is his Name?

Cler. of Arr. *David Creagh.*

Mr. Sol. Gen. What do you know about the Prisoners running away with the Ship *Charles*?

D. Creagh. Upon the 7th of *May*, 1694. I came to the *Groyn*, in Company with the Boatswain and several others, on board the *Charles*; and when I was going in to the Captain of the *Charles*, Captain *Gibson*, I found *Mr. Every*, the Carpenter, and some others, drinking a Bowl of Punch: And after I was come from the Captain, I came and sat down with them, and *Mr. May* drank a Health to the Captain, and Prosperity to their Voyage: And we not knowing their Design then, thought it was to our lawful Captain, and Prosperity to the Voyage he was design'd for.

L. C. J. Holt. What was your Voyage?

D. Creagh. It was to the *Spanish Indies*. And afterwards the Company broke up, and retired, and went to their Cabins. And when we were in our Cabins, we heard a great Noise above Deck; and Captain *Humphreys*, that commanded the Gally, called to us, to tell us his Men were run away with the Boat, and were gone to Captain *Gibson*. To which *Every* answered, that he knew that well enough: So the Men came aboard; and as I was coming out of my Cabin to see what the Matter was, I was met by *Every*, the Carpenter, and two *Dutchmen*; and they obliged me to retire again to my Cabin. And Captain *Humphreys* fired two Guns at us. But we presently got out of Reach of the Guns, and proceeded on the Design. And I came out of my Cabin, and went on the Quarter-deck, where I met *Every* and the Carpenter together; *Every* was conning the Ship.

L. C. J. Holt. What is the Meaning of that?

D. Creagh. That is, to direct in the steering of her. So *Every* took me by the Hand, and ask'd me if I would go with him? And I answer'd, I did not know his Design. He said, there were but few that knew it. Says I, Tell me who do know it, that if you will not tell me your self, I may ask them that can tell me. But he said, we should all know by To-morrow Morning Eight a Clock. I told him, that would be too late to repent of the Design? The Carpenter stood by him, and said, Do you not see this Cock? Yes, says I, I do. Says he, This Man, and old *May*, and *Knight*, I can trust with any thing; they are true Cocks of the Game, and old Sportsmen. Then, said I, I suppose they know your Design. Yes, says he, they do; and if it were a Thing of ten times the Consequence, they should know it. Upon this, the Carpenter came to me, and said, If you do not go down, I will knock you on the Head. And as I was going down, I met with *W. May*, the Prisoner at the Bar. What do you do here? says he. I made him no Answer, but went down to my Cabin; and he said, God damn you, you deserve to be shot through the Head, and he then held a Pistol to my Head. Then I went to my Cabin, and presently came Orders from *Every*, that those that would go ashore, should prepare to be gone. And when the Captain was got out of Bed, who was then very ill of a Fever, *Every* came and said, I am a Man of Fortune, and must seek my Fortune. Says Capt. *Gibson*, I am sorry this happens at this Time. Says he, If you will go in the Ship, you shall still command her. No, says Captain *Gibson*, I never thought you would have served me so, who have been kind to all of you; and to go on a Design against my Owners Orders, I will not do it. Then, says *Every*, prepare to go ashore. Upon which, the Captain, and several others of us, went into the Boat. When we were by the Ship's Side, I heard them order the Doctor to be secured; but if there was any more would go into the Boat, they might: And we came into the Boat, to the Number of Sixteen; and they gave us four Oars in the Pinnace, and set us adrift.

L. C. J. Holt. Where did he set you?

D. Creagh. He set us aboard the *James*, my Lord.

L. C. J. Holt. That is, you were turned off from this Expedition.

D. Creagh. Yes, my Lord.

Mr. Conyers. Was there any Room for more in the Boat?

D. Creagh. Yes there was.

L. C. J. Holt. Was there Liberty for any more to go?

D. Creagh. Yes, my Lord.

Mr. Sol. Gen. What do you know of the Prisoners at the Bar?

D. Creagh. I know only *W. May*.

Mr. Cowper. What Time past from the coming of the Boat, to the Time of your going off?

D. Creagh. About two Hours, Sir.

Mr. Cowper. Was there any Guns fired in that Time?

D. Creagh. Yes, Sir, one or two from the *James*, by Capt. *Humphreys*.

Mr. Cowper. Was this done in the Ship with Silence? Or was there any Uproar, or Opposition?

D. Creagh. No: There could be no Opposition; for the Men came from the whole Squadron, and came upon us, and surprized us, being assisted by those that belonged to the *Charles*.

Mr. Cowper. But did No-body make Opposition to their going? Did not Captain *Gibson*?

D. Creagh. No, Captain *Gibson* could not, being sick.

L. C. J. Holt. But he went ashore?

D. Creagh. Yes, my Lord.

L. C. J. Holt. Was any Body stopp'd that would go?

D. Creagh. No, my Lord, none but the Doctor.

Mr. Sol. Gen. Now call *Jo. Dan.* (*Who appeared and was sworn.*)

Mr. Conyers. What Ship were you aboard of at the *Groyne*?

Jo. Dan. The *Charles the Second*?

Mr. Conyers. Now, pray give my Lord and the Jury an Account what you know of the taking away of the Ship *Charles the Second*, and what pass'd there?

Jo. Dan. Yes, Sir: We came to the *Groyne*, and had been there about three or four Months, and we had been about eight Months out of *England*, and we lay for our Wages, and there was no Wages to be got. But inasmuch as we wanted Wages, *Every*, and several others, contriv'd to carry this Ship away. So that Night, which was *Sunday*, they went ashore; and when they came aboard again, made some Men privy to it, whom I know not. And the *Monday* following, I think, the Packet went out in the Morning, and the Night being fair, was ordered to give Notice; and they came to the *Dove*, and about Nine or Ten her Boat broke off, and she haled us; for they told Captain *Humphreys* they were coming to run away with our Ship. So he hales the *James*; and presently some of the Officers came and order'd their Pinnace to be mann'd, and it was so. And when they gave this Order, there was *Every* and twenty-five or twenty-six Men. And as they came aboard, our Cables were cut, and ready to go. And coming under the Castle, we cut all the Boats but two, and stood out to Sea about two or three Leagues; and there *Every* went to Captain *Gibson*, and, as they said, to ask him if he would go with them, or not. He said, No. Then he said, He must prepare to go ashore; and he did so, and several others with him. And the Word was given about, that they that would go ashore might go; but whether these Men heard it or no, I cannot tell; and no Man's Name was mention'd to be stopp'd, but the Doctor. And when they went away, they cry'd, There was Water in the Boat, and they desired a Bucket of us, to heave it over, and we gave them one; and away they went, I think, about fifteen of them, and no more did offer to go as I saw, nor did I see any hinder any that would go: And afterwards, they that went off went about their Business, and we about our Business. And we came to the *Isle of May*, and victual'd our selves there; and there we met with three *English* Ships, out of which we took some Necessaries for our selves, and among the rest several Men; nine Men we took out of them.

Mr. Sol. Gen. Were the Prisoners at the Bar in the Ship, when they went away?

Jo. Dan. Yes.

Mr. Sol. Gen. Name them.

Jo. Dan. *Ed. Forseith, W. May, Jo. Lewis, Jo. Sparkes, W. Bishop.*

Mr. Conyers. Which of them was aboard the *Charles*, that belong'd to her?

Jo. Dan. *W. May* and *Jo. Sparkes*; and *Ed. Forseith, Jo. Lewis*, and *W. Bishop*, came from the *James*.

Mr. Cowper. Was it not generally understood, that they were going to run away with the Ship, when they came to Capt. *Gibson*?

Jo. Dan. Yes, Sir, they knew to be sure.

Mr. Sol. Gen. Did you know that they assented to it?

Jo. Dan. No, Sir, I did not hear them say so.

Mr. J. Eyre. Did they desire to go ashore with the rest?

Jo. Dan. I saw none hindered.

L. C. J. Holt. Was *Ed. Forseith* in the Ship then?

Jo. Dan. *Ed. Forseith* was in the Ship then.

L. C. J. Holt. Was he at the *Isle of May*, taking in Necessaries with you?

Jo. Dan. Yes, Sir,

L. C. J. Holt. What did he do in the Company?

Jo. Dan. He was in the Ship, and came from the *James*.

L. C. J. Holt. And so did *Bishop*, and so did *Lewis*?

Jo. Dan. Yes, my Lord, these three; and the other two belong'd to the *Charles*.

Mr. Whitaker. Did any of the Ship's Crew go ashore at the *Isle of May*?

Jo. Dan. Yes, Sir, I think so.

Mr. Sol. Gen. But I think, you say, that the Word was given about, that any might go that would.

Mr. Conyers. Go on with the Proceedings after you were at the *Isle of May*.

Jo. Dan. After we had victual'd, we took in some Men.

Prisoners. We have been try'd for that already, my Lord.

L. C. J. Holt. Go on.

Jo. Dan. After we had been there, and took in what we had Occasion for, our Quarter-master said, he would give them Bills for what he took of them. Then we went to the Coast of *Guinea*, and took several Negroes, and carried them away with us. And afterward we went to the *Island of Princes*, where lay two *Danes*, and we fought them, and took them; and after we had taken them, some of the Men went ashore at the *Island of Princes*, and others went along with us; and we brought the Ships to *Vandepo*, and burnt one, and carried one with us. Then we came to *Cape Lopes*.

L. C. J. Holt. Where is that?

Jo. Dan. Under the Equinoctial-Line; and there we fired a Shot through the little one to sink her, for the Men could not agree, and so we could not carry her with us. We went about the Cape, and touch'd at *Madagascar*.

Dr. Littleton. Had not these Men their Part and Share of the Plunder?

L. C. J. Holt. You go too fast, Sir.

Mr. Conyers. What was the next Ship you met with, after you had rounded the Cape?

Jo. Dan. The next was a small Vessel, about 30 or 40 Ton, and we put her ashore, and took a small Matter out of her, and let her lie; and there

there we put this Gentleman, Mr. *May* ashore. And we seeing three *English* Ships a coming, we left him there, and went to the Equinoctial Line: And afterwards, for want of Bread and Water, we came again, and took another small Vessel, and some Rice and Pody out of her, and sunk her, and then went to the Cape again, and took in *W. May* again, and met another Vessel, and took Rice and Meal out of her, and sunk her too. And then we went to the *Red Sea* to a Town called *Meat*; and the People would not trade with us, and we burnt it. And thence we went up to the *Red Sea*, as far as we could: And going up to the Cape *Aiin*, we met with two *English* Privateers more, and they came and joined with us.

L. C. J. *Holt*. You call them Privateers; but were they such Privateers as you were?

J. *Dan*. Yes, my Lord. I suppose they had Commissions at first, but I suppose they did not run so far as that.

Mr. *Conyers*. Did you go all on the same Design?

J. *Dan*. Yes, they failed on with us, and we made the best of our Way, and came up into the *Red Sea* in a little Time, and came to an Anchor at *Bobs Key*, and had lain there but a Night and a Day, and there came up three *Englishmen* more from *America*, and they likewise comforted with us; and we lay there about five Weeks; and in that Time we expected the Fleet to come down.

Mr. *Conyers*. What Fleet?

J. *Dan*. The *Moorish* Fleet, that came from *Mocha*. They pass'd us on *Saturday* Night unseen, and we took a Vessel, which gave us an Account that they were gone. And then we followed them: and about three Days after we made Land, we came up with one of them of about 2 or 300 Tons, and we fired a Broadside at her, and Small Shot, and took her, which, after we had taken her, we plundered, and took out some Gold and Silver.

Mr. *Conyers*. And what did you do with it?

J. *Dan*. We brought it aboard our Ship.

Mr. *Conyers*. Did you share it?

J. *Dan*. Not then, but after we took the other Ship.

Mr. *Conyers*. What was that other Ship?

J. *Dan*. After we had taken her, we put some Men aboard to keep her with us; and about two Days after we were lying at Anchor at *St. John's*, and there was a great Ship called the *Gunfway*; and we weigh'd Anchor, and fought her about two Hours, and took her, and put some Men aboard her, and plunder'd her. And after we had done as much as we thought convenient, we sent her to *Surat* with the People in her. And then we stood farther to the *Indian* Coast, and shared our Money about a Week after.

L. C. J. *Holt*. That was a brave Prize, was it not, the best you had all the Voyage?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. Did you all share?

J. *Dan*. Yes, all that were in the Ship.

L. C. J. *Holt*. You have given a good Account of this Matter. Was *Ed. Forcib* there?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. What did he do? Was he active?

J. *Dan*. I did not see him act.

L. C. J. *Holt*. Had he a Share?

J. *Dan*. Yes, my Lord, he had.

L. C. J. *Holt*. Was *W. May* there?

J. *Dan*. Yes, my Lord.

L. C. J. *Holt*. What did he do there?

J. *Dan*. He could do but little then; he had his Share.

L. C. J. *Holt*. And when you took him in again, what did he do? Did he do his Business as a Seaman?

J. *Dan*. Yes, my Lord, till he was sick.

L. C. J. *Holt*. Was *W. Bishop* there?

J. *Dan*. Yes, my Lord, he was among the rest.

L. C. J. *Holt*. What did he do? Did he consent and agree to what was done?

J. *Dan*. He had Share of the Money.

L. C. J. *Holt*. Did *Ja. Lewis* share too?

J. *Dan*. He had a Share, as far as was allowed by the Company.

L. C. J. *Holt*. Did *J. Sparkes* share with you too?

J. *Dan*. Yes, my Lord, as far as the Company thought fit to give him.

Mr. *Cowper*. When you say as the Company thought fit, what do you mean? How did they share it?

J. *Dan*. Some had 1000*l.* some 500, others 300.

Mr. *Cowper*. Had all the Prisoners some Share?

J. *Dan*. Yes, Sir, all had some Share.

Mr. *Whitaker*. What did you do with the *Charles the Second*, after the Voyage?

J. *Dan*. We left her at *Providence*.

L. C. J. *Holt*. If any of you Prisoners at the Bar will ask him any Questions, you may.

Mr. Justice *Turton*. What Provisions were aboard the *Charles* when she was taken away?

J. *Dan*. I cannot tell.

Mr. Justice *Turton*. What Quantity of Bread was there?

J. *Dan*. A pretty deal, I cannot tell the Quantity.

Mr. Justice *Turton*. And were there any Guns aboard her and small Arms?

J. *Dan*. Yes, my Lord, there were.

W. May. My Lord, may I speak for my self?

L. C. J. *Holt*. If you will ask him any Questions you may; you shall be heard again to speak for your self by and by.

W. May. I desire he may be ask'd where I was taken sick?

L. C. J. *Holt*. He asks you, where he was taken sick?

J. *Dan*. I cannot justly tell that, I think it was at *Allibore*, at the Coast of *Guinea*.

W. May. I did not lie down with it?

J. *Dan*. No you did not; but your first being taken sick was at *Allibore*.

W. May. My Lord, I desire you will ask him, whether he thinks I had any Knowledge of the going away of the Ship?

L. C. J. *Holt*. You hear what he says; what do you say?

J. *Dan*. I know nothing of that.

L. C. J. *Holt*. You were there, and you had a Share of the Prize; you drank an Health to the Success of your Voyage?

W. May. I hope, my Lord, you will not be angry for asking Questions.

L. C. J. *Holt*. No, no-body is angry, you may ask what Questions you will.

Then Philip Middleton was called and sworn.

Mr. *Conyers*. Pray tell what you know of taking away the Ship *Charles the Second*?

P. Middleton. I cannot say any thing of running away with the Ship, for I was asleep then; but afterwards, in the Morning, they called up all Hands; and the Captain said, Every Man should share alike, only he would have two Shares.

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

P. Middleton. Capt. *Every*. From thence they went to *Bonyvis*, and took in some Salt; and from *Bonyvis* they went to the *Isle of May*, and there they took three *English* Ships, and plundered them; and they took the Governor aboard their own Ship till they had done, (for then they could demand what Victuals they had a mind to) and then they sent him away again: And from the *Isle of May* they went to the Coast of *Guinea*, where they put out *English* Colours, to make the Natives come aboard to trade; and when they came aboard, they surprized them, and took their Gold from them, and tied them with Chains, and put them into the Hold; and when they came to a Place called the *Island of Princes*, they gave seven of them away for Slaves: And then they went to *Vandepoe*, where they clean'd their Ship; and from *Vandepoe* they went to *Cape Lopes*, and from *Cape Lopes* to *Annibo*, and from *Annibo* about the Cape; and at *Madagascar* they watered their Ship, and got Provisions, and Cows to salt up; and from thence they went to *Joanna*, and from *Joanna* they went to take a Junk, and took Rice out of her, and sunk her: and from thence they went to the *Equinoctial Line*, and because they were short of Water and Rice, they went back again to *Joanna*; and the Wind being contrary, they went to *Commeroe*; and there they met a small *French* Vessel, and they took her, and sunk her; and then went to *Joanna* again, and there took in Mr. *May* again: And then went to *Meat*; and because the Natives would not trade with them, they burnt their Town: And then they went to *Bobs Key*, by the Mouth of the *Red Sea*: But before that, they met with an *English* Vessel, that was on the same Account that we were; and we rode there a Night or two; and they saw there another Sail a coming, which proved to be another *English* Vessel: And in the Morning they saw two more; *May*, *Farrel*, and *Wake*, were the Captains: And on *Saturday* Night all the *Mocha* Fleet passed by: And on *Sunday* Morning they took another Vessel, that told them the said Fleet was gone by; and so they consulted whether they should follow them, or stay there. And then they went after them and overtook them, and took one that was about three or four hundred Ton, and took Gold and Silver out of her; and sent Men aboard her to plunder and keep her. And next Day they spied another Sail, and got up their Anchor, and stood to her, and took her; she was called the *Gunfway*: they killed several Men aboard, and when they had taken and plundered the Ship, they left the Men aboard to go to *Surat* again. And then they went to *Rachipool* in the *East-Indies*, and got Water and Necessaries; and from thence to *Degorees*, and watered again; and then to *Dascaran*, where they set about twenty-five *Frenchmen* ashore, and fourteen *Danes*, and some *English*; for they were afraid, if they came to *England*, and were caught,

they should be hang'd; and they thought themselves there secure. From that Place they went to *Ascension*, and then to the *Island Providence* in the *Vest-Indies*: And then they wrote a Letter to the Governor, to know if he would let them come in, and said they would present the Governor with twenty Pieces of Eight, and two Pieces of Gold, if he would let them come in; and the Captain, because he had a double Share, he offered forty Pieces of Eight, and four of Gold; and with that they sent some Men down, *Adams* and others, with the Letter: And they came again, with a Letter, from the *Island*, that they should be welcome, and come and go again when they pleased.

Mr. *Conyers*. Look on the Prisoners at the Bar, were they all there?

L. C. J. Holt. Do you know *Ed. Forseth*? Was he there? Did he belong to the *Charles the Second*?

P. Middleton. He came from the *James*.

L. C. J. Holt. Was *W. May* there?

P. Middleton. He was aboard the *Charles*.

L. C. J. Holt. Was *W. Bishop* there?

P. Middleton. *W. Bishop* came from the *James*.

L. C. J. Holt. Was *J. Lewis* there?

P. Middleton. Yes, he came from the *James*.

L. C. J. Holt. Was *J. Sparkes* there?

P. Middleton. Yes, he was aboard the *Charles*.

L. C. J. Holt. Had all the Men their Shares?

P. Middleton. Yes, such as the Company thought fit to allow them, all of them.

L. C. J. Holt. Had these Men their Shares of the several Prizes they took?

P. Middleton. Yes, they had.

L. C. J. Holt. Were they active in the taking of the Prize?

P. Middleton. They were, as far as I saw.

L. C. J. Holt. Were not divers others set ashore besides Capt. *Gibson*?

P. Middleton. I never heard any repine, or wish they had been ashore, or that they had never come along with the Ship.

L. C. J. Holt. But do you know of any others that were set ashore?

P. Middleton. Yes, a great many, Mr. *Grant* and several others.

Mr. *Cowper*. I think, you said, some *French* and *English* were set ashore in the *Indies*.

P. Middleton. Yes, Sir.

Mr. *Cowper*. Were they set ashore willingly?

P. Middleton. They desired to be set ashore.

Jury-man. He says, in the Morning Capt. *Every* called them above Deck, and gave Leave to any to go ashore, that were not willing to go with them; we desire to know whether any of the Prisoners were there at that Time?

P. Middleton. I know not that; all Hands were called up.

Mr. Justice *Turton*. What Number of Persons were aboard when the Dividend was made?

P. Middleton. About a hundred and sixty.

Mr. Justice *Turton*. What might the Shares be?

P. Middleton. Some a thousand Pounds, some six hundred, and some five hundred, and some less, according as the Company thought they deserved.

Mr. Justice *Turton*. Had not you a Share?

P. Middleton. Yes, what the Company thought fit, and they told me that would serve to put me out an Apprentice, and that I should never go near my Friends.

Mr.

Mr. Justice *Turton*. How much was that you had?

Pb. Middleton. Above an Hundred Pound.

Mr. *Conyers*. What became of it?

Pb. Middleton. *Jo. Sparkes* robb'd me of it.

L. C. J. *Holt*. The King's Counsel have done with the Evidence, and therefore now is your Time for to speak, if you have any thing to say for your selves. *Ed. Forfeith*, what have you to say?

Ed. Forfeith. My Lord, I desire you would call Mr. *Druit*, and ask him whether I was one of the Pinnace's Crew?

L. C. J. *Holt*. You hear what he says.

T. Druit. Yes, you were, and I commanded you to come back, and you refused.

Ed. Forfeith. Did not you command me to go?

T. Druit. Yes, and I afterwards commanded you to come back, and you refused.

Ed. Forfeith. You did not command me back.

T. Druit. Yes, I did, and fired at you, and shot through the Boat.

Ed. Forfeith. I held Water with my Oar, that was all I could do.

L. C. J. *Holt*. What did you command him to do?

T. Druit. To rescue the Ship.

L. C. J. *Holt*. Instead of rescuing the Ship, you run away with her. He commanded you back, and you refused to come back.

Ed. Forfeith. I could not bring her back myself, nor come back, unless I should leap over-board.

L. C. J. *Holt*. Have you any more to say?

Ed. Forfeith. My Lord, when I was in the Boat, I knew not who was in it, nor how many. When I came aboard the *Charles*, the Sails were loose, and I was in a very sorry Condition; they cut the Boat off, and put her adrift; I could not get into her, she was gone in a Minute's Time, I did not know which Way, or what Men there were in her, nor heard nothing 'till Two o' Clock the next Day. And I hope, my Lord, as we are but poor Sea-faring Men, and do not understand the Law, you will take it into Consideration.

L. C. J. *Holt*. But all you Seamen understand that Law, that it is not lawful to commit Piracy; and he that doth, deserves to be hang'd.

Ed. Forfeith. My Lord, I never did.

L. C. J. *Holt*. Did you think it no Piracy to rob?

Ed. Forfeith. I was forc'd to do what I did.

Mr. J. *Eyre*. You all compell'd one another.

Ed. Forfeith. My Lord, I was sent of an Errand. I hope as we are poor Men in this Condition, you will take into Consideration.

L. C. J. *Holt*. We shall. Have you any more to say?

Ed. Forfeith. No, my Lord.

L. C. J. *Holt*. *W. May*, what do you say?

W. May. Here is one of the King's Evidence, that testifies that I knew nothing of the Ship's going away; and I believe very few knew it, I believe not above Nine or Ten.

L. C. J. *Holt*. None of them say you were at the Consult; but one says that you said, *God damn you, you deserve to be shot through the Head*; and held a Pistol to him.

W. May. I never was any higher than the Under-deck; I was coming up the Hatch-way, and Captain *Every* was standing, and commanding the Ship.

L. C. J. *Holt*. *Every* was no Officer, he had nothing to do to command; he was under Captain *Gibson*, and took the Ship from *Gibson*.

W. May. My Lord, I know nothing of the Ship's going away.

L. C. J. *Holt*. You should have stuck to Captain *Gibson*, and endeavoured to suppress the Insolence of *Every*. Captain *Gibson* was the Commander, you ought to have obeyed him; and if any had resisted him, or gone to put a Force upon him, you should have stood by him.

W. May. I was surprized.

L. C. J. *Holt*. How?

W. May. By Captain *Every*, and knew nothing of it.

L. C. J. *Holt*. You were zealous from the Beginning, and said to one, *Damn you, you deserve to be shot through the Head*.

Mr. *J. Turton*. And one says you drank a Health to your good Voyage.

W. May. Presently after I heard this Rumour, I came up the Hatch-way, and Capt. *Every* says, *You, May, I believe you do not love this Way, pray get down to your Cabbin*. So I went to my Cabbin, which one that is now at *Virginia* could testify; which I hope will be considered, that I cannot have my Witnesses for me.

L. C. J. *Holt*. What have you more to say? Have you any Witnesses to call?

W. May. I stay'd in the Cabbin a considerable Time. I was thinking I must leave my old Captain without seeing him; and I begg'd them to give me Leave to come to him; and there was two Men stood with naked Cutlaces, and would not let me come to him. We had some Confabulation together, and I begg'd the Favour to come in, and at last they permitted me; and the Doctor was anointing the Commander's Temples. And as I was coming along, I had my Hand cut; and I went to the Doctor, to desire him to bind up my Hand. When I came out again, they began to hurry the Men away. Here was Mr. *Gravel*, the second Mate, who is now one of the King's Evidence; and I told him he should remember me to my Wife, I am not like to see her; for none could go, but who they pleased: For when those Men were in the Boat, they cry'd to have a Bucket, or else they should sink, they having three Leagues to go: And I do not know how they could go so far with more, when their Boat was like to sink with those that were in her, as some of the King's Evidence have testified.

L. C. J. *Holt*. Who will you call?

W. May. Mr. *Dan*. (*Who appear'd.*)

L. C. J. *Holt*. Mr. *Dan*, answer the Question, Whether there was calling for a Bucket several Times by the Men that were in the Boat?

J. Dan. They did call, and a Bucket was given them to pump with.

L. C. J. *Holt*. You were willing to be rid of them.

W. May. I have more to say. Afterwards, if I should have denied to go with them, I might have been kill'd by them; and I knew not whether it be better to be necessary to my own Death, or to suffer by the Law of the Nation.

Sir *Ch. Hedges*. You seem to say that you were under a Constraint and Terror. Did you make any Complaint or Discovery so soon as you had Liberty, or at your first coming into the King's Dominions?

W. May. Yes, at *Virginia*.

Sir Ch. Hedges. Where did you first arrive in *England*?

W. May. At *Bristol*.

Sir Ch. Hedges. When you came to *Bristol*, did you discover it to any Magistrate?

W. May. When I came to *Bristol*, I had a Design to discover it to the Lords of the Admiralty.

L. C. J. Holt. Did you go to a Magistrate?

W. May. I was several Days in the King's Collector's House, and did discover the whole to him; and at *Providence*.

L. C. J. Holt. You speak now of *Providence*; but in *England* who did you discover it to?

W. May. I was taken sick, and could not go abroad.

L. C. J. Holt. You might have sent to the Mayor of *Bristol*.

W. May. I knew nothing of it, I intended to declare it to none but the Lords of the Admiralty: I knew no Man there, but two Men that were Fellow-Tradefmen in *Virginia*. I came from *Virginia* by the first Ship; and if that Ship had come away before the Fleet, I had been at home long before. I lay sick at *Bristol* four or five Days, and the fifth Day I got Passage for *London* in the Coach; and was taken three Miles off *Bath* by the King's Messenger, by one who betrayed me, and I was carried back to *Bath* again. And there was the Duke of *Devonshire*; and there they examined the whole Matter, in every Particular, as I have now declared to the Court. And my Lord desired the Messenger should take me away again, and see me safe to *London*; which was all he said to me. I have more to say, as to my being put ashore at *Joanna*. I had no Place to go to, but lay in a lamentable Condition, I could not put Water to my Mouth without Help, and remained useless of Hands or Feet, despairing of my Life. I desired to go ashore, to see if the Air would do me any good; and I went ashore at *Joanna*, with another Man, *Gunning*, and others, for Refreshment. So the second Day we went in, there appears three Ships, which were *East-India* Men. Captain *Every* being surpriz'd by these Ships, hastened his Men and Water aboard to get out to Sea, that he might not be surprized in the Road without his Men on Board, who were come ashore for the Sick. And I told them, I will not go with you, I will rather trust to the Mercy of my Countrymen, or the Mercy of the Negroes: I should endanger my Life, if I go aboard; if I stay, no question my Countrymen will have Compassion on me; and if I have committed any thing worthy of Death, they have Authority to put me to Death according to the Law of the Nation. And I applied myself to Mr. *Edgcomb*, when he came ashore, and he gave me scurrilous Language. But I replied, I am a weak Man, for me to stay behind is Death; I had rather suffer Death by the Laws of my Country, than to be left to the Mercy of these Negroes. Mr. *Edgcomb* says, I will take you down with me, and will hang you there too.

L. C. J. Holt. Where?

W. May. At *Bombay*, where he said I should be tried. His Mate, and several other *Englishmen*, came to see me, and brought me one thing or other to refresh me. And at last, at Night, he sent his Doctor and Purser to me, who said, the

Captain is just now sending his Boat for you. I replied, I am ready, here is all I have in the World; and he goes away about Two a Clock in the Morning. And I remained seven or eight Weeks at the Mercy of those Negroes, and had perished, but that a Negroe hearing an *Englishman* was there, came to me; he lived at *Bednal-Green*, and spoke *English* very well. He went from *England* in the Ship *Rochester*, taken at *Guinea* some Time before. The Captain commanded this Negroe to go for the Long-boat, and turn her adrift; which he does, but goes away with her himself; and in the Fight, says, the Ship blew up by an accidental Fire, and several were lost. This Negroe I got to look after me, and he did really feed me, and got me all Necessaries belonging to me: And by that Means I saved my Life. Now when Captain *Every* came in again, I could not go nor stir.

L. C. J. Holt. Do not call him Captain; he was a Pirate.

W. May. He commanded me, I was forced to obey him.

L. C. J. Holt. For that Matter, call *Gravet* again, because you and he were very kind together; you shook Hands with him, and bid him farewell, and remember you to your Wife. Mr. *Gravet*, do you remember when you went into the Boat? Did *W. May* take his leave of you, or was he unwilling to be left behind?

J. Gravet. When we had Liberty to go out of this Ship, this Man, *W. May*, took me by the Hand, and wished me well home, and bid me remember him to his Wife, and was very merry and jocund, and knew whither they were going.

Mr. J. Turton. Did he express any Inclination to go with you?

J. Gravet. No, my Lord, not at all.

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

W. May. Yes, my Lord, I remained in this Condition till I came to *Providence*; and the King's Evidence can testify what I say. I only beg Mercy of this honourable Bench, to consider my weak State and Condition that I have been in.

L. C. J. Holt. Have you done?

W. May. Yes, my Lord.

L. C. J. Holt. Then the next. *W. Bishop*, what have you to say?

W. Bishop. I belonged to the Ship *James*; and at the *Groyne* the Men began to complain about Wages, and that was the first Beginning of the Disturbance about this Plotting. We were shipp'd out of *England* in Sir *James Houbton's* Service, to the *Spanish West-Indies*. Upon this Mutiny among the Men for their Wages, several Men went aboard the King's Ships, and desired to be entertained on Board any of them to go for *England*; and we all went away again to the Ship, because we could not be entertained. But this Design of *Every's* I did not know of. On the 17th Day Captain *Humphreys* calls, and says, my Men are gone aboard the *Charles*, I think. And he calls out, says he, Mr. *Druit*, man the Pinnace. I being then on the Deck, at Night, the Men all quiet, as I thought, I went into the Pinnace, and I was no sooner in, but in comes fifteen or sixteen more that knew of the Design; but I was then sent, and knew it not. And they put off the Boat, and overpower'd us; and several of us would have gone aboard again,

again, and they would not suffer us. And when we came aboard the Ship *Charles*, they had cut the Cables, and the Sails were loose, and several Men went from the *Charles* to the *James* in a Boat; and they commanded the Innocent to do what they pleased, with Pistols and Cutlages; and they commanded me to go into the Hold to do what they pleased. And I not knowing of this Matter, the Men that were in the Boat called, Hand the Buckets, or we shall sink. And I heard afterwards, that none went ashore, but whom they pleased, that is, *Every* and his Crew. And I not knowing of it, could not go; and if I had known it, I had not been admitted to go. Then we were carried two Leagues without the *Groyne*.

L. C. J. *Holt*. Have you any Witnesses to call?

W. *Bishop*. The King's Evidence is my Witness; he commanded me to go into the Boat.

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

W. *Bishop*. No, my Lord.

L. C. J. *Holt*. *James Lewis*, what have you to say?

J. *Lewis*. I had been in *France*, a little before the Ship came to the *Groyne*, a Prisoner there; but I knew nothing of *Every's* Design. By the Command of our Officer I went aboard the Boat, and as soon as we were in her, we were overpower'd, and carried away; they took the Oars out of our Hands, and carried us to the Ship *Charles*. And when we came aboard, they put the Boat a-drift, and then they commanded me into the Forecastle; they had Arms, but we had none, and so were forced to obey them. When the Boat was going off, I heard a Noise of crying out for a Bucket. And when we were gone from the *Groyne*, we were forced to do what they would have us; it was against my Consent, and against my Will.

L. C. J. *Holt*. J. *Sparkes*, what say you?

J. *Sparkes*. When Captain *Humphreys* called to them that were gone into the Boat, I was asleep; but with the Noise of *Gravel's* crying out, He is coming, I awaked; and all put the Candles out, for fear I should see them. And when the Men were come aboard, I went on the Deck, and they throw'd the Hammocks, and knock'd me down.

L. C. J. *Holt*. Who did it?

J. *Sparkes*. The Hammocks they brought from the other Ships. I durst not do any otherwise than they bid me; I was innocent of the Thing. I ask'd what they were going to do, and they said they were going for *England*.

L. C. J. *Holt*. Who told you so?

J. *Sparkes*. *John Dan*.

L. C. J. *Holt*. J. *Dan*, did you tell J. *Sparkes* the Ship was going for *England*?

J. *Dan*. I do not remember I saw him all the Night.

L. C. J. *Holt*. I would ask you if you had no Share of the Plunder.

J. *Sparkes*. I was forced to take it.

L. C. J. *Holt*. *Phil. Middleton*, you had some Share, had you not?

Phil. Middleton. Yes, my Lord.

L. C. J. *Holt*. What became of it?

Phil. Middleton. They took it away from me.

L. C. J. *Holt*. Who took it from you?

P. Middleton. J. *Sparkes* robb'd me of it by Night.

L. C. J. *Holt*. Did he take all away?

Phil. Middleton. Yes, all that I had there, Two hundred seventy odd Pieces of Gold; it was in a Belt.

J. *Sparkes*. He took out his Money and shewed it to the Troopers, and they made him drunk and got it from him; and the next Morning he said they took it from him.

Phil. Middleton. I was forc'd to say so, because if I had said he had it, he would have made no more but to cut my Throat.

L. C. J. *Holt*. Have you any more to say?

J. *Sparkes*. No, my Lord.

Mr. *Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for the King against the Prisoners at the Bar. They are arraign'd for a very high Crime, a Robbery upon the Seas. It was not a less Crime because committed on the Sea, but rather the more. These Men had a Trust reposed in them to assist their Captain in his Voyage; but instead of that, they resist their Captain, turn him out, and run away with the Ship. They could not find Shelter in any other Part of the World, and I hope you will make it appear such Crimes shall not find Shelter here, more than in other Parts of the World. These are Crimes against the Laws of Nations, and worse than Robbery on the Land: For in Case of a Robbery on the Land, we know who is to pay it; but in a Robbery by Sea, it often happens that innocent Persons bear the Loss of what these Men do. It has been very plainly proved against the Prisoners, That the Ship *Charles* was run away with from the *Groyne*. And it is as plain by two Witnesses, That all the Prisoners at the Bar were in this Ship; by three, That *W. May* in particular was one of them; and by one, That *W. May* was so far concerned, that because J. *Gravel* seem'd to dislike it, he said he deserved to be shot through the Head: So that he that would make himself the most innocent of the five, is most guilty.

Now they have only this to say for themselves, that they were forced to do what they did. But it has been proved to you that they were not forced; it was said, All might go that would. And it is not proved on their Side, that any one of the Prisoners did seem to dissent from their going away. It is proved, that they all made use of this Ship to very bad Purposes; that they took and plundered several Ships, and shared the Booty. We do not produce this to prove them guilty, but to shew that they made use of this Ship to this very Purpose. Now if you allow what they say, that they were forced to go away; then you must never convict, at any time, one or two Highwaymen that rob in the Company of four or five; for they may say too, that they were overpower'd, and forced by their Company. It is so, not only in Case of Robbery, but in all other Crimes also. They have said a great deal indeed, but without any manner of Probability of Truth. They have produced no Witnesses for themselves, to prove any thing they have said. And the Witnesses for the King have given Testimony without any Exception. And, I hope, you will vindicate the Credit of the Nation, and find them Guilty, as the Evidence has proved them.

L. C. J. *Holt*. Gentlemen of the Jury, These Five Prisoners, *E. Forfeith, W. May, W. Bishop, Ja. Lewis, and J. Sparkes*, are indicted for a Piracy and Robbery committed on the High Seas, some Distance from the *Groyne*, in taking and carrying away a Ship, and several Goods therein contained. She was called the *Charles the Second*. This was done in *May* last was two Years, 1694. You have heard what Evidence has been given on this Indictment against the Prisoners.

It has appear'd that this Ship was bound in a Voyage to the *West-Indies*. Two of the Prisoners, *W. May, and J. Sparkes*, were Seamen then on board this Ship, and engaged in the Voyage; the other three were not Mariners in that, but in another Ship, called the *James*, that lay, at that Time, near the *Groyne*; but they came aboard the Ship *Charles* before, and continued on board her when she was carried away.

That there was a Piracy committed on the Ship *Charles*, is most apparent by the Evidence that hath been given; that is, a Force was put on the Master, and some others of the Seamen on board her, who because they would not agree to go on a piratical Expedition, had Liberty to depart, and be set ashore. But the Ship was taken from the Captain, who was possessed of her for the Use of the Owners, and was carried away by *Every*, and others of his Crew that remained on board her; and others came from the *James*: Which Taking was a Piracy that is manifested by the Use they did put her to; for they did afterwards commit several other Piracies, with her, and took several *English* and *Danish* Ships, and then went to several Islands, Countries and Places, as to the Isles of *May* and *Princes*, to *Madagascar*, and then to *Joanna*, and afterwards to *Meat*, and then to the *Red Sea*; and at the Entrance of the *Red Sea* committed more Piracies, in the manner as you have heard, and has been very particularly described to you. So that I must tell you, beyond all Contradiction, the Force put on the Captain, and taking away this Ship, called the *Charles the Second*, was a Piracy; and for that particular Fact these Prisoners are now charged.

The Matter you are now to enquire after, is, Whether all the Prisoners were guilty of this Piracy, or which of them.

As for *Ed. Forfeith, Bishop, and Lewis*, it hath appeared to you, that they, with others, were aboard the Ship *James*; and that there was a Report spread about of a Plot against the Captain of the *Charles the Second*, and a Design to carry that Ship away. To prevent which, there were some of these Men sent out in a Boat, by the Captain of the *James*, to this Ship, to assist Captain *Gibson*; but instead of preventing this Piracy, they stayed behind, and went along with these Men that carried away the Ship.

As to *W. May* and *J. Sparkes*, that were of this Ship's Crew, they continued on Board, and were Parties in all those Piracies.

There was a Consult, it seems, by some particular Persons, of which *Every* was the Ring-leader, how to effect this Design; Capt. *Every*, as they call him, though he was no Captain, but was under the Command of Capt. *Gibson*, that had the Conduct of this Ship.

It's true, it is not proved to you that these Men were at that Consult; for, it seems, they

were too many, for they were about 160 that remained on board when the Ship was carried off.

Now for *W. May, Jo. Gravet*, Second Mate, that was aboard, though he had a Pistol clapp'd to him to prevent any Resistance, yet had Liberty to depart; and upon his going off, discoursed with *May*, who shook Hands with him and bid him farewell, and remember him to his Wife. And therefore it is evident that *W. May* was under no Force to stay; he stay'd with his good Will, and did consent to the Piracy. And then another Witness is *D. Creagh*, who says, that *May* was so zealous in the Matter, that he said to him, *God damn him, he deserves to be shot through the Head*.

Sparkes was on Board the Ship, and had a design'd End, and no Compulsion was used towards him, since he had Liberty to depart; but the staying behind by the rest, is a great Evidence to induce you to believe they were Parties in the Design; for why else should not they go ashore as well as others, since there doth not appear any Restraint upon them to stay, especially when a general Word was given, that those who would go on Shore should go on the Deck, and a Boat was ready to carry them off?

They say, they wanted a Bucket in the Boat, and they gave them one to lave out the Water; that is a plain Evidence they were willing to be rid of those that were not willing to engage with them; and if they had not approved of the Design, they were not hindered from going in the Boat. As for those that came from the *James*, there was no manner of Force on them, but they were sent from the Captain to assist the Captain of the *Charles*; for those two Ships having lain near together at the *Groyne*, there was some Intelligence of such a Design in Agitation, and these three forsook their own Ship; *Every* declared his Design to some: And he told them what Shares they should have; and because he was their Captain and Commander, he thought himself entitled to a double Share.

And then you have heard what was done in the whole Progress of this wicked Design; every one of these Men had their Share; even this *W. May*, though he was sick for some Time, and was set ashore at *Joanna*, and at the Ship's Return taken in again, yet he had his Share of all the Prizes. *W. Bishop* had his Share, *James Lewis* had his Share, and *John Sparkes* had his Share: and, says this young Man, *Philip Middleton*, I had my Share, which was above an hundred Pound, which was thought by them to be a good Share for a Boy; and *Sparkes* took him at a Disadvantage, and having an Opportunity, took it from him.

Now if there be a Piracy committed, though contrived but by one Man, yet if others do concur in it, they are equally guilty.

Now, though these Prisoners tell you, there was a Force upon them, it is a meer Suggestion, without any manner of Evidence; but there is Evidence of their consenting and confederating in this wicked Enterprize.

Indeed there hath been a Trial before, which you have all heard of; for the City and Nation have discoursed of it; consider therefore the Evidence. You have a great Trust reposed in you, for you are not to act arbitrarily, but you are

are accountable to God Almighty, to whom you are sworn, and to the Government for the Verdict you give. If you are not satisfied in your Consciences that the Evidence is sufficient to find these Men guilty, in God's Name, acquit them.

But if you are satisfied in the Sufficiency of the Evidence to convict them, you must find them guilty.

Cl. of Arr. Cryer, swear an Officer to keep the Jury; which was done, and the Jury went out to consider of their Verdict. And in the mean time, the six Prisoners were again arraigned upon two several Indictments, the one for piratically taking away a *Moorish* Ship, and the other for committing Piracy upon two *Danish* Ships. To both which Indictments *Joseph Dawson* pleaded Guilty; the other five pleaded Not guilty, and put them upon their Trials.

Then the Jury having been withdrawn a little while, returned into Court.

Foreman. If there be any Evidence to prove that *John Sparkes* consented to the running away of the Ship, we desire it may be heard again.

L. C. J. Holt. He was with them at the carrying off the Ship, and at the taking of the several Prizes, and had his Share afterwards. What is Consent? Can Man otherwise demonstrate their Consent, than by their Actions?

Juryman. But we understand, my Lord, that he was tried upon his consenting to carry away the Ship.

L. C. J. Holt. What do you mean by consenting? If a Ship be carried away with Force from the Captain, divers Piracies are committed with her, one continues aboard and receives a Share of the Profit of the several Piracies; is not that an Evidence of Consent to the piratical Design? Was it not proved that many went out of the Ship that were not willing to go on that Design? And that was with the Leave of the rest that remain'd.

Mr. J. Eyre. And one stood on the Deck, and said with a loud Voice, that they that will not go, may have Liberty to go ashore.

Mr. Conyers. No Man was hindred but the Doctor, being a useful Man.

L. C. J. Holt. When a Ship is run away with, and People are aboard that Ship so run away with, that proves their Consent, unless they can produce Evidence to the contrary.

Mr. J. Turton. The Captain was in his Bed sick of a Fever at that Time, and was not willing to go with them, and they sent him away from them.

Mr. J. Eyre. And every Man had his Share.

Then the Jury consulting together a very little Time, agreed on their Verdict.

Cl. of Arr. Gentlemen of the Jury, answer to your Names. *Jo. Degrave.*

J. Degrave. Here. (And so of the rest.)

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

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Set *Ed. Forseith* to the Bar. *Ed. Forseith*, hold up thy Hand. (Which he did.) Look upon the Prisoner; Is *Edward Forseith* Guilty of

the Piracy and Robbery whereof he stands indicted, or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper. What Goods and Chattels, &c.

Foreman. None that we know of.

Cl. of Arr. W. May, hold up thy Hand. (Which he did.) Is *W. May* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper, &c. *W. Bishop*, hold up thy Hand. (Which he did.) Is *W. Bishop* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him Keeper, &c. *J. Lewis*, hold up thy Hand. (Which he did.) Is *J. Lewis* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper, &c. *Jo. Sparkes*, hold up thy Hand (Which he did.) Is *Jo. Sparkes* Guilty, &c. or Not guilty?

Foreman. Guilty.

Cl. of Arr. Look to him, Keeper, &c.

L. C. J. Holt. Gentlemen, you have done extremely well, and you have done very much to regain the Honour of the Nation, and the City.

Then the Court adjourned to Friday next the 6th of November, Two of the Clock in the Afternoon, On which Day *Ed. Forseith*, &c. were tried upon two other Indictments for several Piracies.

An Abstract of the Trial of *Edward Forseith*, *James Lewis*, *William May*, *William Bishop*, *John Sparkes*, (*Joseph Dawson* having pleaded Guilty upon his Arraignment) at the Sessions House in the Old Bailey, Friday, November the 6th, 1696. where were present *Sir Charles Hedges*, Judge of the High Court of Admiralty, the Lord Chief Justice *Holt*, the Lord Chief Justice *Treby*, with several others of his Majesty's Judges and Commissioners.

After several Challenges made by the Prisoners, of the Persons returned upon the Jury, these Twelve Gentlemen were sworn, viz.

<i>Roger Mott,</i>	} {	<i>John Watson,</i>
<i>John James,</i>		<i>Benjamin Hooper,</i>
<i>Richard Rider,</i>		<i>John Hibbert,</i>
<i>William Hunt,</i>		<i>Richard Chiswell,</i>
<i>John Hammond,</i>		<i>Daniel Ray,</i>
<i>Abraham Hickman,</i>		<i>William Hatch.</i>

THE N the Clerk read the two Indictments upon which they were tried, viz. one for seising, robbing, and carrying away two Ships belonging to *Denmark*, on the 30th of *August*, 1694. The other for that they, on the 28th of *September*, 1695. in a Place 40 Leagues distant from *Surat*, did forcibly and piratically set upon

a *Moorish* Ship and take away her Tackle and Goods, to a great Value.

Then Dr. Newton, one of his Majesty's Advocates, spoke to the Jury, as followeth.

My Lord, and Gentlemen of the Jury,

The Crime the Prisoners at the Bar stand charged with, and which has been opened to you, upon the Indictments, is Piracy; which is the worst Sort of Robbery, both in its Nature and its Effects, since it disturbs the Commerce and Friendship betwixt different Nations; and if left unpunished, involves them in War and Blood: For sovereign Powers and Nations have no Courts of Justice afterwards to resort to, as the Subjects of Princes have, in their own Countries, for Redress or Punishment; but they can only have recourse to Arms and War, which how expensive, and how dangerous they are, and what Calamities and Ruin they carry along with them, no Person can be a Stranger to. So that those who bring not such Criminals to Judgment, when it lies in their Power, and is their Duty to do so, are answerable, in a great Measure, before God and Man, for all the fatal Consequences of such Acquittals, which bring a Scandal on the publick Justice, and are often attended with publick Calamities.

It is not therefore, Gentlemen, to be supposed, that wise or honest Men, (and there are none who would be thought to be otherwise) who love their Country, and wish its Peace and Prosperity, would be guilty in that kind.

Gentlemen, This Piracy was begun in *Europe*, carried on through *Africa*, and ended in the remotest *Indies*; so that, in a manner, all the World is concerned in this Trial, and expects and demands Justice of them, if they are guilty, at your Hands.

Then the Witnesses were produced to prove the Facts charged upon the Prisoners, *viz. Jo. Dean, David Creagh, Phil. Middleton*, and others; who fully proved, against them, That the Prisoners, with several other wicked Persons, not yet taken, did forcibly take away the Ship *Charles the Second* from the lawful Commander, Captain *Gibson*, with a piratical Design; and in the said Ship did afterwards commit several Piracies. At the *Ile of May* they took three *English* Ships. From thence they went to the Coast of *Guinea*; and when some of the Natives came on board with their Gold, to trade with them, they took away their Gold, and carried them away for Slaves. And then went to the *Ile of Princes* and took two *Danish* Ships, and took out what was in them, *viz. 40 Pound Weight of Gold Dust*, and other Merchandize; and they offered to restore one of the Ships to the Master after they had robbed her, but the Master said she was insured, and he would not take her again. And afterwards they burnt one of the Ships, and carried away the other. Then they went to *Bobs Key*, at the Mouth of the *Red Sea*, waiting for the *Mocha* Fleet, which one Night pass'd by them unseen; but were informed the next Day that they were gone. And then calling a Council, they agreed

to follow them; and accordingly went after them, and came up with one of them which was about 250 Ton, and with small Resistance took her, and put some Men on board her, and took Gold and Silver out of her to the Value of 30 or 40000*l.* with other Merchandize: And afterwards met with the Ship called the *Gurfway*, and robbed her likewise of all her Furniture, to a very great Value. And about a Week after, they shared all the Prizes they had taken; and some had a thousand Pound, some had eight hundred, some seven hundred, some five hundred, every Man in the Ship his Share, as they thought they deserved. And it was particularly proved by the Evidence against the Prisoners, that they had their Shares. *The more particular Relation of which is already printed at large in the foregoing Trial.*

When the King's Evidence had done, the Prisoners were permitted to say what they could in their Defence; but the same appearing to be very weak, the Lord Chief Justice *Holt* summ'd up the Evidence; and the Jury going out to consider their Verdict, after a short Stay, brought them in all Guilty.

Then the Court adjourn'd to the 10th of November following.

After the Trial of John Murphey was over, the Pirates were brought to the Bar.

Cl. of Arr. Joseph Dawson, you by your own Confession are convicted of Piracy and Robbery: What have you to say why Sentence of Death shall not be pass'd upon you according to Law?

Jos. Dawson. I submit my self to the King and the honourable Bench.

Cl. of Arr. Edward Forseith, what have you to say, &c.?

Forseith. I am an innocent Man; and went on to justify himself, &c.

Judge of the Admiralty. You and the rest of the Prisoners at the Bar have had a very fair Trial, and been fully heard upon your Defence; but the Jury your Countrymen, upon whom you put your selves to be tried, have found you Guilty: So that the insisting upon your Justification cannot now avail you any thing, the Verdict being given; but if you have any thing to offer in Arrest of Judgment, or can shew any Cause why the Court should not proceed to give Judgment according as the Law directs, against Persons convicted of Piracy, you shall have Liberty to speak, and will be heard.

Forseith. I desire to be sent into *India* to suffer there.

Cl. of Arr. William May, what have you to say, &c.

William May. My Lord, I being a very sickly Man, never acted in all the Voyage. I have served my King and Country this thirty Years, and am very willing to serve the *East-India* Company where they please to command me; and desire the honourable Bench to consider my Case, and if I must suffer, I desire to be sent into *India* to suffer there.

Cl. of Arr. William Bishop, What have you to say, &c.

William Bishop. I was forced away; and when I went, was but 18 Years old, and am now but 21, and desire Mercy of the King and the Court.

James Lewis. I am an ignorant Person, and leave my self to the King's Mercy.

John Sparkes. I leave my self to the King's Mercy, and to the honourable Court.

Judge of the Admiralty. Joseph Dawson, You stand convicted upon four Indictments, by your own Confession, for Piracy and Robbery. And you *Edward Forseith, William May, William Bishop, James Lewis* and *John Sparkes,* having put your selves upon your Trials according to the Customs and Laws of your own Country, have been found guilty upon three several Indictments, for

the same detestable Crimes committed upon the Ships and Goods of *Indians, of Danes,* and your own Fellow-Subjects. The Law for the Heinousness of your Crime hath appointed a severe Punishment, by an ignominious Death; and the Judgment which the Law awards, is this;

That you and every one of you be taken from hence to the Place from whence you came, and from thence to the Place of Execution, and that there you, and every one of you, be hanged by the Necks, until you, and every one of you, be dead: And the Lord have Mercy upon you

According to this Sentence, *Edward Forseith* and the rest were executed on *Wednesday, November* the 25th, 1696. at *Execution-Dock,* the usual Place for the Execution of Pirates.




CLXII. *The TRIAL of Captain Thomas Vaughan at the Old-Baily, for High-Treason; on the High-Seas, November 6, 1696. 8 Will. III.*

The Court being sate, at which were present, Sir Charles Hedges, Judge of the High Court of Admiralty, the Lord Chief Justice Holt, the Lord Chief Justice Treby, the Lord Chief Baron Ward, Mr. Justice Turton, and others of his Majesty's Commissioners; the Court proceeded on this Manner.

for his Trial on Friday next, the 6th of November, 1696.

Die Veneris, sexto Novembris, Annoque Regni Regis Willhelmi Octavo, Annoque Domini, 1696.

Cl. of Arr. Cryer.  **A K E** Proclamation. O yes, O yes, O yes. All Manner of Persons that have anything more to do, &c. and were adjourned to this Hour, draw near, and give your Attendance: God save the King.

Cl. of Arr. Cryer. **C** R Y E R, make Proclamation. 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 you Sheriffs of the City of London, return the Precepts to you directed, upon Pain and Peril which will fall thereupon.

Then the Grand-Jury were called over, and the Appearances marked. And Witnesses being sworn in Court to give Evidence to them, against Thomas Vaughan, they withdrew to hear the same.

Then the Under-Sheriff returned the Precepts.

Then the Keeper of Newgate was order'd to bring his Prisoner, Thomas Vaughan, to the Bar. (Which he did.)

Cl. of Arr. Make Proclamation. Cryer. O yes, You good Men of the City of London, summoned to appear this Day, to try between our Sovereign Lord the King, and the Prisoner at the Bar, answer to your Names, as you shall be called, every one at the first Call, and save your Issues.

Cl. of Arr. Tho. Vaughan, Hold up thy Hand. (Which he did.) Thou standest indicted, &c.

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

How say'st thou, *Tho. Vaughan,* Art thou Guilty of the High-Treason whereof thou standest indicted, or Not guilty.

Mr. Phipps. Will your Lordship please to order, that two Men may be brought from the *Marshalsea,* in the Behalf of the Prisoner?

T. Vaughan. Not guilty.

Cl. of Arr. Culprit, How wilt thou be try'd?

T. Vaughan. By God and this Country.

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

L. C. J. Holt. You shall have an Order.

And then the Court proceeded to the Trial of the Pirates, and gave Notice to Mr. Vaughan to prepare

Then the Court went on the Trial of the Six Pirates; and after the Trial was over, Thomas Vaughan was called to the Bar.

T. Vaughan. My Lord, my Irons are very uneasy to me, I desire they may be taken off.

L. C. J. Holt. Ay, ay, take them off.

Mr. Phipps. If your Lordship please, we have some Doubts as to the Indictment.

L. C. J. Holt. If you have any Exceptions, you ought to have made them before the Prisoner pleaded to it.

Mr. Phipps. I thought you had allow'd it, my Lord, in former Cases.

L. C. J. No, we did not allow it as of Right due to the Prisoner; the Exceptions should have been made before the Plea. You were indulg'd in being heard at first in the Cases of *Rookwood*, *Cranburne*, and *Lowick*; but it was not the Intent of the Act, to alter the Method of the Proceeding; and so upon Consideration hath it been determined. The Prisoner hath Time given by the Act to make any Exception to the Indictment before he pleaded; but you may move what you will afterwards in Arrest of Judgment, if it be material.

Cl. of Arr. Thomas Vaughan. Those Men that you shall hear called, and personally appear, are to pass between our Sovereign Lord the King, and you, upon Trial of 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.

Mr. Phipps. There was one Man here that desired to be excused, because he was on the Grand-Jury; therefore it seems there are some returned upon this Jury that were on the Grand-Jury, which I think ought not to be.

L. C. J. Challenge them then.

Mr. Phipps. We do not know the Men.

Then the Pannel was called over, and a great many Challenges made, and the Twelve Men that were Sworn, were these;

<i>Edward Leeds</i>	}	<i>Caleb Hook</i>
<i>Nath. Green</i>		<i>Joceline Roberts</i>
<i>Hen. Sberbrook</i>		<i>Tho. Parker</i>
<i>Jo. Sberbrook</i>		<i>Peter Gray</i>
<i>Tho. Enms</i>		<i>Roger Poston</i>
<i>Peter Parker</i>		<i>—Woolley</i>

Cl. of Arr. Cryer. Make Proclamation.

Cryer. O yes, If any one can inform my Lords the King's Justices, and the King's Serjeant, the King's Attorney-General, the King's Advocate in his High Court of Admiralty, before this Inquest be taken of the High-Treason, whereof Thomas Vaughan, the Prisoner at the Bar, stands indicted, let them come forth, and they shall be heard; for now the Prisoner at the Bar stands 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 Arr. Thomas Vaughan. 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 *Thomas Vaughan*.

Whereas, That before and until the 8th Day of July, in the 7th Year of the Reign of our Sovereign Lord King William III. there was open War between our said Lord the King, and Lewis the French King: And that the said War continued on the said 8th Day of July, in the 7th Year aforesaid, and doth still con-

tinute. And that for all the Time aforesaid, the said Lewis the French King and his Subjects, were, and at present are Enemies of our said Lord the King that now is: And that at the Time of the said War, and before the said 8th Day of July, in the 7th Year aforesaid, the said Lewis the French King, set out, amongst others, a certain small Ship of War, called the *Loyal Clencarty*, of which Thomas Vaughan, a Subject of our said Lord the King that now is, was Commander, with several French Subjects, Enemies of our said Lord the King, to the Number of fifteen Persons, in a Warlike Manner, to take and destroy the Ships, Goods, and Monies of our said Lord the King, and his Subjects, and against our said Lord the King, to wage War upon the High-Seas within the Jurisdiction of the Admiralty of England. And that at the Time of the said War between our said Lord the King, and the aforesaid Lewis the French King, Tho. Vaughan, late of Galloway, in the Kingdom of Ireland, Mariner, being a Subject of our said now Lord the King, as a false Rebel against the said King his Supreme Lord, and not having the Fear of God before his Eyes, nor considering the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, and altogether withdrawing the cordial Love, and true and due Obedience which every true and faithful Subject of our said Lord the King, ought by Law, to have towards the said King; and the said War, as much as in him lay, against our said Lord the King, designing and intending to prosecute and assist; the said Tho. Vaughan, on the said 8th Day of July, in the said 7th Year of the King, being a Soldier aboard the Ship of War called the *Loyal Clencarty*, in the Service of the said Lewis the French King, and being then on the High-Seas, within the Jurisdiction of the Admiralty of England, about fourteen Leagues from Deal; did then and there by Force and Arms, falsely, maliciously, wickedly, and traiterously, aid, help, and assist the Enemies of our said Lord the King, in the Ship of War, called the *Loyal Clencarty*. And afterwards the said Thomas Vaughan, in the Execution and Performance of his said aiding, helping, and assisting, maliciously, falsely, and traiterously sailed a Cruising to several maritime Places within the Jurisdiction aforesaid, by Force and Arms to take the Ships, Goods, and Money of our said Lord the King, and his Subjects; against the Duty of his Allegiance, the Peace of our said Lord the King, and also against a Statute in that Case made and provided.

And the said Jurors for our said Lord the King, upon their said Oaths, farther represent, that the aforesaid Thomas Vaughan, as a false Traytor against our said Lord the King, further designing, practising, and with his whole Strength, intending the common Peace and Tranquillity of this Kingdom of England to disturb; and War and Rebellion against the said King upon the High-Seas within the Jurisdiction of the Admiralty of England, to move, stir up, and procure; and the said Lord the King, from the Title, Honour, Royal Name, and Imperial Crown of his Kingdom of England, and Dominions upon the High-Seas, to depose and deprive; and miserable Slaughter of the Subjects of the said Lord the King, of this Kingdom of England, upon the High-Seas, and within the Jurisdiction aforesaid, to cause and procure; on the said 8th Day of July, in the said 7th Year of the King, upon the High-Seas, about fourteen Leagues from Deal, and within the Dominion of the Crown of England, and within the Jurisdiction of the Admiralty of England aforesaid, falsely, maliciously, devilishly, and treacherously, by Force and Arms, with divers other false Rebels and Traytors (to the Jurors unknown) War; against our said now Lord the King,

King, prepared, prompted, levied, and waged. And that the said Thomas Vaughan in Performance of his said War and Rebellion, then and there, by Force and Arms, maliciously, wickedly, and openly assembled and joined himself with several other false Traytors and Rebels (to the Jurors unknown) to the Number of fifteen Persons, being armed, and provided in a warlike Manner, with Guns and other Arms, as well Offensive as Defensive. And the said Thomas Vaughan, then and there, being aboard the said Ship of War, called the Loyal Clencarty, assembled with the other false Rebels and Traytors as aforesaid, maliciously, wickedly and traitorously sailed a Cruising to several maritime Places, with the aforesaid Ship of War, called the Loyal Clencarty, with an Intent to take, spoil, and carry away the Ships, Goods, and Money, of our said Lord the King, and his Subjects, by Force and Arms, upon the high and open Seas, within the Jurisdiction aforesaid; against the Duty of his Allegiance, the Peace of our said Lord the King, his Crown and Dignities; and likewise against the Form of a Statute in this Case made and provided.

Thomas Noden, } Jurors.
Samuel Oldham, }

Upon this Indictment he hath been arraigned, and upon this Arraignment he hath pleaded not guilty; and for his Trial he 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 guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his Goods and Chattels, as if you had found him guilty. If you find him not guilty, nor that he did fly for it, you are to say so and no more; and hear your Evidence.

Mr. *Witaker*. May it please you, my Lord, and the Gentlemen of the Jury, the Prisoner at the Bar, *Thomas Vaughan*, stands indicted for High Treason; That whereas on the 9th of July, there was a War between his Majesty the King of *England*, and *Lewis* the *French* King; amongst other Warlike Preparations that the *French* King did make, he did set forth a Ship called the *Loyal Clencarty*; That the Prisoner at the Bar, as a false Traitor, did list himself aboard this Ship; and on the High-Seas, about eleven Leagues from *Deal*, did traitorously aid the King's Enemies, to take the King's Ships. This is said to be against the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. He stands further indicted, for that he, the said *Thomas Vaughan*, with several other false Traytors, did levy War, and arm themselves with Arms, Offensive and Defensive, and was cruising on the High-Seas, off of *Deal*, with an Intent to take the King's Ships, and to kill and destroy the King's Subjects, against the Duty of his Allegiance, and the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment he has pleaded not guilty. We shall call our Witnesses, and prove the Fact, and doubt not but you will do your Duty.

Dr. *Littleton*. Gentlemen of the Jury, you have heard the Indictment opened, as also what Sort of Crime the Prisoner at the Bar stands charged

with, viz. That he being a Subject of the Crown of *England*, has, together with his Accomplices, armed himself in a military Way, to murder and destroy his Fellow-Subjects, and as much as in him lay, to ruin his native Country, by ruining the Trade and Traffick, which is the great Support and Riches of the Nation. And that this Crime might be consummate, he, with his Accomplices, has done what in him lay, to dethrone and dispossess his sacred Majesty; as well knowing it was in vain to expect to make the Nation unhappy, as long as we enjoy so great and good a Prince. So that you are to look on the Prisoner as an Enemy and Traitor to his own Country; and not only so, but as one of the worst and most dangerous Enemies; since he being a Subject of these Islands, was the better able to spy out our Weaknesses and Defects, and thereby to do us the greater Mischief. It is not to be express'd what Ruin and Desolation it would have caused to this Nation, had this Man and his Accomplices brought their wicked Intentions to effect. And all this was done to aid and assist the grand Enemy of *Christendom*, and of our own Country in particular, the *French* King. Therefore as you are Lovers of your King and Country, and your Fellow-Subjects, whom the Prisoner and his Accomplices would have destroy'd; I am sure you will take Care to do the Nation Justice, and that he be brought to condign Punishment. Gentlemen, There is one Thing further that I must not omit, viz. That the Prisoner at the Bar being in Custody for these very Crimes about a Twelve-month since, did not think fit to trust to his Innocency, nor to his pretended *French* Extraction, but the Day before he was to be tried, he thought fit to break Prison, withdraw from Justice, and run his Country: Which though not a Confession and full Proof, yet is a great Evidence of his Guilt.

* Mr. *Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar, *Thomas Vaughan*, stands indicted for two Sorts of Treason: The one is for levying War against the King, the other is for aiding and abetting the King's Enemies. And to prove the first, the levying of War, we shall prove that he was a Captain of a *French* Ship, call'd the *Granado*, of *St. Maloes*; and that with that Ship he took and carried away many of his Majesty's Subjects, and took several Merchant Ships, and carried them to *France*. We shall likewise prove that he was Captain of another *French* Ship, called the *Loyal Clencarty*, with which he was cruising off of *Deal*, where we had several Ships lying at the same Time: And there he being on board the said Ship *Clencarty*, was taken Prisoner, with a Commission, by which he was constituted Captain of the *Loyal Clencarty*, under the Hand of *Lewis* the *French* King.

And to prove him aiding and abetting to the King's Enemies, we shall prove against him this particular Fact; That he and his Accomplices did in the Year 1692, come to *London*, and went to *Tower-Wharf*, to enquire what Vessels were ready to go down the River; and there was one laden with Piece-Goods, and he put himself, and several other of his Accomplices into this Vessel, to go down the River; but they had contrived the Matter, and brought it so to pass, that they fell on those Men who had the Government of the Ship, and carried away this Vessel to *France*. Now if this be true, the Prisoner is certainly guilty of aid-

* *Sir John Hawles.*

ing the King's Enemies: And to prove he was guilty of this, we will prove to you, that even in *France*, where he was at perfect Liberty, he owned he was the Contriver of all this, and that he had a thousand Pound for his Share of what was taken from our Merchants. If we prove these two Facts against him, I doubt not but you will find him Guilty. We will call our Witnesses.

Cl. of Arr. T. Eglington, Rich. Crouch, Samuel Oldham, John Bub, — Noden. (Who appeared, and were sworn.)

T. Vaughan. With Submission to your Lordships, and the honourable Bench, I beg that they may be put asunder, out of hearing of one another.

L. C. J. Let it be so, tho' you cannot insist upon it as your Right, but only a Favour that we may grant.

Mr. Cowper. Set up *Richard Crouch*. Is your Name *Richard Crouch*?

R. Crouch. Yes, Sir.

Mr. Cowper. Give my Lord and the Jury an Account of what you know of the Ship *Coventry* taking of the *Clencarty*, and what you know concerning the Prisoner at the Bar in taking of her.

R. Crouch. We weighed our Anchor about Four a Clock.

Mr. Cowper. Where were you?

R. Crouch. At the *Nore*.

Mr. Cowper. In what Ship?

R. Crouch. The *Coventry*. After we had been under Sail a matter of an Hour, we came to an Anchor with a little Wind; so, Sir, this *Thomas Vaughan* met with a Couple of Pinks, they were small Vessels, that he designed to take; but he saw us, and so lay by all Night.

Mr. Cowper. Who lay by?

R. Crouch. *Thomas Vaughan*, the Prisoner at the Bar.

Mr. Cowper. In what Vessel was he?

R. Crouch. In a Two-and-twenty-Oar Barge; he lay by at the *Gunfleet*: The next Morning we weighed Anchor at Day-light; we saw him, and chased after him; and we made them, and he made us; and we made what haste we could, and coming up, we fired a Gun at him, and then we fir'd another, and then we went ashore.

Mr. Cowper. What, do you mean that he run his Vessel on the Sands?

R. Crouch. Yes, and then we fired another Gun at him, and then he got off again; and then we fired another Gun, and could not bring him to, and then he got off the Sands again; and when we came up to him, we manned our Long-boat, and Pinnace, and Barge, and had him at last. When he came on Board I said, I cannot deny but I am an *Irishman*, and that my Design was to burn the Ships at the *Nore*.

Mr. Cowper. Did he himself confess it?

R. Crouch. Yes, he did; that is the Man, I know him well enough.

L. C. J. When you took him, in what Ship was you?

R. Crouch. In the *Coventry*.

L. C. J. Out of what Ship was he taken?

R. Crouch. The Two-and-twenty-Oar Barge.

L. C. J. What Ship did he belong to?

R. Crouch. I reckon it was my Lord *Barclay's* Barge.

L. C. J. Who did it belong to then?

R. Crouch. To the King of *France*.

L. C. J. What Company was there in her? How many Men had she aboard?

R. Crouch. About five and twenty Hands.

Mr. Cowper. Did you ever hear him say any thing of a Commission he had?

R. Crouch. I heard he had a *French* Commission, but I did not see it.

Mr. Cowper. Did you hear him say any thing of it?

R. Crouch. No.

Mr. Cowper. But he told you his Design was to burn the Ships at the *Nore*?

R. Crouch. Yes.

Mr. Cowper. What Ships?

R. Crouch. The *English* Ships; there were several Ships there then.

L. C. J. Were there no *Frenchmen* aboard the Barge?

R. Crouch. No, that I can tell.

Mr. Lechmere. From whence did he come, from *England*, or *France*?

R. Crouch. From *Calais* in *France*.

L. C. J. Prithee hear me, This Two-and-twenty-Oar Barge, did it belong to any other Ship?

R. Crouch. No, not that I can tell.

L. C. J. Did he call that Vessel the *Loyal Clencarty*?

R. Crouch. Yes, my Lord.

Then Edmund Courtney was called.

Mr. Sol. Gen. *Mr. Courtney*, pray tell my Lord and the Jury what you know of the going away of a Custom-House Boat?

Ed. Courtney. I will tell you, if you please.

Mr. Phipps. My Lord, I think they ought not to examine to that, because it is not laid in the Indictment. The carrying away of the Custom-House Barge is not mentioned in the Indictment; and by the new Act for regulating Trials in Cases of Treason, no Evidence is to be admitted or given of any Overt-Act, that is not expressly laid in the Indictment.

L. C. J. Nothing else? Suppose a Man be indicted for levying War against the King, or adhering to the King's Enemies, can't they prove any Act that makes out a levying of War, or an Adherence to the King's Enemy?

Mr. Phipps. With Submission, not by that Act, my Lord, unless it be laid in the Indictment.

L. C. J. Levying of War is the Treason; may they not prove that levying of War, without being confined to any special or particular Act?

Mr. Phipps. With Submission, by the 25th of *Edward III.* levying of War, as well as imagining the Death of the King, must have the Overt-Acts, that are to prove it, express'd in the Indictment.

L. C. J. Levying of War is an Overt-Act.

Mr. Sol. Gen. The Business of Overt-Acts is, where the compassing and imagining the King's Death is a Crime in Question; and this must be discovered by Overt-Acts. But if Treason be falsifying of the King's Money, this is Treason; but there can be no Overt-Act of that, for that is an Overt-Act it self; but there must be an Overt-Act to prove the compassing and imagining the Death of the King, and in no other Sort of Treason.

L. C. J. Levying of War, that is an Overt-Act; so is adhering to the King's Enemies. Now compassing and imagining the Death of the King is not an Overt-Act in it self, but is a secret Imagination in the Mind, and a Purpose in the Heart; but there must be external Acts to discover that Imagination and Purpose.

Mr. *Phipps*. What is the Meaning of the new Act then, that there shall be no Evidence of any Overt-Act, but what is laid in the Indictment?

L. C. J. What Overt-Acts are there in Clipping and Coining?

Mr. *Phipps*. That is not within the new Act of Parliament.

L. C. J. That is most true; the one is excepted, the other is not comprehended: But the Question is upon the Statute of 25 *Ed. III.* to which the late Act doth refer. Now proving an Adherence to the King's Enemy, is proving an Overt-Act. Suppose it be the killing of the Chancellor, or Treasurer, or Judge in the Execution of his Office, what Overt-Acts will you have then? Adhering to the King's Enemies, is a Treason that consists in doing an Overt-Act.

Mr. *Phipps*. Yes, my Lord, I take it that it is; for the new Act, by saying, *that no Evidence shall be admitted of any Overt-Act, that is not expressly laid in the Indictment*, must be intended of such Treasons, of which by Law Overt-Acts ought to be laid. Now the killing of the Chancellor, or Treasurer, or Judge in the Execution of his Office, are not such Treasons of which it was necessary to lay any Overt-Acts in the Indictment, and so not within the Meaning of this new Law. But levying War, and adhering to the King's Enemies, which are the Treasons in this Indictment, must by the express Purview of 25 *Ed. III.* be proved by Overt-Acts, which are to be alledged in the Indictment.

Mr. *Sol. Gen.* The new Act does not alter the Law in this Particular; what was Law before, is Law now; it leaves the Overt-Acts as they were before; and it says not that an Overt-Act need to be express'd, where it was not needful before. Now if a Man be indicted for compassing the Death of a private Person, there ought to be some Overt-Act to prove his Design; but if there be an Indictment for Murder, there needs no other Overt-Act to prove it, but the Murder it self.

L. C. J. But the Force of the Objection lies in this, *viz.* To say a Man levied War, or adhered to the King's Enemies, is no good Indictment; but it is necessary to alledge in what manner he levied War, or adhered to the King's Enemies; as that he appeared in such a warlike manner, or did adhere to and assist the King's Enemies, by joining Forces with them, or otherwise assisting them, or confederating with them; that must be specified. But if you indict a Man generally for adhering to the King's Enemies, and not say how and in what manner he did adhere to them, that is not a good Indictment; therefore, if you particularize what Enemies, and how and in what manner he adher'd to them, no Evidence can be given of any other kind of Adherence, but that which is so specified in the Indictment.

Mr. *Sol. Gen.* Then we must put all our Evidence into the Indictment.

Mr. *Phipps*. So you must, as to the Overt-Acts.

Mr. *Sol. Gen.* That will be the same thing as to put in all our Evidence, if we must give Evidence

of no Overt-Act but what is express'd in the Indictment. But I do not take it, that the Act requires all Overt-Acts to be put in the Indictment.

Mr. *Phipps*. The Act says so. Suppose you had left out the Overt-Act, would the Indictment have been good?

Mr. *Sol. Gen.* We did not intend to put in all the Overt-Acts, but only what related to that Part of the Treason.

Mr. *Phipps*. The Treason must be proved by Overt-Acts, and the Overt-Acts that prove the Treason must be mentioned in the Indictment.

Mr. *Sol. Gen.* What! the Overt-Acts of the Treasons before mentioned, as counterfeiting the King's Money, and the like, are all to be mentioned?

L. C. J. Consider, if you can make that a good Indictment, to say, that the Prisoner adhered to the King's Enemies, without mentioning any Overt-Acts to manifest such an Adherence, then your Answer to Mr. *Phipps* is full; but if it be not a good Indictment, without alledging particular Acts of Adherence, then it necessarily follows, that if Particulars are alledged, and you do not prove them as is alledged, you have failed in the Indictment, and so his Objection will lie hard upon you.

Mr. *Sol. Gen.* My Lord, we framed our Indictment according to the Letter of the Statute.

L. C. J. In compassing the Death of the King, you must shew how that is manifested by the Overt-Acts.

Mr. *Sol. Gen.* But compassing and imagining must be discovered by some Overt-Acts.

L. C. J. *Treby*. This is a Doubt I have often thought of; I thought it most natural that the Word Overt-Act should relate to the first Article, *viz. compassing and imagining of the King's Death*: For Overt-Act seems to be opposed to something of a contrary Nature: Act is opposed properly to Thought, Overt is properly opposed to secret. And that Sort of Treason consisting in secret Thought and internal Purpose, cannot be known, tried, and judged of, without being disclosed and manifested by some external open Act. Wherefore it is pertinent and reasonable, in order to attain a Man of such Treason, that the Indictment should charge and set forth the Act, as well as the Thought. And so it hath been used to be done.

But such Order or Manner doth not seem so natural or necessary, in framing Indictments for other Treasons, where the Treason consists in visible or discernible Facts; as, levying War, &c.

Nevertheless, I think an Overt-Act ought to be alledged in an Indictment of Treason for adhering to the King's Enemies, giving them Aid and Comfort. And the Overt-Act, or Acts, in this Case, ought to be the particular Actions, Means, or Manner by which the Aid and Comfort was given.

My Lord *Coke* declares his Opinion to this Purpose. His Words (which I read out of his Book here) are these: *The Composition and Connection of the Words are to be observed, viz. [thereof be attainted by Overt-Deed.] This, says he, relates to the several and distinct Treasons, before express'd, and especially to the compassing and imagining of the Death of the King, &c. for that it is secret in the Heart, &c.* Now the Articles of Treason, before express'd in the Statute of 25 *Ed. III.* are four. 1, Compassing, &c. 2, Violating the Queen, &c.

3. Levying War, and 4. This of Adhering, &c. (And yet it is hardly possible to set forth any Overt-Act concerning the second, otherwise than the Words of the Statute, that Article expressing so particular a Fact.)

I do observe also, that these Words [*Being thereof attainted by Overt Fact*] do, in this Statute, immediately follow this Article of Adhering, &c. And it would be a great Violence to construe them to refer to the first Article only, and not to this last, to which they are thus connected. If they are to be restrained to a single Article, it were more agreeable to the strict Rules of Construing, to refer them to this of Adhering only.

L. C. J. That which I insist on is this, whether the Indictment would be good, without expressing the special Overt-Act. If it be, then this is a Surplusage, and we are not confin'd to it; but if it be not a good Indictment without expressing it, then we are confin'd to it.

Mr. *Phipps*. I believe Mr. Solicitor never saw an Indictment of this kind, without an Overt-Act laid in it.

L. C. J. Can you prove the Facts laid in the Indictment? For certainly the Indictment, without mentioning particular Acts of Adherence, would not be good.

Mr. *Cowper*. Yes, my Lord; and as to the Evidence before you, we would only offer this; whether in this Case, if the Indictment were laid generally, for adhering to the King's Enemies in one Place, and in another Place levying of War, and nothing more particular, it would be good: I doubt it would not. But when there is laid a particular Act of Adhering, we may give in Evidence Matter to strengthen the direct Proof of that particular Act of Adhering to the King's Enemies, though that Matter be not specially laid in the Indictment: For the Act goes only to this, that the Prisoner shall not be convicted, unless you prove against him the Overt-Acts specially laid in the Indictment; but whether it shall not be heard, to make the other Overt-Act which is laid, the more probable? Now we have laid a special Overt-Act in the Indictment; and we have produced Evidence of it, and we would produce likewise collateral Evidence, to induce a firmer Belief of that special Overt-Act, by shewing you that he hath made it his Practice, during the War, to aid and assist the King's Enemies: But if the Jury do not find him guilty of the special Overt-Acts laid in the Indictment, they cannot find him guilty by the Proof of any other Overt Act not laid in the Indictment. But if we prove he has made this his Practice, in other Instances, during the War, whether that Proof shall not be received?

Mr. *Phipps*. My Lord, I desire the Act may be read. It expressly contradicts what Mr. *Cowper* says; for it says, That no Evidence shall be given in the Overt-Act, that is not expressly laid in the Indictment. [*The Act was read.*]

L. C. J. That is, you may give Evidence of an Overt-Act, that is not in the Indictment, if it conduce to prove one that is in it. And if consulting to kill the King, or raise a Rebellion, is laid in the Indictment, you may give in Evidence an acting in Pursuance of a Consult, that is an Evidence that they agreed to do it; though that doing of the Thing is, of it self, another Overt-Act, but it tends to prove the Act laid in the Indictment.

Mr. *Phipps*. The Overt-Act laid in this Indictment, is his cruising in the *Clencarty*; and this Overt-Act you would prove, is no Evidence of that, nor relates to it, but it is a distinct Overt-Act of it self.

L. C. J. You cannot give Evidence of a distinct Act, that has no Relation to the Overt-Act mentioned in the Indictment, though it shall conduce to prove the same Species of Treason.

Mr. *Cowper*. We would apply this Proof to the Overt-Act laid in the Indictment.

L. C. J. Any thing that has a direct Tendency to it, you may prove.

Mr. *Cowper*. We have laid the Overt-Act, that he did voluntarily put himself on Board this Vessel of the *French King*, the *Loyal Clencarty*, and did go to Sea in her, and cruise, with a Design to take the Ships of the King of *England*, and his Subjects. Now Part of the Overt-Act, is his Intention, in the Act of Cruising; we do not charge him with taking one Ship; so that his Intention is a Member of the Overt-Act: and it must be proved, to make his Cruising criminal, that he design'd to take the Ships of the King of *England*. Now we think it a proper Intention, to shew, that during this War, before and after the Time of the Treason laid in the Indictment, he was a Cruiser upon, and Taker of the King's Ships, and this fortifies the direct Proof given of the Intention.

L. C. J. I cannot agree to that, because you go not about to prove what he did in the Vessel call'd the *Loyal Clencarty*; but that he had an Intention to commit Depredation on the King's Subjects: So he might, but in another Ship. Now, because a Man has a Design to commit Depredation on the King's Subjects in one Ship, does that prove he had an Intention to do it in another?

Mr. *Phipps*. He was cruising in the *Clencarty*, that is the Overt-Act laid in the Indictment; and the Overt-Act you would produce, is his being in another Vessel.

L. C. J. Go on, and shew what he did in the *Clencarty*. You the Prisoner, will you ask this Man any Questions?

Mr. *Phipps*. *Crouch*, you said, that the Prisoner did say he could not deny but he was an *Irishman*; how came you to talk about it?

R. *Crouch*. He said, I cannot deny but I am an *Irishman*.

L. C. J. Did he say he was an *Irishman*? What were the Words he used?

R. *Crouch*. He told the Lieutenant he was an *Irishman*.

Mr. *Phipps*. What Discourse was there? How came he to say that?

R. *Crouch*. I went by only, and heard the Words spoken to the Lieutenant.

L. C. J. Did he speak *English*?

R. *Crouch*. Yes, my Lord.

L. C. J. If he spoke *English*, that is some Evidence he is an *Englishman*, though the contrary may be proved by him.

T. *Vaughan*. That would no more prove me an *Englishman*, than if an *Englishman* were in *France*, and could speak *French*, would prove him a *Frenchman*, because he could speak *French*.

L. C. J. You shall be heard by and by to say what you will on your own Behalf.

Mr. *Phipps*. Were there any *Frenchmen* on board the *Clencarty*?

R. Crouch. No, Sir.

Mr. Phipps. Mr. Vaughan, will you ask him any Questions your self?

Mr. Cowper. Call T. Noden.

T. Vaughan. How did you know that there were no Frenchmen aboard? Did I address my self to you when I came aboard?

R. Crouch. No, Sir.

T. Vaughan. Did I not address my self to the Captain when I came aboard? How came I to tell you I was an Irishman?

R. Crouch. They were all Scotchmen, Englishmen, and Irishmen.

Mr. Phipps. Mr. Vaughan, you need not take up the Time of the Court about that Matter.

Mr. Cowper. You may go on.

Mr. Sol. Gen. Did the Prisoner own that he acted by the French King's Commission? Did you know any thing of his having a French Commission?

R. Crouch. Yes, I heard he had one, but I did not see it; but I heard so by the Company.

L. C. J. Were there any Frenchmen aboard?

R. Crouch. No, not that I know of. They were Dutchmen, and Englishmen, and Scotchmen, and Irishmen.

Mr. Cowper. Call T. Noden. (Who appeared and was sworn.) Do you give my Lord and the Jury an Account of taking the Vessel, call'd the Two-and-twenty-Oar Barge?

T. Noden. Last Year, about June or July, to the best of my Remembrance, I belong'd to his Majesty's Ship the Coventry, and we took the Two-and-twenty-Oar Barge.

L. C. J. How many Dutchmen were aboard?

T. Noden. I do not know of above one.

L. C. J. Treby. What were the rest? Were there any Frenchmen?

T. Noden. Yes, there were several Frenchmen aboard. I belong'd to the Coventry; and as we were sailing by the Nore, and the Gunfleet, our Captain spy'd a small Vessel sailing by the Sands, and he suppos'd her to be a French Privateer, and he fir'd a Gun to make them bring to, and they did not obey; and at last fir'd a Gun, Shot and all, and they would not come to. Then the Captain order'd to man the Boat, and row after them: So the Barge, and Pinnace, and Long-boat were mann'd, and they came pretty near them. This Barge we took, was aground also; and they got her afloat, and she run aground again: And as they were aground, most of them out of the Boat, our Long-boat struck aground, and waded after them near half a League; and when we came to the Barge, there was this Captain Vaughan, and two or three and twenty more; and there was two Dutchmen, and, as I apprehended, some Frenchmen. There was in her a Blunderbuss, and small Arms, and a considerable Quantity of Hand-Granadoes.

L. C. J. What Vessel was you aboard?

T. Noden. The Coventry.

Mr. Sol. Gen. What Countryman did Captain Vaughan say he was?

T. Noden. I did not hear any thing of it. Our Captain examin'd the Dutchmen what Countryman the Commander was, and he said he was an Irishman; but I did not hear it my self. When Captain Vaughan was brought aboard the Coventry, I was put aboard the Prize we had taken.

Mr. Cowper. Had you any Discourse with Captain Vaughan?

T. Noden. No.

L. C. J. Did they endeavour to take your Ship?

T. Noden. No, but endeavoured to get away from us.

L. C. J. What Guns or Ammunition had they?

T. Noden. I cannot tell particularly; there was some Canvas Bags, every Man had a Carteridge Bag, and there were some Hand-Granadoes.

Mr. Whitaker. What Fire-Arms had they?

T. Noden. I cannot say how many; but they had Muskets, and Pistols, and two Blunderbusses.

Mr. Cowper. Did you understand whence this Ship, the Loyal Clencarty, came?

T. Noden. The Dutchmen said they came from Calais. As near as I can guess, we spy'd them about Eleven a Clock, and we weigh'd Anchor in the Afternoon, on Sabbath-day, and they took us to be a light Collier, and endeavour'd to board us, as the Dutchman said; but when they knew what we were, they endeavour'd to escape from us.

Mr. Cowper. Call Sam. Oldbam. (Who appeared and was sworn.) Mr. Oldbam, was you aboard the Coventry, when she took the Ship called the Clencarty?

Sam. Oldbam. Yes, I was.

Mr. Cowper. Pray give an Account what you observed of the Prisoner T. Vaughan then?

Sam. Oldbam. We weigh'd our Anchor first at the Buoy and Nore; so we saw a Prize in the Morning; the Captain said it was a Prize, and we made Sail after him, and they ran on the Goodwin Sands: And the Captain seeing the Barge run aground, we fir'd at her to bring her to; we fir'd a second, and she would not come to, but ran aground again. When she was aground, by the Captain's Order, we mann'd our Boats, and out we went after her.

Mr. Cowper. Did you take her?

Sam. Oldbam. We went, and our Long-boat ran aground; I was in the Long-boat, and we waded, I believe, a Mile and half after her.

L. C. J. What Frenchmen were aboard?

Sam. Oldbam. I cannot justly say whether there were any.

L. C. J. Were there any?

Sam. Oldbam. I think one or two.

Mr. Cowper. Were there any Dunkirkers or Walloons aboard?

Sam. Oldbam. There was a Dutchman, who they call'd a Fleming; and I discours'd him.

L. C. J. How many outlandish Men were there aboard? Was there a Dozen, or how many?

Sam. Oldbam. I cannot say the Quantity.

Mr. Cowper. Was there more than two or three?

Sam. Oldbam. Yes, more than two or three.

L. C. J. What, Foreigners?

Sam. Oldbam. Yes. And there were two Englishmen.

Mr. Cowper. What did you observe of the Prisoner at the Bar, at the taking of the Ship?

Sam. Oldbam. I did not come aboard along with the Prisoner, but with his Man; and his Man said he was an Irishman, and that he was Commander of the Boat.

Mr. Sol. Gen. What was their Design in that Ship Clencarty?

Sam. Oldbam. I cannot tell that.

Mr.

Mr. Cowper. Did they resist, in their being taken?

Sam. Oldham. I cannot tell that; I saw no Arms.

Mr. Cowper. You were in the Action; was there any Resistance made?

Sam. Oldham. I saw no Resistance; they offered to run, they were aground once, and got off again.

Mr. Phipps. You say there were Foreigners; what Countrymen did you believe those Foreigners to be?

Sam. Oldham. I cannot justly say, I believe Dutchmen.

L. C. J. How many Dutchmen were there?

Sam. Oldham. I cannot say.

Dr. Oldish. But you said there were some two or three Frenchmen, and that they spoke French; do you understand French?

Sam. Oldham. No, Sir.

Dr. Oldish. Then how do you know they were Frenchmen, and spoke French?

Sam. Oldham. They said they were; they did not speak English; several of the Ship's Company said they were French.

L. C. J. If they were all Dutchmen, and appear in a hostile Manner against the King of England's Subjects, they are Enemies, tho' we are in League with Holland, and the rest of the Seven Provinces.

Mr. Phipps. The Indictment runs, That the French King, *quandam Naviculam vocat' The Loyal Clencarty, cum quamplurimis Subditis Gallicis, Inimicis Dom. Regis nunc, ad numerum quindecim Personarum, replet' preparavit.*

L. C. J. Suppose it doth?

Mr. Phipps. It is *Subditis Gallicis*, my Lord.

L. C. J. They will be Subjects in that Matter, if they act under his Commission: They are Enemies to the King of England, and they have made themselves the French King's Subjects by that Act.

Mr. Phipps. It appears not that they are Frenchmen, my Lord.

L. C. J. If Dutchmen turn Rebels to the State, and take Pay of the French King, they are under the French King's Command, and so are his Subjects. Will you make them Pirates, when they act under the Commission of a Sovereign Prince? They are then *Subditi* to him, and so *Inimici* to us.

Mr. Phipps. It does not take away their Allegiance to their lawful Prince. They may go to the French King, and serve him; yet that does not transfer their Allegiance from their lawful Prince to the French King, and make them his Subjects. But however, to make them Subjects within this Indictment, they must be *Gallici Subditi*; so they must be Frenchmen as well as Subjects.

L. C. J. Acting by Vertue of a Commission from the French King, will excuse them from being Pirates, tho' not from being Traitors to their own State; but to all other Princes and States against whom they do any Acts of Hostility, they are Enemies: And their serving under the French King's Commission, makes them his Subjects as to all others but their own Prince or State. And tho' they be not Frenchmen, yet they are *Gallici Subditi*; for it's the French Subjection that makes them to be *Gallici Subditi*.

Mr. Phipps. Pray, my Lord, suppose a Subject of Spain should go over to the French, and fight

against England; I take it, he may be termed an Enemy of the King of England, tho' his Prince be in League with ours; but, with Submission, he cannot properly be said to be a Subject of the French King: For suppose an Indictment of Treason against a Foreigner, should say, *that he being a Subject, did commit Treason*; if it be proved he is not a Subject, with Submission, he must be acquitted.

Mr. Cowper. There is a local Allegiance while he is in the Country, or Fleets, or Armies of the French King.

L. C. J. Dutchmen may be Enemies, notwithstanding their State is in Amity with us, if they act as Enemies.

Mr. Cowper. Call R. Bub. (*He was sworn.*) Was you aboard the Coventry, when she took the Clencarty?

R. Bub. Yes, Sir.

Mr. Cowper. Give an Account what you know of the Prisoner, *Tbo. Vaughan*, at the Taking of that Ship.

R. Bub. We came aboard the Coventry, and were at the Nore at Anchor; our Pennant was taken down to be mended. So in the Night Captain Vaughan, with his *Two-and-twenty-Oar Barge*, rounded us two or three times. In the Morning we weigh'd Anchor, and fell down, in order to go to the Downs; and we came up with them, and fir'd at Captain Vaughan, and he would not bring to. With that, our Captain order'd to have the Barge, and Pinnace, and Long-boat to be mann'd, to go after him. They follow'd him, and at last came up with him, and came up pretty near; but could not come so near with the Long-boat, but were fain to wade up to the Middle a Mile and a half. We hoisted our Colours, in order to fight them, and bore down still upon them, and they would not fight our Men: And we took them out; and when they came aboard, the Englishman that was a Pilot was to have his Freedom, to pilot them up the River. He confess'd to the Captain, that Captain Vaughan intended to burn the Ships in the Harbour: And the next Day after the Pilot had confessed it, Captain Vaughan himself confessed it on the Deck, that he came over with that Design.

Mr. Cowper. Who did he confess it to?

R. Bub. To the Boatswain and Gunner, as he was on the Deck, on the Larboard-Side; that he came on purpose to burn the Shipping in the Harbour.

L. C. J. Did he confess that himself?

R. Bub. Yes, my Lord.

L. C. J. Whereabout was this, at the Buoy in the Nore?

R. Bub. In the Downs, my Lord.

L. C. J. Where did the Ships lie that were to be burn'd?

R. Bub. At Sheerness.

Mr. Sol. Gen. He own'd himself to be an Irishman, did he not?

R. Bub. Yes.

Mr. Cowper. And that he came from Calais?

R. Bub. Yes.

Mr. Cowper. Had you any Discourse with him about a Commission?

R. Bub. No. But our Lieutenant and Captain had, but it was not in my Hearing; I will not speak further than I heard, and what I can justify.

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

Mr. Phipps. No.

Mr. Sol. Gen. Then call Mr. Jo. Crittenden, Marshal of Dover-Castle, (who was sworn.) Mr. Crittenden, Pray what did you hear the Prisoner at the Bar confess of his Design in coming to England?

Mr. Crittenden. I did not hear him say any thing of his Design.

Mr. Sol. Gen. What did he confess?

Mr. Crittenden. He confess'd he was an Irishman.

Mr. Whitaker. Upon what Occasion did he confess that?

Mr. Crittenden. When I enter'd him into my Book, I ask'd him what Countryman he was.

Mr. Cowper. What are you?

Mr. Crittenden. I am the Marshal of Dover-Castle.

Mr. Cowper. By what Name did he order you to enter him?

Mr. Crittenden. Thomas Vaughan, an Irishman.

L. C. J. Upon what Account did you enter him?

Mr. Crittenden. As a Prisoner.

Mr. Cowper. Did he speak any thing of a Commission?

Mr. Crittenden. I did not hear him say any thing of that.

Mr. Phipps. Have you your Book here?

Mr. Crittenden. Yes, Sir.

Dr. Oldish. Was he not in Drink when he said so?

Mr. Crittenden. I believe he was not very sober, indeed.

Mr. Phipps. Did you ever after hear him say he was an Irishman?

Mr. Crittenden. The next Day he deny'd it.

Mr. Cowper. When he had consider'd the Danger of it.

Mr. Crittenden. The next Day he was examin'd by some of the Justices of the Peace.

Mr. Sol. Gen. Was you by when he was examined by the Justices?

Mr. Crittenden. Yes.

Mr. Sol. Gen. What did he then say?

Mr. Crittenden. Then he said he was of Martenico.

Mr. Sol. Gen. Set up Mr. Bullock (who was sworn.) Mr. Bullock, Do you know the Prisoner at the Bar?

Mr. Bullock. Yes.

Mr. Sol. Gen. Pray what have you heard him say of his Design that he came into England for?

Mr. Bullock. He came to Dover about the 14th of July, 1695, as I remember: I went with several others, who were brought by the Captain of the Coventry, and the Lieutenant, and some others: And when we came thither, he there owned himself an Irishman; but when he went the next Day to be examin'd, he said he was of Martenico. He told me he had that Barge from the Duke of Bulloign, and came on the Coast, and was chased into the Flatts, where they took him.

L. C. J. Did you ever hear him say he had any Commission from the French King?

Mr. Bullock. I know nothing of that; it was late, and we did not examine him then; but the next Day, when he came to be examined, he said he was of Martenico.

Mr. Sol. Gen. What did he say his Design was?

Mr. Bullock. He said, that seeing the Boat at Bulloign, he bought it of the Duke of Bulloign; and the Duke ask'd him what he would do with her? And he said, he would fit her up, and go and take a Ship at Sea, that is, upon our Coasts.

Mr. Phipps. We are in your Lordship's Judgment, whether we need give any Evidence; for

we think they have not proved their Indictment: For the Indictment sets forth, That the French King fitted out the Loyal Clencarty, of which Thomas Vaughan was Commander; and that very many Frenchmen, Subjects of the French King, were put on board. Now the first Witness swears, there were no Frenchmen; and another swears there was one or two; another, that they were Foreigners; but does not believe they were Frenchmen. So there is no Proof of that Part of the Indictment; nor is there any Proof that he was Captain of the Loyal Clencarty: So that none can say, it is the same Vessel mention'd in the Indictment. Nor is any Act of Hostility proved; for all the Witnesses say, that Vaughan never pretended to attack them, but run from them. So that all they depend on, to support the Indictment, is to prove that he had a Design to burn the Ships at Sheerness; which will not serve their Turn; for the Words of the Indictment are, *ad prædandum super altum Mare*. Now Sheerness is not *super altum Mare*, but *infra Corpus Comitatus*; and then not within the Indictment.

Mr. Cowper. The Words Ships at Sheerness, do not imply, that the Ships lay within the Town of Sheerness, but off of Sheerness, which is *altum Mare*.

Mr. Phipps. Then it is not in your Indictment; for that says, at Sheerness.

Mr. Cowper. No, off of Sheerness.

Mr. Sol. Gen. It is no Contradiction, to say the Sea is within Part of a County.

Mr. Phipps. The Indictment says at Sheerness.

Mr. Sol. Gen. Off of Sheerness is the high Sea.

Mr. Phipps. Sheerness is not the Buoy in the Nore. Then you must prove he was Captain at this Time: For the Indictment says, *Ad tunc fuit Capitaneus & Miles*.

L. C. J. One Overt-Act of adhering to the King's Enemies, is, that he put himself as a Soldier on board the Ship.

Mr. Phipps. You will make one Part agree with another, That the French King did set out a Ship, and gave him a Commission to be Captain of her.

L. C. J. The Witnesses have prov'd he acted as a Captain.

Mr. Phipps. He was taken; and sure, if he was taken, he must have his Commission with him.

Mr. Sol. Gen. Examine the Marshal, he took an Account of him: And by Direction of Mr. Vaughan himself, he enter'd him as Captain; and he enter'd several Men in the Ship as Frenchmen, by their own Direction. (Mr. Crittenden was call'd.) Mr. Crittenden have you got your Book in which you made the Entry?

Mr. Crittenden. Yes, I have it.

Mr. Sol. Gen. By whose Order did you enter them?

Mr. Crittenden. By the Direction of Captain Vaughan, the Prisoner at the Bar.

Mr. Cowper. How did you know he was a Captain?

Mr. Crittenden. Because he told me he was Captain, and I enter'd him as such in my Book.

Mr. Sol. Gen. Captain of what?

Mr. Crittenden. The Loyal Clencarty.

Mr. Sol. Gen. Pray read your Entry in your Book.

Mr. Crittenden. Thomas Vaughan, Captain, Irishman, the 14th of July, 1695; and so of all the rest of the Ship's Crew.

Mr. J. Turton. Did you write these in the Presence of Captain Vaughan?

Mr. *Crittenden*. Yes, in the same Room where he was.

Mr. *Phipps*. Did you write it by his Direction?

Mr. *Crittenden*. For his own Part, by his Direction; and for the rest, by their Direction.

L. C. J. Take all the Circumstances together, it is great Evidence, considering what they were about, and what Vessel they had. Mr. *Crittenden*, can you tell how many *Frenchmen* were there?

Mr. *Crittenden*. I will tell you presently. (*He counts them in his Book.*) There were thirteen.

Mr. *Sol. Gen.* Did Captain *Vaughan* hear any of them bid you enter them as *Frenchmen*?

Mr. *Crittenden*. I cannot be positive in that, I suppose he did; he was in the same Room.

L. C. J. Do you expect Witnesses from *France*, to testify where they were born and christen'd?

Mr. *Phipps*. One Witness says there was not one *Frenchman* there.

L. C. J. Not to his Knowledge.

Mr. *Sol. Gen.* What do you know of his having a *French Commission*?

Mr. *Bullock*. I did not see it.

Mr. *Whitaker*. Did he own his having any *French Commission*?

Mr. *Bullock*. I cannot tell.

Mr. *J. Turton*. He own'd himself a Captain.

Mr. *Phipps*. He might be a Captain in another Ship, but not in this Ship; they ought to prove he was Captain at that Time, in that Ship, by the *French King's Commission*.

L. C. J. All the Witnesses say he acted as a Captain at that Time.

Mr. *Coxper*. He own'd himself the Captain of the *Loyal Clencarty*.

Mr. *Bar. Poveis*. What can be plainer, than that he own'd himself Captain?

Dr. *Oldish*. This seems to me a very strange Proof, to be built only upon the Sayings of these Persons, that they were *Frenchmen*; and this to a Man who had no Authority to examine them, when it might have been easily prov'd in a regular Way, in Case they had been so; they might have been examined before a Magistrate, and thereby it would have appeared whether they were *French* or no. And'twas absolutely necessary in this Case, because of the Contrariety of the Witnesses; for the first Witness said, there were no *Frenchmen* aboard; the next said there were two *Frenchmen* and a *Dutchman*; and *Crittenden* said, there were thirteen. Now how can these be reconciled, unless there had been a legal Examination of the Parties? But the Thing we would chiefly go on is this; I think they have fail'd in the Foundation of the Treason; that is, to prove the Prisoner a Subject of this Crown; neither is there the least Colour of Proof thereof. At Night he came to Mr. *Crittenden*, and is in Drink; there he says he is an *Irishman*: The next Morning, when he is examin'd before the Justices, then he comes in a kind of Judgment, and then such a Confession would be of Moment; but then he confesses himself to be a *Frenchman of Martenico*. Now, my Lord, what Credit is to be given to these Confessions; when before the Marshal he shall say, I am an *Irishman*, and the next Day, when he is on Examination, he declares himself a *Frenchman*; in one Confession he is in Drink, in the other sober? Now, my Lord, I say, what Proof is here? Here then the Foundation of the Treason fails: For the Indictment is, *That he being a Subject of the King of England, levies War*. Now, my Lord, if this

Quality be not proved, all the rest of the Indictment falls to the Ground: For it is impossible for him to commit Treason, where he is not a Subject; because there can be no Violation of Allegiance. So that if he be a *Frenchman*, as he declared before the Justices, he cannot be guilty of Treason. So that here they have fail'd in the Foundation of all; that is, to prove him a Subject of *England*. And because they affirm him to be so, it lies on those that affirm it, to prove it. But, perhaps, now they will say, that these little Confessions of his will throw the Burden of Proof on him. By no Means; when here is a stronger Presumption on the other Side, a meer extrajudicial Saying to Seamen, that he is an *Irishman*, cannot ballance his Confession examined before the Justices, wherein he says he is a *Frenchman*; and so can never throw the Burden of Proof on him. Therefore it lies on them that assert this to prove it. But, my Lord, tho' it doth not lie on him, yet we will prove him to be a *Frenchman*, and born at *Martenico*, by those that were at the Christening of him, and have known him from Time to Time ever since. And because they say, he can speak *English*, if you please to examine him, you shall hear him speak natural *French*; so that that cannot prove him to be a natural *Irishman*.

Mr. *Phipps*. Such a Saying of a Foreigner will be of no great Weight; because, if a Man go into a foreign Country, he may say he is that Countryman to get the more Favour.

L. C. J. What, to hang himself?

Mr. *Phipps*. No, my Lord, a Man that comes into a strange Country, may very well think he shall find better Usage, by pretending to be of that Country, than by owning himself to be a Foreigner. But we will prove *Vaughan* to be a *Frenchman*. Call *Robert French*. (*Then Robert French was sworn.*) Mr. *French*, Pray give the Court and Jury an Account, whether you know Mr. *Vaughan*, the Prisoner at the Bar, and how long you have known him, and what Countryman you take him to be, and the Reason why.

Rob. *French*. I have known him this fourteen Years.

Mr. *Phipps*. Where did you see him then?

Rob. *French*. I saw him in *Saint Christophers*.

Mr. *Phipps*. Pray give an Account how you came to know him.

Rob. *French*. About sixteen Years ago I was at *Mount-Surat*, and I came to *St. Christophers*, and there I chanc'd to come into *English Ground*, among the Factors; and so they brought me to the *French Ground*; and coming there, I was in Company with several others that Night, and it happened I was told there was one Mr. *Vaughan* there; and I coming acquainted with him, he shew'd me this Youth (he was a Youth then :) He told me he was his Son, and recommended him to me, because he look'd on me to be a Man in Trust and Business.

Mr. *Phipps*. From that Time what has he been reputed?

Rob. *French*. A Sea-faring Man.

Mr. *Phipps*. But what Countryman?

Rob. *French*. To be born in *Martenico*.

Mr. *Phipps*. In whose Dominions is that?

Rob. *French*. In the *French King's Dominion*.

Mr. *J. Turton*. What Occasion had you to discourse of the Place of his Birth?

Rob. *French*. Because his Father was look'd upon to be a *Frenchman*.

Mr. J. Turton. His Father was a Frenchman?

Rob. French. Yes, my Lord, and lived at *Martenico*.

Mr. Cowper. How old might he be at that Time?

Rob. French. About Fifteen or Sixteen.

Mr. Cowper. How came you to be talking of his Birth, and with whom?

Rob. French. One that was talking with me, told me, his Name was *Vaughan*, and that he was born there.

Mr. Cowper. What introduc'd this Discourse? How came he to tell you this, that he was born in that Place?

Rob. French. His Father told me so.

Mr. Cowper. You were talking of one *Vaughan* of his Name: How many were in Company when there was this Talk?

Rob. French. There were many of them.

Mr. Cowper. Name them.

Rob. French. It is so long ago I cannot remember them.

Mr. Cowper. Name as many as you can of them, as many as you do remember.

Rob. French. One Mr. *Bodiken*, a Factor.

Mr. Cowper. Who else?

Rob. French. Several others.

Mr. Cowper. You named one *Vaughan* before.

Rob. French. Yes, I did.

Mr. Cowper. But you had forgot him now.

Rob. French. No, there was one *Vaughan*.

L. C. J. Were there any more?

Rob. French. Yes, there was; I remember the Company that went along with me.

L. C. J. Who were they?

Rob. French. There were several Passengers that went over with me.

L. C. J. How came you to talk of this Man's Nativity?

Rob. French. Because his Father said, he had not been out of the Island in twenty Years; (*At which the People laugh'd.*)

Mr. Cowper. What Place was this Discourse in?

Rob. French. At *St. Christophers*.

Mr. Cowper. How did his Father's saying, he had not been out of that Island in twenty Years, prove his Son was born there?

Rob. French. Because he recommended him to me as a Sea faring Man.

Mr. Cowper. What is that a Reason of? What is that to his being born at *Martenico*?

Mr. J. Turton. What Countryman are you?

Rob. French. I am an *Irishman* born.

L. C. J. His Father acknowledg'd himself to be an *Irishman* born; Did he not?

Rob. French. No, my Lord, he did not say where he was born: I do not know.

Mr. J. Turton. Have you continu'd any Acquaintance with Mr. *Vaughan*. since? How long did you stay at *St. Christophers*?

Rob. French. I stay'd but four and twenty Hours, to take in Water.

L. C. J. How long was it after this, before you saw this Gentleman, Captain *Vaughan*?

Rob. French. I never saw him since, till I saw him in *London*. (*Then the People laugh'd.*)

L. C. J. Pray Gentlemen have Patience. How do you know now that this is the same Man, that you saw fourteen Years ago? For there must be a great Alteration in a Man in fourteen Years Time, from what was at that Time, being but fifteen Years of Age.

Rob. French. I believe in my Conscience this is the Man.

L. C. J. Can you take it upon your Oath he is the Man?

Mr. Bar. *Powis*. In what Language had you the Discourse?

L. C. J. How long were you in Company with him and his Father?

Rob. French. I believe five or six Hours.

Mr. Bar. *Powis*. In what Language was this Discourse with his Father?

Rob. French. My Lord, he spoke *English*, a Sort of broken *English*.

L. C. J. Where do you live your self?

Rob. French. I live in *Ireland*.

L. C. J. How long have you lived there?

Rob. French. Nine or Ten Years.

L. C. J. Whereabout in *Ireland*?

Rob. French. In *Connaught*.

L. C. J. Nine or Ten Years?

Rob. French. Yes, my Lord.

Dr. *Littleton*. Did not Captain *Vaughan*, nor his Father speak *Irish* to you in that six Hours?

Rob. French. No, my Lord.

Mr. Justice *Turton*. How long have you been in *England*?

Rob. French. Not above two Months.

Mr. Justice *Turton*. Did you hear of Captain *Vaughan* being to be try'd?

Rob. French. No, my Lord.

Mr. Justice *Turton*. How did he come to hear of you then?

Rob. French. I heard he was in *Town*.

L. C. J. It is a strange Thing; you have a most admirable Memory, and Captain *Vaughan* has as good a Memory as you; that you should never have any Intercourse for fourteen Years, and yet should remember one another after so long a Time. It is a wonderful Thing too, that when he could not know you were in *Town*, yet he should call you a Witness on his Behalf; sure he must have the Spirit of Prophecy.

Rob. French. He did not send to me at all.

L. C. J. How did you come to be here then?

Rob. French. I will tell you. It was my Custom always to go and see Prisoners; and I heard there were Prisoners in *Newgate*; so I went to *Newgate*, and I met with one *Dwall*; and I ask'd him of another Gentleman that was there; and I went to the other Side by Chance, and I met with Captain *Vaughan*.

L. C. J. What was thy Design? Why didst thou visit *Newgate*?

Rob. French. Because it was my Custom, because it was an Act of Charity.

L. C. J. Did you go to *Newgate* out of Charity?

Rob. French. I went to see my Friend, and carried a Letter to him. I went out of Charity.

Mr. *Phipps*. You were in the *West-Indies*, upon the *French Ground*; don't they speak *English* on the *French Ground*, and *French* on the *English Ground*?

Rob. French. Yes.

Mr. Cowper. So they do here. Did you ever see Captain *Vaughan* before that Time?

Rob. French. No.

Mr. *Whitaker*. Did you visit lately any other Prisoners in *Newgate*, besides Captain *Vaughan*?

Rob. French. Yes.

Mr. *Whitaker*. Give their Names.

Rob. French. I have visited Mr. *Noland*, and another Gentleman that is with him; and I went into the House and drank with him there.

Mr. *Whitaker*. What is that other Gentleman's Name?

Rob. *French*. I do not remember his Name at present; but he is a Companion of Mr. *Noland's*.

Mr. *Whitaker*. Do you know him if you see him?

Rob. *French*. I, I would.

L. C. J. *Treby*. How long have you been in England?

Rob. *French*. But two Months.

L. C. J. *Treby*. Have you usually visited Prisoners in former Years?

Rob. *French*. My Lord, where-ever I have been, it was my Custom to do so.

L. C. J. *Treby*. But how doth it consist, that you, who are an *Irishman*, should come hither to visit Prisoners in *Newgate*?

Rob. *French*. I can prove under my Lord-Mayor of *Dublin's* Hand, that I came here upon Business; and I went to the Prison to visit the Prisoners for Charity-sake, and did bestow it according as I was able.

L. C. J. You had best stay there, and not go away; for we may have Occasion to ask you some Questions.

Mr. *Cowper*. Do you not use, out of Charity, to be Evidence for them?

Rob. *French*. No, never before in my Life.

Mr. *Whitaker*. What other Prisons have you visited, besides *Newgate*?

Rob. *French*. I did visit none.

L. C. J. *Treby*. Had you no Charity for other Prisons?

Mr. *Bar. Powis*. When you so visit Prisons, on what Account is it? Is it to give ghostly Advice?

Rob. *French*. Upon a charitable Account, my Lord.

L. C. J. Ghostly Advice and Charity.

Mr. *Phipps*. Where is Mr. *Lesseur*? (He did not appear.) Call Mr. *Gold*, (who appear'd.)

Cl. of *Arr.* That Man is attainted, but pardon-ed.

Mr. *Phipps*. Mr. *Gold*, how long have you known Captain *Vaughan*?

Mr. *Gold*. I never knew Mr. *Vaughan*, before I saw him in the *Marshalsea*.

Mr. *Phipps*. Is Monsieur *Lesseur* here? Is Mr. *Deherty* here? (Mr. *Deherty* appeared and was sworn.)

Mr. *Phipps*. Do you know Mr. *Vaughan*, the Prisoner at the Bar?

Mr. *Deherty*. Yes.

Mr. *Phipps*. How long have you known him?

Mr. *Deherty*. Five Years.

Mr. *Phipps*. What has he been reputed all along, since you have known him?

Mr. *Deherty*. A *Frenchman*.

Mr. *Phipps*. Did you know him in *France*?

Mr. *Deherty*. Yes, and he was reputed a *Frenchman* there.

Mr. *Justice Turton*. What Occasion had you to enquire into that, the Place of his Nativity?

Mr. *Deherty*. I did not enquire at all; but one that was his Servant, was my Comrade a great while.

Mr. *Phipps*. Now we will prove where he was christened, by one that was as his Christening.

Mr. *Dascine*. (He appear'd and stood up, being sworn, and spoke in French to the Court, pretending he could not speak English.)

L. C. J. If he cannot speak English, there must be an Interpreter.

Mr. *Sol. Gen.* They must find an Interpreter, he is their Witness.

Then a Person in Court stood up, and told the Court he could speak English as well as he; that he had been a Bailiff's Follower for several Years.

L. C. J. You can speak English, can you not?

Mr. *Dascine*. I will speak as well as I can.

King's Messenger. I am a Messenger to the King, Do you know me?

Mr. *Dascine*. Yes.

L. C. J. Prithee speak English.

Mr. *Dascine*. As well as I can, my Lord, I will speak.

Mr. *Phipps*. Are you sworn?

Mr. *Dascine*. Yes, my Lord.

Mr. *Phipps*. Do you know Captain *Vaughan*?

Mr. *Dascine*. In 1669, I was in *St. Christophers*; I went from *Roan*, and from thence I went with Hats and Cloth to *Crebeck*, and had a Letter to one *Thomas Williams*, a Factor in *Martenico*. And after I had done, as I was coming away, Mr. *Williams* desired me to go to a Christening, a Mile and half from *Port-Royal*. He told me, there was one Mr. *Vaughan* had a Plantation there, and desired him to be Godfather. And about two Days after, I went from *Port-Royal* to *St. Christophers* again, and I came to *Roan* again in a Ship called *St. Joseph*. So in 1677, I went to *St. Christophers* again, and from thence to *Martenico*, to Mr. *Williams*; I asked him, what is become of that young Man we were at the Christening? and so he shewed me him that is here (pointing to the Prisoner.)

L. C. J. That was in 1677?

Mr. *Dascine*. In 1677. So I came from *Port-Royal*; I went to *St. Christophers*, and so took Sail, and came to *France* again. And 13 Years ago I went to *St. Christophers* again, and to *Mourtsferat*, and *Martenico*; and so when I was at *Martenico*, and asked Mr. *Williams* of this young Man, that I was at his Christening, and he said, he is at such an House, and I saw him there.

L. C. J. Thirteen Years ago.

Mr. *Dascine*. And we went and drank Punch together, and I came back for *Roan*.

L. C. J. When did you see him since that?

Mr. *Dascine*. Never till I saw him here a Prisoner.

L. C. J. How do you know he is the Man?

Mr. *Dascine*. He has a Bruise in his Side.

Mr. *Phipps*. What was the Gentleman's Name, at the Christening of whose Child you were?

Mr. *Dascine*. *Thomas Vaughan*.

Mr. *Phipps*. What was the Child's Name?

Mr. *Dascine*. *Thomas Vaughan*.

Mr. *Phipps*. When you went the next Time to *Martenico*, did Mr. *Williams*, you speak of, that was the Godfather, present this Person, Captain *Vaughan*, to you, as the Man who was then christened?

Mr. *Dascine*. Yes, the next Time.

Mr. *Phipps*. Now is Captain *Vaughan*, that stands at the Bar, that very Gentleman?

Mr. *Dascine*. I am sure it is he.

L. C. J. You say this Meeting was about 1669?

Mr. *Dascine*. Yes.

Mr. *Sol. Gen.* Pray what was the Reason you were so inquisitive to know what became of that Person that was christened when you was there?

Mr. *Dascine*. Because I being at the Christening, I ask'd him how the Child did?

L. C. J.

L. C. J. How came you to take such extraordinary Observation of that Child? Was he such a remarkable Child?

Dr. Newton. Where were you born?

Mr. Dascine. In France.

Mr. Whitaker. What are you?

Mr. Dascine. A Barber by Trade.

L. C. J. What Employment have you?

Mr. Dascine. An Officer in the Marshal's Court sometimes.

Mr. Justice Turton. What was this Man's Father, what Sort of Man was he?

Mr. Dascine. A tall Man.

Mr. Baron Powis. What was his Father's Name?

Mr. Dascine. Thomas Vaughan.

Mr. Justice Turton. Was his Father living when you was there the second Time?

Mr. Dascine. The last Time I was there I did not see his Father, but I saw his Father the second Time.

Mr. Justice Turton. But you saw Mr. Williams, his Godfather.

Mr. Dascine. Yes.

Mr. Phipps. Call Simon Danneau.

Tho. Vaughan. My Lord, he is sick, and not able to come out of his Bed.

Mr. Phipps. Call Francis Harvey. (Who was sworn.)

Mr. Phipps. Do you know Captain Vaughan?

Francis Harvey. Sir, in the Year 1693, I was in France, with one Captain Bontee, who was taken Prisoner in August the same Year; and my Captain he had the Liberty to go up to Paris with a Guard, for his Pleasure, and to learn the Speech. And, as it happened, we came to lodge in a Street, called *Dolphin Street*, at the Sign of the *Crown*; and there was some Gentlemen that were there to learn the Speech, that were my Countrymen; and there was a young Man there, and he was acquainted over the Way, where this Gentleman, Captain Vaughan, lodged; he lodged at his Aunt's, that sold Silks; her Name was *Madam Wotton*; I saw this Gentleman there; I am sure it is he; and with that I came acquainted with him, as well as the rest.

Mr. Phipps. What was he reputed there?

Fr. Harvey. A Captain of a Ship.

Mr. Phipps. What did he go for there? A Frenchman, or an Englishman, or an Irishman?

Fr. Harvey. He went for a Frenchman, as I heard; one Time his Aunt, she said, that he was born in the *West-Indies*, at *Martenico*, and that he was her Sister's Son, that lived in *Martenico*.

Mr. Sol. Gen. You say he was a Captain of a Ship; what Ship?

Fr. Harvey. That I cannot tell.

Mr. Sol. Gen. When was that?

Fr. Harvey. In 1693.

Mr. Phipps. Is Mr. L'fleur here?

Cl. of Arr. He is a Prisoner in the *Savoy*; he was taken in the same Ship with Mr. Vaughan.

Mr. Phipps. It is reasonable he should have been here, to give an Account of the Prisoner.

L. C. J. Then they should have taken care to have had him here. Have you any more Witnesses?

Mr. Sol. Gen. I think we have given sufficient Evidence that he is an *Irishman*: But now we shall shew you, that all your Witnesses have given a very extravagant Evidence to prove that he is a *Frenchman*. All he hoped for was, that the Prosecutors for the King could not be able to

prove him an *Irishman*; he believed there were but three Men could prove him so; that was *David Creagh* and two more; and so he writes to *David Creagh*, and tells him, *That his Life was in his Power, and he hoped he and the other two would not discover it.* This *David Creagh* was his Neighbour in *Ireland*; we will call him to prove that *Capt. Vaughan* was born at *Galloway* in *Ireland*.

Mr. Whittaker. And here is his Letter under his Hand. Bring *David Creagh*. (Who was sworn.)

Mr. Cowper. I desire, before he give his Evidence, he may look upon those that have given Evidence about the Prisoner, one by one. (Then he look'd upon Robert French.) Mr. Creagh, do you know him.

Dav. Creagh. No. (Then he looked upon the rest.)

Mr. Cowper. Have you had any of these Men come to you on a Message?

D. Creagh. No, Sir.

Mr. Sol. Gen. Do you know *Thomas Vaughan*, the Prisoner at the Bar?

D. Creagh. Yes, I do.

Mr. Sol. Gen. How long have you known him?

D. Creagh. About two Years.

Mr. Sol. Gen. Was that your first Acquaintance with him?

D. Creagh. Yes.

Mr. Sol. Gen. What Place was he born at, as you have heard?

D. Creagh. At *Galloway* in *Ireland*.

Mr. Sol. Gen. From whom did you hear it?

D. Creagh. From all Persons that I have heard speak of him.

Mr. Sol. Gen. Did he ever own to you that he was born there?

D. Creagh. Yes, oftentimes in my Company.

Mr. Sol. Gen. Did you ever receive a Letter from him about your giving Evidence in this Matter?

D. Creagh. Yes, Sir.

Mr. Sol. Gen. Do you know this Letter? (Which was shewn him.)

D. Creagh. Yes, Sir.

Mr. Sol. Gen. Do you know his Hand?

D. Creagh. Yes, I partly know it.

Mr. Whitaker. Did you ever see him write?

D. Creagh. This is the Letter I received from him.

L. C. J. Read it. Do you think it is his Hand?

D. Creagh. I cannot swear it; but I believe it is his Hand.

Mr. Phipps. Have you seen him write?

D. Creagh. I have seen him write several Times.

L. C. J. Do you believe it is his Hand?

D. Creagh. Yes, my Lord, but I cannot swear it.

[Then the Letter was read.]

To Mr. *David Creagh*, in *Newgate*, These.

Mr. Creagh,

I Have some Assurance that Mr. Whitaker has no Witness to prove me a Subject of England, but you, and two more, which I am glad of with all my Heart: I hope I may have none against me that wish me worse than you and *Capt. Etherington*. If Mr. Whitaker has not sworn you yet, I hope you will not appear against me. I declare, if I had more than my Life, I would lay it in your Hand. I am like to be sent to *Newgate* this Day, and it is like you and some more will be sent here, that we

may

may not talk together. The Dutch Dogs took from me Eleven hundred Dollars in Money, which certainly troubles me more than the Thoughts of Death, which I value not a Straw; but I hope in four or five Days to be supplied. I fear they will keep me close. I have all the Liberty imaginable here to write, and my Friends suffered to see me. I can say nothing that is comfortable, but that I am very well in Health, and nothing concerned, if my Money come in time.

Friday Morning.

T. Vaughan.

Mr. Phipps. Is that Letter proved? That is not to the Purpose; nor of any Weight, considering who proves it.

L. C. J. No, that none could prove him a Subject, but he and two more?

Mr. Sol. Gen. We will produce only one Witness more. Call Mr. Jo. Rivet. The Court being informed by some Gentlemen then on the Bench, that there was a Gentleman then in Court, one Mr. Rivet, who being of Galloway, could probably give some Account of the Prisoner; he was immediately called, and required to depose what he knew.

Jo. Rivet. My Lord, I am sorry I am called, where Life is concerned, when I came hither only out of Curiosity; but the Service I owe to this Government, obliges me to speak what I know, now I am called to it. (Then he was sworn.)

Mr. Sol. Gen. Do you know the Prisoner at the Bar? What Countryman is he?

Jo. Rivet. I have known him a great many Years; we were Children together in the same Town; we liv'd in Galloway in Ireland. I knew his Father, and Mother, and Brothers, and Sisters; and I remember him a Child, as long as I can remember any thing, I cannot determine to a certain Number of Years; and I remember him not only a School-boy, but also an Apprentice to one Mr. Coleman. And I wonder very much at what Mr. French says, for by the Name and Place of his Birth, he must have sworn what he knows to be otherwise; for the Frenches are a Family in Galloway; his Father was an honest Gentleman, and went over into Ireland in the Rebellion, in 1641. and he there married a Woman, a Native of Galloway, and had several Children, one of which, in the latter End of King Charles's Reign, turned Papist, and I believe the Grief for it hasten'd his Father's Death. I own Part of the Evidence may be true, about his being in the West-Indies; but his Mother, I believe, was never out of Ireland in her Life.

Dr. Oldish. What was his Father's Name?

Jo. Rivet. John.

L. C. J. You say, you knew this very Gentleman an Apprentice to one Tho. Coleman at Galloway.

Jo. Rivet. I did so, my Lord.

L. C. J. How long is it since you saw him?

Jo. Rivet. I cannot be positive, I think at the Reduction of Galloway in 1691. I cannot say whether at or after; but I saw him about that Time, and knew him, and have known him from a Child; I knew him a School-boy, and knew his Brothers.

Mr. Justice Turton. What Year did you know him first?

Jo. Rivet. I dare not be positive; I remember him particularly well.

L. C. J. Are you sure this is the Man?

Jo. Rivet. I know him as well as any Face I ever saw. I came accidentally into Court out of Curiosity; and one that knew me, that was of Galloway, gave Account to the King's Counsel, and so I am called to give Evidence.

L. C. J. Do you know this Robert French?

Jo. Rivet. I cannot say I know him, for I see him but in the Dark; if I saw him in a better Light, it may be I may. (Then Robert French was set up for Mr. Rivet to see him.) I think I recollect the Face, I am not certain.

L. C. J. Do you know this Gentleman?

Rob. French. No, my Lord.

L. C. J. Where did you live?

Rob. French. In Connaught.

L. C. J. Did you know John Vaughan of Galloway?

Rob. French. I have heard of him, my Lord.

Mr. Baron Powis. What Trade was the Prisoner's Father?

Jo. Rivet. He had the Market several Years; he lived very well, and kept a Publick House in the Town.

Mr. Phipps. Did you know any other Tho. Vaughan but this?

Rob. French. No, not in Galloway.

Jo. Rivet. This may be a Confirmation of what I say; if it be the same Gentleman, his Hair is reddish.

L. C. J. Pull off his Peruke. (Which was done.)

T. Vaughan. My Hair is not red.

L. C. J. How are his Eye-brows?

T. Vaughan. A dark brown, my Lord, the same as my Wig.

Mr. Baron Powis. Let Some-body look on it more particularly. (Then an Officer took a Candle, and look'd on his Head, but it was shaved so close, the Colour could not be discerned.)

Mr. Phipps. We can give an Answer to this, my Lord; we shall prove that there was one John Vaughan at Galloway, and he had a Son Thomas, that died ten Years ago. As for Mr. Rivet, he is a mere Stranger to us, we know nothing of him; and, by what I can perceive, he comes in as a Volunteer, not subpoena'd by either Side. And for Mr. Creagh, we shall shew he is not to be credited in any thing; for we shall prove him guilty of Felony, and that he swore, that if his Brother would not supply him with Money, he would swear Treason against him, and shop him in Newgate, and that he should not come out till he came upon a Sledge; and if so, there is Nobody surely can believe he will stick at Perjury or Forgery, or any thing else which may be for his Advantage. Call Mr. Christopher Creagh. (Who was sworn.)

Mr. Phipps. Pray do you know David Creagh?

C. Creagh. Yes.

Mr. Phipps. Is he any Relation to you?

C. Creagh. Yes, he is my Brother.

Mr. Phipps. Give the Court and the Jury an Account what you know of your Brother.

C. Creagh. It is an unnatural Thing to come on this Occasion, and I am sorry I am called upon this Account.

D. Creagh. Speak what you have to say?

Mr. Phipps. What do you know of your Brother, whether you have not found him guilty of stealing any thing?

C. Creagh. My Lord, I am upon my Oath, I have known something of it, he has stolen some Gold from me.

L. C. J.

L. C. J. You pretend to be so very nice; you are to answer to what you know of his Reputation in general, and of his Way of Living.

C. Creagh. His Reputation has been but very slender, I am very sorry for it; several in the Court can give Account of it, as well as I. He served a Relation of his in *Newcastle*; he served there some Time, and came to Town, and came to me, and depended upon me, and I subsisted him; and he took an Opportunity one Day, when I and my Wife were gone abroad, and No-body at home but the Maid, and went up Stairs, where my Wife's Room is, and there being a Sash-window, he opens it, and took out of my Wife's Closet several Pieces of Gold.

L. C. J. How did you know that he did it?

C. Creagh. I found it out afterwards; he was my Brother, and therefore I did not prosecute him. I did not know he had it, till afterwards, that I found to whom he had disposed of the Gold. I inquired who was in the House, and thought the Maid had it; and she said none had been there but my Brother; and he at last owned the Fact, and I had it again.

L. C. J. Have you any more to say of your Brother?

Mr. Phipps. Did he ever threaten to swear against you?

T. Vaughan. Or me?

C. Creagh. He has been confined in *Newgate* eighteen Months, and I subsisted him in Charity; I allowed him all along; and he has been sending to me by several Messages, that if I subsisted him not with more Money than I did allow him, he would swear me into a Plot.

L. C. J. Did he tell you so?

C. Creagh. No, but he has sent me Word so.

L. C. J. Is the Man here that he sent this Word by?

C. Creagh. Yes, the Man is here.

Mr. Phipps. Let him stand up.

L. C. J. Where do you live?

C. Creagh. In *Walling-street*; I am a Merchant; I declare it is not in Favour or Affection, but only in Conscience, that I declare this.

D. Creagh. This is only to hinder me from giving my Evidence against a Merchant that I have taken up.

T. Vaughan. What Character had he in *Spain*?

[Then David Creagh spoke, but was not heard.]

L. C. J. What do you say of the Gold?

C. Creagh. He had it, my Lord.

D. Creagh. Why did you not prosecute me then, if I had it?

L. C. J. You are not sure he took the Gold.

C. Creagh. I was so sure he had it, because I had it from him again by another Hand.

L. C. J. Did he tell you so, that he had it?

C. Creagh. No, but I had a Letter about it.

L. C. J. Where is that Letter?

C. Creagh. I have it not here.

L. C. J. Give not an Evidence of a Letter, without the Letter were here; it ought to have been produced.

Mr. Phipps. Call *Christopher Heyden*. (He was sworn.) Do you give the Court an Account what *David Creagh* has said to you of swearing against any Body.

C. Heyden. Several Times, when my Master has sent me to him, to pay him Five Shillings

a Week, or Five and Six-pence a Week, to subsist him.

Dr. Oldish. Who are you Servant to?

C. Creagh. He is my Servant.

C. Heyden. This *David Creagh* has often told me, that I should tell his Brother, that if he would not supply him with more Money, he would swear against him. When I came to the *Sessions-House*, when the Pirates were tried the first Time, I was going thro' the Bail-dock, where this *David Creagh* called to me; and I asked him what he did there? He said he was to be Evidence against Captain *Vaughan*. No certainly, said I, you do not know him, do you? Says he, Here's the Thing, it had been better for me that I had been an Evidence against him before this; and I am forced to be an Evidence against him, to save my self: And he bid me tell his Brother, God damn his Soul to all Eternity, if he did not send him Supply that Day, he would have him in *Newgate*, and that he should not come out again, till he came out upon a Sledge?

L. C. J. Did he say so?

C. Heyden. Yes, my Lord.

C. Creagh. How long is it agon, Mr. Heyden?

C. Heyden. It was the Day the Pirates were tried; more than that, here was Mr. *Wrotb's* Man was with me at the same Time; and because he should not hear what you said, you took me to the Door.

Mr. Phipps. Is *Daniel Bryan* here? (He appeared and was sworn.)

Daniel Bryan. I was subpoena'd here for I know not what; for I know not Captain *Vaughan*.

Mr. Phipps. Give me Leave to ask you a Question: Do you know, or have heard of *David Creagh*?

Daniel Bryan. Yes, Sir.

Mr. Phipps. Will you give an Account of what he has said of swearing against any Body?

Daniel Bryan. He has threaten'd his Brother several Times, that if he would not send him Relief, he would bring him in for something, and would inform against him.

Mr. Phipps. Did he say he would swear against him?

Daniel Bryan. He did say he would inform against him.

Mr. Phipps. What did you hear him say of swearing against any one?

Daniel Bryan. He said, he had rather others should perish, than himself.

Mr. Whitaker. This Man was condemned for the same Crime.

Mr. Phipps. Mr. *Vaughan*, have you any other Witnesses? Call *Creighton*. (Who was sworn.) What Countryman are you?

Creighton. A *Connaught* Man, I was born in *Galloway*; I believe Mr. *Rivet* knows me.

Mr. Phipps. Did you know one *John Vaughan*, that lived at *Galloway*?

Creighton. I know him very well.

Mr. Phipps. Do you know the Prisoner at the Bar?

Creighton. No.

Mr. Phipps. Do you remember, that that *John Vaughan* had a Son *Thomas*, and what became of him?

Creighton. Yes, he had a Son *Thomas*; but I understood that he went somewhere into the Country, and there died; and it was spread all about the Town.

Mr.

Mr. Phipps. Do you know what he died of?

Creighton. I cannot tell.

L. C. J. How long ago did he die?

Creighton. About ten Years ago. I knew all the Brothers.

Mr. Phipps. Did you know that *Thomas Vaughan*?

Creighton. I knew him very well.

Mr. Phipps. Is that Gentleman, the Prisoner, he?

Creighton. No.

Mr. Phipps. Do you believe that is not the Man?

Creighton. I believe not.

Mr. Phipps. Did you ever know any other *Thomas Vaughan*?

Creighton. No.

Mr. Justice Turton. Had not *John Vaughan* a Son Apprentice at *Galloway* to one *Thomas Coleman*?

Creighton. No, as I know of.

Mr. Justice Turton. How old was that Son, *Thomas Vaughan*, when you knew him?

Creighton. I was born at the next Door to that *Thomas Vaughan* that was reputed to be dead.

Mr. Justice Turton. Was not that *Thomas Vaughan* Apprentice to Mr. *Coleman*?

Creighton. I cannot certainly tell.

Mr. Justice Turton. How old was that *Thomas Vaughan* when he went away from *Galloway*?

Creighton. I cannot tell.

Mr. Justice Turton. What is your own Age?

Creighton. My Age is about Five and Twenty.

L. C. J. You have not seen him in ten Years?

Creighton. No, my Lord.

L. C. J. Can you take it upon your Oath, this is not the Man you saw ten Years ago, that *Thomas Vaughan* you knew?

Creighton. Yes, my Lord.

L. C. J. How old was he when you were acquainted with him?

Creighton. I cannot tell certainly; I believe he might be about fifteen.

L. C. J. How long is that since?

Creighton. Ten Years.

L. C. J. What is your Name?

Creighton. Creighton.

Mr. Cowper. You say you knew him ten Years ago; pray what sort of Person was he, and how did he differ from this Man?

Creighton. He was better set, and not quite so tall as this Man, and full of the Small-Pox; he was the quarrelsomest Boy in the whole Town.

Mr. Sol. Gen. You say he was not quite so tall as this Man.

Creighton. No, he was not quite so tall.

Mr. Sol. Gen. Do you think he might not grow since? This was ten Years ago, when he was but fifteen Years old.

Mr. Cowper. You knew him at Fifteen; how long had you known him?

Creighton. From my Infancy, 'till he departed the Town.

Mr. Cowper. During all that Time, what Employment was he in? Tell some Circumstances.

Creighton. I think this *Vaughan* went to one Mr. *Russel's* School.

Mr. Cowper. What to do?

Creighton. To learn to write and read.

Mr. Cowper. And was he not an Apprentice in that Time?

Creighton. I cannot tell.

Mr. Cowper. Were you acquainted with him?

Creighton. Yes.

L. C. J. You lived next Door to him; sure you must be acquainted with him?

Creighton. He was a fighting Boy, for I remember he did once thrash my Coat soundly.

L. C. J. Where do you live now?

Creighton. At the *Castle and Falcon* in *Aldersgate-street*.

L. C. J. What Trade are you?

Creighton. A Shoemaker.

Mr. Baron Powis. How long have you lived here?

Creighton. This ten Years.

Mr. Baron Powis. What did that *Thomas Vaughan* die of, that you say was dead before you came away, as it was reported up and down?

Creighton. I cannot tell.

Mr. Cowper. Just now you said he went away from *Galloway*, and it was reported there that he was dead ten Years ago; now you say you have been in *England* ten Years.

Creighton. I came into *England* about ten Years ago.

Mr. Cowper. Did you hear it at *Galloway* before you came away?

Creighton. I heard it at *Galloway* before I came to *London*; and there are many can testify that there was a Report that he was dead.

Mr. Justice Turton. How long was he gone from *Galloway* before you came away?

Creighton. I cannot say to an Hour; I heard he was dead.

L. C. J. Well, well, he went away from *Galloway*.

Mr. Justice Turton. Have you not been here twelve Years?

Creighton. I think not; I came a little before the Revolution.

Mr. Justice Turton. That is eight Years ago: Just now you said you had been here ten Years.

Mr. Phipps. Call *John Kine*. (Who was sworn.) *John Kine*, did you know one *John Vaughan* in *Galloway*?

John Kine. Yes, I lived with him.

Mr. Phipps. What Children had he?

John Kine. Four Sons.

Mr. Phipps. Had he any one of those Sons that was named *Thomas*?

John Kine. Not of those four.

Mr. Phipps. Had he a Son *Thomas*?

John Kine. Yes, he had; he died about ten or eleven Years old of the Small-Pox.

Mr. Phipps. You say you lived with this *John Vaughan*; look upon the Prisoner at the Bar, is he any of those Sons?

John Kine. No, Sir, I never saw this Man 'till now.

Mr. Phipps. How long did you live with him?

John Kine. About eight or nine Years.

Mr. Phipps. But how long have you been come away from him?

John Kine. About ten Years.

Mr. Justice Turton. How well do these Two Witnesses agree together? The other said he died at Fifteen, and was pitted with the Small-Pox; this Man says he died at Ten, and of the Small-Pox.

L. C. J. Where do you live now?

John Kine. I live in the City.

L. C. J. How long have you lived there?

John Kine. Twelve Years.

L. C. J. How long was this *Thomas Vaughan* dead before you came hither?

John Kine. Really I cannot be positive, I believe about eight or nine Years.

L. C. J. Did *Thomas Vaughan* die of the Small-Pox?

John Kine. Yes.

L. C. J. That you are sure of?

John Kine. I am sure that was the Disease he died of?

L. C. J. You knew him well, I believe.

John Kine. Yes, my Lord.

L. C. J. How old was he when he died?

John Kine. About ten Years.

L. C. J. Where was he buried?

John Kine. At Galloway.

Mr. Justice *Turton.* Why does not the Officer take Care? There is one talking with the Witnesses. Can you now reconcile your Evidence? (To the Prisoner's Counsel.)

L. C. J. Have you any more Witnesses?

Mr. *Phipps.* No, my Lord.

Mr. Justice *Turton.* What were the Names of all the Sons?

John Kine. The eldest was *John Vaughan*, the other *William Vaughan*, another *Edward Vaughan*, and another *James Vaughan*; that was all that he had alive.

Mr. *Whitaker.* There is never a *Thomas Vaughan* among these.

Mr. *Coxper.* *Thomas* died up and down in several Places.

Mr. *Phipps.* Mr. *Rivet*, do you know the Sons of that *John Vaughan*?

Mr. *Rivet.* He had all these Sons, *John*, *William*, *Thomas*, and *James*. He speaks of a Son *Edward*; I cannot exactly remember whether there was such a Son or no; tho' I have a rude Idea of it, but am not certain. I knew this *Thomas*, I went to School with him, and I saw him in the Year 1691. about the Surrender of *Galloway*.

Juryman. Is that Man at the Bar the same *Thomas Vaughan*?

Mr. *Rivet.* I am positive of that.

L. C. J. You saw him at the Surrender of *Galloway*?

Mr. *Rivet.* I did; it was about that Time.

Thomas Vaughan. I am a Subject of the most Christian King; and I desire, though I speak *English*, that I may be examined in *French*, in a Matter that touches me so near. And you may see by my Commission, my Lord, that I am a *Frenchman*; which I desire may be read.

L. C. J. We shall not trouble you with that.

Thomas Vaughan. I can shew you my Commission, wherein the King, my Master, declares me to be a Subject of *France*.

Dr. *Oldish.* Mr. *Vaughan*, I think, you need not trouble the Court to read the Commission; the Commission is the same as for all other Subjects of the *French King*, wherein he is look'd upon as a natural-born Subject of *France*; and so he owns himself upon his Examination before the Judge of the Admiralty.

L. C. J. Have you any more to say? As to the Examination, who can prove that?

Mr. *Cawley.* I can prove that, my Lord. (Mr. *Cawley* was sworn.)

L. C. J. Is that *Thomas Vaughan's* Examination?

Mr. *Cawley.* Yes, my Lord, it is signed by him, and taken before Sir *Charles Hedges* the 25th of *July*, 1695.

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L. C. J. Read it. (Then Mr. *Cawley* read the Examination of *Thomas Vaughan*.)

The 27th of *July*, 1695.

Officium Domini contra *Thomas Vaughan*; Capuam' *Navicule*, The *Loyal Clencarty*.

The Examination of *Thomas Vaughan*, late Commander of the Ship, the *Loyal Clencarty*, aged Twenty-six Years, taken before the Right Worshipful Sir *Charles Hedges*, Kt. Judge of the High Court of Admiralty of *England*.

THIS Examinee saith, That he was born at *Martenico* within the Dominions of the *French King*, and is his Subject; but refuses to answer of what Parents he was born: That he came last from thence about four Years ago as Commander of a Ship called the *Hare*, which had been before taken from the *English*, and came in her to *Nantz* in *France*, and hath ever since been in *France*, or cruising in *French Ships*: That he hath been a Commander ever since he was sixteen Years of Age, and hath commanded several *French Privateers*, and was Commander of a *Privateer* of *St. Malo*, called the *Granada*, of 36 Guns, which about two Years ago took the *Diamond*; and the Examinee was never till now taken. Being asked, whether he ever lived in *England*, or in *Ireland*? he refuses to answer. Being asked, Whether he knew any thing of the taking and carrying off a Custom-house Boat from the *Downs* to *Bulloigne*? Or, Whether he was then in *London*, or did give Directions to any Persons, or knew of her being carried off? he answered nothing, but said, That if any Person would prove it against him, he was present to answer it: But saith, That in *France* he heard of her being brought to *Bulloigne*; and he the Examinee bought her at *Bulloigne* of the Men that carried her away, and that she cost him 900 and odd *Livres*, and was then called the *Elizabeth and Anne*, or *Michael and Anne*, but which doth not remember: That he the Examinee still hath the said Vessel at *Bulloigne*; That he cannot tell the Names of the Persons he bought her of, and that took her away, but believes they had a Commission: That something above three Weeks ago the Examinee went with a Commission from the *French King* on board a Two-and-twenty-Oar-Barge, called the *Loyal Clencarty*, then at *Bulloigne*, as Commander thereof; and on Monday last was a Fortnight was taken by the *Coventry Man of War* at the Buoy in the *Gunfleet*; and that the Commander of the *Coventry* took away this Examinee's Commission. Being asked, Upon what Design he came out with the Barge? replied, That it was not to take the *Air*; That the Barge formerly belonged to the *Lord Danby*, and was taken by a *French Privateer* about a Year ago; That before he came out, he met with two *English Seamen* upon the Court of *Guards* at *Bulloigne*, who told the Examinee, that they had been taken Prisoners, and the Examinee took them in upon Charity; and afterwards met another *Englishman*, who told the Examinee, that he had been taken in *Land-Service*, and believes it was before *Fort Kenoque*; and the said Person sitting upon a Stone at *Bulloigne*, and not knowing what to do with himself, the Examinee took him on board for Charity, and designed to put the said three Persons ashore in *England*. Being asked, Whether he did not put in a Claim for the said Custom-house

from-House Boat, by Reason of her Captain? Or, Whether the Persons that took her had any Commission from him? he the Examinee answered, That they that took her, must answer for what they did, and he must answer for his Actions only.

Eodem die Capt'
coram me,
C. Hedges.

Thomas Vaughan.

L. C. J. Mr. *Vaughan*, have you any more to say?

Tho. Vaughan. It is very hard Circumstances I am under; if an *Englishman* was in *France*, under the Straights that I am here, it would be very hard for him to prove himself an *Englishman*.

L. C. J. You have had a very fair Trial, and you shall have Justice, be it for you, or against you.

Thomas Vaughan. I hope your Lordship will do me Right.

L. C. J. Gentlemen of the Jury, The Prisoner at the Bar, *Thomas Vaughan*, stands indicted for High-Treason, for adhering to the King's Enemies, viz. That he put himself as a Soldier in the Service of the *French King*, in a Vessel called the *Loyal Clencarty*, with divers other Persons on board her, that were Subjects to the *French King*, and Enemies to the King of *England*, with a Design to burn the King's, and his Subjects Ships; and for that Purpose went in that Ship. That the Prisoner was on board the Ship, and with such a Design, is proved, without all Contradiction, by several Witnesses that have been produced; that is, that the Two-and-Twenty-Oar Barge, which is the same called the *Loyal-Clencarty*, lay hovering about the Buoy in the *Nore*; those Men in the *Coventry* imagined they had some Design of Mischief to the Ships, and they made after him with the *Coventry*. It was apprehended by Captain *Vaughan*, and his Crew, that the *Coventry* would be too hard for them, and so they did submit, and were taken. And being examined on what Account he came on our Coasts, it is confess'd by him, That he came with a Design to burn our Ships. You may observe what Sort of Men were aboard. You have heard it proved to you, that *Crittenden*, the Marshal of *Dover*, entered those Persons taken aboard the *French Vessel*, of what Nation, and what Quality they were; and there were about a Dozen of these *Frenchmen*, for they were entered as such. Now, for a Subject of *England* to join with the King's Enemies, in pursuit of a Design to burn or take any of the King's, or his Subjects Ships, that is an Adherence to the King's Enemies. But it appears, not only that Captain *Vaughan* was in their Company, but that he was their Commander; which commanding the Vessel, on board which were *French Subjects*, Enemies of the King and the Kingdom of *England*, is High-Treason, and the particular Fact of Treason for which he is indicted. And it appears that he had a Commission from the *French King* to command this Vessel, the *Loyal Clencarty*.

Now the Prisoner having this Commission to be Commander of this Vessel, though they who served under him were not native *Frenchmen*, but other Foreigners, yet their subjecting themselves

to him, acting by Virtue or Colour of that Commission, makes them to be the *French King's* Subjects, during their Continuance in that Service; for otherwise all Prizes, which they should take, would make them to be Pirates; which none will pretend to maintain, when they acted by a Commission from a Sovereign Prince, that was an Enemy. And if they shall cruize upon our Coasts with a Design to take, or destroy any of the King's, or his Subjects Ships, they are Enemies, tho' they were the Subjects of a Prince or State in Amity with the King of *England*. But at this time there is no Necessity of entering upon this Question, because it is proved that divers, who were on board this Vessel, were *Frenchmen*; the joining with whom, in Prosecution of such a Design, is that Kind of High-Treason, of adhering to the King's Enemies. So that if Captain *Vaughan* was a Subject of *England*, he is proved guilty of High-Treason, if you believe the Evidence.

But now it is insisted on by Mr. *Vaughan* and his Counsel, that though he was exercising Hostility against the King of *England*, and designing Mischief to his Subjects; yet, says he, I was not a Subject of *England*, I was born a Subject to the *French King*. If that be true, then he is not guilty of High-Treason; he is an Enemy, but not a Traitor: And that is the Point you are now to consider of, whether he be a Subject of *England* or *France*?

Now as to that, he being taken under such Circumstances, and speaking *English*, it is reasonable to be presumed that he is a Subject of *England*, unless he proves the contrary. But then you have heard by several of the Witnesses, that when he was at first taken, he acknowledged himself to be an *Irishman*; and he did not only acknowledge it to them that assisted in apprehending him, but being carried to *Dover*, when the Marshal entered him in his Book as a Prisoner, he entered him not as a *Frenchman*, but he declared at that Time he was an *Irishman*. It may be, he did not consider the Consequence of it; for the next Day he was carried before the Mayor of *Dover*, and then having considered better of it, that it was not for his Interest to acknowledge himself an *Irishman*, he said he was born a Subject to the *French King*, and at *Martenico*. There were *Scotchmen* and *Irishmen* taken at the same Time, and they were entered as of the Nation they belonged to, and so were divers entered as *Frenchmen*. So that unless he hath given sufficient Evidence to the contrary, this is sufficient to induce you to believe him an *Irishman* born.

But he has endeavoured to take off this Evidence that hath been given. First, he says, it was when he was in Drink, that he did confess himself to be an *Irishman*; but when he was sober, he said he was a *Frenchman*. And besides that, he calls a Witness, whose Name is *Robert French*, to give an Account of him. And *French* says, that about fourteen Years ago he was at *St. Christophers*, on *French Ground*, and he did then see this *Thomas Vaughan*; he did take him then to be about the Age of Fifteen. He says he stay'd there about four and twenty Hours, and that he was in the Company of this *Vaughan* and his Father about five or six Hours. He says, his Father told him at that Time, that this young Man, who was then about fifteen Years of Age, was born at *Martenico*. He says farther, that his Father did recommend this Son

Son to him to be a Sea-faring Man, being the Employment he intended him for; and he is sure this is the Man. This *Robert French* was ask'd, whether he ever saw this *Vaughan* from the Time he first saw him at *St. Christophers* until this Time: He says he never saw him since that Time, till about two Months ago. He gives you this Account how he came to meet with him: He says he came to Town; and being a charitable Man, he used to visit the Prisons; and he came to *Newgate* to one *Noland*; and there he saw Captain *Vaughan*; and though he had not seen him for fourteen Years before, yet he knew him again, and is positive that he is the same Person.

Another swears he knew the Prisoner about five Years, and he was reputed a *Frenchman*.

There has been another Witness produced, which is that *Dafine*, who came up as a *Frenchman*, and talked *French*, pretending he could not speak *English*; but on Examination it was discovered that he had an Employment in *England*, and was a Bailiff's Follower; and it appears he can speak *English* very well; and notwithstanding his Pretence, has given his Evidence in *English*. And he tells you, That he, about the Year 1669, did go to *St. Christophers*, and afterwards to *Martenico*; and there he went to one *Williams*, who had a Friend whose Name was *Vaughan*, at whose House there was a Christening to be of his Son, to whom *Williams* was to be Godfather; and this Witness was carried thither, and the Child was christen'd *Thomas*. He tells you he went over again to *St. Christophers*, and to *Martenico*, in the Year 1677, and that then he enquired for this Child, and did see him. Then he says, after that he went over again to *St. Christophers*, and to *Martenico*, about thirteen Years ago, and then saw him again; and, I think, never saw him since until very lately; and this Prisoner, he undertakes to tell you, is the very Person.

But then one *Harvey* tells you he saw him in *France*, in the Year 1693, and there he was taken to be a *Frenchman*, and he lived with a Woman that sold Silk, that said he was her Nephew, her Sister's Son; and that he was born at *Martenico*. This is the Evidence he gives you to induce you to believe he is a *Frenchman*.

Now in the first Place, before I open the Evidence in Answer to it, I desire you to observe the Weight and Import of this Evidence that hath been produced by the Prisoner. First, for this *French*, that says he saw Captain *Vaughan* fourteen Years ago, when he was about fifteen Years of Age; he had no former Acquaintance with him; stay'd in his Company but six Hours; and came away within four and twenty Hours after his Arrival; and never saw him again in fourteen Years: It is a strange Thing that he should know him again so well as to be positive that he is the same Person; for in fourteen Years there is a great Alteration in a Man: For a Man that has known one at the Age of fifteen, and not seen him in fourteen Years after; though before he was very well acquainted with him, cannot so easily know him again. But however he is positive, upon his Oath, that he is the same Person that he saw at *Martenico*.

Then as for *Dafine*, you may consider him, that he should take Notice of a little Child that he saw christen'd several Years before; and that he should now remember him when he had not seen him in thirteen Years; sure he had a great Liking to this Child, that when he went to *Martenico*, many Years after, he should be so inquisitive after him:

I must leave these Things to you to consider of: That he might have an Aunt in *France*, that is very possible too.

But now consider how this Evidence hath been endeavoured to be answered: Two Witnesses have been produced to contradict that which they have sworn. The first is *David Creagh*, who tells you he has known the Prisoner for two Years; and says he was always reputed to be an *Irishman*, and born in *Galloway*: He has often discoursed with him about his Country, and he told him that he was an *Irishman*, and born at *Galloway*. Then you hear what a Letter is produced, writ to *Creagh*, when he was to come upon his Trial; he mentions what his Defence was, and that it was impossible that any could do him any harm but he and two more. *Creagh* swears it is his Hand; that he hath seen him write, and he believes it is his Hand.

Then there is a Gentleman, *Mr. Rivet*, that came here by chance, who is a *Galloway* Man; he saith he knew the Prisoner's Father, who was reputed to come thither about the Time of the Rebellion in *Ireland*, in 1641. and lived at *Galloway*; and that this Prisoner, *Mr. Vaughan*, was his Son, and he knew him of a Child; was well acquainted with him; liv'd hard by him; remembers him an Apprentice in *Galloway*, and tells you to whom; and says he is sure this is the very Man; and that he saw the Prisoner in 1691, about the Time and the Reduction of *Galloway*; and he is confident that the Prisoner is the Son of *John Vaughan*, at *Galloway*; and he gives you a particular Account of him and his Family, viz. of the Reputation and Manner of living of his Father; and what other Brothers he had: So that there is no Objection against his Credit; and it is hard to believe, since he is so positive and circumstantial, that he can be mistaken.

But the Prisoner and his Counsel have endeavour'd to answer all this Evidence; and first they have called *Creagh's* Brother to prove that he is an ill Man; for that he came into this Town where his Brother lives, who subsisted him and took him into his House; and one Day, when he and his Wife went abroad, he made bold with some of his Money; but they thought the Maid had it, and he charg'd her with it; but to his Satisfaction, it did afterwards appear that *David* had it.

Then there is another, *Christopher Heyden*, *Christopher Creagh's* Servant, who says, he heard *D. Creagh* say he was forc'd to be an Evidence against *Vaughan* to save himself; and that he used to threaten his Brother, that if he would not give him more Money he would swear against him. *Bryan* saith much to the same purpose. These are produced to take off the Credit of *D. Creagh's* Testimony.

But then, Gentlemen, as to the Place of the Prisoner's Birth; two other Witnesses are produc'd to give you Satisfaction that this Captain *Vaughan* was not the Son of that *Mr. Vaughan* of *Galloway* whose Evidence I will open to you, and then you will see how coherent they are in their Testimony. The first is *Creighton*, a Shoemaker; he says he knew *Thomas Vaughan*, the Son of *John Vaughan* of *Galloway*, about ten Years since; he was a *Galloway* Man bred, and lived the next Door to *John Vaughan* that had a Son *Thomas*. He says he has been here about ten Years in *England*. He says he thinks that *Thomas Vaughan*, the Son of *John Vaughan*, was about the Age of fifteen Years; but that this Prisoner is not he; for that *Thomas*

Vaughan was disfigured with the Small-pox; he remembered him well, he had Reason for it, for he once basted him soundly; and that he went away from *Galloway* when he was about fifteen Years of Age, and was reported to be dead; and if it were so, this Prisoner cannot be the Person.

The other Witness is as positive as *Creighton*; for he saith, he knew this *John Vaughan* of *Galloway*, and his Son *Thomas*; and that *Thomas Vaughan*, Son of *John Vaughan*, died about ten Years since of the Small-pox. So that they have found two *Thomas Vaughans*: One tells you of one that was fifteen Years old, and was disfigur'd with the Small-pox; and the other tells you of *Thomas Vaughan*, who died of the Small-pox when he was ten Years of Age.

You are therefore to consider the Evidence on both Sides. The Question principally is, Whether the Prisoner be a Subject of the King of *England*. If you are satisfied that he is not an *English* Subject, but a *Frenchman*, then he is not guilty of this High-Treason; but if you are satisfied, by the Series of the whole Evidence, that he is an *Irishman*, and that he had a Commission from the *French King*, and that he cruized upon our *English* Coasts, in Company with the King's Enemies, with a Design to take, burn, or destroy any of the King's or his Subjects Ships, you are to find him guilty of the High-Treason whereof he stands indicted; otherwise you are to acquit him.

Cl. of Arr. Swear an Officer to keep the Jury. (*Which was done.*)

After a short Stay, the Jury returned into Court, and gave in their Verdict.

Cl. of Arr. Gentlemen, answer to your Names. *E. Leeds.*

Mr. Leeds. Here.

Cryer. *Vous Avez*, and so of the rest.

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

Jury. Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand. (*Which he did.*) Look upon the Prisoner. How say you, is he guilty of the High-Treason whereof he stands indicted, or not guilty?

Foreman. Guilty.

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

Foreman. None to our Knowledge.

Cl. of Arr. Then hearken to your Verdict as the Court hath recorded it: You say that *Thomas Vaughan* 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.

Tho. Vaughan. My Lord, let me beg one Favour, that I may be used like a Gentleman; that I may be sent to a Chamber, and not to a Dungeon; and that my Friends may come to me.

L. C. J. Captain *Vaughan*, they say you once made an Escape, and therefore the Keeper must keep you with Humanity, but with all Security.

Tho. Vaughan. I desire I may be kept like a Christian.

L. C. J. The Keeper must do his Duty.

Cl. of Arr. *Thomas Vaughan*, hold up thy Hand. (*Which he did.*) Thou standest convicted of High-Treason against our Sovereign Lord the King; What hast thou to say for thy self why Judgment shall not pass against thee to die according to the Law?

Tho. Vaughan. I am altogether a Stranger to the Law, my Lord; I refer my self to my Counsel.

L. C. J. Well, then you refer your self to your Counsel. You have had a fair Trial, and have no Reason to complain of it: If your Counsel have any thing to say in arrest of Judgment, they shall be heard.

Mr. Phipps. My Lord, the Indictment has two Sorts of Treason laid in it; the one for adhering to the King's Enemies, the other levying of War; and with Submission, I take it, that the first is not well laid; for it says that the Prisoner did adhere to the King's Enemies, but says not against the King. Now every Body knows that the *French King* is in War, not only with *England*, but *Holland*, and *Spain*, and the Emperor: But if a Man join with the *French* against any of them, he adheres to the King's Enemies; and yet it cannot be said to be against the King; therefore they ought to have laid it, that he did adhere to the King's Enemies *contra Dominum Regem*; it must be aiding and comforting them against the King that makes the Treason.

L. C. J. It does say so.

Mr. Phipps. No, my Lord, it only says that Captain *Vaughan* did adhere to the King's Enemies, and does not say it was against the King; and if that be Treason, is what we desire to know.

L. C. J. If he adhere to the King's Enemies, it must be against the King, though he assist them only against the King's Allies; for thereby the King's Enemies may be more encouraged and enabled to do Mischief or Damage to the King. Suppose you assist the *French King* against the King of *Spain*, that is now in Alliance and League with the King of *England*, and the *French* in actual Enmity; that is to adhere to the King's Enemies against the King.

Mr. Phipps. Would that be Treason, my Lord?

L. C. J. Yes, certainly; though that is not a Point in this Case, and so not necessary to be determined now; for the Act of Parliament of 25 of *E. III.* defines Treason in adhering to the King's Enemies, and expresses the Overt-Act in giving them Aid or Comfort; it is sufficient to alledge the Treason in the Words of the Statute, adhering to the King's Enemies. An Overt-Act alledged, shews it to be against the King; and in pursuance of that Adherence, he did so and so: He was a Captain and Soldier in the Ship; did join with the King's Enemies, &c. with a Design to destroy the King's and his Subjects Ships; surely that is most manifestly an Adherence to the King's Enemies against the King.

Mr. Phipps. The Overt-Act, if it were alledged sufficiently, would not help it; for if there can be an adhering to the King's Enemies, that is not Treason; they ought to alledge such adhering as is Treason; and if the Treason it self is not well alledged, the Overt-Act will not help it.

L. C. J. There is an Overt-Act to shew it to be against the King. It is said all along, he being in this Vessel *Clencarty*, *cum diversis Subditis*.

Mr. *Phipps*. But then that Overt-Act is not well alledged; for 'tis said only he went a cruising; whereas they ought to have alledged that he did commit some Acts of Hostility, and attempted to take some of the King's Ships; for cruising alone cannot be an Overt-Act; for he might be cruising to secure the *French* Merchant-Ships from being taken, or for many other Purposes, which will not be an Overt-Act of Treason.

L. C. J. I beg your Pardon. Suppose the *French* King, with Forces, should come to *Dunkirk* with a Design to invade *England*; if any one should send him Victuals, or give him Intelligence, or by any other Way contribute to their Assistance, it would be High-Treason in adhering to the King's Enemies.

Mr. *Phipps*. If the *French* King had design'd an Invasion upon *England*, and Captain *Vaughan* had assisted in his Vessel in forwarding the Invasion, it would have been Treason; but here is nothing mentioned but Cruising.

L. C. J. Cruising about the Coasts of *England* with a Design to destroy the King's Ships.

Mr. *Phipps*. That Design ought to be made appear by some Act of Hostility; for in the Case of *Burton* and *Bradshaw*, and others, which my Lord *Coke* cites, the agreeing to rise and pull down Inclosures, and meeting and providing Arms for that Purpose, is agreed not to be levying of War; and they were indicted for conspiring to levy War, upon the Statute of Queen *Elizabeth*. And in this Case, here being only a Conspiring, and nothing attempted, it can be no more Treason than it was in that Case.

L. C. J. When Men form themselves into a Body, and march Rank and File with Weapons Offensive and Defensive, this is levying of War with open Force, if the Design be publick. Do you think when a Ship is armed with Guns, &c. doth appear on the Coast, watching an Opportunity to burn the King's Ships in the Harbour; and their Design be known, and one goes to them, and aids and assists them, that this is not an adhering to the King's Enemies? Here are two Indictments, one for levying War, and the other for adhering to the King's Enemies; but the adhering to the King's Enemies is principally insisted on; and there must be an actual War proved upon the Person indicted in the one, yet need not be proved in the other Case.

Mr. *Phipps*. The same certainly is necessary in one as well as the other; for barely adhering to the King's Enemies is not Treason; but there must be an actual aiding and comforting them; and a meer Intention to assist the King's Enemies, is not an Adherence within the Statute of 25 *Ed. III.*

L. C. J. If there be not High-Treason in the Act alledged; that is, if it do not make out an Adherence to the King's Enemies, then your Objection would hold good.

Mr. *Phipps*. The going to cruize, my Lord, does not make out an Adherence to the King's Enemies; for his Cruizing might be for other Purposes as well as to take the King's Ships; and your Lordship will intend the best in favour of Life.

Mr. *Whitaker*. To burn the King's Ships.

L. C. J. *Treby*. The Indictment is laid for adhering to, and comforting and aiding the King's Enemies. You would take that to be capable to be construed adhering to the King's Enemies in other Respects; but I take it to be a reasonable Construction of the Indictment, to be adhering to the

King's Enemies in their Enmity. What is the Duty of every Subject? It is to fight with, subdue, and weaken the King's Enemies: And contrary to this, if he confederate with, and strengthen the King's Enemies, he expressly contradicts this Duty of his Allegiance, and is guilty of this Treason of adhering to them. But then you say here is no aiding, unless there were something done, some Act of Hostility. Now here is going aboard with an Intention to do such Acts; and is not that comforting and aiding? Certainly it is. Is not the *French* King comforted and aided, when he has got so many *English* Subjects to go a Cruising upon our Ships? Suppose they man his whole Fleet, or a considerable Part of it; is not that aiding? If they go and enter themselves into a Regiment, list themselves and march, though they do not come to a Battel; this is helping and encouraging; such Things give the Enemy Heart and Courage to go on with the War; or else, it may be, the *French* King would come to good Terms of Peace. It is certainly aiding and comforting of them, to go and accept a Commission, and enter into their Ships of War, and list themselves, and go out in order to destroy their Fellow-Subjects, and ruin the King's Ships; these are Actings of an hostile Nature. And if this be not adhering, &c. it may as well be said, That if the same Persons had made an Attack upon our Ships, and miscarried in it, that had not been so neither; because that in an unprosperous Attempt there is nothing done that gives Aid or Comfort to the Enemy. And after this kind of Reasoning, they will not be guilty, 'till they have Success; and if they have Success enough, it will be too late to question them.

Mr. *Phipps*. Intending to levy War is not Treason, unless a War be actually levied.

L. C. J. *Treby*. Is it not actually levying of War, if they actually provide Arms, and levy Men, and in a warlike manner set out and cruize, and come with a Design to destroy our Ships?

Mr. *Phipps*. It would not be an actual levying of War, unless they commit some Act of Hostility.

L. C. J. Yes, indeed, the going on board, and being in a Posture to attack the King's Ships. As to the Fault you find with the Indictment, there is a Fault, but not in Point of Law; they might have laid it more generally, so as to have given more Evidence.

Mr. Baron *Powis*. However, it is well enough. But for you to say, because they did not actually fight, it is not a levying War; is it not plain what they did intend? That they came with that Intention, that they came in that Posture, that they came armed, and had Guns, and Blunderbuffes, and surrounded the Ship twice; they came with an armed Force; that is a strong Evidence of the Design.

L. C. J. You would make no Act to be aiding and assisting, but fighting.

Mr. *Phipps*. Then next I am in your Lordship's Judgment, whether the Statute of 28 of *Hen. VIII.* by which Captain *Vaughan* is tried, is in Force, and be not repealed by the first and second of *Philip* and *Mary*, which saith, That all Trials, in Cases of Treason, shall be at the Common Law. Now by the Common Law before the Statute 28 *Hen. VIII.* Treason done upon the Sea, was tried before the Admiral, or his Lieutenant; and my Lord *Coke*, in the 12 *Rep.* in the Case of the Admiralty, saith the Jurisdiction of the Admiralty is by the Common Law. By the Statute 33 *Hen. VIII.*

Treason confessed before three of the Privy-Council might be tried in a foreign County, but that Statute is repealed by the Statute 1 and 2 of *Philip and Mary*; for by the Statute 33 *Hen. 8. c. 4.* Treason committed in *Wales*, might be tried in what County the King would assign; but since the Statute of *Philip and Mary*, it must be in the proper County; so that we are in your Lordship's Judgment, whether the Statute of 28 *Hen. 8.* be in Force; and whether, since the Statute of 1 and 2 *Philip and Mary*, Treasons done upon the Sea, ought not to be tried before the Admirals, or anciently at the Common Law?

L. C. J. This is Treason by the Common Law, and the Trial is by the Method of the Common Law.

Mr. *Phipps*. 'Tis true that my Lord *Coke*, and other Authorities say, that the Statute 35 *H. 8.* for trying Treasons committed beyond Sea, is not repealed by the Statute of 1 and 2 *Philip and Mary*; but they do not say that this Statute is not repealed by the Statute of *Philip and Mary*; and the Books being silent in this, is the Reason why I propose this Question for your Lordship's Judgment.

L. C. J. It is no more a Question than the Trials of foreign Treason, and then the Determination of the Trials upon the 35th determines the Question upon this.

Dr. *Oldisb.* We must have two Witnesses by the Rules of the Civil Law; an extrajudicial Saying of a Party may be retracted by them at any Time, that is the Civil Law, and so there can be but one Witness.

L. C. J. That is not the Law of *England*.

Dr. *Oldisb.* I do humbly conceive that the Civil Law is not taken away in this Case; for though the Statute prescribes the Form of Proceedings according to the Rules of the Common Law, yet as to the Crimes and Proofs, the Civil Law is still in Force; and then the Party may retract his Confession in Judgment, much more any extrajudicial Saying.

Mr. *Whitaker*. You are arraigning the Verdict.

L. C. J. That you should have taken Notice of before the Verdict was given. But we think there is no Danger in hearing this Objection, because it is so easily answered. How many Witnesses were to the Confession?

Sir *Charles Hedges*. We are not in a Court that proceeds according to the strict Rules of the Civil Law; but if we were, that Law is not so absurd as to allow that a Party may retract his Confession at any Time, so as to make it have no Effect.

Dr. *Oldisb.* There must be two Witnesses at any Time.

Sir *Charles Hedges*. So there are here to the Confession; but you mistake if you think that every Particular is to be proved strictly as the Civil Law requires; for the End of the Statute which directs the Proceedings of this Court, was to facilitate the Method of making Proofs, that being found difficult by the Course of the Civil Law; and therefore was that Statute made, as plainly appears by the Preamble thereof.

Dr. *Oldisb.* There is a new Statute that revives that Statute again, and that requires two Witnesses; whereby it is reduced to the Rules of the Civil Law again.

L. C. J. Two Witnesses there must be; but then consider it is not necessary to have two to every individual Overt-Act: For suppose there be two Overt-Acts laid in the Indictments, for one Species of Treason, compassing and imagining the Death of the King; if there be one Witness that he bought a Dagger, and said he would kill the King, and he is seen, it may be, going to the King's Bed-Chamber with the Dagger; another Witness says, he said he would kill the King with a Pistol, and bought a Pistol, and he stood waiting to kill the King as he came by; that is another Overt-Act of the same Treason. If one Witness prove one, and another Witness prove the other, this is sufficient Proof with us.

Dr. *Oldisb.* It is another Question, Whether he be a Subject?

L. C. J. That is not an Overt-Act; if there be one Witness to that, it is enough, there needs not two Witnesses to prove him a Subject; but upon the Trial there were above two Witnesses to prove it; that was *Crittenden*, the Marshal of *Dover*, *Creagh*, and *Rivet*. I must tell you, as to the Doctrine of the Civil Law, it is not universally received in all Countries; it is received in several Countries as they find it convenient, and not as obligatory in itself.

Dr. *Oldisb.* Yes, in all Places, as to Proof; for 'tis the Law of God and Nations, *ex ore duorum, vel trium*, &c. and one Witness is no Witness.

Sir *Charles Hedges*. Two Witnesses may be necessary to convict a Man of any capital Crime, but then it doth follow that there must be two Witnesses to prove every particular Fact and Circumstance. In this Point, touching the Place of the Nativity of *Thomas Vaughan*, was there not sufficient in his own Confession, together with the other Proofs on the King's behalf, to throw the Burden of Proof upon the Prisoner? You yourselves seem to have been of that Opinion; you undertook to prove it, and 'tis you that have failed in that Particular.

L. C. J. Our Trials by Juries are of such Consideration in our Law, that we allow their Determination to be the best, and most advantageous to the Subject; and therefore less Evidence is required than by the Civil Law. So said *Portefeu* in his *Commendation of the Laws of England*.

Dr. *Oldisb.* Because the Jury are the Witnesses in Reality, according to the Laws of *England*, being presumed to be *ex vicineto*; but when it is on the high and open Seas, they are not then presumed to be *ex vicineto*, and so must be instructed according to the Rules of the Civil Law by Witnesses.

Mr. Baron *Powis*. This is not a Trial by the Civil Law; for that Statute was made to avoid the Niceties of your Law.

Mr. *J. Eyre*. He is tried with like Evidence, as in other Cases of High-Treason.

Dr. *Oldisb.* No, the late Act requires two Witnesses.

Cl. of Arr. Make Proclamation of Silence.

Cryer. All manner of Persons are commanded to keep Silence, while Judgment is giving, upon Pain of Imprisonment.

And then Judgment was given, according as the Law directs in Cases of High-Treason

The Commission of Capt. Thomas Vaughan, which he had by Order of the French King.

Lewis Alexander of Bourbon, Earl of Toulouse, Duke of Anville, Commander of the King's Orders, Governor and Lieutenant-General for his Majesty in the Province of Britany, Peer and Admiral of France; To all those who shall see these present Letters, Greeting. The King having declared War against his Catholick Majesty, the Favourers of the of the Crowns of England and Scotland, and the Estates of the United Provinces, for the Reasons contained in the Declarations published by his Majesty throughout the Extent of his Kingdom, Countries, Lands, and Lordships under his Obedience; and his Majesty having commanded us to take Care that the said Declaration be observed, in what it do depend upon the Power and Authority which his Majesty hath been pleased to commit to our said Charge of Admiral; We have, according to the express Orders of his said Majesty, given Leave, Power and Permission to Thomas Vaughan, living at Bulloigne, to arm and set forth in warlike Manner a Bark, called The Loyal Clencarty, of the Burthen of Ten Tons, or thereabouts, which is at present in the Port of Bulloigne, with such Number of Men, Cannons, Bullets, Powder, Shot, and other Ammunitions of War, and Provisions which are necessary to set her out to Sea, in a Condition to sail and cruize upon the Pirates, and others without Commission, as also upon the Subjects of his Catholick Majesty, the Estates of the United Provinces, the Favourers of the of the Crowns of England and Scotland, and other Enemies of this Estate, in what Places sever he can meet them, whether it be upon the Coasts of their Country, in their Ports, or Rivers; also upon their Shores, or Places where the said Captain Thomas Vaughan shall think fit to land to annoy the said Enemies; and there to make use of all the Means and Arts permitted and used by the Laws of War, to take them and bring them Prisoners, with their Ships, Arms, and other Things in their Possession.

Provided the said Vaughan shall keep, and cause those of his Crew to keep the Maritime Orders, and that he shall carry, during his Voyage, the Flag and Ensign of the King's-Arms, and of Ours, and cause the present Commission to be registred in the Registry of the nearest Admiralty where he shall be equipped, and leave there a Roll signed and certified by him, containing the Names and Surnames, the Births and Residence of his Crew; and make his Return to the said Place, or some other Port of France, and make his Report before the Officers of the Admiralty, and no

others, of what shall have happened during his Voyage, and give us Advice thereof, and send his said Report to the Secretary-General of the Marine, with the Papers justifying the same, that we may give such Orders thereupon as may be necessary.

And we pray and require all Kings, Princes, Potentates, Sovereigns, Estates, Republicks, Friends and Allies of this Crown, and all others, to whom it shall appertain, to give to the said Vaughan all Favour, Aid, Assistance and Succour in their Ports, with his said Vessel, Company and Prizes, which he shall take during his Voyage, without doing, or suffering to be done to him any Trouble or Hindrance; offering to do the like when we shall be by them thereunto required.

And we do command and require all Marine Officers, and others, to whom it shall appertain, to let him safely and freely pass with his said Vessel, Arms and Company, and the Prizes which he shall take, without doing, or suffering to be done to him any Trouble or Hindrance; but on the contrary, to give him all Succour and Assistance that shall be necessary. These Presents to be of no Force after one Year, from the Day of the Date hereof.

In Witness whereof We have signed these Presents, and caused them to be sealed with the Seal of our Arms, and counter-signed by the Secretary-General of the Marine, at Versailles, the tenth Day of the Month of July, One Thousand Six Hundred Ninety Five.

L. A. de Bourbon.

L. S.

By my Lord de Vallencour.

The present Commission was registred in the Registry of the Admiralty of Bulloigne, after having been seen by us James Abbot de la Cocherine, the King's Counsellor, deputed to the Intendency of Bulloigne, exercising the Charge of Lieutenant-General of the Admiralty, in the Presence of the King's Proctor, at the Request of the said Captain Vaughan, being present, whom we have permitted to sail and cruize upon the Enemies of the Estate. Done at Bulloigne the fourteenth of July, One Thousand Six Hundred Ninety Five.

Maginon.

Versionem hanc Anglicanam in omnibus, cum suo Originali Gallio convenire testor,

Wilhelmus Rocke, Notar. Publ.

He was afterwards executed according to his Sentence.



CLXIII. *Proceedings in Parliament against Sir John Fenwick, Bar. upon a Bill of Attainder for High-Treason, November, &c. 1696. 8 Will. III.*

Proceedings in the House of Commons.

Veneris 6 die Novembris, 1696.

Admiral *Ruffel* acquainted the House of Commons, that his Majesty had given Leave to lay before the House several Papers in the Nature of Informations of Sir *John Fenwick*, in which he and several other Persons of Quality were named; and desired that they might be brought up to the Table and read; and that he might have an Opportunity to justify himself, or if he did not, that he might fall under the Censure of the House. And Mr. Secretary *Trumbal* being present, did say, That he had his Majesty's Leave to lay those Papers before the House; and if the House pleased he would bring them up to the Table.

And accordingly (the House shewing a general Inclination for it) they were brought up to the Table and read (being the Account he gave of the last Plot under his own Hand; and his Examination taken by Mr. *Vernon*, afterwards upon his Trial produced); and after the same was read, the House ordered, That Sir *John Fenwick* should be brought immediately before them; and that no Person should in the mean Time speak with him, or give or receive any Paper from him. And the House further order'd, That the Lord *Cutts*, Sir *Henry Hobart*, and Mr. *Norris*, three of their Members, should see their Order executed.

And in the mean Time adjourned to the Afternoon.

About Five a Clock in the Afternoon Sir *John Fenwick* was brought with a strong Guard (which the Lord *Cutts* had taken Care for) to the House; and being brought to the Bar, Mr. Speaker spake to him thus:

Mr. Speaker. Sir *John Fenwick*, the House understand that you have shew'd some Inclinations to make a Discovery of the Designs and Practices of the Enemies of the Government; you have now an Opportunity to do it; and the House require it from you, that you make a full and ample Discovery of all you know of that Matter.

Sir *John Fenwick*. Mr. Speaker, I suppose the House is not ignorant of my Circumstances. I am indicted of High-Treason, and have been arraigned: What I have done to serve the King and Nation his Majesty knows, it hath been communicated to him by his Privy-Council. I do not know but what I say may hurt my self; and therefore I desire that I may have some Security for my self, and I am willing to tell the full of all I know.

Mr. Speaker. Sir, if you please to withdraw for the present, the House will send you their Pleasure.

Sir *John Fenwick* withdrew. Was call'd in again.

* Mr. Speaker. Sir *John Fenwick*, since you withdrew, the House have consider'd of what you said at the Bar. * Paul Foley, Esq;

They do not think what you said is an Answer to what they require; they do expect a full and candid Confession from you of what you know; and they think that the best Way for you to obtain the Favour of the House is to deal ingenuously with them.

Sir *John Fenwick*. Sir, I am in the Hands of the Law, and I would not do any Thing that his Majesty might be angry with me; for I do not know it is with his Majesty's Consent: I have acquainted him fully with all I know of the Matter; this is all the Account I can give you at this Time. 'Tis a dangerous Point that I am under; I know not but I may come to my Trial in a few Days; and what I may say may rise up against me in a Court of Judicature: I humbly propose it to the House, if they do not think it a hard Case for me to make any Confession here, when his Majesty hath all that I know. I shall be very ready to do what this honourable House pleases to command me; but I desire this House will consider my Circumstances; I would not offend the King, nor offend this House.

Thereupon Mr. Speaker again spake to him to withdraw. And being withdrawn, the House debated, whether they should acquaint him with their having those Papers of Information. But they did not think fit to do it for this Reason, because they thought those Papers were a Contrivance, and made by others for him; and that the best Way to get the Truth out of him, would be for him to tell his own Story. Besides, if the House should let him know they had those Papers, he would only refer to those Papers, as he had lately done, when he was examined by the King and Council.

'Twas also debated, whether there should be any threatenng Words used towards him; but they thought that not proper; for his Confession ought to be free and natural. It was also debated, whether they should take Notice of his Majesty's Consent; but that was not thought fit, being thought derogatory to the Privileges of the House. So the House ordered him to be called in again; and Mr. Speaker delivered the Sense of the House to him in these Words.

Sir John Fenwick at the Bar.

Mr. Speaker. Sir *John Fenwick*, the House has considered of what you have said, to excuse your making a Discovery of your Knowledge of the Designs and Practices of the Enemies of the Government; and they think what you stand upon is only an Excuse; they think you have no Reason to apprehend the King should be angry with you for making any Discovery to this House, this being the proper Place to enquire of all Things that do relate to the King and Government, especially his Majesty's Safety; and you ought to discover to them what you know. As to what you stand upon, that you should not be prejudiced by what you discover here, I am commanded to tell you, they do take Notice by what you have said here, that you have already, notwithstanding what you say, discovered it to the King and Council: And they command me to tell you, that you have no Reason at all to apprehend, that you shall suffer any thing if you make a full and free Discovery here; no Man that ever did so, and dealt candidly with this House, ever did: 'Tis in your Power to deserve the Favour of the House; 'tis requir'd by the House, that you make a Discovery; and this is the last Time that you are like to be asked to do it.

Sir John Fenwick. Mr. Speaker, I know not what Answer to make to this House; I would not willingly offend it; what I have informed the King of, is a great deal; and a Man would have some little Time to recollect himself; and I have been kept a very close Prisoner, and had no Conveniency of Pen, Ink, and Paper; 'tis hard to remember just of a sudden; and I would willingly be secure his Majesty will not be angry with me. I was in hopes that his Majesty would have informed the House himself; he hath all that I know; my Circumstances are hard, I am in danger every Day to be tried, and I desire to be secured, that what I say shall not rise up in Judgment against me; 'tis hard to make me accuse my self under these Circumstances, and very hard to put me on it now.

Mr. Speaker. As to what you say relating to the Fear of his Majesty's Displeasure, and the other Excuse, you have had your Answer already. As to what you say relating to Time, if you will now declare what you know and remember, the House will take it into Consideration, whether they will give you farther Time to make up the rest.

Sir John Fenwick. Sir, his Majesty hath all exactly; 'tis impossible for me to inform you of it without accusing my self: I do not really know what to ask but a little Time, if they would please to give it me.

Mr. Speaker. Sir, you know already what the House requires of you.

Sir John Fenwick. I do: But 'tis no Excuse that I have made: What I have told is Truth, to the best of my Knowledge: I am not very good at Speaking; and if I might have a little Time, I shall do what they please to command me.

Mr. Speaker. If that be all you have to say, if you please to withdraw, you shall know the Pleasure of the House.

Sir John Fenwick withdraws. Is called in again.

Mr. Speaker. Sir *John Fenwick*, this House have

considered what you stood upon when you were here last, that your Memory was bad, and that you desired Time; but the House think it a Matter of great Moment to the King and whole Nation, that those that are their Enemies should be discover'd as soon as possible; and this being a Matter within your Knowledge, the House do not think fit to give you Time; but if they find by your Discovery, that you deal candidly and ingenuously with them, and have told them as much as you know upon your Memory, they will consider of your Request of giving you Time for the rest.

Sir John Fenwick. When first I spake to the Privy-Counsellor, I propos'd it to him, whether I might have a Pardon without being an Evidence against any Man; and in that Case I would serve the King so as to tell him all that I knew. It was upon Honour that I did it to him, and he took the Words in Writing from me, and sent them to the King in *Flanders*. The King's Answer was, That he made no Objection as to my being an Evidence, nor his giving me a Pardon; but that I could expect no Pardon 'till he knew what I could say: Upon that, I was encouraged to do what I did for his Majesty's Service; and I have found in all my Business since, whatever I do or say, the Answer is, 'Tis not satisfactory, and I am where I was. When this was done, there was a Message sent to me from the Lords Justices, That this was not satisfactory, and I must tell all I know: Now when a Man hath told all he knows, and this must still be the Answer, 'tis very hard. The King's Answer was, That I should more fully make good what I had said. Sir, I did afterwards explain what I had informed that honourable Person, and still it was not satisfactory. I hope I shall not find this from this honourable House: I am upon my Life, and I hope this House will consider of it: I know this House is good Security if I had it; but 'till I have it, I am under these Circumstances, and I may at last be told all is not satisfactory: I desire the House will please to consider of it.

Mr. Speaker. Sir, you know the Pleasure of the House, you know what they require of you.

Sir John Fenwick. I am very unwilling to offend the House; but these are very hard Circumstances, to be told, when I have done all I can, 'tis not satisfactory.

Mr. Speaker. Sir, you know what the House does expect; you must either give them Satisfaction in it, or withdraw.

Accordingly he withdrew.

And a Motion was made for Leave to bring in a Bill to attaint *Sir John Fenwick* of High-Treason; and after a Debate thereupon, the House divided.

Yeas — 179.

Noes — 61.

So it passed in the Affirmative.

Lunæ 9 Die Novembris, 1696.

The Bill for attainting *Sir John Fenwick* of High-Treason was presented to the House; and after a long Debate of several Hours, the Question was put for the second Reading of it; whereupon the House divided.

G

Yeas

Yeas—196.

Noes—104.

So it passed in the Affirmative, and *Friday Morning* was appointed for it.

The same Day the House order'd, That Sir *John Fenwick* should have a Copy of the Order for reading the Bill the second Time, and a Copy of the Bill; and that he should be allow'd Pen, Ink, and Paper.

And further order'd, That Mr. Attorney-General, and Mr. Solicitor-General, should prepare and produce the Evidence against him on *Friday Morning*.

And Mr. Speaker this Day acquainted the House, that he had received a Letter from Mr. *Fuller*, which he thought fit to acquaint the House with; but upon a Question for reading of it, it passed by a very great Majority in the Negative; so that there was no Division upon that Matter, but the Letter was writ in the Words following:

S I R,

I presume that no Person whatever, in the Interest of the present Government, hath been more actually engaged with Sir John Fenwick than my self, it being my Fortune several Times to bring Letters to him from the late King and Queen at St. Germain's, and to carry his Answers: I have also been with him at private Consults of the late King's Adherents, as my Informations assert; so that if I may be serviceable to the detecting his Treasons, I shall be very ready to serve the Government, and to demonstrate my Integrity.

I am, Sir,

Your Honour's most humble
and devoted Servant,

*W. Fuller.**Martis 10 die Novembris, 1696.*

Sir *John Fenwick* sent the Speaker a Letter in these Words,

S I R,

Newgate, Nov. 10.
I would have address'd my self in the humblest Manner I could to the Honourable House of Commons, from whom I received a Copy of a Bill against me with their Order; but my Keeper will not carry any Paper from me but to your self, to whom I durst not presume to send a Petition to deliver for me. Therefore I beg the Favour you will please to acquaint the House, that it is my humble Petition to them, That they would give Leave for my Counsel Sir Francis Pemberton, Sir Thomas Powis, and Sir Bartholomew Shower, to come to me, with my Solicitor, Christopher Dighton, to advise with alone. The Keeper will not so much as let me send the Copy of the Bill and Order to my Solicitor, so it is of no Use to me: I humbly beg they will please to give Order, that I may have all Assistance that is necessary for me, and that you will pardon this Trouble from, Sir,

Your most humble Servant,

JOHN FENWICK.

Upon this Letter they did readily order that he should be allowed two Counsel to make his Defence, and that they might be alone with him; and after some Debate, did give Leave that he

might have the Solicitor he desired, though it was said, his Solicitor was a very great Jacobite; and it was insinuated, that he was suspected to be concern'd in the Escape of *Goodman*; but it was also said, that he had been made use of as his Solicitor to prepare for his Trial, and before that, in other Matters; and so that it might not be thought that there was any Hardship upon him, in that Respect, the House thought fit to allow Mr. *Dighton* to be his Solicitor.

Jouis 12 die Novembris, 1696.

A Petition was presented from Sir *John Fenwick*, as follows:

To the Honourable the Knights, Citizens, and Burgesses in Parliament assembled,

The humble Petition of Sir *John Fenwick*, Bar.

Sheweth,

THAT there being a Bill of Attainder brought into this House for the Attainting of your Petitioner of High-Treason, and your Petitioner is advised, That there are many weighty Reasons to be offered against the said Bill;

Your Petitioner therefore most humbly prays, That your Honours will be pleased to bear him by his Counsel against the Passing of the said Bill at the Bar of this Honourable House; and to appoint such Time for the same, as to your Honours shall seem meet. And your Petitioner shall ever pray, &c.

J. FENWICK.

Which Prayer of his Petition was granted.

Veneris 13 die Novembris, 1696.

Sir *John Fenwick* was brought to the House (by Order) from the Prison of *Newgate*; and there being a very great Company of Strangers, both in the *Lobby* and *Speaker's Chamber*; and the House being full of Members, to prevent the Inconvenience that such a Number of People crowding in might occasion, the *Lobby* was ordered to be cleared of all Persons that were not concerned, and also the *Speaker's Chamber*, and that the Back-door of the same should be lock'd, and the Key laid upon the Table: But it having been said, that the Lords did admit the Members of this House to hear their Debates; there was private Intimation given the Serjeant to let them remain in the *Speaker's Chamber*, when others were remov'd.

Then Sir *John Fenwick* was order'd to be brought to the Bar: But it being a Proceeding of that Nature, that none of the ancientest Members could give a Precedent, it was necessary to settle some Preliminaries; and the first Question that was moved, was, Whether the Mace ought to lie upon the Table when Sir *John Fenwick* was in the House, or whether the Serjeant ought not to stand by him with it at the Bar?

Mr. *Smith*. Sir *John Fenwick* being a Prisoner, the Mace ought to be at the Bar, and then no Member can speak.

Mr. *Boyle*. This Hearing. of any Thing I can think of, is most like the Hearing of an Election; and then the Mace is upon the Table, and every one has Liberty to speak and ask Questions.

Mr.

* Mr. Charles Montague. * Mr. Chanc. of Excheq. The Mace ought not to be upon the Table, because he is a Prisoner: The Sheriffs of London can't have him in Custody here, and so they deliver him into Custody of the Serjeant.

Mr. J. Howe. That Argument would be good, if he could not be in Custody of the Serjeant unless he had the Mace in his Hand.

Mr. Brotherton. The Mace ought to be upon the Table, because the Bill is to be read.

Mr. Cbr. Musgrave. The Mace ought to be upon the Table. Never any Bill was read but the Mace was upon the Table.

Col. Granville. If the Mace be not upon the Table, it would be a great Hardship to the Members that they cannot speak, and a great Hardship upon the Prisoner that he can't ask any Questions. My Lord Torrington was brought Prisoner from the Tower, and upon Account of his Quality the House did not let him go to the Bar: But while he was in the House, the Mace was upon the Table, and he gave an Account of the whole Campaign; and every Body was at Liberty to ask what Questions they pleased.

* Sir Tho. Trevor. * Mr. Att. Gen. The Matter is very new; and I think 'tis necessary you resolve upon the Method before you call in the Counsel, that you may acquaint the Counsel with it: I think it not proper that the Mace should be upon the Table, because he is a Prisoner; though it may not be necessary that the Serjeant should have it upon his Shoulders all the Time, but he may ease himself. I believe you will ask Sir John Fenwick what he has to say, but no Questions to make him accuse himself: And I humbly propose it to you, that after the Counsel is called in, they may open the Nature of the Evidence against Sir John Fenwick; and then, whether you will permit them to go on, or they shall withdraw, and the House will consider what Questions shall be asked.

Col. Mordaunt. I hope the Questions will be taken down upon a Paper by the Speaker, and then read to us, that we may see if they be right, and so asked by the Speaker.

Sir Will. Williams. If the Mace is not upon the Table our Mouths are muzzled: We are in the Nature of Judges; and shall we pass a Vote that the Judges shall not ask any Questions?

Sir Tho. Dyke. I can't be informed without asking of Questions: I know not whether you are a House without it, without having the Mace upon the Table. And will you act in your highest Capacity without being a House? I do not know how it was when the Lord Torrington was here; but when the Duke of Leeds was here, the Mace was upon the Table.

Mr. Boyle. I wish you had appointed a Committee to have settled the Preliminaries, and that the Bill had not been brought in at all; what they labour, as a Matter to avoid Delay, may occasion more. For though when you carry the Mace to the Table, no Member should have the Liberty to speak, yet any Member hath Liberty to desire that the Counsel may withdraw, and then they must withdraw, and the Mace must be brought upon the Table.

Mr. Chanc. of Excheq. That Gentleman is certainly in the right: But I think the Mace must not be upon the Table till when the Prisoner is here; and I think the Questions must be ask'd by the Chair.

The longest Examinations that I remember was of the Admiralty, and then the Questions were asked by the Chair. For the Instance of my Lord Torrington, 'tis true, he had not the Mace with him, but he came at his own Request, he came to give you an Account of his Proceedings; and in that Case not a Question was asked by any Member; any Member hath Liberty to propose any Question, but it must be ask'd by the Chair.

Afterwards the Question was put, and it passed, That Sir John Fenwick should stand with the Mace at the Bar.

Then a Question arose about reading of the Bill: Some Gentlemen said, it could not be read when the Counsel was present, for the Mace would be off the Table; (and they seemed to be under a Difficulty by having passed the last Question;) others said, it was not necessary to read it whilst Sir John Fenwick was present, he having had a Copy of it; but at last it was thought reasonable, it being in the Nature of a Charge upon him, that it should be read to him when present with his Counsel; and 'twas said, it was done so in the Case of Indictments, tho' Copies were delivered to them: But it should be read only as a Matter of Form, as a Charge to which he was to answer; but it could not be reckoned a second Reading, according to the Rules of the House, the Mace being off the Table; and therefore it should be read again when the Counsel and he was withdrawn.

And it was said, that the Journals did take notice, that in some Cases, as in the Case of an adjourned Debate, some Bills had been read four times; and so it was agreed, and that Difficulty was solved.

And the Serjeant took the Mace, and brought Sir John Fenwick to the Bar; and Counsel was admitted for him, and for the Bill, viz.

Mr. Serjeant Gould, King's Serjeant, and Mr. Recorder Lovel, likewise King's Serjeant. And Sir Thomas Powis, and Sir Bartholomew Shower, for Sir John Fenwick.

And Mr. Speaker opened the Matter thus.

Mr. Speaker. Sir John Fenwick, the House have received Information that you have been in a horrid Conspiracy against the Life of his Majesty, and for bringing in a French Force to invade this Kingdom, that you have been indicted thereof; and they have considered the Nature of the Crime with which you stand charged, and how destructive it would have been (if it had succeeded) to the very Being of this Kingdom; and therefore, that you may not go unpunished, if you are guilty, have ordered a Bill to be brought into this House to attain you for High-Treason, which hath been once read, and will be now read to you at the Bar; and then you will hear the Evidence against you, and have Liberty to make your Defence: And though you cannot claim any Right thereto, this House (to shew how ready they are to favour you, in giving you any reasonable Help to make your Defence) do allow you Counsel to assist you therein; and having granted you this their Favour, they do expect that you will make a good Use of it. I am likewise to acquaint those that are your Counsel; that this House do reckon their own Prudence will so guide them, as not to give any just Offence to this House; and that they will not be allowed to question the Power of Parliaments to pass Bills

of Attainder, when they judge it requisite ; of which this House is more proper to judge than any private Person, and therefore they will not allow you to debate that Point.

Let the Bill be read.

[*Clerk of the House of Commons reads.*]

Whereas Sir John Fenwick, Bart. was, upon the Oaths of George Porter, Esq; and Cordel Goodman, Gent. at the Sessions of Oyer and Terminer held for the City of London, on the 28th Day of May, 1696. indicted of High-Treason, in compassing and imagining the Death and Destruction of his Majesty, and adhering to his Enemies, by consulting and agreeing with several Persons (whereof some have been already Attainted, and others not yet brought to their Trial for the said Treason) at several Meetings, to send Robert Charnock, since attainted and executed for High-Treason, in conspiring to assassinate his Majesty's Sacred Person (whom God long preserve) to the late King James in France, to invite and encourage the French King to invade this Kingdom with an armed Force, by promising to join with and assist him with Men and Arms upon such Invasion. And whereas the said Sir John Fenwick did obtain his Majesty's Favour to have his Trial delayed from Time to Time, upon his repeated Promises of making an ingenuous and full Confession of his Knowledge of any Design or Conspiracy against his Majesty's Person or Government, and of the Persons therein concerned. And whereas he has so far abused his Majesty's great Clemency and Indulgence therein, that, instead of making such Confession, he hath contrived and formed false and scandalous Papers as his Informations, reflecting on the Fidelity of several Noble Peers, divers Members of the House of Commons, and others, only by Hearsay; and contributing therein to undermine the Government, and create Jealousies between the King and his Subjects, and to stir the real Conspiracy. And whereas Cordel Goodman, one of the Witnesses against the said Sir John Fenwick, to prove the said Treason, lately and since the several Times appointed for the Trial of the said Sir John Fenwick, at one of which Times the said Sir John Fenwick had been accordingly tried, had it not been for the Expectation of the said Discoveries so often promised, is withdrawn; so that the said Cordel Goodman cannot be had to give Evidence upon any Trial. Be it Enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this Parliament assembled, and by the Authority of the same, That the said Sir John Fenwick is hereby Convicted and Attainted of High-Treason, and shall suffer the Pains of Death, and incur all Forfeitures as a Person attainted of High-Treason.

Mr. Speaker. Mr. Serjeant Gould, the House expects from you, and Mr. Serjeant Lovel, that you open the Evidence you have to prove the Suggestions of the Bill.

Mr. Serjeant Gould. Mr. Speaker, we are here in Obedience to your Commands, to give an Account of the Charge, and likewise of the Evidence of the Fact, that is against this Gentleman, Sir John Fenwick. The Charge against Sir John Fenwick is for High-Treason, and High-Treason of the highest Degree; 'tis no less than a Design of deposing

the King, and subverting the Government, and subjecting it to a French, arbitrary, and slavish Power. It further charges, that in Prosecution of this Conspiracy, he hath met, together, with several others, who have consulted, consented, and agreed together, to bring in a French Army upon us; and in order to that, as a particular Overt-Act, it is charged, that they contrived to send one to the late King James to bring in a French Power upon us. It is charged likewise, that he conspired to levy War upon us, and for that Purpose did provide Pistols, and other warlike Arms. This I take to be the Substance of the Charge, as laid in the Indictment.

Now, may it please you, Mr. Speaker, as for the Evidence of the Fact charged and alledged in this Indictment: It is no Secret certainly to any at this Time of Day (after so many Trials, so many Convictions, so many Attainders) that for some Years last past there hath been a wicked Conspiracy to bring in a French Power upon us, to subvert this good Government, and to depose the King; but God Almighty, by special Providence, hath always prevented and disappointed them. We know ever since the Business of *la Hogue* (in which, even by a Miracle, God disappointed them) they have been still restless, and have been industrious to set up again this Design; and for this have plotted to bring in a French Power, and have not had any Regard to the King's Mercy shewed to them, and that in passing several Acts of Parliament, but have still persisted in the same Designs.

As to the Charge upon this Gentleman at the Bar, we shall shew you that in Time: In the Year 1694. for several Months there was a Conspiracy carried on, but did not take Effect; afterwards, in Time, I think the Beginning of June, or latter End of May, there were several Consults, or Meetings, at the King's Head Tavern at the Upper End of *Leadenball-street*, where this Gentleman that now stands charged at the Bar was present; there were several Gentlemen, and among the rest (as it hath and will appear upon Evidence) there was Sir John Fenwick, my Lord *Montgomery*, and several others, whereof Captain *Porter* and *Goodman* were there likewise present: It was then proposed, that one *Charnock* (since executed, and agreed upon by all to be present) should go over into France to the late King James, to communicate to him their Resolution and Sincerity in being serviceable to him in levying War here to depose the King, and subvert the Government; who was to intercede with the French King, so that there might be Forces sent from France. But after this, *Charnock* (present still this Gentleman) comes and proposes this thing again, and tried whether they were sincere and real in their former Resolutions. To which they all replied, and did agree and assent, that it should be done, and they were very zealous in the Matter, and the Forces were at that Time proposed. And what was that? Why truly, no less than 8000 Foot, and 2000 Dragoons of French, with an Assurance of 2000 Horse from this Country. *Charnock* did go into France, and did communicate this Matter; and after he had communicated this Matter he came back, and brought Answer, that King James had endeavoured to answer their Expectations, but at that Time the French King could not spare his Forces, but however returned his Thanks to them.

This passed on till towards *Christmas* last; then comes over Sir *George Barclay* upon this Expedition, and there was a Commission prepared for that Purpose: And as to one Part, he brought along with him a Detachment of some of King *James's* Guards, who was to assassinate the King. The next Part was for raising a Rebellion; now that fell to Sir *John Fenwick's* Part. As to the assassinating Part, you have had several Examples made already. This we have Evidence to prove; and if we prove this Matter as we have opened it, then I think there is no Person whatsoever, but will agree that this is High-Treason in the highest Degree. Now, Sir, here stands our Matter: Here was an Indictment found according to the Law you made last Sessions of Parliament, by two Witnesses to one Species of Treason against Sir *John Fenwick*; we have one of these Witnesses here *viva voce*: But Sir *John Fenwick* hath protracted his Trial by frequent Assurances of making a Discovery, which hath terminated in what you have already mentioned in your Bill; by Means of which, Sir *John Fenwick* hath not been try'd; whereas he had been try'd in course, without these Applications, and found guilty: But now he hath had all this Time, that *Goodman* is withdrawn is plain, and we think (but that we must leave to the Judgment of this honourable House) may be reasonably supposed, by Contrivance, to take off this Prosecution of Sir *John Fenwick*. For why? The Inference is from a Fact that we shall prove to this honourable House: There hath been the like Attempt upon Captain *Porter*, but Captain *Porter* hath been more stedfast; he hath been so resolved, that he stood his Ground; and, to speak the Truth, notwithstanding he hath been highly attempted: For we shall prove to you, that one *Clancy* comes to Captain *Porter*, and tempts him to withdraw into *France*, with Assurance of a Pardon, and he hath Three Hundred Pounds paid him in Hand, and Three Hundred more he was to be paid when he should come into *France*, to be remitted by Bills of Exchange: Besides, he was to have 300 *l.* a Year; 100 *l.* from my Lord *Aylesbury*, 100 *l.* from my Lord *Montgomery*, and the other 100 *l.* a Year from Sir *John Fenwick*, and this to be an Annuity during his Life: And thus far we suspect Sir *John Fenwick* may be concerned; for his Lady came) he did not come personally, but his Lady did) and gave her Honour and Assurance, that it should be all performed, and much more, if he would withdraw himself.

Captain *Porter* presently made a Discovery of this, and takes the 300 *l.* which was paid down; upon this it hath been so far proceeded, that *Clancy* hath been indicted for it, and convicted, and hath received Judgment, and I suppose there hath been Execution: We have the Record of all these Proceedings.

We have this Circumstance farther in the Case, (which it is my Duty to open to this House) to shew what Labour there hath been to stifle the Truth of the Fact, upon taking of Sir *John Fenwick*. There was one *Webber* taken with him, and he slid a Letter into one *Fowl's* Hand, and this was to be sent to my Lady *Fenwick*: And what is the Import of this Letter? The Import of it is (they could not prevail with *Porter*, as I opened just now, therefore you must influence the Jury, get two or three stout Jurymen to starve the rest, for we have nothing else to depend upon: These Things we shall humbly offer to prove, according to our

Duty, and according to the Order of this House, and then leave Sir *John Fenwick* to make his Defence.

Mr. *Recorder*: Sir, in what I say; I shall endeavour, as I ought to do, to pursue the Method of this Bill: And first, I will take Notice, that it is the Pleasure and Direction of this House, that we should attend this House this Day, to produce the Evidence against Sir *John Fenwick*.

The Crime for which he stands indicted is High-Treason: I presume the learned Gentlemen on the other Side will not deny, but that the compassing and conspiring the Death and Destruction of the King, is High-Treason; and that to endeavour it, or shew it by an Overt-Act, to cause a foreign Power to invade the Realm, or to hold Correspondence, or adhere to the King's Enemies, is likewise High-Treason; and therefore I shall not trouble the House to say any thing to it one way or another, because I believe they will not deny it.

In the next Place the Bill does take Notice, that Sir *John Fenwick* hath been indicted at the *Old-Baily* in *May*, 1696. Sir, by the Law of this House of Parliament made last Sessions, no Man ought to be indicted of High-Treason without two Witnesses; pursuant to that Law, Sir *John Fenwick* hath been indicted upon the Oaths of two Witnesses, Captain *Porter* (whom we have here) and *Goodman* (whom we then had, and he did swear) and upon the Evidence of these two Witnesses the Jury found the Bill.

We have this farther Matter: For before the Time the Bill was presented to the Grand-Jury, there was an Examination taken both of *Porter* and *Goodman* in Writing, and I think it was before a worthy Member of this House, to whom I appeal in this Case, and in those Informations (if I mistake not) the same Informations they gave against Sir *John Fenwick* as they gave against Mr. *Cook*; and upon the Trial of *Cook* they were sworn, and did justify and verify the Informations they gave before: And then, if you please, we shall call Witnesses to prove, that upon the Trial of *Cook*, *Porter* and *Goodman* gave that Evidence that did equally affect Sir *John Fenwick* (for he was then withdrawn, and could not be taken); and the Evidence was, That *Cook*, Sir *John Fenwick*, with my Lord *Aylesbury*, my Lord *Montgomery*, Sir *William Perkins*, Sir *John Friend*, *Charnock*, *Goodman* and *Porter*, were all together at a Consult especially appointed for the carrying on these traitorous Purposes; they gave the Court a great deal of Trouble, whether *Goodman* was there at that Time, and they did call some Servants of the House that did prevaricate, but the Court was thoroughly satisfied, and it hath appeared more plainly since, that they did abuse the Justice of the Court, for that *Goodman* was undoubtedly there. Sir, *Cook* upon the Trial was convicted, and had Judgment of Death. And, Sir, he is attainted; but it does not become me to say, why he is not executed: His Majesty, no doubt, hath great Reason for it. But this I may say, being present at the Trial, nothing was made more plain; and Sir *John Fenwick* appeared to be equally concerned.

To shew Sir *John Fenwick* is guilty, I crave leave to add this, he did withdraw himself, and fled, and was enquired after with Diligence; and at last he was found.

We shall make good all we have with, by Evidence (we hope) to the Satisfaction of this House.

Mr. *Speaker*. If you please, Mr. *Baker*, that is Solicitor for the King in this Case, does attend at the Door with all the Papers; we desire that he may be let in.

Mr. *Speaker*. Serjeant, call in Mr. *Baker*. (*Which was done.*)

Mr. *Speaker*. What do you call Mr. *Baker* for?

Mr. Serjeant *Gould*. To give an Account of this Indictment, for we have a true Copy from the Record.

Sir *Thomas Powis*. Mr. *Speaker*, since I am here assigned Counsel for the Prisoner, by the Allowance of this Honourable House, upon his Application, without my Privity, I crave Leave humbly to acquaint you, in Behalf of my Client: I take it for granted, that he is, I am sure we that are Counsel for him are, a little surpris'd in what the King's Counsel are going about; for in Truth, we were not aware, nor do we find that any Notice was given to the Gentleman at the Bar, that there would be any Proceeding against him by examining of Witnesses, or giving of Evidence; he had (it seems) the Vote of the House sent to him, and likewise a Copy of the Bill; but I could not understand that the House had given Notice that he should be prepared by Witnesses, if he had any, or be at Liberty to produce them. Nor was there the least Notice to him, that there would be a Proceeding against him by Way of giving Evidence. He did, as I find, humbly apply himself, by Petition, that he might be heard by Counsel, against the passing of the Bill, and I shall very carefully observe those Directions you gave us, which I hope we should not have stood in need of, but have behaved our selves as becomes us, and not have drawn in question the Power of Parliaments: I never had a Thought to do such a thing; but this I humbly lay before you for your Consideration, whether, without any sort of Notice, that I perceive, he had from this House to make his Defence to any Evidence, and consequently there could be no need of Witnesses on his Behalf; whether you will so proceed, unless he had had Forewarning to provide himself otherwise than by the printed Votes, which (I suppose) he had no Opportunity of seeing; and, whether, within the Words you are pleas'd to acquaint us with, we may be heard as to the Reasonableness of this Proceeding, that by and by we must crave Leave to speak unto.

Mr. *Speaker*. Sir *John Fenwick* did petition, it is true, that he might be heard by Counsel at the Bar against passing the Bill; but he likewise petitioned for Counsel and a Solicitor; and the Answer from the House was, That he should be allowed Counsel to make his Defence.

Sir *Tho. Powis*. Yes, Sir, I have seen the Order of the House; and truly there did not any Thing occur from it to me, that it should be expected that he should produce Witnesses; for he praying that he might be heard against passing of the Bill, and the Order of the House being that he might have Counsel for making his Defence, I did not apprehend that it empower'd us so to be prepar'd as to bring Witnesses, especially there being no Notice given to him to bring Witnesses, nor no Way for him to compel them to come here.

Sir *Bart. Shower*. Mr. *Speaker*, we do acknowledge that we are so far ready as to offer some

Considerations against the Reasonableness of the Bill, not against such Bill in general, but against Sir *John Fenwick* in particular, and upon those Suggestions in the Bill; but in respect of his making his Defence against Matter of Fact, and to answer the Charge of the Bar, we are not ready. The first Time we had Notice that Sir *John Fenwick* should attend, or be brought to the Bar, was last Night at Nine or Ten a-Clock at Night; 'tis true, the Order said the King's Counsel should produce Evidence for the Bill upon this Day; but it was not order'd that there should be Evidence produced for Sir *John Fenwick*, or at that Time that he should be personally present: We are ready, with Submission, to offer what we have to say against the passing of this Bill, upon the Suggestions made in the Bill, as Sir *John Fenwick's* Case is there represented; but to answer them in respect of Truth or Falshood, that we are not prepared to do: Whether you will hear them to that, before you have heard us, in the other Particular, that we submit to you.

Mr. *Speaker*. Sir, you had Notice on *Wednesday* last, that Sir *John Fenwick* should have Liberty to make his Defence by Counsel; and if you had doubted whether he should be admitted to do it by Witnesses, you might have applied to have known the Pleasure of the House: But if that be what you stand upon, if you will withdraw, you shall know the Pleasure of the House.

Mr. Serj. *Gould*. I must confess we depended on it, and expected no other Thing than the Bar Evidence. This was our Order, and I apprehended that the Petition meant the same Thing: For, as I remember, it was an Order likewise that the King's Counsel should produce the King's Evidence: What Reason was there for that Evidence, unless Sir *John* was to apply himself to answer it?

Mr. *Recorder*. I beg your Leave to observe with what Reason the Counsel on the other Side make this Objection; when 'tis the Import of this Bill, that Sir *John Fenwick* is guilty of High-Treason: And your Order says, They are to be heard against the Bill, that is to say, they are to be heard against the High-Treason charg'd upon him by this Bill. Therefore the House did direct us to produce the Evidence against Sir *John Fenwick*, to verify the Suggestions of this Bill: And so I cannot apprehend what can be more proper at this Time, but to prove the Fact against Sir *John Fenwick*; and 'tis their Business to defend it as well as they can.

Sir *Tho. Powis*. What was said by the learned Gentleman on the other Side, I hope, will be some Reason why we might be of Opinion, that we should not have Occasion to produce Witnesses: And the Truth is, this Bill does no where so much as say, Sir *John Fenwick* is guilty of High-Treason; and therefore Mr. *Recorder* was under some Mistake, when he said the Bill charged that he was guilty. The Bill does not any where make such an Allegation; there is nothing but a Recital that he was indicted for such a Treason; and then it recites, That whereas he had protracted his Trial by such Means, and *Goodmen* had withdrawn himself; (but it does not say with his Privity;) and then follows the enacting Part; *Be it enacted*, &c. So that there is no such Thing

Note. This Order was made the Day before at the Rising of the House.

as any Allegation that he is guilty, whereby we could imagine that that was the Fact or Question between us. We now offer these Things humbly to you, and shall readily submit to what you think fit to do in it.

Mr. Recorder. Sir Tho. Powis says, That Sir John Fenwick is not charged with his doing any Act, or being guilty of High-Treason; but the Bill takes Notice that he stands indicted for it: Then it will be enough for us to prove, that he stands indicted, unless the House think fit to let us go into the Evidence of his being guilty.

Sir B. Shower. We do not oppose the producing Evidence to prove the Suggestions of the Bill; and the Recitals of the Bill specified: But if they attempt to prove him actually guilty, by living Witnesses, as they have opened it here, that we humbly beg Leave to oppose. But if they think fit to prove the Suggestions of the Bill, that there was an Indictment, that there were Witnesses sworn, and one is withdrawn, and the Promises of making Confession, and his prevaricating in that Matter, we are ready to make our Defence to that.

Mr. Speaker. Gentlemen, you must withdraw before you have the Directions of the House.

Accordingly Sir John Fenwick, and the Counsel of both Sides, withdraw.

And being withdrawn.

Mr. Speaker. Gentlemen, you have heard what is stood upon by the Counsel for Sir John Fenwick: They say, if you call only Evidence to prove the Suggestions of the Bill, they are ready to answer them; but if you call any Evidence to prove Sir John Fenwick guilty of a Conspiracy, by living Witnesses, they pretend they are not ready, and say, They did not know they should be allow'd Liberty to produce any Witnesses.

Sir Tho. Littleton. Mr. Speaker, the Counsel could not think that the Bill should set forth that Sir John Fenwick was indicted, but that the House would know by what Means; and that Goodman was gone away, and we should not enquire by what Means. What are the Objections by the Counsel against the Bill? Say they, We are ready to give Reasons against the Bill; they do not say down-right against your Jurisdiction: But, say they, we are ready to shew 'tis not reasonable in this Case, as stand Circumstances, to pass this Bill: Sir John's Petition was to be heard down-right against the Bill. If that was your Intention to hear him to that, and to that only, I conceive you would not have worded your Answer as you did: You order'd him Counsel to make his Defence; and at the same Time order'd the King's Counsel to produce the Evidence: How could they understand it, but to make Defence to the Evidence? It may be they have a Mind to have another Fee: Whether you will think fit, in the Circumstances you stand, to give them further Time, I do not know: But the Circumstances of the Kingdom, and the King's Life, must be considered as well as Sir John Fenwick. What is the Meaning that they are not prepared? I suppose it is to have further Time; but I think your Order is so plainly worded, that they could not ignorantly mistake it.

Lord Norryes. I rise up to the Matter of Fact: That Gentleman tells you your Order is plainly

worded; 'tis so, if they had timely Notice of it: But the Counsel at the Bar tell you; they had no Notice of this Order till Ten a-Clock last Night.

Mr. Speaker. That noble Lord does mistake; for that which they say they had no Notice of till last Night, was, that Sir John Fenwick should be brought hither; but the Notice that he should be heard by his Counsel for his Defence was sent him the Day before.

Lord Norryes. This very Order, for his Majesty's Counsel to produce the Evidence, was made but upon Thursday.

Mr. Speaker. Then I mistake. But the Order that was made upon his Petition, I sent away immediately: But the Order they mean, I suppose, is that for bringing him hither.

Mr. Cowper. Say the Counsel for Sir John Fenwick, We come prepared to make Defence to every Thing charged in the Preamble of the Bill, but what is not charged, we do not come prepared to make Defence to. Now they conceive the Fact of High-Treason is not charged upon him by the Bill; and if true, it is of great weight; but as it is, 'tis none: For first, 'tis plain, the Preamble recites that he was indicted for High-Treason by the Grand-Jury; that is a Charge of High-Treason within the Bill; for it says, he was charged by the Oaths of his Country upon the Oaths of two Witnesses; and there is the very Overt-Act recited in the Preamble of the Bill. Now, allowing this its due Weight, Can any one think, that fits here as a private Judge, that the High-Treason thus recited, as found by the Grand-Jury, was no Part of his Charge? The very Nature of the Bill speaks; for could any one think, that you would ground a Bill of Attainder upon a Suggestion, that he being indicted of High-Treason, had spirited away one of the King's Evidence, or for giving false Information? So that this is trifling with the House, with Submission.

Sir Rich. Temple. Can any Body say any Thing of the Intention of the House, when 'tis reduced into a Bill? Is it not the Bill that he is to make his Defence to? And the Gentleman that spake, says, that no Body could think otherwise: Why, Sir, no Body is to think otherwise than the Bill states it.

Now the thing before you is, Whether upon the Suggestions of this Bill 'tis fit for you to pass it? The Case of Mortimer was, That he had made his Escape, being under an Indictment of High-Treason; and it came before the House, Whether upon the Statute of 25 E. 3. it was High-Treason: But they did not debate the Fact.

Now you have brought a Bill here, and all the Ground is, that he was indicted for High-Treason, had thus and thus prevaricated and delay'd his Trial, upon Promises of Confession, and in Conclusion, one of the Witnesses is withdrawn: Sir, no Man is to make his Defence but to what is in the Bill; nor can you examine to any Thing but what is suggested in the Bill. If you had put the Issue upon the Guilt of Sir John Fenwick, he must have a fair Trial in some Place, and that he cannot have here upon Oath; for upon all Bills of Attainders they have had a fair Trial above.

Mr. Smith. I always thought when a Bill of Attainder was to pass through this House, that every Man was concerned to hear what Evidence he could,