

Charles Earl of Manchester, Guilty upon my Honour.

George Earl of Northampton, Guilty upon my Honour.

John Earl of Leicester, Guilty upon my Honour.

Scroop Earl of Bridgewater, Guilty upon my Honour.

Lionel Earl of Dorset and Middlesex, Guilty upon my Honour.

Henry Earl of Lincoln, Guilty upon my Honour.

Thomas Earl of Pembroke, Guilty upon my Honour.

James Earl of Derby, Guilty upon my Honour.

William Marquis of Anandale, Guilty upon my Honour.

Thomas Duke of Newcastle, Guilty upon my Honour.

Evelin Duke of Kingston, Guilty upon my Honour.

Robert Duke of Ancafter and Kesteven, Lord Great Chamberlain, Guilty upon my Honour.

Henry Duke of Kent, Guilty upon my Honour.

John Duke of Roxburgh, Guilty upon my Honour.

James Duke of Montross, Guilty upon my Honour.

John Duke of Montagu, Guilty upon my Honour.

John Duke of Buckingham and Normanby, Guilty upon my Honour.

John Duke of Marlborough, Guilty upon my Honour.

Charles Duke of Sbroesbury, Guilty upon my Honour.

Charles Duke of St. Albans, Guilty upon my Honour.

Charles Duke of Richmond, Guilty upon my Honour.

Charles Duke of Somersfet, Guilty upon my Honour.

Charles Duke of Bolton, Lord Chamberlain of his Majesty's Household, Guilty upon my Honour.

William Duke of Devonshire, Lord Steward of his Majesty's Household, Guilty upon my Honour.

Charles Earl of Sunderland, Lord Privy-Seal, Guilty upon my Honour.

L. H. Steward. My Lords, I am of Opinion that *George Earl of Wintoun* is Guilty of the High-Treason whereof he stands Impeached, upon my Honour.

Proclamation for Silence, and Proclamation to bring forth the Prisoner, as usual.

L. H. Steward. *George Earl of Wintoun*, the Lords have considered of the Charge, and the Evidence given against you; and likewise of what you have said in your Defence, and of the whole Matter as it hath been before them in this Trial, and are of Opinion that your Lordship is Guilty, and have found your Lordship guilty of the High-Treason whereof you stand impeached.

Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

Then all the Lords returned in the Order before-mentioned to the Chamber of Parliament.

Monday, March 19. *The Third Day.*

Proclamation for Silence, and Proclamation for the Prisoner to be brought to the Bar, as usual.

L. H. Steward. *George Earl of Wintoun*, when you was last at this Bar, I let your Lordship know that your Peers had found you guilty of the High-Treason whereof you stand impeached, that is in the Terms of Law, convicted you of High-Treason. I am now to ask your Lordship if you have any thing to offer why Judgment of Death should not pass upon you according to the Law.

Clerk from L. Wintoun. My Lord *Wintoun* saith his Council have a Point of Law to offer to your Lordships, to shew that he is such a Person against whom, by Law, Judgment ought not to be given.

L. H. Steward. My Lord, will your Lordship state the Point upon which your Lordship is advised, that you are not such a Person against whom Judgment ought to be given?

Clerk from L. Wintoun. I don't know what your Lordship means.

Sir C. Phipps. If your Lordships please, we have a Point of Law humbly to offer to your Lordships, if—

Att. Gen. My Lords, I hear a Gentleman of the long Robe offering to speak. I do humbly insist on it that they are not to speak, unless there be a Point of Law stated by the Prisoner, and which your Lordships shall think to be a Point of Law, we think it irregular.

Mr. Cooper. We apprehend the Objection to that Gentleman's being heard is so obvious, that we are surprized to find he should presume to speak without your Lordship's Direction so to do; he cannot but know that the Prisoner is to propound the Question in Law; and if your Lordship shall conceive it to be a Point of Law proper to be argued by Council, your Lordships will direct him to speak; but he ought not in any case to propound a Question in Law, nor when a Question is propounded by the Prisoner, to speak to it without your Lordship's express Direction.

Lord High-Steward. *Sir Constantine Phipps*, you know the Practice to be so, and the Point must be first stated by the Prisoner before you can speak to it.

Sir C. Phipps. My Lords, if I had been heard but ten Words more—

Sir W. Thomson. My Lords, we humbly insist upon it that that Gentleman be not heard one Word more—

Lord Illey moved to adjourn.

L. H. Steward. Is it your Lordship's pleasure to adjourn?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

The Lords went in their Order to the Chamber of Parliament.

And after about half an Hour being returned, The House was resumed, and Proclamation made for Silence, as usual.

L. H. Steward. My Lord *Wintoun*, the Lords have consider'd of the Matter which you have moved in Arrest of Judgment, which was to this effect,

effect, that you are not such a Person as against whom Judgment of Death for High-Treason ought to be pronounced. I am directed to acquaint you that their Lordships are of Opinion it is Matter of Fact, and not of Law; and that the Lords think you are such a Person as against whom Judgment ought to be given in this Case. I am likewise ordered by the Lords to reprimand you Sir *Constantine Phipps*, for having, in a Proceeding of this Nature, presumed to be so forward as to speak for the Prisoner at the Bar before a Point of Law was first stated, and you had leave to speak to it; and your Fault is certainly the greater, for having presumed to do this to a Matter which you cannot but know is Matter of Fact, and that the Law is not doubtful one way or other, the Fact being supposed. My Lord *Wintoun*, I am allowed again to ask your Lordship, if you have any thing further to alledge or move why Judgment of Death should not pass upon you according to the Law.

Clerk from L. Wintoun. My Council are ready to offer, in Arrest of Judgment, that the Impeachment is insufficient, for the Time of committing the Treason is not therein laid with sufficient Certainty.

L. H. Steward. I think the Matter moved by my Lord is, that his Council should be admitted to shew that the Impeachment is insufficient, in respect that the Time therein is not laid with sufficient Certainty. This I think is the Matter mov'd. Will your Lordships be pleased that the Council have Leave to speak?

L. H. Steward. Is it your Lordships pleasure that the Council for the Prisoner may be allowed to speak to this Point?

Lords. Ay, ay.

L. H. Steward. I ask your Lordships leave to go nearer to the Table.

Which being done,

Proclamation for Silence was made as usual.

L. H. Steward. Gentlemen that are of Council for the Prisoner at the Bar, you have liberty to speak to the Point proposed.

Sir Constantine Phipps. **M**AY it please your Lordships, we that have the Honour to be assigned by your Lordships as Council in this Case, do humbly apprehend the Impeachment against the noble Lord at the Bar to be insufficient; it is so uncertain, that we (with the greatest Submission) take it no Judgment can be given upon it. My Lords we beg leave to take Notice to your Lordships, that in Indictments in the Courts below, even for Trespasses, the Law requires the certain Day when the Offence is supposed to be committed to be alledged, and if a particular Day be not laid, the Indictment is insufficient. And if such Certainty is requisite in Offences of the most minute Nature, it is much more so in capital Crimes, and more still in Offences of the highest Nature, such as Treason, with which this noble Lord is charged.

My Lords, there be two Reasons why, in Indictments for High-Treason, a certain Day should be assigned when the Treason was committed.

One is for the Advantage of the Prisoner, that being apprised not only for the Facts with which he is charged, but also of the Time when those Facts are supposed to be committed, he may be the better able to make his Defence: 'Tis possible he may have Witnesses to prove he was at ano-

ther Place, and in other Company, at the Time when he is accused to have committed the Treason, or may by other Circumstances make his Innocence appear.

The second Reason is for the Benefit of the Crown, that it may be known to what Time the Forfeiture shall relate; for in Treason the Forfeiture relates to the Time laid in the Indictment; and if there be no precise Time alledged in the Indictment, the Forfeiture can relate no farther than to the Judgment.

My Lords, the Forfeitures in Cases of Treason are very great, therefore we conceive, with humble Submission, that the Accusation ought to contain all the Certainty it is capable of, that the Prisoner may not by general Allegations be rendered incapable to defend himself in a Case which may prove so fatal to him.

Our Books, my Lords, furnish us with many Instances where Indictments have been held to be insufficient for less Faults than not specifying the Day when the Offence was committed; but in Cases so plain, I will not trouble your Lordships with citing Authorities; for I believe there is not one Gentleman of the long Robe but will agree an Indictment for any capital Offence to be erroneous, if the Offence be not alledged to be committed upon a certain Day.

My Lords, an Attainder upon an Impeachment subjects the Offender to the same Punishment, the same Forfeitures, as an Attainder upon an Indictment; and therefore I am at a loss to find out a Reason why there should not be the same Certainty in the one as in the other; if equal Certainty be required in both, then we humbly submit to your Lordships Judgment whether this Impeachment be not erroneous and insufficient, in that there is no particular certain Time alledged when the Treason or the Overt-Acts were committed. The Treason alledged is conspiring and imagining the Death of the King, and the Impeachment sets forth, "That the Conspirators, (and names them) as false Traytors to his present most sacred Majesty King *George*, the only lawful and undoubted Sovereign of these Kingdoms, having withdrawn their Allegiance, and cordial Love, and true and due Obedience, which they, as good and faithful Subjects, owed to his said Majesty, did, in or about the Months of *September, October, or November 1715*, most wickedly, maliciously, falsely, and traiterously imagine and compass the Death of his most sacred Majesty." My Lords, a Prosecution by Impeachment is a Proceeding at the Common Law, for *Lex Parliamentaria* is a Part of the Common Law; and we humbly submit it to your Lordships Consideration, whether there is not the same Certainty required in one Method of Proceeding at the Common Law as in another.

Your Lordships observe with what Uncertainty, as to the Time, the Treason is alledged. 'Tis said to be in or about the Months of *September, October, or November 1715*. Who is able to say to which of these Months, much less to what Day of either of these Months, the Forfeiture shall relate? And how is it possible for the noble Lord, the Prisoner at the Bar, to make a Defence to a Charge so general, unless he bring for Witnesses all those Persons with whom he has had any Conversation during those three Months at least?

My Lords, the Overt-Acts are alledged with the same Insufficiency and Uncertainty as the Treason it self is; for in charging the first Overt-Act, which is conspiring to levy War and to depose the King, it is said, "That for accomplishing and executing their said traiterous Purposes, they the said *James Earl of Derwentwater, &c.* did, in or about the said Months, or some of them, and at diverse other Times, and at diverse other Places within this Kingdom, wickedly and traiterously agree, confederate, &c. to raise, excite, and levy, within the Counties of *Teviotdale, Northumberland, Cumberland,* and the County-Palatine of *Chester,* and elsewhere within this Kingdom, a most cruel, bloody, and destructive War against his Majesty, in order to depose and murder his sacred Majesty, and to deprive him of his royal State, Crown and Dignity." My Lords, can any thing be more uncertainly alledged, than to say that the Conspirators did, in or about the said Months, or some of them, and at diverse other Times, and at diverse other Places within this Kingdom, confederate, &c. to levy War within the Counties of *Teviotdale, Northumberland, Cumberland,* and County-Palatine of *Chester,* and elsewhere within this Kingdom?

The next Overt-Act, which is actually levying War, is not laid with greater Certainty; for the Impeachment sets forth, "That the said Earl of *Derwentwater, &c.* their Accomplices and Confederates, *in or about the Months* aforesaid, in the Counties aforesaid, *or some of them,* did gather together great Numbers of his Majesty's Subjects, and with them did assemble in a warlike and traiterous manner, in order to raise Tumults and Rebellion within this Kingdom; and having procured great Quantities of Arms, Ammunition, and warlike Instruments, *at the Times and Places aforesaid, or some of them,* did form and compose, or did assist in forming and composing an Army of Men, consisting of his Majesty's liege Subjects, in order to wage War against his said Majesty, for, and in behalf, and in favour of the said Pretender to the Crown of these Realms; and at the Time, and Times, and Places aforesaid, *and at divers other Times and Places* within this Kingdom, the said Conspirators did levy and raise War and Rebellion against his most sacred Majesty, &c.

The next Overt-Act is proclaiming the Pretender, which is more uncertain than any of the other; for the Impeachment sets forth, "That the aforesaid Conspirators, *during their March and Invasion aforesaid,* in open Defiance of his most sacred Majesty's just and undoubted Title to the Imperial Crown of these Realms, did wickedly and traiterously cause and procure the said Pretender to be proclaimed in the most public and solemn manner as King of these Realms.

Here is no certain Time or Place alledged when or where the Pretender was proclaim'd, but only that it was during their March and Invasion.

The last Overt-Act seems to be laid with greater Certainty than the rest; for 'tis said, "That the Conspirators did, on or about the 9th, 10th, 11th, 12th, or 13th of *November* aforesaid, traiterously seize and possess themselves of the Town of *Preston,* in the County Palatine of *Lancaster,* against his Majesty, and did then,

"and there, in a warlike and hostile Manner, levy War, oppose, engage, and fight against his Majesty's Forces, and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects." Here indeed are particular Days mention'd, but then the Words *or about* leave it at large, for no Man can tell how many Days may be included in these Words *or about.* We humbly apprehend that a Charge of this high Nature ought not to be alledged with such uncertainty, and that the Impeachment is as erroneous as an Indictment drawn in this Manner would be; this being a Proceeding of the same Nature, and according to the Course of the Common Law.

My Lords, I do not pretend any great Skill in Parliamentary Proceedings, but presume to say that in my little Experience in Business in other Courts, I never saw a Charge exhibited against any one that was laid in so uncertain a manner, unless in Libels in the Ecclesiastical or Admiralty Courts, which cannot in the least influence the Case now before your Lordships; this (as I have observed) being a Proceeding according to the Course of the Common Law.

Upon the whole Matter I humbly submit to your Lordships Judgment, whether for the Reasons I have offer'd to your Lordships Consideration, the Impeachment is not erroneous, and whether your Lordships will think fit to proceed to Judgment against the noble Lord the Prisoner at the Bar upon an Impeachment so uncertain and insufficient as I humbly apprehend this to be.

Mr. Williams. MY Lords, I am also assign'd, by your Lordships, of Council for this unfortunate Lord, and humbly insist in arrest of Judgment, that there is a Defect in this Impeachment, in regard no certain Day is laid, when the Treason is charged to have been committed.

In the Impeachment 'tis said, that this noble Lord did, *in or about* the Months of *September, October* or *November, 1715,* together with the others in the Impeachment nam'd, traiterously compass the Death of his most sacred Majesty: That this noble Lord did, *in or about* the said Months, *or some of them,* together with the rest, agree and confederate to levy War, against his Majesty: That *in or about* the said Months, *or some of them,* this noble Lord with others did levy War, and did march thro' several parts of the Kingdoms, and did proclaim the Pretender to be King: And that *on or about* the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of the said *November,* the noble Lord with others did seize and possess themselves of the Town of *Preston,* and fought against his Majesty's Forces.

This is the Effect of the Impeachment.

And with great Submission I take it, that in Point of Law, the Impeachment is defective in respect of the Uncertainty of the Time when this Treason is said to have been committed.

I humbly apprehend, that the Honourable the House of Commons is the *Grand Inquest of the whole Nation;* and that their Impeachment is in Nature of an Indictment, found by that Grand Inquest: Differing from an Indictment in this Respect, that an Indictment is found by the Inquest of a *County only;* but an Impeachment by the *Grand Inquest of the whole Kingdom.*

And

And taking it, that Impeachments are properly to be resembled to Indictments.

Then as the omitting of the laying of a certain Day when the Treason was committed wou'd be a material Fault in the Case of an Indictment; with great Submission, it is as material a Defect in the Case of an Impeachment.

It seems plain, that in the Case of an Indictment, a certain Day ought to be laid when the Treason was committed.

It will, I believe, hardly be denied, but that in Case of an Indictment for Treason, it wou'd be ill, if 'twere laid, that the Party indicted committed the Treason *on or about* the first of September, 1715.

It wou'd be apparently worse, if 'twere laid in an Indictment, that the Party committed the Treason *in or about the Month of September*, 1715.

It wou'd be still worse (because more uncertain) if it were laid in an Indictment, that the Party committed the Treason *in or about the Months of September, October or November*, 1715.

And, with great Submission, this, as I humbly take it, is the very Case before your Lordships; I mean, taking it, that Impeachments and Indictments, as to the material Parts of them, are to be measured by the same Rules of Law, as I humbly conceive they ought to be.

That the certain Day, for the committing the Treason, ought to be laid in Case of Indictments for Treason, seems to be proved, not only from the constant Practice of laying a Day certain in all Indictments of Treason; but from the Reason of the Law, which shews it to be a *Substantial and Material Part* of the Indictment.

That the constant Practice, in Case of Indictments for Treason, is to lay the Day on which the Treason is supposed to be done, will, as I presume, be admitted.

And such constant Practice is, of itself, a strong Argument that the Law requires it.

But I humbly take it, that the Reason of the Thing argues still much stronger for me, and shews it to be an *essential Part* of the Indictment.

The Reason of mentioning a Day certain in the Indictment when the Treason is supposed to have been committed, is in some Respects even for the Benefit of the Crown itself, and in some Respects for the Advantage of the Party indicted.

It concerns the Crown, in respect of the Forfeitures accruing to the King, of the Lands of the Party indicted; for where an Attainder ensues upon an Indictment for Treason, the Lands of the Party indicted are forfeited to the Crown, not only from the Judgment, but from the Day mentioned in the Indictment when the Treason is charged to have been committed.

This is expressly said, in the *Lord Coke's 1 Inst.* 13. a. b. 390. b. and the Difference there taken is, between a Writ of Appeal and an Indictment. 'Tis there said, That if a Man be indicted for a capital Offence and out-law'd upon it, the Land of the Party is forfeited from the Day laid in the Indictment, for the committing of the Treason, or other capital Crimes; but in the Case of an Outlawry upon a *Writ of Appeal*, because no Day is mentioned in the Writ, the Forfeiture is only from the Judgment.

And though in the Case of a Writ of Appeal, which is called in *Latin (Breve)* from its Brevity, no Day is mention'd, yet in the Declaration upon

the Appeal (which resembles an Indictment) 'tis necessary not only to mention the Day, but even the Hour when the Murder or Felony was committed.

In the Case of *Wilson* against *Law*, which was adjudg'd in the Court of *King's-Bench*, in the sixth Year of King *William* and Queen *Mary*, in an Appeal of Murder, an Exception was taken to the Appeal that it was too uncertain, in regard the Murder was laid to be done, *circa horam primam post meridiem*, and this Incertainty even of the Hour was much insisted upon: But this, 'tis true, was at length over-rul'd, and held that *circa horam primam*, or *inter horam primam & secundam*, was well enough.

However no one, as I humbly apprehend, ever doubted, but that laying of a certain Day when the Fact was committed, is necessary both in the Case of an Indictment, and in a Declaration upon an Appeal; and that as to the Land of the Party indicted, the Forfeiture relates to the Day mentioned in the Indictment.

But, if the Question were ask'd in the present Case, from what Day the real Estate of this unhappy Lord should be forfeited, it wou'd, as I humbly apprehend, be difficult to answer it.

And that Difficulty arises from the Incertainty of the Impeachment, as to the Time when the Fact was committed.

If then the laying in an Indictment the certain Day when the Treason was committed concerns the Benefit of the Crown, as it surely does;

If it entitles the King to the Forfeiture of the Lands from the Day laid in the Indictment, as from the Authorities I have mentioned it appears to do;

If this Matter concerns that great Prerogative and Flower of the Crown, and its Right to Forfeitures;

Then surely this Omission can by no means be called a slight Omission, or a Fault in Form only.

It will also have its Weight with your Lordships, That the mentioning a Day certain in the Indictment, when the Crime is laid to have been done, is likewise for the Benefit of the Party indicted. 'Tis for his Advantage to know the Time when he is charg'd to have committed the Offence, and by that he will be the better enabled to defend himself against the Accusation.

It is a known Rule in Law, that in all Cases of Indictments, (though for Misdemeanors only) they ought to be strictly certain.

This Rule holds *a fortiori* in Cases of Indictments for capital Offences;

And still, *a fortiori*, in Cases of Indictments for High-Treason, where for Example sake the Judgment, though just, is as terrible as can well be thought of.

My Lords, I am sensible I ought to have too great a Value for your Lordship's Time, to cite any of those numerous Cases in the Law-Books, which justify that known Rule in the Law that requires Certainty in Cases of Indictments.

I shall only beg leave to mention to your Lordships one Case, which is an Authority of your Lordships, upon a Writ of Error before your Lordships, which shews how strict the Law is in the penning of Indictments for Treason; and that it requires that even what seems to be Matter of Form only in such Indictments must be complied with. It is the Case of the King against *Tucker*,

which was in the sixth Year of King *William* and Queen *Mary*, and is reported in *Serjeant Le-zinz*, 3. *Rep.* 396. where *Tucker* was indicted for Treason, and in the Conclusion of the Indictment it was not said to be *contra allegiantie sue debitum*; and upon this Indictment *Tucker* was attainted, and his Lands forfeited to the Crown, and afterwards purchas'd under the Attainder; but afterwards this Attainder was revers'd in a Writ of Error in the King's-Bench upon very great Debate, for want of those Words in the Indictment, *contra allegiantie sue debitum*, and upon a Writ of Error before your Lordships the Judgment of Reversal was affirmed, by which means a Purchaser under the Attainder lost the Estate.

With Submission, this Case is much stronger than the principal Case now before your Lordships.

In that Case it might with seeming Reason be objected, that the Word (*Proditore*) which is always in the Body of every Indictment, shews and necessarily implies, that the Treason committed was against the Party's Allegiance, for else how cou'd it be *Proditore*?

Also in that Case the Treason is set forth at large in the Indictment, together with the Over-Act, which *demonstrates* that the doing this must be against the Party's Allegiance.

But all this would not maintain the Indictment, in regard Indictments for Treason were always laid to be against the Party's Allegiance.

And if the constant Forms of Indictments be an Argument,

'Tis as strong a one for us in the present Case; for I believe there never was an Indictment without mentioning the Day when the Fact was committed.

Neither, with Submission, is this Matter of Form only, but 'tis the substantial Part of the Indictment, in regard in this Point the King is interested in respect of the Forfeiture, and the Party in respect of his Duence.

It will, I humbly presume, hardly be expected, from us, that we should cite Precedents of Impeachments, especially if 'twere known what few Hours Notice we had of attending your Lordships in arrest of Judgment.

I however, I will beg leave to mention one Case of an Impeachment fresh in your Lordships Memory, *Dr. Sacheverell's* Case.

Dr. Sacheverell was impeach'd before your Lordships by the Honourable House of Commons, for seditious Expressions in two Sermons, the one preach'd at *Darby* Assizes, and the other at *St. Paul's, London*; and in that Impeachment the precise Days are laid when the Doctor preach'd each of these two Sermons.

And I humbly take it, that by a like Reason a certain Day ought to be laid in the Impeachment, when this Treason was committed; and that the Authority of *Dr. Sacheverell's* Case seems so much stronger than the present Case in question, as the Crime of Treason is higher than that of a Misdemeanour.

My Lords, I have nothing else to say on behalf of this unhappy Lord; unhappy, as being in that doubtful State of Memory, not *insane* enough to be within the Protection of the Law, nor at the same time *sane* enough to do himself in any respect the least Service whatever.

Here the Managers gave some Interruption to the Council.

Lord High-Steward. Mr. *Williams*, I apprehend the Reason why the Managers of the House of Commons appear uneasy with you, is, that you are going into a Matter of Fact, and which you have not leave to speak to; you must therefore confine yourself to the Point of Law that was stated.

Mr. *Williams.* My Lords, I shall take up no more of your Lordship's Time; but humbly hope that the Cases of Indictments are parallel with those of Impeachments;

That, as in an Indictment for Treason, the want of laying a Day when the Treason is charg'd to have been committed, is a manifest Error;

That as the constant Forms of Indictments are so;

That as the Reason of the Law requires they should be so;

So for want of this Certainty in this Impeachment, we with great Submission insist that the Impeachment is defective:

And therefore pray that the Judgment against this unfortunate Lord may be arrested.

Mr. *Walpole.* MY Lords, the Commons have attended to the Objection made by the Council on the Part and Behalf of the Noble Lord at the Bar, and they humbly conceive those learned Gentlemen seem to forget in what Court they are. They have taken up so much of your Lordships time in quoting of Authorities and using Arguments to shew your Lordships what would quash an Indictment in the Courts below, that they seem to forget they are now in a Court of Parliament, and on an Impeachment of the Commons of *Great-Britain*. For should the Commons admit all that they have offered, it will not follow that the Impeachment of the Commons is insufficient; and I must observe to your Lordships, that neither of the learned Gentlemen have offered to produce one Instance relating to an Impeachment, I mean, to shew that ever the Sufficiency of an Impeachment was called in question from the Generality of the Charge, or that any Instance of that Nature was offered at before. The Commons don't conceive, that if this Exception would quash an Indictment, it would therefore make this Impeachment insufficient; nor do they think it necessary, in Justice to the Noble Lord at the Bar, that a certain Day should be mentioned in the Impeachment. They don't think, from the Nature of this Crime, and the Evidence that has been given, that there can be any Hardship for want of fixing a certain Day on which the Treason was committed. What he is charged with, is being concerned in a most notorious Rebellion. The Time mentioned in the Impeachment is the Months of *September, October, and November*, and particularly the Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Days of *November*. He is charged with being concerned from the Time that he left his own House, to the Time he was taken at *Preston*; and it hath been proved, I believe, in a more ample Manner than ever any Crime of the like Nature hath been. And how can this Noble Lord suffer because no particular Day is mentioned, after he continu'd in Rebellion for so many Days and Months, and marched through so many Counties? It is impossible to conceive he can suffer from any Uncertainty in the Charge, in not having a particular Day fixed.

But, my Lords, the Commons think themselves sufficiently justified, and their Impeachment supported by a Precedent I have in my Hand, the Trial of my Lord *Stafford*, who was tried for High-Treason, and was executed for the same. And I observe that he had Council, and it appears he offer'd some Things in Arrest of Judgment; and altho' it will appear that the Time was more uncertain in that Impeachment, yet that was never attempted to be offer'd in Arrest of Judgment. In his Case the Words of the Articles of Impeachment are, that for divers Years last past a damnable Contrivance and Conspiracy had been form'd and carried on, that is just as these Articles are; and when they come to the particular Charge, all that is said is, That within the Time aforesaid, &c. that is, some Time within diverse Years last past; but this Impeachment is so far from being uncertain, that the Commons have named three Months, in which the Treason charged in the Impeachment was committed; and in the Precedent it is only said, Within some of the Years last past; so that here the Commons are sufficiently justified in the Articles exhibited by them, by the Precedent I have mentioned; and there Judgment pass'd, and nothing of this Nature was offer'd in Arrest of Judgment. I hope this will satisfy your Lordships, that this Impeachment is sufficient, notwithstanding this Objection; and I hope it will never be allowed here as a Reason, that what quashes an Indictment in the Courts below, will make insufficient an Impeachment brought by the Commons of *Great-Britain*.

Mr. *Attorney-General*. MY Lords, the Council for the Prisoner have made two Objections, as I apprehend, in Point of Law, which I would give a short Answer to, without taking notice of the other Matter which was spoke to by one of the Gentlemen, contrary to the Orders of the House.

The First Objection is, That there is no certain Day charged in the Impeachment, when the Treason was committed.

The Second is, that as to several of the Overt-Acts there is no Time mentioned at all.

I would follow the Steps of the learned Gentleman who spoke before me, and I think has given a good Answer to these Objections: I would take notice, that we are upon an Impeachment, and not upon an Indictment. The Courts below have set Forms to themselves, which have prevailed for a long Course of Time, and thereby are become the Forms by which those Courts are to govern themselves; but it never was thought, that the Forms of those Courts had any Influence on the Proceedings of Parliament. In *Richard* the Second's Time it is said in the Records of Parliament, That Proceedings in Parliament are not to be govern'd by the Form, of *Westminster-Hall*.

I beg leave to take notice, in Answer to this Objection, that tho' it is the usual Form in the Courts below to alledge a certain Day on which the Crime is charged to be committed, yet at the same time they add (and at divers other Days and Times) and that Day which is laid, is only for Form sake; but that Day is not material, they are not bound to prove the Crime committed on that Day, but they may prove the Defendant Guilty at any Time, either before or after the Duty laid in the Indictment. There has been produced by the Honourable Gentleman who spoke

before, a Precedent in Parliament much stronger than this Case, it is the Case of the Lord *Stafford*; there is not so much Certainty as there is in this Impeachment. Here it is said, That on or about the Months of *September*, *October*, or *November*, or on or about one of them, the Crimes charged in the Impeachment were committed; but all that is said in my Lord *Stafford's* Case is, That there had been for many Years then last past a damnable Conspiracy carried on; and when they came to charge the noble Lord with particular Facts, there is no Time mentioned at all.

One of the Gentlemen cited another Case in Parliament, which was Dr. *Sacheverell's* Case: There was in that Case an Exception taken to the Impeachment for Uncertainty: and it was said and argued from the Forms of the Courts in *Westminster-Hall*, that where Indictments were for Words spoke or writ, the Words must be laid as they were spoke or wrote; and the Opinion of the Judges was, that it was necessary according to the Forms of the Courts below, but it was resolved to be otherways in the Court of Parliament, and they were not bound but by their own Forms; so that upon this Head we apprehend we are clear of the Forms of Law in the Courts below, and that they are of no Use, since if a certain Day is laid, they are not by Law bound to prove the Crime committed on that Day, but may prove it upon any other Day.

The Second Objection is, That there is no Time laid for some of the Overt-Acts.

I think there is a certain Day charged when one of them was done, the seizing of *Preston*; and in the inferiour Courts it has been held, that it is not necessary there should be a Day and Place alledged for every Overt-Act.

We think this Objection has no Weight in it, and therefore would not spend more of your Lordships Time in it; we are in the Case of an Impeachment, and in the Court of Parliament. Your Lordships have already given Judgment against Six upon this Impeachment, and it is warranted by the Precedents in Parliament; therefore we insist that the Articles are good in Substance, and according to the Forms of Parliament.

Mr. *Cowper*. THE Objection, as stated by the Prisoner, and upon which his Council have argued, is this, That the Time of the Treason committed is not laid in the Impeachment with sufficient Certainty. The Council have acquainted your Lordships with the Practice of inferior Courts, and have insisted too much upon the Precedents of Trespasses and other Crimes set forth in Indictments, considering the Question arises upon the Usage and Practice of the High-Court of Parliament; and they cannot but know that the Usages of Parliaments are Part of the Laws of the Land, altho' they differ in many Instances from the Common Law, as practised in the inferior Courts, in Point of Form.

My Lords, if the Commons, in preparing Articles of Impeachment, should govern themselves by Precedents of Indictments, in my humble Opinion they would depart from the ancient, nay, the constant Usage and Practice of Parliament.

It is well known that the Form of an Impeachment has very little Resemblance to that of an Indictment: and I believe the Commons will endeavour to preserve the Difference, by adhering to their own Precedents.

One of the learned Gentlemen has said that he had not time to search Parliamentary Precedents : That Gentleman seldom wants time to make himself serviceable to his Clients ; but when he has more leisure, I believe he will not find one Precedent, where, in the case of an Impeachment of High-Treason, there hath been a certain Day or Time laid when the Treason was committed. The Precedent that hath been mentioned of my Lord *Stafford* is directly otherwise : There your Lordships will find it laid thus, that *for many Years last past* there has been contrived and carried on by Papists a traitorous and execrable Conspiracy. And afterwards when it comes to charge the Treason and Overt-Acts, it alledges *they were done* and committed *within the time aforesaid*. And yet we don't find any Exception was taken for want of Certainty, although not so much as a Year was laid with Certainty, within which the Treason was committed.

In the Case of my Lord *Wintoun* the Commons have charged, that his Lordship, together with *James Earl of Derwentwater*, and several others, as false Traitors to his Majesty, did, in or about the Months of *September, October, or November, 1715*, traitorously imagine and compass the Death of the King : That his Lordship and the rest, to accomplish their said traitorous Purpose, did, in or about the said Months, or some of them, conspire and agree to levy War within this Kingdom, in order to depose and murder his Majesty : That his Lordship did, within the time aforesaid, traitorously levy a War and Rebellion in the Bowels of the Kingdom ; and that he together with his Accomplices and Confederates, did, on or about the Ninth, Tenth, Eleventh, Twelfth, or Thirteenth of *November* aforesaid, traitorously seize and possess themselves of the Town of *Preston* ; and did then and there cause and procure a miserable and horrid Slaughter and Murder of many of his Majesty's faithful Subjects. So that, my Lords, here is a Certainty not only of the Year, but of the Months and Days ; and the Treasons committed by the Prisoner are, with Submission, not only charged with Certainty as to the Point of Time, but are charged with a great deal more Certainty than was necessary, in a Case where his Lordship's Treason began at *Seaton House*, and continued from thence till the Surrender at *Preston*.

Surely there is not the least Weight in the Prisoner's Objection ; for even in the Case of an Indictment, though it be necessary to lay a Day, yet it is not necessary to prove the Treason to be done upon that Day : So that even in inferior Courts it is an immaterial Form. One would think, if it be necessary to assign a Day certain, it should be necessary also to prove the Treason to be done upon that Day ; but it is not requisite to prove the Treason upon the Day ; therefore in inferior Jurisdictions it seems rather a Form than Substance. The Courts below have, it's true, their Forms, many Forms for which no Reason can be given ; but I believe in Parliamentary Process, nothing is necessary that is not material.

Sir *W. Thomson*. MY Lords we humbly apprehend that the Exception taken in Arrest of Judgment has no Foundation in Law or Reason.

As to the Law, we must refer to the Forms of

Proceedings in the Court of Parliament, which is the Law of Parliament, and which must be owned to be Part of the Law of the Land. It has been mentioned already to your Lordships, that the Precedents in Impeachments are not so nice and precise in Form as in the inferior Courts ; and we presume your Lordships will be governed by the Forms of your own Court, (especially Forms that are not essential to Justice) as the Courts below are by theirs ; which Courts differ one from the other in many Respects as to their Forms of Proceedings, and the Practice of each Court is esteemed as the Law of that Court.

As to the Reasons alledged to support the Exception, they will receive a plain Answer.

'Tis said, that 'tis necessary to alledge a certain Day in an Impeachment when the Fact was committed, that the Defendant may be able to make his Defence, that he may produce Witnesses to give an Account where he was at the time he is accused to have been guilty. And one of the learned Council was pleased to say, that this is requisite in Indictments for the smallest Offences, and ought to be much more so in capital Cases, and in Impeachments for so high a Crime as Treason. My Lords, that Gentleman knows very well, that the Day which is mention'd in an Indictment is not material to the Purpose of making a Defence as to that Time only, for that the Defendant must come prepared to give an Account of his Innocence all the Time between the Day alledged and the Indictment found. And in this Case there is no Hardship on the Noble Lord at the Bar. Here is one of the Treasons alledged to be within the Compass of Five Days (*viz.* the seizing of *Preston*, levying War there, and engaging the King's Troops.) if he could have given an Account of himself to have been elsewhere at those times, it might have been of Service to him : But that happened very unfortunately for him to be otherwise ; and your Lordships have found him guilty of those Facts on or about those Five Days : Which has created a second Reason to be offered to your Lordships, that the Time alledged is not sufficiently certain (*viz.*) To what Day shall the Forfeiture of the Defendant's Estate relate ? If 'tis taken the most favourably for the Defendant, the Conviction shall operate so as to make the Forfeiture only from the last of these Days, and I don't apprehend any other Inconvenience. But to infer that, for that Reason, no Judgment at all shall be given upon this Conviction, where the material, the substantial Part of the Issue is found, seems not to be right Consequence.

My Lords, we conceive for these Reasons, and what has been mention'd before, this Exception has no Weight in it, and hope your Lordships will over rule it.

L. H. Steward. Gentlemen of the House of Commons, I suppose you don't oppose the Council's replying to you ; afterwards, if you have any thing to offer you may be heard to it.

Att. Gen. My Lords, we don't object to it, if the Commons have the Liberty of speaking afterwards and closing, which they insist upon as their Right.

L. H. Steward. Gentlemen, you may reply.

Sir *C. Phipps*. Is it your Lordships Pleasure that we reply ?

L. H. Steward. You may reply.

Sir

Sir C. Phipps. **I**F your Lordships please, we do not, with great Submission, apprehend they have answer'd our Objection; but before I take notice of the Answers, I beg leave to set the learned Gentleman that spoke last right in one thing, wherein he did misapprehend me: He was pleas'd to suggest that I said the Day laid in an Indictment was material. I don't remember I said so, for I never thought the Day so material, that there was a Necessity to prove the Treason to be committed upon that very Day; I did say there ought a certain Day to be alledged in Indictments, and that there always is; but how material that Day is, when alledged, is another Consideration; but I conceive the Day laid in an Indictment, ought to be very near the time, if not upon the very Day the Treason is supposed to be committed, for the Reasons I have before offer'd; and I take constant Practice to be so. I perceive all the Gentlemen who have spoke in Answer to me have been pleas'd to admit, that in Indictments for Treason and other capital Offences, there is a certain Day always alledged. The honourable Gentleman that spoke first, was pleas'd to make a Difference between an Indictment and an Impeachment: That an Impeachment is a Parliamentary Proceeding, and that the Parliament in their Proceedings are not tyed up to such strict Forms as the Courts below. I have already spoken fully to this Point, and therefore shall not trouble your Lordships with any Repetition, but submit to your Lordships Judgment, whether an Impeachment, by which a Noble Peer is to be attainted, ought not to be as certain as an Indictment, by which a Commoner is to be attainted, and whether by the *Lex Parliamentaria* as much Certainty is not required in one Case as in the other. The same Gentleman was pleas'd to observe, that the Impeachment in my Lord *Stafford's* Case was more general than this, for there it was charged, that for many Years last past there had been a Conspiracy to alter and subvert the Government, &c. In answer to which I beg leave to take Notice, that the Impeachment of that Lord begins with an Account of the Plot in general, and in that Case there is no doubt but such a general Allegation was sufficient. But whether the particular Part, which my Lord *Stafford* had in that Plot, be not more certainly alledged; I must beg leave to refer to the Trial, for I cannot take it upon my Memory to say one way or other. But whether it was so or no, I think is not material? for that honourable Person admits, that no Objection was made to that Impeachment for the Uncertainty of the Charge: If such Objection had been made and over-ruled, it would have been a full Answer to us; but since no Notice was taken of it, our Objection is as strong and of the same Force as if that Case had never happened.

A learned Gentleman of great Eminence in the Law was pleas'd to observe, that frequently in Indictments for Treason, the Offence is laid to be committed, *diversis aliis diebus & vicibus*, which is true; but then in all such Cases there is a particular Day first charged in the Indictment; and I believe that learned Gentleman, or any other of the long Robe, will not say that an Indictment conceived in such general Terms, without alledging a particular Day, would be good. As to that Part of the Impeachment which re-

lates to the taking of *Preston*, tho' that seems more certain than any other Overt-Act; yet I have shew'd that the Words *or about*, leave at large, and render it uncertain.

My Lords, this is what we humbly offer by way of Reply; and humbly submit to your Lordships Judgment, whether our Objections are not good, notwithstanding what has been said in Answer to them.

Mr. *Williams*. **M**Y Lords, I must submit it to your Lordships, whether the learned Managers have answer'd the Objection which we have humbly laid before your Lordships in Arrest of Judgment.

The Managers are pleas'd to object, that we are attempting to quash an Impeachment of the Honourable House of Commons for High-Treason, and that this has not been known.

But, my Lords, with great Submission, we are not endeavouring to quash this Impeachment. We are so far from it, that we must admit that the Courts of *King's-Bench* will not quash Indictments for Treason, nor Indictments for Felony, nor even Indictments for any gross Misdemeanours, but will put the Party to plead to such Indictments; but in the present Case, where the Matter in Issue has been try'd, and the unhappy Lord is convicted; if this Impeachment be defective, as I humbly hope and insist it is, then what other Way, what other Method has this unfortunate Lord at the Bar to take Advantage of this Defect, but by offering it to your Lordships in Arrest of Judgment, which on my Lord's Behalf we now humbly do?

It seems admitted, as I apprehend, that had the present Question been upon an Indictment, instead of an Impeachment, that then the Exception might have prevailed: But the Managers are pleas'd to insist, that the Law and Course of Parliaments justify this Omission in Case of Impeachments; and for this an Honourable Manager has been pleas'd to cite the late Lord *Stafford's* Case; and that the Impeachment of that Lord was more uncertain, as to the Time laid for the committing the Treason, than the Impeachment now before your Lordships.

My Lords, I must confess I am very unfit to answer an Objection of this Nature, and which concerns the Course of Parliaments: But wou'd beg leave, with the greatest Submission, to observe, that only one Precedent (I beg Pardon if I mistake, I mean that of the late Lord *Stafford*) has been cited against us: It must be submitted to your Lordships, how far that one single Precedent will of it self be taken as a Proof, that this is the Course and Custom of Parliamentary Impeachments, especially when it appears that the Objection now made, was not made in that Case. It must be submitted to your Lordships, whether repeated and iterated Acts are not requisite to prove this, as well as all other Customs; and that if this were *Lex & Consuetudo Parliamenti*, whether it wou'd not be an easy Matter to cite many Instances in that Behalf, and whether it is not the more necessary in this Case to cite farther Precedents, in regard the single Case of the Lord *Stafford* may seem, as to this Point, to have lost some Part of its Force, by the later Precedent of Doctor *Sacheverell's* Case, when even in Case of a Misdemeanour, a certain Day is laid in the Impeachment when the Misdemeanour is charged to have been committed.

It has been also objected by the learned Managers, that in Indictments of High-Treason, it is usually charg'd, that the Party committed the Treason *diversis diebus & vicibus*, which is as uncertain as the present Impeachment.

My Lords, It is very true that these Words (*diversis diebus & vicibus*) are as uncertain as the Words in the present Impeachment; and that these Words are usually put into Indictments: But with Submission, it is as true, that in all Indictments for Treason, over and besides these Words, there is a certain Day laid when the Treason is said to be committed; and I would beg leave to know, whether if in Case of an Indictment, the Treason were laid to be committed *diversis diebus & vicibus*, without any further Certainty as to the Day, whether this wou'd not be ill for the Uncertainty: And this Case, with Submission, seems to come nearest to the present Case; and as to the Words *diversis diebus & vicibus*, tho' they are frequently mentioned in an Indictment, yet they are only Surplusage, and the Indictment good, whether with 'em, or without 'em.

It is likewise objected, that if a certain Day for the committing this Treason had been mentioned in this Impeachment, or in an Indictment, yet it had not been material; because if the Treason had been proved to have been committed on any other Day, the Party must have been found guilty; and therefore, if the Day be immaterial, the omitting of it must be also immaterial.

My Lords, I must admit that the Day, as to the Party indicted, is not in this respect so far material, but that if it shou'd be prov'd that the Party committed the Treason on a different Day, than that laid in the Indictment, yet the Party must be found guilty: And that it might put too great a difficulty on such Prosecution, to hold, that if the Treason be not proved to be committed on the precise Day laid in the Indictment, that therefore the Party, who appears still guilty of the Treason, shou'd upon the nicety of the time be found not guilty; but what I humbly insist on is, that 'tis the constant Course to mention a Day certain in the Indictment; and that the Day thus mention'd in the Indictment is, as I believe, generally the very Day on which the Treason is supposed to be committed; and to know this, is, with Submission, of great use to the Party indicted or impeached, and may very much assist him in his Defence. And I farther humbly insist, that the mentioning of a Day certain in the Impeachment or Indictment for the committing the Treason, is manifestly for the Advantage, and the omitting it, is to the Prejudice, of the Crown; in regard, as between the Party impeached or indicted, and the Crown, the Forfeiture of the Land to the King shall relate to that Day which is laid in the Impeachment or Indictment.

My Lords, from hence, with the greatest Defence to your Lordships, I beg leave to infer;

That the mentioning of a Day certain in the Impeachment, is material:

That by Consequence the Omission of it is also material;

That therefore in respect of this Omission, the Impeachment is defective;

And in regard of this Defect I humbly pray that your Lordships wou'd be pleased to arrest the Judgment.

Mr. Attorney General. MY Lords, for preserving the Rights of the Commons of Great-Britain, I shall trouble your Lordships with a Word or two.

I think the learned Gentlemen have left it now where they left it on their first Speech: They now agree that the particular Day in an Indictment is but Form, and that the Fact may be proved any Day before or after, and so the Law is in the inferior Courts.

I only add this, that the Prisoner loses no Benefit nor gets any, by having a Day charged or omitted; for since it is of no use, he must provide for his Defence as if no Day was laid; and since it is immaterial in Indictments, it must be so in Impeachments. We are justified by the Forms and Precedents of Parliament. As to the Answer given to my Lord *Stafford's* Case, that this Objection was not made there, but that it past *sub silentio*: If that Impeachment had not been thought good, we know he had the Assistance of learned Council, who were well able to advise him, and who certainly would have taken the Exception. There is no uncertainty in it that can be to the Prejudice of the Prisoner, we insist it is according to the Forms of Parliament, he has pleaded to it, and your Lordships have found him guilty.

L. H. Steward. My Lord *Wintoun*, your Council have been heard, hath your Lordship any thing more to offer in Arrest of Judgment?

L. Wintoun. If your Lordship will be pleased to ask the Council, they will tell you what they have to object.

L. H. Steward. My Lord, you have been told again and again upon this Occasion, that the Point you would have your Council speak to must be first stated and proposed by your self; you have had a sufficient Opportunity to inform your self.

L. Wintoun. Since your Lordship won't allow my Council, I don't know nothing.

Lord Stamford moved to adjourn.

L. H. Steward. I once more acquaint your Lordship, that as your Council have been allowed to speak; so the Question yet is, whether you have any other Point or Matter for them to speak to; the Lords are ready to hear: Have you any thing else to propose?

L. Wintoun. If you will allow my Council to answer, he will answer.

L. H. Steward. My Lords! Is it your Lordships Pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House was adjourned about three of the Clock, and about five returned again, and Proclamation was made for Silence as usual.

L. H. Steward. **G**George Earl of *Wintoun*, I have already acquainted you, that your Peers have found you Guilty, (*i. e.*) in the Terms of the Law, convicted you of the High-Treason whereof you stand impeached.

After, your Lordship has moved in Arrest of Judgment, and the Lords have disallow'd that Motion; their next Step is to proceed to Judgment.

The melancholy Part I am to bear in pronouncing that Judgment upon you, since it is his Majesty's Pleasure to appoint me to that Office, I dutifully submit to it; far, very far, from taking any Satisfaction in it.

'Till Conviction, your Lordship has been spoke to without the least Prejudice, or Supposition of your Guilt; but now it must be taken for granted, that your Lordship is guilty of the High-Treason whereof you stand impeached.

My Lord, this your Crime is the greatest known to the Law of this Kingdom, or of any other Country whatsoever: And it is of the blackest and most odious Species of that Crime; a Conspiracy and Attempt, manifested by an open Rebellion, to depose and murder that sacred Person, who sustains and is the Majesty of the whole; and from whom, as from a Fountain of Warmth and Glory, are dispersed all the Honours, all the Dignities of the State, indeed the lasting and operative Life and Vigour of the Laws, which plainly subsist by a due Administration of the executive Power.

So that attempting this precious Life, is really striking at the most noble Part, the Seat of Life and Spring of all Motion in this Government; and may therefore properly be called a Design to murder, not only the King, but also the Body-Politic of the Kingdom.

And this is most evidently true in your Lordship's Case; considering that Success in your Treason must infallibly have establish'd Popery; and that never fails to bring with it a Civil, as well as Ecclesiastical Tyranny; which is quite another Sort of Constitution than that of this Kingdom, and cannot take Place, 'till the present is annihilated.

This your Crime (so I must now call it) is the more aggravated, in that when it proceeds so far, as to take Arms openly, and to make an Offensive War against lawful Authority, 'tis generally (as in your Case) complicated with the horrid and crying Sin of murdering many, who are not only innocent but meritorious.

And if Pity be due (as I admit it is, in some Degree) to such as suffer for their own Crimes; it must be admitted, a much greater Share of Compassion is owing to them, who have lost their Lives merely by the Crimes of other Men.

As many as have so done in the late Rebellion, so many Murders have they to answer for who promoted it; and your Lordship, in examining your Conscience, will be under a great Delusion, if you look on those who fell at *Preston*, *Dumblain*, or elsewhere, on the Side of the Laws, and in Defence of settled Order and Government, as slain in lawful War; even judging of this Matter by the Law of Nations.

Alas! my Lord, your Crime of High-Treason is made yet redder, by shedding a great deal of the best Blood in the Kingdom: I include in this Expression the brave Common Soldiers, as well as those Gallant and Heroic Officers, who continued faithful to Death, in Defence of the Laws; for sure but little Blood can be better than that, which is shed while it is warm in the Cause of the true Religion, and the Liberties of its native Country.

Believe it, notwithstanding the unfair Arts and Industry used, to stir up a pernicious Excess of Commiseration, towards such as have fallen by the Sword of Justice, (few, if compar'd with the

Numbers of good Subjects murdered from Doors and Windows at *Preston* only) the Life of one honest loyal Subject is more precious, in the Eye of God, and all considering Men, than the Lives of many Rebels and Parricides.

This puts me in mind to observe to your Lordship, that

There is another Malignity in your Lordship's Crime (open Rebellion) which consists in this; that it is always sure of doing Hurt to a Government in one Respect, though it be defeated; (I will not say it does so on the whole Matter.)

For the Offence is too notorious to be let pass unobserved, by any Connivance: Then is a Government reduced to this Dilemma; if it be not punished, the State is endanger'd, by suffering Examples to appear, that it may be attack'd with Impunity; if it be punished, they who are publicly or privately Favourers of the Treason (and perhaps some out of mere Folly) raise undeserved Clamours of Cruelty against those in Power; or the lowest their Malice flies, is, to make unseasonable, unlimited, and injudicious Encomiums upon Mercy and Forgiveness (Things rightly used, certainly of the greatest Excellence.)

And this Proceeding, it must be admitted, does some Harm, with silly undistinguishing People.

So that Rebels have the Satisfaction of thinking they hurt the Government a little, even by their Fall.

The only, but true Consolation every wise Government has in such a Case (after it has temper'd Justice with Mercy in such proportion as sound Discretion directs, having always a Care of the Public Safety above all Things) is this;

That such like Seeds of unreasonable Discontents, take Root on very shallow Soil only; and that therefore, after they have made a weak Shoot, they soon wither and come to nothing.

It is well your Lordship has given an Opportunity of doing the Government right, on the Subject of your Surrender at *Preston*.

How confidently had it been given out by the Faction, that the Surrender was made on Assurances, at least Hopes insinuated of Pardon: Whereas the Truth appears to be, that Fear was the only Motive to it; the evil Day was deferred; and the Rebels rightly depended, fewer would die at last by the Measures they elected, than if they had stood an Assault: They were aw'd by the experienced Courage, Discipline, and Steadiness of the King's Troops; and by the superior Genius and Spirit of his Majesty's Commanders, over those of the Rebels; so that in truth they were never flatter'd with any other Terms, than to surrender, as Rebels and as Traitors; their Lives only to be spar'd till his Majesty's Pleasure should be known.

It was indeed a Debt due to those brave Commanders and Soldiers (to whom their King and Country owe more than can be well expressed) that their Victory should be vindicated to the present and future Ages from untrue Detraction, and kept from being sullied by the Tongues of Rebels and their Accomplices, when their Arms could no longer hinder it.

'Tis hard to leave this Subject without shortly observing, that this Engine which sets the World on fire, a lying Tongue, has been of prodigious use to the Party of the Rebels, not only since

and during the Rebellion, but before, while it was forming, and the Rebels preparing for it.

Falſe Facts, falſe Hopes, and falſe Characters, have been the greater half of the Scheme they ſet out with, and yet ſeem to depend upon.

It has been rightly obſerved, your Lordſhip's Anſwer does not ſo much as inſiſt, with any Clearneſs, on that, which only could excuſe your being taken in open Rebellion; That you was forc'd into it, remain'd ſo under a Force, and would have eſcaped from it but could not.

If you had ſo inſiſted, it has been clearly prov'd, that had not been true; for your Lordſhip was active and forward in many Inſtances, and ſo conſiderable in a Military Capacity among your Fellow-Soldiers, as to command a Squadron.

Theſe and other Particulars have been obſerved by the Managers of the Houſe of Commons, and therefore I ſhall not purſue them farther;

But conclude this Introduction to the Sentence, by exhorting your Lordſhip, with perfect Charity, and much Earneſtneſs, to conſider, that now the Time is come when the Veil of Partiality ſhould be taken from your Eyes (it muſt be ſo when you come to die) and that your Lordſhip ſhould henceforward think with Clearneſs and Indifference (if poſſible) which muſt produce in you a hearty Detestation of the High Crime you have committed, and being a Proteſtant, be very likely to make you a ſincere Penitent, for your having engaged in a Deſign, that muſt have deſtroyed the Holy Religion you profeſs, had it taken Effect.

Nothing now remains; but that I pronounce upon you that Sentence which the Law ordains, and which ſufficiently ſhews, what Thoughts our Anceſtors had, of the Crime of which your Lordſhip is now convicted: *viz.*

“ That you *George Earl of Winton* return to
“ the Priſon of the *Tower* from whence you
“ came; from thence you muſt be drawn
“ to the Place of Execution; when you
“ come there, you muſt be hang'd by the
“ Neck, but not till you be Dead; for you
“ muſt be cut down alive, then your Bowels
“ muſt be taken out, and burnt before your
“ Face; then your Head muſt be ſever'd
“ from your Body, and your Body divided
“ into four Quarters; and theſe muſt be at
“ the King's diſpoſal.

And God Almighty be merciful to your Soul!

Serjeant at Arms. O Yes! Our Sovereign Lord the King ſtrictly charges and commands all manner of Perſons to keep Silence, upon Pain of Imprisonment.

Then the Lord High Steward ſtood up uncover'd, and declaring there was nothing more to be done by virtue of the preſent Commiſſion, broke the Staff, and pronounc'd it diſſolv'd: And then leaving the Chair, came down to the Woolpack, and ſaid, Is it your Lordſhips Pleaſure to adjourn to the Houſe of Lords?

Lords. Ay, ay.

And then the Houſe adjourn'd to the Chamber of Parliament, and the Lords and others returned in the ſame Order they came down.

The Earl of *Winton* was carried back to the *Tower*, from whence he afterwards made his Eſcape.



CLXXXVII. *The Trial of Francis Francia a Jew at the Old-Bailey, for High-Treason, Jan. 22. 1716, 3 GEO. I.*

FRANCIS Francia having been formerly arraigned upon the Indictment found againſt him for *High-Treason*, and having pleaded *Not Guilty*, was on *Tuesday* the 22d of *January* brought to the Bar to receive his Trial.

Clerk of Arraignments. You the Priſoner at the Bar, theſe Men that you ſhall hear called, and perſonally appear, are to paſs between our Sovereign Lord the King and you, upon Trial of your Life and Death. If therefore you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be ſworn, and before they be ſworn.

Cl. of Arr. Sir *Dennis Dutry*, Bart.

Priſoner. Are you a Freeholder in this City?

Sir *Dennis Dutry.* Yes.

Sir *J. Felſyll.* My Lord, we that are Council for the King, deſire, that thoſe who are called may be aſked that Queſtion; Whether they have Freehold (or Copyhold) of Ten Pounds *per Annum*, or

not; before they are ſworn in Chief?

Mr. *Att. Gen.* We ſuppoſe Sir *Edward Northey*, the Priſoner will aſk that Queſtion; and therefore we deſire that it may be aſk'd of every one as they come to the Book.

Mr. *Ward.* It is a Challenge on both Sides.

L. C. Baron. They ought to be Sir *Thomas Bury*, ſworn whether they have a Freehold or not, if they would excuſe themſelves.

Mr. *Hungerford.* I have nothing to offer againſt it. In caſe the King's Council think fit to proceed in that Method, we concur in it. I ſhould have mov'd it myſelf, if they had not.

Mr. *Att. Gen.* It was in the Trial of the Rebels.

Priſoner. He has had a Quarrel with me; and there was a Suit depending between us about ſeven Years ago: And I challenge him for Cauſe.

Mr. *Att. Gen.* He may challenge him peremptorily, if he will. But if he challenges him for Cauſe he muſt prove it.

Priſoner. Sir *Dennis* will not deny it.

L. C.

L. C. Baron. If you challenge him, you must prove your Challenge. Do you challenge him for Cause, or peremptorily?

Prisoner. For Cause.

L. C. Baron. That which you assign is no Cause.

Then Sir Dennis was sworn upon a Voir Dire, with respect to his Freehold; as all the others were, before they were either challenged, or sworn in Chief.

Sir J. Jekyll. Sir, have you a Freehold in this City?

Sir D. Dutry. Yes.

Sir J. Jekyll. To what Value?

Sir D. Dutry. About Ten Pounds a Year.

Prisoner. My Lords, there has been a Suit depending between us.

Mr. Att. Gen. If they talk of a Suit, they must prove it by Record.

Prisoner. His Name is *Dennis*; and they have given me a Pannel with barbarous *Latin*. In my Copy of the Pannel, he is return'd by the Name of *Dionysius*; that is not the same Name.

Mr. Ward. The Prisoner observes, that in the Pannel he is return'd by the Name of *Dionysius*, when his Name is *Dennis*.

Sir J. Jekyll. He is to have a Copy of the Pannel; but it is not to be put into *English* for him.

Mr. Ward. But we say, that is not *Latin* for *Dennis*.

Sir J. Jekyll. Sure no one will argue, but that *Dionysius* is the proper *Latin* Name for *Dennis*.

L. C. Baron. You offer no Cause of Challenge.

Prisoner. I hope I prove his Name is return'd in the Pannel *Dionysius*.

L. C. Baron. It is so; and that is *Latin* for *Dennis*.

Prisoner. No, it is not. *Dennis* is a Saint in *France*, and *Dionysius* is a Saint in *Italy*. They are two different Names, and of different Countries.

L. C. Baron. *Dionysius* is *Latin* for *Dennis*. If they don't challenge him peremptorily, he must be sworn.

Prisoner. I alledge, that we fell out about seven Years ago: And that his Name is not *Dionysius*, as it is wrote in the Pannel. And in my former Pannel he was put down *Knight*, and in this *Baronet*.

L. C. Baron. These Things are nothing, except the Suit; and that you must prove.

Mr. Hungerford. As to the Distinction of the two Saints, I do not meddle in it. But I suppose *Sir Dennis* can tell whether he is a Knight or a Baronet. But as to the Saints, whether the Nominal ones Abroad, or the Pretended ones at Home, I let them alone.

Prisoner. You allowed this Challenge the last Time.

Mr. Att. Gen. You challeng'd him peremptorily.

Mr. Ward. He was stiled Knight in the last Pannel.

L. C. Baron. That don't appear to us. You must either challenge him peremptorily, or he must be sworn.

Prisoner. I must do what you order; but I think it very hard. Then I challenge him.

Cl. of Arr. *Sir John Scott*, Knt.

Prisoner. I challenge him.

Cl. of Arr. *Sir Daniel Wray*, Knt.

Prisoner. I don't except against him.

Then he was sworn.

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Cl. of Arr. *Sir W. Chapman*, Kt.

Prisoner. I challenge him.

Cl. of Arr. *Joseph Webb*.

Prisoner. I challengé him.

Cl. of Arr. *Robert Adams*.

Prisoner. Was you upon the Grand Jury, that found the Indictment against me?

Mr. Adams. No.

Prisoner. I challenge him.

Cl. of Arr. *Robert Ashurst*.

Prisoner. I challenge him.

Cl. of Arr. *Joseph Bishop*.

Prisoner. I challenge him.

Cl. of Arr. *Thomas Boucher*.

Prisoner. I challenge him.

Cl. of Arr. *Joseph Brooksbank*.

Prisoner. I challenge him.

Cl. of Arr. *Nicholas Benoist*.

Prisoner. I challenge him.

Cl. of Arr. *John Child*.

Prisoner. I challenge him.

Cl. of Arr. *Joseph Chamberlain*.

He was sworn.

Cl. of Arr. *John Casbert*.

Prisoner. He was upon the Grand Jury that found the Bill against me; and I challenge him for that Cause.

Cl. of Arr. *Robert Wood*.

Prisoner. I challenge him.

Cl. of Arr. *Isaac Cailovell*.

Prisoner. He don't write his Name as it is in the Pannel. I could never find this Gentleman out by all the Enquiry I could make.

L. C. Baron. What is the Mistake?

Prisoner. It is wrote in the Pannel *v Consonant*; and he spells his Name with a *w*. And it is in the Pannel a single *l*, and he writes it with double *ll*.

Then Mr. Cailovel being ask'd, said he wrote his Name with a v Consonant, as in the Pannel; but with a double ll.

L. C. Baron. That don't alter the Pronunciation. It is the same Name.

Prisoner. I challenge him.

Cl. of Arr. *Thomas Davis*. He was sworn.

Cl. of Arr. *John Dodson*, Esq;

Prisoner. I challenge him.

Cl. of Arr. *William Dewick*.

Prisoner. I challenge him.

Cl. of Arr. *William Dell*.

Prisoner. I challenge him.

Cl. of Arr. *John Davis*. He was sworn.

Cl. of Arr. *Joseph Emmes*. He was sworn.

Cl. of Arr. *John Farr*. He was sworn.

Cl. of Arr. *Thomas Gouge*.

Prisoner. I challenge him.

Cl. of Arr. *Thomas Geering*.

Prisoner. I challenge him.

Cl. of Arr. *Joseph Goddard*.

Prisoner. I challenge him.

Cl. of Arr. *Robert Gill*.

Prisoner. I challenge him.

Cl. of Arr. *Henry Greenway*.

Prisoner. I challenge him for Cause. He is returned upon the Pannel *Greenway*, and his Name is *Greenaway*: That is a different Name.

Sir J. Jekyll. How are you usually called; *Greenway*, or *Greenaway*?

Mr. Greenaway. I am most commonly called *Greenaway*.

Then he was set aside.

Cl. of Arr. *John Glasbrook*.

He was sworn.

Cl. of Arr. *John Goodlad*.

Prisoner. I challenge him.

Cl. of Arr. John Gore.

Prisoner. I challenge him.

Cl. of Arr. Henry Ankey.

Prisoner. I challenge him.

Cl. of Arr. Lawrence Hatsell.

Prisoner. I challenge him.

Cl. of Arr. Robert Hackshaw.

Prisoner. I challenge him.

Cl. of Arr. Benjamin Hooper.

Prisoner. I challenge him.

Cl. of Arr. Jonathan Hicks.

Prisoner. I challenge him.

Cl. of Arr. Jeremiah Fenning.

Prisoner. I challenge him.

Cl. of Arr. Thomas Jordan.

Prisoner. I challenge him.

Cl. of Arr. William Kent. He was sworn.

Cl. of Arr. Richard Levitt, Esq;

Prisoner. I don't except to him.

Sir J. Fekyll. I challenge him for the King.

Cl. of Arr. James Lamb.

Prisoner. I challenge him.

Cl. of Arr. Thomas Lingard. He was sworn.

Cl. of Arr. Stephen Lee. He was sworn.

Cl. of Arr. John Lane, Esq;

Prisoner. I challenge him.

Cl. of Arr. John Lane.

Prisoner. I challenge him.

Cl. of Arr. Richard Lindsey.

Prisoner. I don't except to him.

Sir J. Fekyll. I challenge him for the King.

Cl. of Arr. John Mabew. He was sworn.

Cl. of Arr. Henry Mallett. He was sworn.

Then they were counted; and the Twelve sworn were Jurors.

Sir Daniel Wray, K^t. John Glasbrook.

Joseph Chamberlain, William Kent.

Thomas Davis, Thomas Lingard.

John Davis, Stephen Lee.

Joseph Emmes, John Mabew.

John Farr. Henry Mallett.

Then Proclamation was made, as is usual in those cases.

Prisoner. I pray that George Flint, a Prisoner in Newgate, may be sent for; and may be near me during my Trial.

L. C. Baron. What is he in Newgate for?

Prisoner. For a Fine.

L. C. Baron. Then he may be sent for.

Which was done accordingly.

Cl. of Arr. Francis Francia, hold up your Hand.

Which he did.

Gentlemen, you that are sworn, look upon the Prisoner, and hearken to his Cause.

HE stands indicted by the Name of Francis Francia, of London, Merchant: For that he being a Subject of our most Serene Lord GEORGE King of Great Britain, France and Ireland, Defender of the Faith, &c. not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, as a false Traitor against our said Lord the King, his supreme, true, natural, lawful, and undoubted Lord; withdrawing that cordial Love, and true and due Obedience, Fidelity and Allegiance, which every Subject of our said Lord the King towards him ought to bear; and designing and traiterously intending, the Government of these King-

doms, under our said Lord the King duly and happily established, to change and subvert; and our said Lord the King from the Title, Honour, Royal Estate, Empire and Government of these Kingdoms to depose; and our said Lord the King to Death and final Destruction to bring; and the Person in the Life of King James the Second, pretended to be Prince of Wales, and after the Death of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, Royal Estate, and Dignity of King, and to the Government of this Kingdom to advance: The First Day of September in the Second Year of the Reign of our said Lord the King, and at several Days and Times as well before as after, falsely, maliciously, devilishly, and traiterously did compass, imagine and intend, our said Lord the King, now and then his supreme, true, natural, lawful and undoubted Lord, from the Title, Honour, Royal Estate, Empire and Government of these Kingdoms, to depose and to Death and to final Destruction to put and bring; and the said Person, in the Life of the said King James the Second, pretended to be Prince of Wales, and since the Death of the said late King pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, to the Crown, Royal Estate and Dignity of King, and to the Empire and Government of this Kingdom, to exalt. And that he the said Francis Francia, to accomplish and bring about the said Treason, and traiterous and devilish Intention, did traiterously meet, propose, consult, conspire, and agree with divers other Traitors, to the Jurors unknown, to raise Insurrection, Rebellion and War within this Kingdom, against our said Lord the King, and in Favour of the said Person, in the Life of the said King James the Second, pretended to be Prince of Wales, and since the Death of the said late King taking upon himself the Stile and Title of King of England, by the Name of James the Third. And that he the said Francis Francia, for the more effectual compleating and perfecting the said Treason and Traiterous Intention, did propose, consult, conspire and agree with divers other Traitors, to the Jurors unknown, to require, solicit and procure, from divers Foreigners, and others, in the Kingdom of France, Arms, Ammunition and Money, to assist and help in the said War. And that he the said Francis Francia did traiterously compose and write, and caused to be composed and written, several traiterous Letters, notifying the Intentions and Resolutions of him the said Francis Francia, and the said other Traitors, to move and levy the said War; and requiring Aid in the said War, of the said Foreigners, and other Persons then in France. And the said Letters so composed and written, and caused to be composed and written, did traiterously send, and caused to be sent to Parts beyond the Seas, to be delivered to the said Foreigners, and other Persons in France, and caused and procured them to be delivered accordingly; against the Duty of his Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Upon this Indictment he hath been Arraigned and hath thereunto pleaded Not Guilty: And for his Trial hath put himself upon God and his Country; which Country you are. Your Charge is to enquire, whether he be guilty of this High-Treason whereof he stands indicted, or not guilty? If you find that he is guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had

at the Time of the High-Treason committed, or at any Time since. If you find him *Not Guilty*, 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. *Cowper*, Jun. **M**AY it please your Lordship, and you Gentlemen that are sworn: The Prisoner at the Bar, *Francis Francia*, stands indicted of High-Treason; in intending to alter and subvert the Government of these Realms, happily establish'd under his Majesty King *GEORGE*; to depose his Majesty, to bring him to Death, and to place the *Pretender* upon his Throne.

The Indictment sets forth, that for this Purpose the Prisoner, the First of *September*, in the Second Year of the Reign of his present Majesty, and at several other Days and Times, at *London* in your County, traiterously compassed and imagined, to depose and kill his most Sacred Majesty, and to place the *Pretender* on his Throne.

And that for the more effectual performing such his Intentions, he did meet, propose, consult and agree with several other Traitors, to raise Rebellion and War within this Kingdom, against his Majesty, and in favour of the *Pretender*. And that he did solicit Men, Arms and Ammunition, from certain Foreigners and others in *France*, to assist him in that Rebellion. And that he did write and cause to be written several Letters, intimating this Resolution, and requesting the Assistance of such Foreigners and others.

The Indictment charges further, that he wrote and composed such Letters, and caused them to be wrote and composed; and procured them to be sent and deliver'd for that Purpose. And this, Gentlemen, is laid to have been by him done, contrary to the duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case provided.

Gentlemen, to this Indictment the Defendant has pleaded that he is *Not Guilty*. If upon calling our Evidence for the King, we shall prove this Case upon him; it will become your Duty to find him guilty of the Charge.

Sir *J. Jekyll*. **M**AY it please your Lordship, and you Gentlemen of the Jury, I am of Council with his Majesty: And, Gentlemen, it is my Part to open to you the Substance of the Charge against the Prisoner at the Bar; and the Nature of the Evidence we shall offer to prove that Charge.

The Prisoner stands indicted of the first Species of High-Treason, mentioned in that antient Statute 25 *Edw. III.* that is, compassing and imagining the Death of the King.

The Overt-Acts alledged in the Indictment, to manifest that traiterous Design of the Prisoner, are three:

He is charged with consulting and conspiring, with other Traitors, to levy War against the King, in favour of the *Pretender* to his Majesty's Crown:

With conspiring and agreeing to solicit and procure Assistance, from Foreigners and others in *France*, to carry on that War:

And further, with writing traiterous Letters, notifying his and his Accomplices Resolution to Levy that War; and requiring the before-mentioned Assistance; and sending those Letters into foreign Parts for that Purpose.

These are undoubted Overt-Acts of the High-Treason charged upon him.

To make good this Charge, we shall shew, that about three or four Years since, there was a Correspondence begun between the Prisoner and Abbot *Butler*, an Ecclesiastic of *Cambray*. That Correspondence began on the Occasion of a Law-Suit in *England*; wherein one Mrs. *Butler*, a Relation of that Abbot, was concerned; which was recommended to the Prisoner's Care. But some Time after (a Gentleman, whose Name it will be necessary to mention in the Prosecution of this Cause) Mr. *Harvey* of *Combe* took upon him to make use of that Correspondence, in order to transmit and receive Letters to and from that Abbot; and also to the Duke *D'Aumont*, by the means of the Prisoner.

Mr. *Harvey*, for some time, made use of the Prisoner only to convey those Letters forward and backward, under the Prisoner's Cover, directed to one *D'Aulmay*, alias *Payen*; who had married a near Relation of the late Duke of *Ormond*; to be communicated by *D'Aulmay* to the Abbot, or the Duke *D'Aumont*. But it seems, the Prisoner having gained a Knowledge of the Tendency of Mr. *Harvey*'s Correspondence, (which was a treasonable one) he himself soon after came to partake of the Guilt.

As it was at first a Correspondence between the Prisoner and the Abbot, and afterwards between Mr. *Harvey* and the Abbot, under Covers; so afterwards, Mr. *Harvey* made use of the Prisoner himself, to correspond with *D'Aulmay*. And in those Letters you will find, that the Prisoner does not enter into the Correspondence as a Matter that he was transacting as only for Mr. *Harvey*, but shews a great Concern in it himself: He is importunate for Assistance to the late Rebellion from *France*; impatient for its Ceming, and Anxious for the Success.

The Evidence we shall offer to you, to shew that this Correspondence was thus carried on, will be this.

Informations being given to a Noble Lord, (then Secretary of State) of a treasonable Correspondence being carry'd on by Mr. *Harvey*, by means of the Prisoner; there was a Warrant issued to take the Prisoner, and seize his Papers. And upon the Execution of that Warrant, Letters directed to the Prisoner, and his Copy-Book of the Letters wrote by himself, and an Original Letter of Mr. *Harvey*'s, were found in the Prisoner's Custody, and will be produc'd to you; and these were own'd and admitted by the Prisoner.

The Letters themselves plainly speak the Nature and traiterous Effect of this Correspondence begun by Mr. *Harvey*, and carried on with the participation of the Prisoner. And Gentlemen, my Lords the Judges will tell you, that it is not couching such a Correspondence in the Cant of a Law-Suit, (as in the present Case) or otherwise, that will screen an Offender from Public Justice, in case a traiterous Correspondence can be made manifest. If that would evade the Justice of the Law, it would be impossible for Traitors to be brought to Punishment. But that which puts this out of all doubt, is, that the Sense which is
put

put on these Letters by us, and by the Indictment; that very Sense, or Construction, has been put upon them by the Prisoner himself. For we shall lay before you the Examination of the Prisoner before the Secretary of State. In that he admits, that the Subject-Matter of the Letters wrote by *D'Aulmay* to him, to be communicated to Mr. *Harvey*, was the Design of the *Pretender's* Invading the Dominions of his Majesty. And those Letters being one Side of the Correspondence, (I mean that which came from Abroad) serves to evince or demonstrate the other Part or Side of the Correspondence, which came from hence.

I shall not enter into the Particulars of the Letters; or state and reason upon Matters in writing, without having them first read, whereby to lay a Foundation for Observing upon them. But the Letters will be read to you: And we who are the King's Council, don't desire you to put any forc'd or strain'd Construction upon them. Nay, we desire you to put no other Construction upon them, than what the Prisoner himself has done already.

I shall say nothing to you, Gentlemen, to aggravate the Nature of the Offence. I rather chuse to appeal to your Judgments, than to excite your Passions.

All that is desired of you, is, to give your best Attention to the Evidence; and to do Justice, and discharge your Consciences.

Mr. *Att. Gen.* **M**AY it please your Lordships, and you the Gentlemen of this Jury; I am also of Council against the Prisoner at the Bar. The Indictment has been at large opened and explained by Mr. Serjeant *Jekyll*. The Prisoner is charged with High-Treason, in compassing and imagining the Death of his Majesty, in order to set the *Pretender* on the Throne. The Overt-Acts laid, are conspiring to levy that War and Rebellion that broke out lately; and in applying to *Aliens*, and others in *France*, for Men and Money for carrying it on.

It is notorious, that Preparations were making many Months for the Rebellion that broke out in *Scotland*, *September*, 1715. under the Earl of *Marr*; and in *Northumberland* in *October* after, under Mr. *Foster*; and the like were design'd at *Oxford*, *Bath*, &c. in *October*, 1715. And Men were list'd and sent down for those Purposes; as hath appear'd on the Trials of the Persons who have suffer'd for those Treasons.

The Conspiracy was carry'd on with great Secrecy: And tho' it had been long in agitation in favour of the *Pretender*; yet was not publicly known, till his Majesty (upon the 20th of *July* 1715) was pleas'd to acquaint his Parliament, that he had certain Notice of the *Pretender's* Design to Invade this Kingdom; and that at the same time there were great Preparations here to assist that intended Invasion.

The Defendant lives in *Plow-Yard* in *Fetter-Lane*, and goes for a *Jew*. When the Duke *D'Aumont*, as Ambassador from the *French* King, in the Year 1713. was here, the Prisoner came acquainted with the Abbot *Butler*, called the *Vidame* of *Cambrai*, and from that time he corresponded with him. The Abbot had a Relation of his Name, *Barbara Butler*, who had a Suit at Law depending here, which he recommended to the Care of the Prisoner; and that I believe might

be the beginning of the Correspondence between them. There is a Gentleman that has been named, Mr. *Harvey* of *Combe*; he also then contracted an Acquaintance and Familiarity with the Duke *D'Aumont*, and Abbot *Butler*, and corresponded with both. These Correspondencies first began in the Queen's Time, and appear to have been carried on with great Secrecy and Caution, which induce a Belief they were then Criminal; but I don't mention this, as if what was done in the Queen's Time would affect the Prisoner upon this Indictment, for it is laid only for Treason committed against the King. These Correspondencies were carried on, from the going away of the Duke *D'Aumont*, till the Prisoner was seized, which was occasioned in this Manner.

My Lord *Townshend*, then Secretary of State, was diligent in his Enquiries, and on the 16th of *September*, 1715. had a private Information given him, that Letters constantly came by the Post from *France*, to *Francia*, and Mr. *Harvey*; from the Duke *D'Aumont*, and Abbot *Butler*, and one *Payen* alias *D'Aulmay de Coulange*; and that the Subject of the Letters related to the *Pretender*, and that intended Invasion.

His Lord was cautious, and did not immediately seize the Prisoner, but staid the coming in of two Posts from *France*, and gave Orders for stopping all Letters directed to the Prisoner, to see what further Discovery they would make, and having received further Information by those Letters, on the 19th of *September*, 1715. his Lordship made his Warrant to *Joseph Smith*, one of the Messengers, to apprehend *Francia*, and seize his Papers. He having received the Warrant, went, together with *Wilcox* another Messenger, (who is since dead) to the Defendant's House, and there seized his Person, and at the same time his Copy-Book of Letters. And it is extraordinary to find therein entred the Copies of any Letters relating to a Matter of this Nature. When they seized that Book, he told them there was nothing in it, and that it was only his Copy-Book of his Letters to his Correspondents. They seized also several Original Letters, wrote from *France* to him by *D'Aulmay* alias *Payen*, which will be read to you. They then seized also in his Custody an Original Letter of Mr. *Harvey's* to Abbot *Butler*, dated *January* 9. 1714. which was sent to *Francia* to be transmitted beyond Sea; but it seems *Francia* opened it out of Curiosity, or by Accident, and kept it. In it were Figures for Names and Things, which he well understood. The Prisoner was on *September*, 22, 1715. examined before both Secretaries of State, and the Copy-Book of Letters was shewn him, and he owned it to be his Book, wherein he entred the Letters of his Correspondency, and that the Entries were made by himself or his Son. *D'Aulmay's* Letters were also shewed to him, and he owned that they were those that he received, and were found in his Custody.

He at first seem'd to be open and ingenuous, and the Secretaries of State then thought him to be so. He told them in particular when the Correspondence began, how long carried on by covering Mr. *Harvey's* Letters; and when altered, and the Correspondence carried on only by *Francia*; and that the Subject of the Letters wrote to him by *Payen*, was, the Design of the *Pretender* to invade his Majesty's Dominions; and he named Persons, who were intended in them by initial Letters of their Names or Titles. That *M. H.*

was Mr. *Harvey*. My *D D* the Duke of *Ormond*; *M B*. Lord *Bolinbrooke*; *Dd*. the Duke *D'Aumont*. He also explained Mr. *Harvey's* Letter, and the Figures therein. That 22 was the Duke *D'Aumont*; 6 the late *French King*; 17 the *Tories*; 8 the *Pretender*; and 9 his Majesty King *George*; and signed his Examination, and was sent back in the Messenger's Custody. But it appearing after, on further perusing of the Letters, that he had not been ingenuous, but had concealed a great Part of what he knew, he was further examined, and then changed his Note, and thereupon was committed to *Newgate*.

He was here twice before, in Order to be tried; the first Time he was advised by his Council, (and he was in the Right to follow it, and take all the Advantages the Law allowed him) to insist, that in the Copy of the Indictment delivered to him, there was a Mistake of an *I* for an *A*, and therefore he had not had a true Copy of his Indictment; and thereupon the Trial was put off. The next Time he came, he made use of another Privilege the Law allows him, and challenged so many of the Jurors, that there did not appear besides enough to make a Jury. There were Accidents afterwards, which occasioned the putting off the Trial twice by the King's Council, some of the Witnesses being abroad on his Majesty's Service.

The Indictment charges the Prisoner with compassing and imagining the Death of the King. And its plain, a Conspiracy to levy War, to dethrone or to deprive the King of his Liberty, is an Evidence of imagining his Death; for the War necessarily tends to that End. That this Transaction which he was concerned in, was a Design to have a Rebellion raised here, and to bring in the *Pretender*, we don't doubt but we shall give you Satisfaction of, when we produce the Letters, and you will observe that the Prisoner hath so explained them: And if he had not, every Body must so understand them.

The Correspondence began in the Year 1713, and continued to the Time he was taken, which was on *September 19, 1715*. And so far we may read the Letters in the Queen's Time, to shew the Nature and Beginning of it. At first he carried on the Correspondence, only as a Correspondence between Mr. *Harvey* and *Butler*, by covering Mr. *Harvey's* Letters, and having the Answers sent under Cover to him; what he wrote in the Covers, he has enter'd in his Book; for Mr. *Harvey* was cautious not to let his Letters go openly to and from him. And so for a good while Mr. *Harvey's* Letters were brought to *Francia*, which he covered and directed to *Butler* or to *D'Aulmay*, sometimes by that Name, and sometimes by the Name of *Payen*, and sometimes by the Name of *Coulange*, which is a way used by many in *France*, to take the Name of the Place where they live instead of their Sirname. While the Correspondence was carried on by covering Letters, *Francia* in his Covers wrote those Matters that demonstrate he was privy to the Correspondence, and you will understand it by Mr. *Harvey's* Original Letter.

Mr. *Harvey* is not before the Court, and therefore we shall not meddle with him more than is necessary, to shew that while the Correspondence was carried on under *Francia's* Covers, *Francia* well knew the Subject Matter of the Correspondence, and many Times gave Cautions to have

to do with discreet Persons, and to make use of People that do not babble.

The Correspondence was carried on thus till about *June, 1715*. and then the way of Corresponding was changed. For Mr. *Harvey* was advised to be more careful, and not to write himself; but whatever was wrote, it was agreed should be wrote to and by *Francia*. And so the Correspondence was carried on between *D'Aulmay* and him, to the Time of the Prisoner's being apprehended. We have Entries of Letters of his for a considerable Time in his Copy-Book; and it is surprising to me, and will be so to every Man, that a Man should enter Copies of Letters that carry such an Evidence of Crimes in the Writer. In one of the Letters enter'd in the Copy-Book, he writes to *D'Aulmay*, dated *April 7, 1715*. "to be cautious, to avoid giving Umbrage to those in Power; and says, when I have any thing particular to write to you, I will do it by a strange Hand, and will sign *Jacques Christian*. Take notice of this, and provided you let me know you received this Letter without its having been opened, I shall be easy.

From that Time there is no Entry of *Francia's* Letters in the Book; but we have a Chain of Letters from that Time wrote by *D'Aulmay* to *Francia*, in Answer to Letters written by *Francia* to him, wherein *D'Aulmay* takes notice, "That *Francia* in his Letters had complained that the Invasion was delay'd; and reproach'd those in *France* with Backwardness, Neglect and Indolence; and the Cause he knew of, would be undone for want of Care.

In the reading the Letters, we shall first produce that of Mr. *Harvey*, dated *January 9, 1715*. to *Abbot Butler*; which was found in *Francia's* Custody, with his Explanation of it; by which it will appear, he was fully acquainted with the Subject of the Correspondence, while he cover'd Mr. *Harvey's* Letters: And after that we shall produce the Letters from and to *Francia*, in the Order of Time they were written.

It is remarkable, that the Correspondence was so close, that scarce a Post passed without Letters from the one or the other.

The first of Mr. *Francia's* Letters that we shall produce, is dated *March 15, 1715*. He writes to *D'Aulmay*; "and desires to know what was in the Story of the Marriage between the *Pretender*, and one of the *Arch-Dutchesses*. For it is essential to the Interest of your Wife." She was a *Butler*.

D'Aulmay answers that, *March 20, 1715*. and writes, "that no mention was made of late of the Marriage of the *Pretender*: And that he was of Opinion, that would not be a sure Way to bring his Affairs to a happy Issue. But that a Party-War (that is, among ourselves) would be much more to his Advantage.

March 10, Francia writes, "That there was a Letter from the Duke *D'Aumont*, which 'tis wished may succeed better than the former; which have not been answer'd, tho' entirely for the Affairs. Besides I am (by the way) to tell you, that Persons of 50 or 60 Thousand Crowns a Year, can't with Prudence run the Hazard of losing such Estates, unless more Encouragement be given them. And that the Misfortunes of a certain Person are more owing to their being neglected on your Side of the Water, than to the Party that is against him: So that

" if

“ if this continue, your Wife must lose all Hopes.” This demonstrates, that the Matter solicited for was criminal, for which the Persons concerned might forfeit their Estates; and is plainly a soliciting for Succours.

April 2. 1715. *D'Aulmay*, in Answer to this, writes, “ He had communicated the Complaints “ in *Francia's* last Letter to the Duke *D'Aumont*; “ and was assured all should be mended.

March 17. 1715. *Francia* writes to *D'Aulmay*, “ He should be glad if he could find means to satisfy Mr. *Harvey* — That to deal with him “ as has been done, is no good Policy.

April 8. 1715. *Francia* writes to *D'Aulmay*, in Answer to his of the 20th; and tells him, “ He “ is satisfied; and consequently we are now to “ expect every thing from your Side the Water.

April 18. He writes again to *D'Aulmay*, “ That Affairs are here in such a Situation, that “ great Precaution must be used, to avoid giving “ Umbrage to those who are in Power. When “ I have any thing particular to write to you, I “ will do it by a strange Hand, and will sign “ *Jacques Chrétien*. Take notice of this: And “ provided you let me know you received this “ Letter, without its having been open'd, I shall “ be easy.

April 24. 1715. *D'Aulmay* writes to *Francia*, “ That his Letter came safe to Hand; and bids “ him be easy. If Mr. *Harvey*, in these trouble- “ some Times, should think fit to make use of “ Mr. *Chrétien*, he may.

These Letters of *Francia's* are entered in his Copy-Book: But from this Time there are no Entries in the Copy-Book: Which is not to be wondered at; but rather that they were entered so long. But we have many Original Letters from *D'Aulmay* (alias *Payen*) to *Francia*; which appear to be Answers to Letters written by him: And by what of them is repeated in the Answers, it appears in his Letters, great Sollicitations were for the Pretender's Coming, and great Uneasiness express'd at the Delay. And therefore, to quiet the Conspirators in *England*, *D'Aulmay* gives frequent Assurances that all Things were preparing.

August 7. 1715. Which was after his Majesty had notice of the Invasion designed, and had acquainted the Parliament with it; *D'Aulmay* writes to *Francia*: “ You are in the Right to inveigh “ against the Indolence you reproach us with; “ but be persuaded, 'tis only so in Appearance. “ I even hope, that by this time you have convincing Proofs of it; and that suitable Returns are made to the good Dispositions on your “ Side: And that at last God, blessing the Just “ Cause of our Friend, will let him gain his Suit: “ At least, Assistance and powerful Sollicitations “ shall not be wanting.

This needs no Explanation. The Suit of their Friend, appears plainly to be the Invasion of the Pretender.

August 10. 1715. *D'Aulmay*, under the Name of *Payen*, acquaints *Francia*, that he received his of the 5th Instant. Says he, “ Pray be easy; “ before it be long you will be contented. The “ Chief of the Name of our Friend the Abbot “ arrived here on *Tuesday-Night* in good Health. “ He is very well pleased; and has Reason to be “ so. He is preparing to return Home with all

“ Expedition; and to take his Friends with him, “ to pass the Vacation there. I am this Moment “ going to wait on him; and design to make “ One in the Voyage with him, or to be with “ him soon after his Departure.

August 21. *D'Aulmay* writes again to *Francia*, in Answer to two of his, of the 12th and 15th Instant; “ Our Friend's Cause will soon be ready “ (God willing) to be tried: All Preparations “ are making for it. The Friend who is related “ to my Wife has read your two Letters, and is “ mightily pleased with them.

August 24. He writes again, “ pressing him “ not to let a Post go, without letting him know “ all that passes relating to the Cause of our “ Common Friend. And he takes notice, that “ he had been so busy, that he had not had time “ to write to *Treacher*, but would do it suddenly.

This shews the difference between *D'Aulmay's* own Suit against *Treacher*, and the Pretender's Design, which he calls the Cause of their Common Friend.

August 28. *D'Aulmay*, under the Name of *Payen*, writes to *Francia*, acknowledging the Receipt of his of the 22d Instant; and saith, “ If “ I could venture to acquaint you with the Particulars of all that passes on the Affair which “ you know of, you would be more quiet than “ you appear to me to be, and would accuse us “ of Negligence less than you do. I know there “ are favourable Moments, which 'tis dangerous to let slip. But will you not grant too, “ that 'tis the Part of Prudence to foresee all Inconveniences; and to take proper and sufficient Measures to enable us to surmount them “ all? This is what we are doing: Be satisfied “ of it: and that your Friends are more earnest “ and ardent than ever, to procure you all the “ Satisfaction you can wish. Have Patience “ therefore yet awhile.

September 3. *Payen* to *Francia*. “ I received “ this instant yours of the 29th past. We have “ at last the Misfortune to lose the greatest of “ Kings. The *German* Journey might be very “ proper; I wish it may be perform'd; the rather, because for the Reasons that you know “ of. Our Preparations have been a little suspended, but not at all broken; Things going on always better and better. My (a) *DD* “ and (b) *MD* are in a House within half a “ League of this Town, which a private Person “ has lent them; where they receive all their “ Friends, with whom they go to dine and sup “ every Day. They are both in perfect Health; “ and think quite differently from what they are “ reported to think: That is to say, they are “ what they ought to be; you may assure your “ Friends of this.

Septemb. 6. *D'Aulmay* writes to *Francia*; “ I “ have just now received your Letter of the second Instant. I desire you to continue to write “ to me directly; and if you had some trusty “ Hand, other than your own, and that of your “ Son, you would do well to employ it. I believe also, that a Cypher for the principal “ Names, (which you might send me, and a “ Copy whereof you might keep to make use of “ yourself) would be very necessary: For I'll “ avow to you frankly, that this Precaution “ seems to me to be very necessary.

(a) Duke of Ormond.

(b) Lord Bolingbroke.

Sept. 14. *D'Aulmay*, under the Name of *Pagen*, writes to *Francia*; "The Contents of your last without a Date were very agreeable to me, as well as to all our Friends, who give you Thanks for it. We knew already Part of what you tell us about the Cause of our Friend; which will soon end (please God) to his Satisfaction, or all Appearances would deceive. As to my own Cause, I can't help telling you that my Fate is very unhappy, to have to do with so dishonest a Man.

Here again he distinguishes between his own Cause, and the Cause of their Friend the *Pretender*.

There cannot be any Doubt of the Subject of this Correspondence: Every Body that hears or reads these Letters, must understand them to relate to the intended Invasion; and if there were any Doubt, (as there is not) Mr. *Francia's* Confession sufficiently explains them.

It cannot be expected we can produce Mr. *Francia's* Letters, to which the last are Answers, they being sent away by him to *France*; but we insist that the Answers to them take notice of his, and of the Contents of them, with their being taken in his Custody, and owned by him on his Examination, to be those he received; and that he knew the Design of them to be, the Design of the *Pretender* to invade his Majesty's Dominions; is a full and sufficient Evidence to prove the treasonable Correspondence charged in the Indictment.

The Secretary of State did right, in stopping the Letters at the *Post-Office*, which were directed to the Prisoner; but those Letters having never been in the Prisoner's Custody, we shall not offer them in Evidence.

In one of them *D'Aulmay* complains, that the Correspondence was interrupted; and afterwards in another to *Francia's* Son, he bewails his Father's Misfortunes.

It can't be pretended that *Francia* was only a Hand to convey Letters from one to another; and that the Correspondence was only Mr. *Harvey's*; and that *Francia* is only guilty of Misprision of Treason, in concealing the other's Treason; for while he covered Mr. *Harvey's* Letters, he also wrote in the Cover those Things that demonstrate he was acquainted with the Subject of the Correspondence, and assented to, and assisted in the Treason: And the Law is plain in Case of High-Treason, that he that knoweth it before it be done, and assenteth to it, is *Particeps Criminis*, and guilty of the Treason.

What he did was not in the dark, but knowingly and openly, and he expresses himself concerned that the Business went on no better: That is making himself a Party and a Principal.

The Method of our Evidence will be this. These Letters and Copy-Book were seized by the Messenger, who brought them to Mr. *Walpole*, Under-Secretary to my Lord *Townshend*: They were laid before the Prisoner, in the Presence of both Secretaries of State: He owned the Book to be his Copy-Book of his Letters to his Correspondents; and the Letters shewn him, to be those he received, and that were taken in his Custody; and that that Correspondence continued till the Time of his being taken into Custody; and that the Subject whereof was the Design of the *Pretender* to invade his Majesty's Dominions. We shall for the better understanding of them, first read his Confession, and then the Letters; and when we have done this, we do not doubt but

you will be satisfied, we shall have fully proved the Charge laid in the Indictment against him.

My Lord, we will call our Witnesses. Set up Mr. *Smith*. John Fortescue
Aland, Esq;

Then *Joseph Smith* was sworn.

Mr. *Soll. Gen.* You was sent, I think, as a Messenger to *Francia's* House: Pray give an Account of every Thing that passed there.

Mr. *Smith*. My Lord, I have the Honour to serve his Majesty as one of his Messengers: I was appointed to attend the Secretaries Office that Day, being my Day of waiting, which was September 19, 1715. I had a Warrant delivered to me against Mr. *Francia*, but it being late I did not go to execute it that Night. The next Day I went to his House, in *Plow-Yard* in *Petter-Lane*; Mr. *Wilcox*, another Messenger, went with me, and went into the House first; he went up one Pair of Stairs, and I staid below, and after he had been up a little Time, he called me up, and told me there was the Prisoner: He was then in Bed; and there was a Woman with him he called Wife: We told him, we had a Warrant against him for High-Treason, and bad him get up. I asked him if he had any Closet? And looking about, I saw one by the Fire-Place: I opened it, and the first Thing I observed over-against the Closet-Door, upon a Shelf, was a Parcel of Letters lying open in *Folio*; I saw they were in *French*, and directed to the Prisoner, and upon the Desk there lay a Paper-Book.

Mr. *Soll. Gen.* Look upon this Book; is this the Book?

Mr. *Smith*. This is the Book; it lay upon the Desk, and I looked into it, and observed this Writing at the one End of it: He said it was his Son's Writing, and then I shut it again. I open'd the Desk, and looked over the Papers; I found there several other Papers and Letters folded up: I took them out, and laid them upon the Desk by the others. Then I search'd the other Parts of the Closet, and laid all the Papers by the other Letters. I desired then to go up Stairs, and I did so: And a Person I saw just now in Court, his Son, went with me; and I searched the Rooms and Boxes, and found several other Papers, and brought them down into the Chamber where the Prisoner was, with Mr. *Wilcox*; I put up all the Papers together, and said I had taken all Things that I thought necessary, and desired to be going. The Prisoner desired to stay and drink some Coffee; we did so, and then brought him down to a House at *Westminster*. We carried the Papers to the Office, and deliver'd them to Mr. *Horatio Walpole*. When I was in the Chamber with him, he seemed to be under a Concern when I put up the Book; and I asked him what that Book was? He said it was the Book of his Correspondence abroad.

Mr. *Att. Gen.* Is this the Book?

Mr. *Smith*. Yes.

Mr. *Att. Gen.* You say you saw several Letters there, did you look into them?

Mr. *Smith*. I saw they were directed to *Francia*: There was a Parcel lay open in *Folio*; and others that lay folded up in the Desk.

Mr. *Att. Gen.* What became of the Book and Papers after you had them?

Mr. *Smith*. We went with them and the Prisoner, and deliver'd the Prisoner into a House at *West-*

Westminster; and then went to the Office, and staid till Mr. *Walpole* came, and then delivered the Book and Papers to him.

Mr. *Att. Gen.* Did you deliver any Papers to him but what were seized there?

Mr. *Smith.* No.

Mr. *Att. Gen.* What is become of Mr. *Wilcox*?

Mr. *Smith.* He is dead.

Mr. *Cowber.* What was it that the Prisoner said about the Book?

Mr. *Smith.* He said, that is my Copy-Book of my Correspondence abroad, it signifies nothing. I afterwards observed some more Concern than ordinary in him; and he said to me again, the Copy-Book of my Letters signifies nothing.

Mr. *Ward.* How long had you the Book and Letters in your Custody?

Mr. *Smith.* I received them about Six or Seven o'Clock, and I deliver'd them the same Day to Mr. *Horatio Walpole*.

Mr. *Hungerford.* How can you be sure this is the Book?

Mr. *Smith.* Because I never parted with it.

Mr. *Hungerford.* Was it not out of your Possession when you delivered it into the Office?

Mr. *Smith.* Yes, then it was.

Mr. *Hungerford.* Did you set any Mark upon the Book?

Mr. *Smith.* No.

Mr. *Hungerford.* Did he say that which was wrote in it, was wrote in it by him?

Mr. *Smith.* He said, this is my Copy-Book of my Letters to my Correspondents abroad.

Mr. *Hungerford.* But how can you be sure this is the same Book?

Mr. *Smith.* I made a Remark of this Writing as he was dressing himself.

Prisoner. Who was it that carried the Book and Papers to the Office, you or *Wilcox*?

Mr. *Smith.* I myself.

Prisoner. I know that to be false. How soon did you go out of Town after you had lodg'd me?

Mr. *Smith.* In a Day or two.

Prisoner. Did you not go that Moment?

Mr. *Smith.* No; not that Day.

Prisoner. To whom did you deliver them?

Mr. *Smith.* To Mr. *Horatio Walpole*.

Prisoner. Did you take no more Books?

Mr. *Smith.* There were several Books in your House, but I don't remember that I carried any of them away but this.

Mr. *Hungerford.* Did the Prisoner own to you, that the Letters wrote in that Book were wrote by him?

Mr. *Smith.* He said, that is the Copy-Book of my Letters to my Correspondents abroad.

Then Mr. *Horatio Walpole* was sworn.

Sir *J. Jekyll.* Pray Sir, will you give the Court and the Jury an Account of this Book and those Letters; and how, and when they were brought to you?

Mr. *Walpole.* I remember the Warrant for seizing the Prisoner was dated the 19th of *September*, and that the Day after Mr. *Smith* and Mr. *Wilcox* came into my Room, and deliver'd to me a Copy-Book and a Parcel of Letters, which they said they took at *Francia's* House. I took them and kept them by themselves, to be produced when my Lord *Townshend* should call for them.

I remember that Night Mr. *Buckley* came into my Room, and I desir'd him to sit down and look them over with me, and accordingly he and I look'd into them. The next Day my Lord *Townshend* sent for the Prisoner, and I carried in the same Book and Letters, and laid them upon the Table, and particularly the Letters, they were laid open, and my Lord examin'd the Prisoner about them. They were wrote in *French*, and directed to the Prisoner. My Lord ask'd him whether he knew the Hand of those Letters, and turn'd them all over; and shew'd him the Directions, saying, are these directed to you? He own'd it. He own'd that he receiv'd them. My Lord ask'd him again, is this your Book? He answer'd, it is; some of the Letters are enter'd by me, and some by my Son.

Sir *J. Jekyll.* Were they all the same Letters that were brought to you by Mr. *Smith*?

Mr. *Walpole.* The same.

Sir *J. Jekyll.* Pray look upon this Book; is this the same Book?

Mr. *Walpole.* I am sure this is the Book: This is the same Book that *Smith* deliver'd to me, and said he took it at *Francia's* House.

Then several Letters were shewn to Mr. *Walpole*.

Mr. *Walpole.* I remember all these Letters to be the same that I received from *Smith*.

Mr. *Att. Gen.* After the Prisoner had been examin'd, what became of the Letters?

Mr. *Walpole.* I took them back again. I kept them under Lock and Key, till my Lord *Townshend* had occasion to use them, which was the same Night that my Lord examin'd the Prisoner; then I took them back, and I constantly kept them till I went to *Holland* for the *Dutch* Troops, and then I deliver'd them to Mr. *Buckley*.

Prisoner. And you can swear these are the same Letters that were deliver'd to you. By what Mark? You swear very home. What mark did you put upon those Letters, that you can swear to them?

Mr. *Ward.* Pray Sir, when they were in your Custody, are you sure they were never deliver'd out?

Mr. *Walpole.* I am sure.

Mr. *Ward.* Do you remember one *Jones* the Gun-maker on the other Side the Water, when he was under Examination? Are you sure they were not deliver'd out by Mistake to him?

Mr. *Walpole.* I can't know that they were.

Mr. *Hungerford.* Did you put any Mark on those Letters?

Mr. *Walpole.* No, I put no Mark on them.

Mr. *Hungerford.* Then how can you know them to be the same?

Mr. *Walpole.* I perus'd them several times. I remember the Hand, and Dates, and Directions.

Mr. *Hungerford.* Then probably you remember the Number too?

Mr. *Walpole.* No, I don't remember the Number.

Mr. *Ward.* Are you sure these are all the Letters that were brought to you?

Mr. *Walpole.* No, there are not all the Letters.

Mr. *Att. Gen.* We shall now call Mr. *Buckley*.

Then Mr. *Buckley* was sworn.

Mr. *Att. Gen.* Pray Mr. *Buckley* look upon this Book and these Letters, and acquaint the Court what you know of them.

* *George Francia's* Name in large Church Text, at the End of the Book.

Mr. *Buckley*. My Lord, the Day the Prisoner was seiz'd, I came into Mr. *Walpole's* Room. He told me he had received that Book and those Letters that were seiz'd at the Prisoner's House, and desired me to sit down and read them with him. I did so. Afterwards, when Mr. *Walpole* went to fetch the *Dutch* Troops, he delivered this Book and these Letters into my Hand. Afterwards my Lord *Townshend* directed me to look into them, and see which contain'd Passages most Criminal, and to extract such Passages, which I did accordingly out of several of them. I will look over them again, and then I can tell you whether they are the same.

Prisoner. By what Mark?

Mr. *Buckley*. I can tell you by that which is stronger than any Mark, I copy'd Passages out of several of them.

Then he looked over the Letters one by one. I had every one of these Letters from Mr. *Walpole*, and I know it certainly; for that from every one of these I extracted some Passages.

Mr. *Cowper*. Was you present at any time when the Prisoner was examin'd?

Mr. *Buckley*. I was.

Mr. *Cowper*. Were this Book and these Letters produced to him at the time of his Examination?

Mr. *Buckley*. He was examined by my Lord *Townshend* and Mr. Secretary *Stanhope*, and I was call'd in to take his Examination in Writing, accordingly I did.

Mr. *Cowper*. Were the Book and Letters at the time of his Examination produc'd to him?

Mr. *Buckley*. I can't say that, for I was intent on my Paper, writing the Examination, and looking upon the Prisoner, and hearing what he said. When I had written down what is in my Hand, [holding out the original Examination.] I read it over to him distinctly and audibly; and he being ask'd whether he was willing to swear to it, and answering, Yes, I offer'd him his Oath: And I offer'd him a *New Testament* to swear on. He said he could not swear on that Book. But he took another Book out of his Pocket, and I swore him on that. I asked him whether this was true: He said it was. Then he sign'd it; and afterwards my Lord *Townshend* sign'd it.

Mr. *Cowper*. Is the Subscription of his Handwriting?

Mr. *Buckley*. It is.

Prisoner. You say I took an Oath? on what Book was it?

Mr. *Buckley*. Indeed I don't know, I believe it was an *Hebrew* Book; Mr. Secretary *Stanhope* look'd upon it.

Mr. *Denton*. Was he examin'd at any time after?

Mr. *Buckley*. Yes.

Mr. *Denton*. Was you present then?

Mr. *Buckley*. No.

Mr. *Ward*. How long were they in your Custody?

Mr. *Buckley*. From the time that Mr. *Walpole* went abroad, till he came back again, and then I delivered them back to him.

Mr. *Ward*. Were they in your Custody when Mr. *Jones* was under Examination?

Mr. *Buckley*. I can't tell; but I never did shew them to him.

Mr. *Ward*. Were they not delivered out on that Occasion?

Mr. *Buckley*. No, they were not delivered out by me.

Mr. *Ward*. You say you read the Examination to him. Did not he desire to read it himself?

Mr. *Buckley*. I don't remember it.

Mr. *Ward*. Was he not refused to read it?

Mr. *Buckley*. No, upon my Soul.

Mr. *Ward*. Was you with the Prisoner in *Newgate*?

Mr. *Buckley*. I was with him at his own Desire; otherwise I had not gone to him.

Mr. *Ward*. Do you remember the Days?

Mr. *Buckley*. No.

Mr. *Ward*. How often was you with him there?

Mr. *Buckley*. Twice.

Mr. *Hungerford*. Were there any Offers made by you to him?

Mr. *Buckley*. I desire you would explain yourself.

Mr. *Hungerford*. Did you make him any Offers, that upon his signing any Paper, he should have his Liberty?

Mr. *Buckley*. No.

Mr. *Hungerford*. Did you not mention to him his giving Evidence against any other Person?

Mr. *Buckley*. No, upon my Soul.

Mr. *Att. Gen.* These Questions ought not to be asked. It is an Iniquity to tamper with any Man; and therefore such Questions ought not to be put. If you have any Witnesses, you may examine them.

Mr. *Hungerford*. Then we will examine to it.

Prisoner. Is that the Book I swore upon? [shewing a Book he had in his Hand.]

Mr. *Buckley*. I don't know indeed; it was such a sort of Book.

Mr. *Att. Gen.* I don't take that to be material, if it were the *Alchoran*. He had it in his Pocket. But it is not his Oath, but his Confession that is material.

Mr. *Hungerford*. Taking the Book into his Hands. I understand a little *Hebrew*. This is a Book to pray by, not swear by. It is a Collection of some *Jewish* Prayers and Rituals; I believe taken out of *Maimonides*. You had best send it the learned *Monfalcon* in *Paris*, he is compiling some critical Observations upon the *Eastern* Languages.

Mr. *Ward*. Did you put any Mark on any of those Letters?

Mr. *Buckley*. I did on some of them.

Mr. *Hungerford*. Where are the Extracts you made out of them?

Mr. *Buckley*. I have some of them here. [Holding out some Papers.]

Mr. *Hungerford*. What did you do with the Letters, after you had made those Extracts?

Mr. *Just. Pratt*. He tells you that he kept them till Mr. *Walpole* came back again, and then delivered them to him.

Mr. *Buckley*. Here is my Name on some of them. The two initial Letters of my Name.

Prisoner. When was that Mark made upon them?

Mr. *Buckley*. I don't justly remember.

Prisoner. That might be done yesterday, or since they were delivered out of his Custody.

Mr. *Buckley*. I did it while they were in my Possession, and before I deliver'd them back again to Mr. *Walpole*.

Then the Lord *Townshend* was sworn.

Sir *J. Jekyll*. We must desire your Lordship to inform the Court, what your Lordship knows in relation to the Prisoner at the Bar, as to the issuing out the Warrant against him, and what happened afterwards.

Lord *Townshend*. My Lord, having received Information that there was a treasonable Correspondence carry'd on between the late Duke of *Ormond*, Duke *D'Aumont*, *Coulange* and Mr. *Harvey*, in which the Prisoner was concerned, and was the Channel in which the Correspondence was convey'd; and that the Pretence of it was a Law-Suit, but that the Design of it was in Favour of the Pretender; and that when they talk'd of the Party, the Pretender was meant; and that they expected him to be soon here. Having reason to rely on this Information, I drew a Warrant to seize the Prisoner and his Papers. I had indeed before sent an Order to stop all Letters that came from *France*, directed to *Francia*, by which I receiv'd a Confirmation of the Intelligence which had been before given me. Upon the issuing out the Warrant, the Prisoner was seiz'd, and his Letters was brought to Mr. *Walpole*.

The next Day I sent for the Prisoner to be examin'd, and order'd Mr. *Walpole* to bring me the Papers, and sent for the Prisoner in. The Letters that Mr. *Walpole* brought in, were laid open upon the Table, and the Book lay by them. I ask'd him whether he knew the Hand, and whether those Letters were not for him? He own'd the Letters, but said he could not help what was in those Letters, and that what others wrote to him could not make him guilty. As for what I have wrote (said he) I appeal to my Book. That is my Book, I appeal to that for my Innocency. He did not appear obstinate, and I remanded him; and at Night I sent for him again, and Mr. Secretary *Stanhope* was with me; I had in that time look'd into more of the Letters, I saw several initial Letters of Peoples Names, I ask'd him the meaning of them; and he gave me the Account contain'd in this Examination. He seem'd in a Disposition to tell me all he knew; he gave me an Account how this Correspondence began, and was carry'd on; and then he came to explain the initial Letters that were in those Letters that were taken upon him, and in several other Letters that I had intercepted. I remanded him again that Night, having taken his Examination in my Hand.

A second Examination was taken upon Mr. *Harvey's* Letter; (*which Examination and the Letter thereto annex'd was shew'd to his Lordship.*)

This is the very Letter on which I examin'd him; he own'd to me how he came to stop the Letter, and not to forward it, and explain'd all those Figures to me very distinctly. He protested that he knew no more, and made solemn Protestations that he had said all he knew, and I was almost convinc'd he had; but in the Consequence, I had reason to think he had not. But these two Examinations were taken before me, one I sign'd alone, and the other Mr. Secretary *Stanhope* sign'd with me. As to the First, I believe Mr. Secretary *Stanhope* was gone out of the Room before it was sign'd.

Sir *J. Jekyll*. I desire to ask your Lordship whether all the Letters that were brought by Mr. *Walpole* were laid upon the Table at the time of the Prisoner's Examination?

Lord *Townshend*. All that Mr. *Walpole* brought me were laid there, and I saw him take them back again.

Mr. *Ward*. I desire to ask your Lordship whe-

ther you heard that Declaration read over to him?

Lord *Townshend*. I dare say I did.

Mr. *Ward*. Did he not endeavour to excuse himself from signing it, 'till he had read it himself?

Lord *Townshend*. I don't remember that, I don't know that he made any Difficulty of signing it; but I am sure it could not be because he was refus'd to read it.

Prisoner. Was not there any Reluctancy in me to sign it?

Lord *Townshend*. What do you mean? Have not I answer'd that already?

Prisoner. Did not you offer me some Money to sign it?

Lord *Townshend*. I hope you can't say a thing of so much Infamy. After he had been examin'd, he complain'd to me of the Misery he was reduc'd to, that his Wife and Family must starve, and represented himself as if he were at a loss for a Supper: I told him he had nothing to hope for, or any room to expect any Favour, but by making a clear Confession. He went on begging, and said that his Wife was starving; I do not certainly know whether it was the very Night that he sign'd his Confession or not; but I am sure it was not for that, but in pure Alms, and because he begg'd so hard, I put my Hand in my Pocket, and gave him three, four, or five Guineas, I know not which, in Charity; and it was what I never could refuse any Man that apply'd to me in that manner, and begg'd so hard. He said his Brother would not look upon him, because he was taken up for High-Treason, and he desired me to give him something in Charity, which I did.

Prisoner. I desire to ask you, whether you ever bestow'd on any body else the like Charity? Pray my Lord, name the Man under your Examination, you ever gave five Guineas to before? [*At which there being a Laugh round the Court.*]

Prisoner. I must not be laugh'd out of my Life; you did not answer me.

Lord *Ch. Baron*. Propose your Question to the Court?

Prisoner. I desire to know who he ever gave five Guineas to besides me?

L. *Ch. Baron*. My Lord says it was out of Charity.

Prisoner. And that he never refus'd any Body under his Examination the Sum of five Guineas?

L. *Ch. Baron*. He don't say so; he says, he never could refuse his Charity to People that begg'd as you did.

Prisoner. I had less need to beg than some others.

Mr. *Ward*. I have but one Question more to trouble your Lordship with, which my Instructions lead me to; and that is, whether at the time when this Examination was sign'd by the Prisoner, he was not told of its being for some particular Purpose, but that it should not be binding to him?

Lord *Townshend*. He did desire that it might not be made use of against him; I told him that depended on his Behaviour, if he was ingenuous, if he dealt frankly and fairly, and declar'd all the Truth, I would do all in my Power that he should have Mercy; I don't know whether it is proper to give my Reasons why I am convinc'd he did not deal candidly; but on the perusal of the Letters, I found he was not a bare Conveyer of them, or came by Chance to the Knowledge of what he explain'd in them, but that he was wrote to, as

* Referring to the Original Examination.

one of the Managers : On that I sent to him again, and told him plainly, he must know more of it. He flood it out that he did not, and then I sent him to *Nexgate* : Soon after he was committed, his Wife came, as Mr. *Buckley* inform'd me, and acquainted him that she was persuaded, if she could see her Husband, that she could prevail with him to discover the whole : On that I gave Directions to put him into the Messenger's Hands again, which was done ; about a Morning or two after, one *Curtis*, who was in the same Messenger's House, brought a Letter to the Office, which he had found drop'd by his Man's Bed-side. It was directed to his Wife, and the Subject was to bid her not afflict herself, for he found better Company in *Nexgate* than he expected, that the better half of them were in upon the Government Account ; that he had said nothing of Mr. *Harvey* that could hurt him, nor could he ; that the Government had nothing against Mr. *Harvey*, but a general Suspicion that he was against the Government, which three Parts in four of the Nation were ; and that he himself laugh'd at any thing the Government could do against him the Prisoner : When I found a Man write in his Sale, I could not but think he had not dealt ingenuously.

Mr. *Hungerford*. I would propose to the Judgment of the Court, whether it is proper to give Evidence of the Substance of a Letter without offering the Letter itself.

Mr. *Just. Pratt*. This comes in Answer to Mr. *Ward's* Question. He ask'd my Lord *Townshend*, whether there was not some Promise that this Confession should not be made use of against the Prisoner ? His Lordship gives this Account, and justifies himself, how he came to make use of it, and gives this as the Reason.

Mr. *Hungerford*. But to give an Account of the Substance of a Letter without producing it, I apprehend, is not according to the Rules of Evidence.

Sir *J. Jekyll*. If the Council for the Prisoner desire the Letter to be read, it shall be read.

Mr. *Att. Gen.* Do you insist upon the reading of it ?

Mr. *Ward*. If you will read it in the proper time you may.

Mr. *Hungerford*. If in the Course of the Evidence the Letter is not read, I don't press it.

Then Mr. *Horat. Walpole* was call'd again, and the Letter was shew'd to him.

Mr. *Att. Gen.* Pray, Sir, will you give an Account what you know of this Letter, and how it came to your Hands ?

Mr. *Walpole*. This Letter *Curtis* brought to me, and I made this * Mark on it : He told me it was found in *Francis's* Chamber near his Bed-side, and this is the Letter.

Mr. *Ward*. There is nothing prov'd yet of its being the Prisoner's Hand, its being found by his Bed-side will not affect him.

Then Mr. *Buckley* was call'd again, and the Letter was shew'd to him.

Mr. *Soll. Gen.* Pray look upon this Paper, and tell us whose Hand-writing you take it to be ?

Mr. *Buckley*. I never did see the Prisoner write but once, and that was upon my being sent to him to take a Confession he seem'd willing to make, and then I sat by him while he was writing.

Mr. *Soll. Gen.* How long did he write then ?

Mr. *Buckley*. About an Hour, and I read it over.

Mr. *Soll. Gen.* Do you believe this to be his Hand-writing ?

Mr. *Buckley*. I not only saw him write then, but I have read a great deal in this Book, which Mr. *Walpole* told me was taken at the Prisoner's House ; therefore being used to the Writing in this Book, and to what I saw him write, for those Reasons, and no other, I believe this Paper to be his Writing.

Mr. *Denton*. Are not the Letters of your Name on this Letter ?

Mr. *Buckley*. Yes : When Mr. *Walpole* put into my Hands all the Letters, my Lord bid me single out those that were fit to be extracted, and I did mark them that were extracted, and I always kept them in my Hands till Mr. *Walpole* return'd, and then I delivered them to him : Those Letters that I extracted, I mark'd ; some other Letters that were intercepted by my Lord *Townshend*, I did not mark, because they came to me at other times.

Mr. *Denton*. Did you mark that Letter ?

Mr. *Buckley*. Yes.

Mr. *Ward*. Can you be positive that it is the Prisoner's Hand ?

Mr. *Buckley*. No.

Mr. *Ward*. Do you rely on the Writing in the Book ?

Mr. *Buckley*. By that, and by what I did see him write, from thence it is that I conclude this to be his Hand.

Mr. *Hungerford*. He attempts to prove his Hand by two Inducements, one that he saw him write, and the other is the Book ; therefore let him fix on those Parts of the Book, that he takes to be the Prisoner's Hand, and to be like this Letter.

L. *Ch. Baron*. The Book is not material ; it is enough for a Man to say, that he saw another write for an Hour together, and then that he believes this to be his Hand.

Mr. *Hungerford*. If that was the single Foundation, it was something ; but he makes another Foundation also.

Mr. *Just. Pratt*. We are going out of the way, the Question is, Whether this shall be read ? In order to that, the Method is to prove, that the Witness is acquainted with the Prisoner's Hand-writing, and believes this to be his Writing. He tells you he saw him write for an Hour. He gives you a further Reason, that it is like some Letters in the Book. If that were laid out of the Case, the other would be sufficient without it.

Mr. *Hungerford*. A Man makes two Things the Foundation of his Judgment, his seeing him write, and the Similitude of Hands in the Book, the most conclusive Evidence would be, the Similitude of the Hand in the Book, which others may judge of as well as himself.

L. *C. Baron*. That is no Evidence at all ; Similitude of Hands is no Evidence.

Mr. *Hungerford*. I am far from thinking it is, or that there is as yet any Evidence at all. Do you believe this to be his Hand, only from your having seen him write, or from what you have observ'd in the Book also ?

Mr. *Buckley*. I say that from my having seen him write, and my having seen the Entries in the Book, I believe this to be his Hand.

Mr. *Just. Pratt*. If you had never seen the Book, but had seen him write for an Hour ; could you collect from thence that this was his Hand ?

* Showing a Mark upon the Letter.

Mr. *Buckley*. No, I would not affirm it.

Mr. *Hungerford*. Then it is with us, and makes it necessary to look into the Book.

Mr. *Att. Gen.* How come you to apprehend any one Part of the Book to be *Francia's* Writing more than the other?

Mr. *Buckley*. By my Eye-sight, and comparing it with this Letter.

Mr. *Att. Gen.* Is it from your Knowledge of seeing him write?

Mr. *Buckley*. Yes, and this Writing being like this Book.

Sir. *J. Jekyll*. I desire this Matter may be considered how it stands, my Lord *Townshend* is examin'd touching the Confession of the Prisoner, and was asked, whether there was not Hopes of Mercy given him? My Lord said there were, upon his making a frank Discovery; but he tells you the Prisoner was not entitled to Mercy, because he had not made such a Discovery, and then gives an Account of this Letter: I thought the Council for the Prisoner appeal'd to that Letter, and would have had it produc'd, to check the Evidence given by my Lord.

Mr. *J. Pratt*. Since it is gone thus far, I think it would be proper to clear this matter.

Prisoner. I desire to know where Mr. *Buckley* saw me write for an Hour together?

Mr. *Buckley*. It was in the Messenger's House.

Mr. *J. Tracy*. My Lord *Townshend* was giving an Account in Answer to a Question propos'd by the Prisoner's Council, and gave his Reason why he did not think the Prisoner was frank. I did not think so (says he) because of a Letter which was found by his Bed-side. Says Mr. *Hungerford*, then that Letter ought to be produced.

Mr. *Hungerford*. If the Account is no more than that my Lord observed so upon that Letter, there is no great Harm in reading it: But I am still in your Judgment, whether, when the Contents of a Letter is insisted upon, and repeated, and that upon Memory only, the Letter itself ought not to be produced?

Then — *Curtis* was sworn.

Mr. *Soll. Gen.* Look upon that Letter, whose Hand-writing is it?

Curtis. I believe it is Mr. *Francia's*.

Mr. *Soll. Gen.* Have you seen him write?

Curtis. Yes.

Mr. *Soll. Gen.* And do you believe it to be his Writing?

Curtis. Yes.

Mr. *Ward*. How long have you been acquainted with the Prisoner?

Curtis. While he was in the Messenger's Hands.

Mr. *Ward*. How often did you see him write?

Curtis. Several times.

Mr. *Ward*. Was you in Custody at the same time when he was?

Curtis. Yes.

Mr. *Soll. Gen.* Where did you find this Letter?

Curtis. In his Chamber by his Bed-side.

Mr. *Hungerford*. I don't hear that he gives an Account, whether he is so well acquainted with his Writing, that he can distinguish it from any others?

Curtis. He told me it was a Letter that he had wrote to his Wife.

Mr. *Att. Gen.* The Letter is in *French*; we have a Translation of it; we must desire that the Interpreters who translated it may be sworn.

Then Mr. *Bowyer* and Mr. *Ozell* were both sworn.

Mr. *Cowper*. Did you translate the Letter?

Mr. *Bowyer*. I did, and afterwards I compared it with Mr. *Ozell*.

Mr. *Cowper*. Is that a true Translation of the Original Letter?

Mr. *Bowyer*. I did make a true genuine Translation of it, allowing for the Difference of Language and Style.

Mr. *Cowper*. Was it the best and most exact Translation you was able to make?

Mr. *Bowyer*. Yes.

Mr. *Cowper*. Mr. *Ozell*, have you compared this Translation with the Original?

Mr. *Ozell*. Yes, and I believe it to be a true Translation.

Note. That the Original Letter was deliver'd into the Prisoner's Hand, during the Time that the Translation was reading; and Mr. *Flinn*, who was permitted to stand in the Bar near the Prisoner, assisted him in comparing the Original with the Translation. The like Method was observed, when the Translations of the Letters received by the Prisoner were read; and when the Letters wrote by him were read out of the Copy-Book, the Copy-Book was shewn to him.

[Clerk reads.]

My Dear,

ALL I exhort you to, is, to make yourself as easy as you can. I do the same, and am well, having slept well last Night; and the Company here is much better than I expected; they are all Tories, and the major Part for the Government, that is sent hither for being so, according to their Informations. Although all should sail, and my Lord *Townshend* should do nothing, the Business will be at an End in less than a Fortnight. You know upon what Account I am here, which cannot disgrace me. Be therefore comforted, and do not grieve. God will assist us. I neither know, nor have said any thing against Mr. *Harvey*, nor can they do any thing to him, unless he has other Affairs which I know not of; therefore you may assure that Frenchman, that's false, for I know nothing against that Gentleman, which is not intirely regular. He may only be suspected of being a Friend to the Pretender; but that was well known before; and if all who are so were to be punish'd, above three fourths of the Nation would suffer. Therefore I laugh at any thing they can do to me, all my Sorrow is not to be with you; and I would not see you in this wretched Place, in which you can but grieve both me and yourself. Adieu.

Mr. *Hungerford*. Pray let me have the Letter; I have a little *French*, and I would willingly see how they render the Word *Tories*.

Mr. *J. Pratt*. When did you find this Letter?

Curtis. Upon the 27th Day of *November*.

Mr. *Soll. Gen.* My Lord *Townshend*, pray be pleased to give an Account of the Occasion that this Confession was not sign'd by both the Secretaries?

Lord *Townshend*. I suppose Mr. Secretary *Stanhope* might be gone out of the Room.

Mr. *Hungerford*. I would not willingly trouble my Lord *Townshend* at any other Time, and therefore would take this Opportunity: I think your Lordship said, that the Letters that were stopp'd at the *Post-Office* were laid on the Table with

with the other Letters, when the Prisoner was examined?

Lord *Townshend*. I did not say that. The Letters that were intercepted, I did first lay them before the King, and then put them into the same Hands with the other Letters.

Then Mr. Secretary *Stanhope* was sworn.

Mr. *Att. Gen.* Mr. Secretary *Stanhope*, we must desire you to inform the Jury what you know about the Examinations of the Prisoner, and the Confession he made.

Mr. Sec. *Stanhope*. I have here two Examinations, one sign'd by my Lord *Townshend*, the 21st of *Sept.* and the other dated the 22d of *Sept.* sign'd by my Lord *Townshend* and myself. I was present at both the Examinations: There has been an Account given of the first, which is perfectly agreeable to what pass'd there, and my Name is to the second.

There is annex'd to this second a Letter, which we take to be Mr. *Harvey's*: I remember the Letter; the Hand is particular, and there are Figures by way of Cyphers. I remember very well this Letter. It has been before the Cabinet Council. It was shewn to Mr. *Harvey* at the Council-Table; he did not deny it, but shew'd the utmost Consternation when it was shewn to him; and desir'd that he might withdraw, and have the Liberty to speak to one particular Lord. The manner of his Behaviour was such, as to induce the Lords of the Council to be of Opinion, that he was inclin'd to confess what he knew; therefore they thought fit to let him withdraw, and go to the Messenger's House; but his Agonies were such, that he stab'd himself that Night, or the next Morning.

I believe at twice we spent about two Hours in the Examination of the Prisoner, and these Examinations were taken from his own Mouth; and I can be positive there is not a Passage in them, that he did not repeat more than once or twice. The Reason why my Name is to one, and not to the other, may be, because the Room where he was examined was next to the Room where the Council used to meet; and I believe I might be going in and out between the two Rooms, and might not be there when he sign'd it; and therefore I might not think it proper to set my Name to what I did not see sign'd: But I saw him sign that to which my Hand is set; and I don't remember that he had any Reluctancy to sign it. I read the first Examination more than once or twice to him, and did myself examine him to all the Particulars of it.

After the first Night's Examination, it is certain he behav'd himself like a Man not worth a Groat, intimating as if he did not know how to get a Sapper: He represented himself in a pitiful Condition, and it was at his going out of the Room, that my Lord put his Hand in his Pocket, and gave him something, what it was I don't know, but it was after he had sign'd his Examination; for, after it, there was a good deal of Conversation pass'd between him and me. I ask'd him several Questions, as to his being in *France*, and about the Countries he came from; and ask'd him as to several *Spanish* Letters that were in the Book, and other Things of that Nature.

Mr. *Ward*. Did he not desire to read over the Examinations before he sign'd them?

Mr. Sec. *Stanhope*. I don't remember that he did; but they were read over to him, and he was

ask'd to every Particular by myself, some one Particular might slip; but I did examine him, I think, to every Particular, in order to have it alter'd, if he objected to it, and he did not express the least Reluctancy. I saw him set his Hand to one of them; as to the other, I can't say, because the Room was next to the Room where the Council was sitting, and I don't know but that I might be there.

Mr. *Ward*. Do you remember any thing particular that was said to him, that those Examinations should only be laid before his Majesty, and no other Use made of them.

Mr. Sec. *Stanhope*. I don't remember any such thing.

Sir *J. Jekyll*. If he had desired to have read these Examinations, would you have refused it?

Mr. Sec. *Stanhope*. It never was denied to any Man to read his Examination before he sign'd it, where I was present.

Sir *J. Jekyll*. Nor you would not have refus'd him, if he had desired it?

Mr. Sec. *Stanhope*. No, God forbid.

Mr. *Hungerford*. I am informed that the Prisoner wrote some Letters to my Lord *Townshend*, complaining of some other Use being made of his Examinations, than was design'd?

Mr. Sec. *Stanhope*. I received some Letters from the Prisoner, but none that I thought were of any sort of avail.

Mr. *Hungerford*. Did he complain of his not being suffer'd to read them?

Mr. Sec. *Stanhope*. I don't remember it; but I am sure it was not so. If he did complain, it was without any Ground.

Prisoner. I desire a Sight of the Original Letter, which *Curtis* said Which was shewn him accordingly. I own'd. I never wrote one Word of it; it is forg'd since: Any Body will say it; it is not like my Hand.

Mr. *Cropper*. Before the Examinations are read, I desire the Gentlemen of the Jury would take an Account in Writing of the initial Letters and Figures they will hear read, and then will observe who are the Persons meant and intended by them, according to the Prisoner's Explanation, when he was examin'd. Gentlemen, it is necessary you should understand, who are the Persons that are intended by the Letters and Numbers. If you take them down, all the Letters will read to the Purpose.

L. C. Baron. Gentlemen, the desire you will take Notice of the Letters and Numbers that are explain'd in this Examination, because you will the better understand the Letters that will be read to you: That is what they desire, and it will be for your Satisfaction.

The Examination upon Oath of Francis Francia of London, Merchant.

Clerk reads. **T**HIS Examinant saith, That about two Years ago he became acquainted with the Abbot *Butler*, otherwise call'd, the *Vidame of Cambrai*, at the Time when the Duke *D'Aumont* was here; and afterwards, viz. soon after the Duke *D'Aumont* left *England*, this Examinant receiv'd a Letter from the said *Butler*, then in *France*, recommending to this Examinant's Care a Law-Suit, in which one *Barbara Butler*, a Kinswoman of the said Abbot's,

Abbot's, was concerned; that this occasion'd a Correspondence between this Examinant and the said Abbot *Butler*, which from a little before the late Queen's Death, hath lasted till within these few Days past; during which Correspondence with the said Abbot, this Examinant received from the said Abbot several Letters directed to Mr. *Edward Harvey* of *Combe*, and convey'd back several Letters from the said Mr. *Edward Harvey* to the said Abbot, which Letters to the said Abbot, from the said Mr. *Harvey*, were sometimes brought to this Examinant by the said Mr. *Harvey* himself, and at other Times sent by Mr. *Harvey* to this Examinant.

This Examinant further saith, That at such Times during the said Correspondence, as the Abbot *Butler* was at *Cambray*, the said Mr. *Harvey* usually brought or sent to this Examinant two Letters, one directed to the said Abbot at *Cambray*, and the other, either directed by Mr. *Harvey* himself, to the Duke *D'Aumont* at the *French Court*; or the said Mr. *Harvey* desired this Examinant to direct the same to the Duke *D'Aumont*, the said Mr. *Harvey* telling this Examinant, that he did not send the said Letters himself to *France* openly, because he would not expose himself to be reflected on for having Friends in *France*, not that he car'd a Pin if it were known, because we were in Peace with *France*, or Words to that Effect.

This Examinant further saith, that the Letters so delivered, or sent to him by the said *Harvey*, for the said Abbot, or for the Duke *D'Aumont*, were by this Examinant sent over to *France* under a Cover directed to Monsieur *D'Aulmay*, alias *Payen* at *Paris*, but about two Months ago that Method of Correspondence was changed; for the said *Payen*, instead of inclosing his Answers to the said Mr. *Harvey* in Letters or Covers directed to this Examinant, wrote only to this Examinant, but order'd him to shew to Mr. *Harvey*, or to deliver to him, what he so wrote to this Examinant, which this Examinant did accordingly.

This Examinant further saith, that whereas in some of the Letters lately written to him by Monsieur *Payen*, to be communicated to the said Mr. *Harvey*, and which were communicated to the said Mr. *Harvey* accordingly, and which being taken in this Examinant's Custody, were shewn to him; there are the Letters *M. H.* and my *D. D.* and *M. B.* which seem to be the initial Letters of Men's Names; he, this Examinant, understood that the said Letters *M H* stand for the aforesaid Mr. *Harvey*, and my *D D.* for the Duke of *Ormond*, and *M. B.* for the Lord *Bolbrooke*; and this Examinant verily believes that the Subject of the said Letters written to him by *Payen* to be communicated to Mr. *Harvey* aforesaid, is the Design of the Pretender to invade his Majesty's Dominions.

Francis Francia.

*Capt. Die 21.
Sept. 1715.*

per TOWNSHEND.

The further Examination of Francis Francia

THIS Examinant being sworn, says, That a Letter shewn to him, and mark'd by him, which is hereto annexed, and is dated the 9th of

January, 1714. and writ by Mr. *Edward Harvey's* own Hand, was sent to him, this Examinant, by the said Mr. *Harvey*, under a Cover, in order to be forwarded to the Abbot *Butler* in *France*: And that this Examinant in opening the Cover, accidentally broke the Seal of the said inclosed Letter, which made him detain the said Letter, and not forward it, lest it should be imagined that he had opened the said Letter, out of a Curiosity to read it. And this Examinant further saith, that he verily believes that by N^o (22) mentioned in the second Line in the said Letter, is understood the Duke *D'Aumont*; and that N^o (6) mentioned in the thirteenth Line in the said Letter, and where-ever the said N^o (6) is mentioned in the said Letter, he, this Examinant, verily believes it signifies and is meant to stand for the late *French King*: And that by N^o (17) mentioned in the said Letter, is to be understood the Word *Tories*; and that where-ever (22) is mentioned in the said Letter, the Duke *D'Aumont* is meant. And this Examinant further saith, he verily believes that by (8) is to be understood the Pretender; and by (9) mentioned in the said Letter, is to be understood his Majesty; but that this Examinant doth not well know what 24000, mentioned in the said Letter, stands for; neither can he tell what (14) stands for, mentioned in the said Letter.

Francis Francia.

*Jur. 22 Die Sept. 1715.
Coram nobis.*

TOWNSHEND,
JAMES STANHOPE.

Sir *J. Jekyll*. Now we will read Mr. *Harvey's* Letter.

Mr. *Ward*. You cannot read that Letter against the Prisoner.

Sir *J. Jekyll*. He hath made it Part of his Examination.

[*Clerk reads.*] The 9th of *January, 1715.*

Dear Sir,

WITH great Satisfaction I receiv'd yovrs of the 12 yovr Stile, and the next time I write vnto ^a 22 I will be svre to write on yovr behalf, just as yov mention, and I wish it may have the Effect yov propose; but I remember very well the Advice yov formerly have given me, that your great ones are good at words and fair promises, but slow at performing, if Ever; therefore as I take yov to be my Friend, I shall lay out no more Money till I am repaid what ^b 22 was pleas'd to promise me long agoe should be rymitted me if the Fau—en had not done it, on notice I meane the 130: 4—0 so long due, itt being abovt halfe I have bin ovt of Pocket, and for my good will am sufficiently scandalis'd as a friend to ^c 22, and Pentionar to ^d (6) nay and yov from tyme to tyme have affvred me it should be done, and still itt is the same, and so is like if you see itt not done.

Now if you please only to remind ^e 22 to send me a Bill if he pleases for the 130: 4—I shall be obleged very mvch to yov, or otherwise I see it is lost, and yov only doe give me faire words, which realy is not like a trew Friend, for I am sure I have not, or ever will omitt any one thing

^a Duke D'Aumont.

^b Duke D'Aumont.

^c Duke D'Aumont.

^d The French King.

^e Duke D'Aumont.

to serve^f (6) ²² nor yov pay'd or not, itt shall not trovble so I have^h ²² Esteem; wee are now in a hurrey on chosing of Parliament Men, and how those things will goe, God above best dos knows; but this I will affirme ware those that are to chvse leste to them selves to chvse no Money from Corte threats, nor any other indirect means vfed, all would be ovt of sight on theⁱ ¹⁷ side; and as it is, I hope all will doe well if^k (6 and^l ²² sticks to their trew Friends, and on no accompt forgett them and all their good intentions. I desire you to lett^m ²² know, if my Life lay att stake, I cannot get 30 such Hovnds as I dare send to his Friend the Co—t of To—ovs he desires; but by *March* I hope I may, my good Friend Mr. *B—ne* that yov mention in yovr Directions, has given me two of his best Bitches; they are sovre Years Hunting, and they shall be in Whelp a're I take them: and one young one I daily will look ovt, tho' it is a Thing quite ovt of my way, *but to serveⁿ 6 or^o 22 I will do any thing tho' to the bazard of my Life, and all I have.*

I have got for^p ²² two as fine and good Gray-hovnd Bitches as can run, and as handsome; the red and white one is three years olde, the other black and white, and but two; and one Covple of Stag-g-hovnds, the Bitch is entired, the other bvt ¹¹ Months old, large enough, and of the Queen's Hovnds breed; I have also a very fine Hovnd of Blood-kind, fit for a Harbering-Hovnd, and would rvn vp to any Hovnds; he is but 9 Months old, and if^q ²² sends any one over with yovr Ambasadore all shall be given him, or by any Token, I will send them to *Dover* on notice: As to Horses, here is a Stone-horse I think will please; he is a Bay, with a Blace down his Face, bvt by any till liked I dare not, so that mvst depend on^r ²² Pleasvre, and if any I have, or can gett, or here of, I will, and I will also freely send in my own Charge, one to helpe by as many as^s ⁶ or^t ²² shall please to command me; bvt this, as things

pray order things
 to as not to give
 offence to^u ²².

now Stands, must be done with Cavtion; why would you mention byeing of Stvffs to^w ²², he will fancy I have some self Interest in mind; I told ¹⁴ at dyner, that^x ²² was his humble Servant; he assured me he was his real Friend, I mean^y ²² and would write to him and would remind him of you; I dyne with him to morrow; pres^z ²² to think of his Friends, it will be of Service I am svre to^a (6) all looks well for^b (8) and in my Heart I think better than ever^c (9) every day loses himselfe, and for the 24,000 it makes for^d (8) and^e 6. I am.

Mr. *Att. General*. We will now show the Nature of this Correspondence, by their sending Letters to and again, and shew when he came into it himself.

Mr. *Ward*. Are you going to offer any Letters?

Mr. *Att. Gen.* Yes, out of his own Book.

Mr. *Ward*. We must humbly submit it to your Lordship's Judgment, whether they can offer any of these Letters in Evidence, the Charge of the Overt-Act is general, that he wrote several treasonable Letters: Now a Confession that there were several treasonable Letters past, might support that Allegation, or they may give Evidence in general, that he did write such Letters. But we must be in your Lordship's Judgment, whether they can produce any particular Letters, which are every one of them Overt-Acts themselves, and are not laid in the Indictment.

We think the Law has guarded the Life of a Man by the Stat. 25 *Edw.* III. That tho' the Intention is the Crime, yet that must be declared by Overt-Act or Deed, which must be charged in the Indictment. And the late Laws since the Revolution says nothing shall be given in Evidence, but what is expressly laid in the Indictment. Now if this be allowed of under such a general Charge, to prove such a number of Facts, which are not charged particularly in the Indictment, then all the Security of that Law will be eluded, and a Man will be no more able to make a Defence, than if it had been laid in general, that he conspired the Death of the King; or it had been laid, that in order thereto, he had been guilty of several treasonable Practices.

We insist that they can't under this Allegation give any Evidence but what is correspondent to it, as any Confession or Proof in general; but they can't enter into any distinct Overt-Act, which ought to be laid, and can't be given in Evidence unless expressly laid in the Indictment. If that Act has any meaning, it is to avoid any such Artifice as this; and it obliges them that are concerned for the King to specify in the Indictment the Overt-Act they will go upon.

Mr. *Hungerford*. My Lord, I think we have an Objection to the reading these Letters that cannot be got over. The Law hath in all Ages guarded the Life of the Subject against Prosecutions for High-Treason, and with a great deal of Reason: The Offence is great; the Proiecutions supported with great Power and Influence, and the Consequence great to the Party concerned; for it is not only the Loss of his Life, but the Ruin of his Family and Estate; his Family must be infamous and his Estate forfeited; therefore the Law hath guarded the Life of the Subject in a more particular manner, against these Prosecutions, than against any other capital Offences.

Before that happy Law, 25 *Edw.* III. the Prosecutions in Cases of High-Treason were such, that no Man could be safe against them. There was scarce any thing a Subject could do, even any thing that did but give the Umbrage of Offence, but might be drawn into the compass of High-Treason. In Truth, the Definition or Description of High-Treason before this Act is so loose that it gave a colour for this Proceeding. It was among other things, *Si quis aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, &c.* And in pursuance of this Notion of High-Treason, imprisoning an Officer of Justice, and Officers cheating Soldiers of their Pay, killing a Person going to List himself, &c. were before this Act

^f The French King. ^z Duke D'Aumont. ^h Duke D'Aumont. ⁱ Tories. ^k The French King. ^l Duke D'Aumont.
^m Duke D'Aumont. ⁿ The French King. ^o Duke D'Aumont. ^p Duke D'Aumont. ^q Duke D'Aumont.
^r Duke D'Aumont. ^s French King. ^t Duke D'Aumont. ^u Duke D'Aumont. ^w Duke D'Aumont.
^x Duke D'Aumont. ^y Duke D'Aumont. ^z Duke D'Aumont. ^a The French King. ^b The Pretender.
^c King George. ^d The Pretender. ^e The French King.

adjudged High-Treason. And I can shew that some of those hard Cases happen'd the Circuit before the Act. And therefore the Legislature thought fit to ascertain what Offences should be Treason for the future. And our Historians remark, that from the Time of this Law, the Sword that before hung by a slender Thread over the Heads of the Subjects, was then removed; and for this Reason likewise the Parliament is called *Benedictum*.

It is true, that the bare Compassing, or imagining the Death of the King is Treason, and it ought to be so; for in that precious Life the Common Weale, the Happiness of all the Subjects, is eminently concerned. But this Act of Parliament hath provided, that such Compassing, &c. shall be proved by Overt-Act, that is, not by Inferences, strained Constructions, or rhetorical Aggravations, and the like, but by plain Proof of Matter of Fact. And I am bold to say, the Intent of this Law was perverted for some Ages, by laying the Charges of High-Treason, so loose, that the Party could not tell how to apply his Defence: And of this, and other Kinds, there had been several irregular Prosecutions; such as those of Col. *Sidney*, my Lord *Ruffel*, &c. And for these Reasons the late Act for regulating Trials, &c. hath provided, that no Evidence of an Overt-Act, shall be given but what is specially laid in the Indictment: And such a Certainty was intended, that the Party might know certainly and exactly to what Points to apply his Defence.

If it should be admitted that what is done in this Indictment is sufficient to answer this Act, the Intent of it will be eluded: For the Intent is, that the Criminal shall know how to apply his Defence. The Offence in this Case is supposed to be in the Letters; must not therefore the Letters, or the Substance be set forth? For my Part I think they must, or they cannot be given in Evidence. I can produce very ancient Authorities to this purpose: And as to the Modern ones, besides that in Dr. *Sacheverell's* Case, I have one in my Eye, which is Mr. *Attorney's* own Authority (for which I shall always have a great Regard) in the Indictment against *Gregg**, which was a Prosecution of Mr. *Attorney's*; there the Letter was set out at length.

Mr. *Att. Gen.* That was not in my Time; I was not Attorney then.

Mr. *Hungerford.* I beg Mr. *Attorney's* Pardon; but he has been in and out so often, that I may have been easily led into a Mistake.

I have another very great Authority, and that was in the Case of Dr. *Sacheverell*: The Question was put to all the Judges for their Solution, whether in all Informations and Indictments, for Offences in Speaking and Writing, the Words ought not to be particularly mentioned? This was the Question proposed, and it was answered, that it ought so to be: Your Lordship's Answer was, That you was of the same Opinion with your Brethren. You, my Lord, Mr. Justice *Tracy*, agreed in the same Opinion, and so did the Eleven Judges then present; which was, that the Words supposed to be criminal, whether written or spoken, must be expressly specified in the Indictment or Information. This I am sure is the greatest Authority that can be in any Case: It is the Authority of all the then Judges of *England*, who were but Eleven, the Lord Chief Justice *Holt* being then lately dead;

so, my Lords, to justify this Objection, we have the Precedents on our Side, particularly of *Coleman*, *Fitzbarris*, *Gregg* and *Sidney*; in all which Cases the Papers supposed to be Criminal, or the Substance of them, are inserted in the Indictment. We have the Authorities for us, Ancient and Modern, and we have the Reason of the Thing for us. It being the highest Reason and Justice, that as the Prisoner is now to have some Days before his Trial the Names of his Judges, viz. the Panel of the Jury, so he should be apprized of his Charge with so much Certainty, as to know how to apply his Defence; and we don't doubt therefore but we shall have your Lordship's Opinion in favour of our Objection.

Sir *J. Jekyll.* We may offer this Book and these Letters, notwithstanding this Objection. Mr. *Ward* did not go so far as Mr. *Hungerford*, that it is necessary to set them forth *Verbatim*. As to that, I believe it was never done in any Case: And as to *Coleman's* Case, those Letters are not set forth; but it is alledged, that they were wrote to procure the Aid and Assistance of the *French King*, as it is here said, that the Prisoner's Letters were to desire Assistance from *France* to the Rebellion here. If it be necessary to set forth the Words in the Case of a Misdemeanour for a Libel in the ordinary Courts of Justice, it is because the Libel is the Crime; but in the Case of a treasonable Correspondence it is otherwise; for there the Letters are not the Crime, but the Overt-Act of the Treason, which is the Manifestation of the Crime. Besides, let it be consider'd what Evidence are we going to offer; we offer the Letters sent to him in answer to the Letters wrote by him, and to require us to set them out in the Indictment is impossible; when we make it part of the Charge that the Letters were sent to *France*, it is to mock us to call upon us to produce those Letters themselves.

Mr. *Ward* seemed to admit, that the Clause mentioned by him in the Statute 7 *Will.* was grounded upon the 25 *Edw. III.* For that old Statute doth require, that a Man be attainted by Overt-Act; and what doth 7 *Will.* do in that Case? No more than to make plain what the Law was before: For the Words are, that no Evidence shall be given of an Overt-Act that is not expressly laid in the Indictment; and from thence the Prisoner's Council would infer, that no Letters ought to be given in Evidence that is not laid in the Indictment: No, the Act requires only that the Overt-Act be expressly laid in the Indictment. Not that the Evidence shall be expressly laid in the Indictment. All that the Court is to consider as to this Matter is, whether the Overt-Act is not sufficiently laid in the Indictment; it will not be doubted, but that writing Letters to excite Rebellion is an Overt-Act. Then the Question is, whether this Indictment doth not expressly alledge this Overt-Act. The Words in the Indictment are these; *Quodque predictus Franciscus Francia, ad dict' Predicon' & Diabolic' & Proditor' Intencion' & proposit' pred' ulterius perimplend' perficiend' & ad effectum redigend' postea scil' eodem primo Die Septembris, Anno suprascripto nec non diversis al' diebus & vicibus tam antea quam postea apud London' pred' in parochia & Ward' pred' malitiose, diabolice & proditorie composuit & scripsit & componi & scribi causavit separales proditorias Epistolas notifican' intencion' & resolution' ipsius Francisci Francia & pred' al'*

* Jan. 19. 1707. at the Old Bailey, when Sir Simon Harcourt was Attorney-General.

proditor' Fur' præd' adhuc ignot' ad bellum præd' contra dictum Dominum Regem nunc movend, &c.
This is surely an express laying the Overt-Act of which these Letters are the Evidence.

Trial 146. I have been looking upon the Case of my Lord *Preston*; which though it was before the Statute of 7 *Will.* yet my Lord *Preston* was not without the Assistance of Council, though he was not allowed them in Court. It is there laid, that he wrote several Letters to inform the *French* King what the Forces of the Kingdom were; and the Indictment goes on to shew the Purport of those Letters. But in that Case the Letters are not particularly set forth: And yet that was never made an Objection at his Trial, or before Judgment. In that Indictment is charged his writing Letters, and they are described, and that we have done. This we think is sufficient, that is, that we are bound to lay the Overt-Act expressly, but not the Evidence of that Overt-Act.

Mr. Attorney-General. This is a surprizing Objection; we admit there must be an Overt-Act laid in the Indictment, and that is all that the Law requires; we must set it out so that we may apply our Evidence to it: And the Meaning of the Statute is, that when you lay one Overt-Act, you must not prove another.

The Instance that is given by the Serjeants is very strong, and every Body remembers *Coleman's* Case, the writing Letters is an Overt-Act; but it is not necessary to set them out, that being the Evidence of the Overt-Act. In *Gregg's* Case there was but one single Letter which was set out, and that was stopp'd at the Post-Office.

In the Case of Libels they must be set out; and that was the Opinion of the Judges in *Dr. Sacheverell's* Case in Proceedings at Law: But the Course of Parliament was held by the Lords to be otherwise. We have charged that he agreed to write Letters; that he did write them, and send them; and now they would have us to set out those Letters that are sent beyond Sea: And if that were Law, it would be impossible to convict any Man of a Correspondence Abroad, because the Letters are sent Abroad.

If it was charged in the Indictment, that he wrote to a great Numbers of Men, it would not be necessary to set out the Names of those Men; this is a Matter we don't need to labour much; for this last Statute has not alter'd the Law, as to the laying the Overt-Act, but only as to the Proof: that when you lay one Overt-Act, you can't prove another. I don't know that it could have been done before; so that that Act, as to this Matter, was only a Declaration of what the Law was before.

Mr. Sol. Gen. We think none of the Cases instanced prove what is insisted upon in this Case. That Case of *Coleman* is mistaken, for the Letters in that Case are not set forth particularly, only the Subject-Matter and Nature of them, as is here done.

They can instance no Case where the Indictment is for writing treasonable Letters, importing a treasonable Correspondence, that ever they were set out in the Indictment; and to what a length would such an Indictment be carried, if it should be done in this Case.

Col. Sidney's Case is against them; for there was a whole Volume wrote by him, and there was nothing put into the Indictment but the Sub-

stance of a very little Part; and that was *Col. Sidney's* own Objection: Says he, *Am I to be found guilty for a little Part that is cull'd out of the rest; when if the whole was put in, by comparing the whole together, it might not be possible to collect any Treason from it?*

As to *Dr. Sacheverell's* Case, that is quite different from this; for that was in the Case of a Libel, where the Offence properly consists in the Expression. But even in the Case of Libels. I must beg leave to deny that the particular Words must be set out in the Indictment; for a Libel may be so out in *Latin*, which is the better and safer way; and then if you set out the Substance, it is sufficient. And if you may set it out in *Latin*, it can't be true that you are bound down to the particular Words, for *Latin* Words and the *English* Words can't be the same.

The Act of Treasons say, No Evidence is to be given but of the Overt-Act laid in the Indictment. Now what is that Overt-Act here? It is writing Letters, which is specially expres'd, and the Substance of them set out, which shews them to be treasonable. The Inconvenience objected is nothing, unless it shall be suppos'd, that the Prisoner may have wrote so many treasonable Letters that he can't recollect them all.

Besides, it is to be considered, that all these Letters import a Correspondence, and so are to be consider'd as many, but as one Overt-Act, it is entire, and it is unreasonable as well as unnecessary, that the whole Correspondence should be set out. Therefore we think we have done what is sufficient, and that they can't give one Instance of a Case where the Treason consisted in writing many Letters of Correspondence, that the Letters themselves were set out. For the Design of the Law before-mentioned was no more, than that it should not be lawful to lay one Overt-Act, and give Evidence of another.

The Treason is, the Prisoner has imagin'd the Death of the King; and the Overt-Act is, he has wrote several Letters, that is expressly and specially laid; and then to distinguish these Letters from all others, the Substance of those Letters are set out, notifying his Intentions to raise a Rebellion in this Kingdom, and inciting those in foreign Parts, to aid, assist, and join with him.

But this Objection may receive another Answer, and that is, that there are two other Overt-Acts, besides his writing of treasonable Letters, which are conspiring, consulting, and agreeing to raise a Rebellion and Insurrection in this Kingdom, and soliciting Aid and Assistance from *France*: And these Letters are very good Evidence to prove those Overt-Acts; for I believe it will not be denied, but that these Letters are Evidence of a Conspiracy, and therefore if they could not be read in Evidence to prove the writing Letters, because they are not set out in the Indictment, yet they may be read as Evidence to prove a Conspiracy.

Therefore we insist that we are right both in Point of Reason and of Precedent.

Mr. Ward. My Lord, I beg a Word or two by way of Reply: They say we have not mentioned one Case where the Treason is grounded upon Letters, where they have been set out in the Indictment: I believe they can't shew one Case where it has been otherwise; we insist upon the Case of *Colonel Sidney* and of *Fitzharris*.

Colonel *Sidney's* Objection was, That they had not set forth the whole Book; but they had set forth entire Paragraphs, and that is what I insist they should have done in this Case.

They would have it believ'd, that the Act of Parliament, 7 *Will.* is nothing, and that the Law stands as it was upon 25 *Edw.* III. It was taken to be a great Point gained when that latter Act was pass'd, and I am sorry it is like to have so little Effect. But we insist that what is now offer'd hath all the ill Effects that were before the making of the Act. It is not that a Man must be suppos'd to have wrote so many treasonable Letters, that he can't remember them; but he don't know which of his Letters may be called so. And it was open'd that these Letters were of such a Nature, that they could not be understood without producing them. Therefore they ought to be set out, that so a Man may know which of them to defend himself against.

There is one Case like this, which is the Case of the good Name of a Man: Every Witness that is produced may be examin'd to his Credit; but you will not suffer particular Facts to be prov'd upon him, because he can't be prepar'd to maintain every Action of his Life. And that was intended in this Case; that a Man might be certain what he was to defend himself against, especially in the Prosecutions from the Crown, which usually come with a greater Weight than other Prosecutions. Agreeable to this have all the Precedents been when any thing have been founded upon Letters.

Mr. *Attorney* says, that the Letters are sent into *France*: So that they can't be produced. I did not object that they ought to be produced. But they are going to produce a Copy-Book to prove, that there were such Letters, and by that they had the same Opportunity to set them out, as if they had the Letters themselves.

There is no Inconvenience to the Crown by this Method, but the greatest Inconvenience to the Subject by omitting it; for he may have all the Letters he ever wrote brought against him, and he must off-hand give an Account of them.

[Mr. *Ward*, who had an Hoarseness upon him, clos'd with saying, that his Voice fail'd him, and that he could go no farther.]

Mr. *Hungerford*. The Gentleman who is join'd with me in the Defence of the Prisoner complains that his Voice fails him; (God be thanked) I have no Defect of that sort, for I can speak pretty audibly, but I have a greater, for I had my Instructions late last Night.

Mr. *Solicitor* observes, that we are not entitled to have those Letters set out either by Reason or by Precedent; as to the Reason of the Thing, I appeal to your Lordship, whether all the Laws relating to Trials of Treasons, and some others, which are to take Effect three Years after his Majesty's Accession to the Throne, and the Death of the Pretender, have not been grounded on this great Reason, to guard the Subject against Prosecutions that have been sometimes carried on with too much Severity. And as to what relates to the present Case, that the Overt-Act should be so particularly laid, as to describe the Offence with so much Certainty as to enable the Prisoner to apply his Defence.

What is the Intent of laying an Overt-Act at all, but that the Defendant may suit his Defence to it. If it is intended only that you shall not

give Evidence of a different Overt-Act; as the King's Council would expound it, that will be of little avail to the Prisoner. It is of late grown to be the Practice to lay the Treason, to be in conspiring the King's Death, and the Overt-Act, to be conspiring to levy War, though by the way, that is making one Article of the Statute of 25 *Edw.* III. redundant and useles; for if every Intention of levying War doth imply an Intention to kill the King, there was no need of making levying of War a distinct Species of Treason at all, for at that rate it was comprehended in the former. And as to what is said, that laying the Overt-Act is a sufficient Certainty of the Charge, I think not; suppose the Overt-Act laid, be levying of War, or an Intention so to do; there are several Instances of levying War, one way may be by mustering Men, another by seizing some of the King's Ships: These are so different, that upon a general Charge of levying War, one perhaps may prepare to defend himself at Sea, and may be attack'd at Land; and so *vice versa*; and by the general Charge he don't know what to defend himself against. Therefore the Intent of that Act must be to give a Man such a Notice of the Matter laid to his Charge that he may know how to apply himself to his Defence.

I did not insist that the Letters at large ought to be set out, but the Substance of them, or the Paragraphs in them, containing the Words suppos'd to be criminal, so that a Man may know how to apply to his Defence.

As to my Lord *Preston's* Case, though he might have Council to advise him, yet in his Time he could not (as the Judges had determin'd the Matter) have a Copy of his Indictment; so that he was outed of any Observations that could be made upon it. Therefore if that Indictment is in the same manner with this, it will be no Authority, for it might be irregular, as we insist this is, and yet there could be no Opportunity to observe it so to be.

As to what Mr. *Solicitor* insist, that to insert the Letters at large, would make the Indictment long and tedious: For God's Sake, my Lord, is there any Competition betwixt the Charge of two or three Skins of Parchment, and a Man's Life?

As for the Precedents, I have here *Coleman's* Case, where the Date and Substance of the Letter is mentioned; and in Colonel *Sidney's* Case, the Title of the Book, and the Paragraphs insisted on are set out: In *Fitzbarris's* Case, the Letter is set out *Verbatim*. As to what is said of Dr. *Sacheverell's* Case, that it was only for a Misdemeanour, I am bold to say, the Question was ask'd in general, whether in all Indictments or Informations, the Words or Writing suppos'd to be criminal, should not be set out. And surely if in a Case of Misdemeanour, where only Fine or Imprisonment is the Punishment, so much Certainty is required, much more Certainty ought to be requisite in a Charge of High-Treason, where Loss of Life, Estate, and Posterity are the Consequence of the Conviction. So that as I observ'd before, we have both Reason and Precedent with us, and they have neither of their Side, and those Precedents that are of their Side, were before the late Act of Parliament.

L. C. *Baron*. The Objection made by the Council for the Prisoner, is, that tho' here is an Overt-Act laid, yet it is not laid so expressly as it ought

ought to be. The Overt-Act is, That he wrote several Letters to Foreigners, to move and excite a War, and sent them to Foreigners beyond Sea for that purpose. I think this is a sufficient Description of the Overt-Act, and that is as much as is required by the Act of Parliament. That Act says, That no Evidence shall be given of any Overt-Act, that is not expressly laid in the Indictment. None can say that here is not an Overt-Act expressly laid. If it is expressly laid, and sufficiently described, sure it is not necessary to mention all the Evidence that is to prove the Overt-Act, the Intent of the Law is no more, than that the Overt-Act should be sufficiently described and charged in the Indictment. It is here so charged and described, the Design and Intention of the Letters is set forth, and they go to prove that such Letters, manifesting such Design and Intention, were written, and that they have laid that he wrote several Letters to move this War, then they go to produce the Letters. I am of Opinion, that they need not be more particularly described, and it would be endless to set out all the Letters.

As to what Mr. *Hungerford* insisted on in Dr. *Sachewell's* Case (which made a great Noise formerly, and has made some Noise now) the Question there put to the Judges, was concerning Crimes and Misdemeanours, by Writing or Speaking. As the Crime of a Libel consists only in the Words, and therefore they must be laid in the Indictment, he might as well have mentioned an Action upon the Case for Words. There the Words must be expressly laid, and they must be prov'd as they are laid.

But here the Crime is compassing and imagining the Death of the King, and the writing and sending of Letters to Foreigners to excite a War is the Overt-Act, and that Act is expressly laid in this Indictment, which is sufficient, without setting forth the Words of the Letters.

If it be laid, that a Man did consult and agree to levy War, a Time and Place must be laid, but all the Times and Places when and where he met and consulted, and all the Persons Names with whom he met and consulted, need not be mentioned in the Indictment, neither need the very Words of the Consultation be set forth. Therefore I think this Overt-Act is sufficiently laid, and, as Mr. *Solicitor* observes, if there was no other Act laid, but consenting and agreeing to levy War, they might prove it by Letters, although no Letters had been mentioned; but here the Overt-Act is more particularly described, that he wrote Letters for that Purpose. Those Letters are now offer'd to be read, and I think they ought to be read.

Mr. *Just. Tracy*. I am of the same Opinion; I think they have sufficiently set out the Nature of the Overt-Act, writing Letters, praying Aid of Foreigners to assist in a Rebellion. Some of those Letters are sent by the Prisoner beyond Sea, and they can't be set out; and whatever is alledged as certainly as the Nature of the Thing will bear, is certain enough.

But it is objected, you have the Copy-Book, and you might set them out by that. But they don't go on that only, but also on several Letters wrote to and receiv'd by the Prisoner; and to set forth all those Letters in an Indictment, is against Reason. But this is not the Matter now, for Mr. *Ward's* Objection was against reading the

Letters, which were offered to prove the writing and sending the Letters as charg'd in the Indictment; but instead of shewing they are not Evidence, you have run into Exceptions against the Indictment itself; for Uncertainty is not setting out the Letters particularly, which is not the Question now.

Mr. *Just. Pratt*. I am of the same Opinion; many Things have been said of the great Care of the Laws to preserve the Life of the Subject. I hope we shall always take a due Care to put those Laws in Execution; but we must take Care of that precious Life, as Mr. *Hungerford* calls it, not to hazard it, by making it too difficult to convict any Man of such a Correspondence. And if we should make such a Construction of the Act, as they contend for, it would be impracticable to convict any Man in any Case.

The Act says, the Overt-Act shall be express'd, and is it not so here? It is writing Letters, and with an Intent to levy War against the King; so that it is mentioned that there were Letters, and the Purport of those Letters is set forth. And whatever has been said of that Case that was in the House of Lords, none of you can say, but that it is sufficient in Informations for Libels, if they are set forth in *Latin*, to set out the Substance of the Words. If a Man sets it out *Verbatim*, he is tied up to the very Words, and by a Letter or Syllable mistaken, he may be gone: Therefore the best way is to set out the Substance only. Now what would you be the better, if you had what you ask, if there are several Letters to the same purpose? It would only be setting out the same thing over and over again. This satisfies the Meaning of the Act as fully as if they had been set out at large. But to say that a Man shall be bound to set out the Letter itself, when it is gone from him, when it is gone beyond Seas, how can he come at it? If that were to be the Case, a Man might carry on a Correspondence, and you could never convict him.

I think this is sufficient to answer the Intent of the Act. They offer you Letters that correspond with the Indictment, and if they offer any that do not, they will not be proper to be read.

Mr. *Att. Gen.* We will read our Letters as they are in Time and shew the Nature of the Correspondence.

Mr. *Ward*. I am informed there are different Hands in that Book: Now whether your Lordship will admit them to read it under a general Proof of his owning it to be his Copy-Book, or whether you will not expect that that which is his Writing shou'd be prov'd, and what is wrote by any other, to be wrote by his Direction, or Privity; for a small Variance in the Expression may turn a Man out of his Life.

Mr. *Hungerford*. All that the Witnesses said was, that the Prisoner said it was his Copy-Book. Now whether he is to be affected by every Word in that Volume, is what we must submit to your Lordship; and whether they ought not to single out which were wrote by him, and which not; for his saying that is his Book, that is, the Volume is his, the Cover is his, and the Paper is his, but it will not imply that he is the Author of all those Letters.

Sir *J. Jekyll*. My Lord, when they objected to our reading the Copy-Book, they ought to have made all their Objections together; but this being

being in the Case of Life, I won't stand upon that.

It is plain, it ought to be read; for you observe the Letters, of which these are Copies, are suppos'd to be sent to *France*; and it is impossible to have them; then what Certainties have we touching these Letters? We have the taking the Book in the Custody of the Prisoner, and if there had been no more than its being found in his Custody, I apprehend we might have been let in to read them. But it goes a great way farther; for several of the Witnesses swear that he own'd it was his Copy-Book of his Letters.

Let's consider how this Evidence would have been, if it had been given to every Letter in particular. If we had produ'd one single Copy of a Letter, and he own'd that was a Copy of a Letter wrote by him, will any one doubt but that it might be read? Now the Evidence say that he own'd this to be the Copy-Book of his Letters.

Mr. *Just. Tracy*. Where the Court is in no doubt, we must not spend our Time in arguing Points that have nothing in them.

L. C. *Baron*. It is no matter whether any of them are of his Hand-writing or not, I think they may be read.

Then the Original Letters and the Translations were shewn to Mr. *Bowyer*, and to Mr. *Oz!!*, who prov'd them to be true Translations.

[*Clerk reads.*] This is directed to *Francis Francia*, and dated *Paris Feb. 26, 1715*.

Sir *J. Jekyll*. This is dated at *Paris, Feb. 1715*, but that is in our *Stile 1714*.

[*Clerk reads.*]

SIR,

THE base Dealings of the Sieurs *Treacher* and *Robinson* with me, made me always believe that you would not otherwise bring them to Reason, than by pressing them without Mercy. Since you have taken the Trouble to begin, be pleas'd to continue to the last the same Attention to my Concerns which you have had hitherto, and never consent to any Accommodation till they have remitted not only my Disbursements, as you tell me by your last of the 18th Instant, but also the whole of what may come to my Share, either in Money or Wine, supposing there remains any unsold, which I cannot believe. As for the fourth Share I have in the fifty odd Hampers, which I bought for them of my Friend, the Count *de Silbery*, if, in order to enter upon an Accommodation, you should content yourself with their consigning into the Hands of Mr. *Harvey* the 2500 and odd Livres disburs'd, be persuad'd, Sir, that to get the Remainder, you'll find yourself under the Necessity to begin anew, to give yourself the same Trouble which you have taken hitherto. Therefore while you hold them, I beg the Favour of you to make an End of the Matter with them at once, and in order thereto, not to give them any Quarter. They have render'd themselves unworthy of it upon all Accounts. If in this Matter you think the Interest of the Chevalier (Sir *Thomas*) *Hammer*, Speaker of the last Parliament, may be useful to you; he does me the Honour to be one of my Friends: Visit him from me; and I flatter myself he will readily grant you his Assistance,

when you have inform'd him how the Case stands, and of the unfair Dealing of those Merchants towards me. I am so sensible of Mr. *Harvey's* Favours, that I would do any thing to shew him my Gratitude. Acquaint me therefore with the true State of his Affair with the *D. D.* and write to me about it in such a manner that your Letter may warrant my Speaking; after which I shall do my best to procure him the Satisfaction he desires; be pleas'd to assure him of it from me. I hope that ere it be long you will acquaint me with the Conclusion of my Affair; in the mean time, I still assure you that 'tis not possible for any one to be more perfectly than myself, Sir, your most humble and obedient Servant,

D'Aulmay.

Sir *J. Jekyll*. We read this only for the sake of the Postscript, which we will read presently.

Prisoner. This is not a true Translation.

L. C. *Baron*. What is your Objection to the Translation?

Prisoner. There is not one Word true in it.

L. C. *Baron*. Who do you depend on to translate it for you?

Prisoner. Upon Mr. *Flint*.

L. C. *Baron*. Tells us your Objection to the Translation; tell us in any one material Part wherein the Translation don't agree with the Original.

Mr. *Flint*. One can't carry it in one's Head.

Prisoner. I hope you will not take it for a true Translation when it is false.

L. C. *Baron*. We shall if you don't shew wherein it is false.

Sir *J. Jekyll*. We will read the Postscript, let them shew any Mistake in that.

[*Clerk reads.*]

As I have Reasons of private Concern to know what passes in the Country you live in, you will sensibly oblige me in informing me of it now and then. Be persuad'd of my Discretion, and that the State is no ways concern'd in my Curiosity; nothing raised it but the Concerns of my Wife and her Family, who is Irish.

Prisoner. That is wrong translated.

L. C. *Baron*. How do you translate it?

Flint. You will oblige me sensibly to inform me of the same. Be persuad'd of my Discretion, and that the State has nothing in my Curiosity: The Interest of my Wife, who is Irish excites me.

Sir *J. Jekyll*. That is to the same Effect as we read it. We will now read a Letter from the Prisoner to *D'Aulmay*, out of his Copy-Book.

[*Clerk reads.*]

Paris. Mr. D'Aulmay de Coulange.

London, March 1/4, 1714.

I Received the Honour of yours of the 26th past. I shall no ways spare the Sieur *Treacher*, but prosecute him to a final Judgment, which cannot be 'till *July*. He makes an Apothecary's Bill sets down the Wines that are sold, for the most part, at half a Crown per Bottle, but I shall prove him the contrary. I am very sorry this Business should go so far, but it is according to the Laws of this Country, where we have no need of Sollicitations; without which he will, within that Time, be certainly adjudged to pay. You must in the mean time transmit hither the Ori-

Duke D'Aumont.

ginal

ginal Paper you have of your Partnership in the Wine; and without flattering you, a Letter of Attorney; for a Letter of Order will not be sufficient. You may leave a Blank for the Name of your Attorney, which Mr. *Harvey* shall cause to be fill'd up as he shall think fit: But if you come to this Town before the Trial, as you told me, you may avoid all this. I shall take the Care I have promised you without any question. As for the Business of Mr. *Harvey*, with the ^a D. D. the Matter is, that he has disburs'd about 200*l.* Sterling: And that altho' the ^b D. D. had sent to pay him what he had advanced, it happens that the Person whom he intrusted with it did not do it: Therefore, if there were Means to give the said ^c D. D. to understand, without hinting that it comes from hence, that 'tis not just Mr. *Harvey* should be so long out of Pocket, that would undoubtedly have the desired Effect; for which I would, in particular, be very much obliged to you, &c. As for News from this Country, I learn sometimes more in the *Paris Gazette* than here, where the greatest Part of the House murmurs to see the *Low-Church* flourish. The latter are very eager for a War, but they want the Emperor and Money. 'Tis strongly reported, that a Match is very forward between the Prince who is at Lorraine, and one of the Arch-Duchesses: Let me know what's in it, since that's essential to your Wife's Interest. If, as I doubt not, an Ambassador comes hither, I desire you to send me, by one of his Domesticks, 20 Ells of fine *Ras—de—St. Maur*, very black, and at the cheapest Rate, and order the Bearer to receive the Account, or acquaint me with it, that I may remit it to you. Forgive, I beseech you, this Trouble, and believe me with a great deal of Devotion.

Prisoner. He that commits a Fault in any essential Matter, may do so in the rest. They have opened all my Letters at the Post, and they have made this Book for me; there is not one Word of my writing.

[*Clerk reads.*] This is directed to *Francis Francia*, and dated

SIR, Paris, March 20, 1715.

I Received yesterday the Honour of your Letter, dated the 14th Instant; I confess to you that it is a very melancholy thing for me to be obliged to give you so much Importunity upon the account of a Knave, from what you wrote to me in your former. I hoped a speedier Conclusion of my Affair. Notwithstanding which, you tell me we must still wait till the Month of July. This is a very long Delay: But if there be an absolute Necessity for it, we must e'en submit. Be that as it will, I beg the Favour of you, Sir, not to give any Quarter to such People who deserve none, for their Dishonesty which they shew in its full Latitude. As for the Papers I have, I shall send you such as will be necessary for you, as soon as you shall write to me for them. But as for a Letter of Attorney, I have signed a general and very extensive one, on the 7th of August last, which is as particular and as strong as possible; there is a blank for the Name, and it was sent to Mr. *Arthur* at London, by Mr. the Chev. *Cantillon* of Paris. The said Mr. *Arthur* having made no use of

it, you may get it out of his Hands and use it in your Name, or in the Name of such a Person which you and Mr. *Harvey* shall think fit to pitch upon. I believe it may be sufficient, and that the said Mr. *Arthur* will make no difficulty to deliver it to you when you shew him this Letter. However, I would cause Mr. *Cantillon* to write to him if it were necessary.

You may assure Mr. *Harvey*, that I shall do my utmost to procure him Satisfaction in the Matter you write to me about, without exposing him to any Inconveniencies. I have followed the Court too long to be ignorant how to deal with our Grandees.

Flint. It is how to deal with our Lords.

[*Clerk reads.*] I shall endeavour to know precisely the time of the Departure of the Marquis *d'Allegre*, who is to go Ambassador to London; and I shall charge some Body in his Retinue with the 20 Ells of black *Ras de St. Maur*, which you ask of me; if there be any thing else for your turn, let me know it. As you tell me you learn the News of England in the *Paris Gazette*; so I^d

you that I learn from you the Marriage of the Chevalier de St. George with the Arch-Duchess.

Prisoner. Is it Chevalier de St. George there? It is not so in the Original.

Cl. of Arr. It is *Cb— de St. G—*.

Mr. *Att. Gen.* That is Chevalier de St. George.

Mr. *Ward.* That is no part of the Key that was given by the Prisoner.

Sir *J. Jekyll.* Read it as it is.

Mr. *Hungerford.* Let it be read then without a Comment.

Mr. *Ward.* I wish the Jury take sufficient Notice, that some of these Letters are not wrote by the Prisoner, but only directed to him.

[*Cl. reads.*] I learn from you the Marriage of the *Cb— de St. G—* with the Arch-Duchess. 'Tis true, there was some talk of it when the Peace was made with the Emperor, but since that Time no mention has been made of it. That in my Opinion would be no proper way to bring his Affairs to a happy Issue. A Party War would best suit with his Affairs. God is above all; but I hope still, neither do I believe my Hopes altogether ill grounded. I shall be glad in the mean time to see what Turn Affairs will take before I cross the Sea. Wherefore I still desire you to inform me. I assure you, Sir, that I am more than any Body else in the World,

Your most humble and

most obedient Servant,

D'AULMAY.

Sir *J. Jekyll.* The former Letter from *Francia* desires to know what there is in the report of the Marriage of the Prince at Lorraine, with the Arch-Duchess. This Letter in Answer says, it is true, there was some mention of it about the time of the Peace with the Emperor; but he is of Opinion, that a Party-War would be more advantageous.

[*Clerk reads.*] Paris, Mr. *D'Aulmay de Coulange*.

SIR, London, March $\frac{10}{17}$. 1715.

BY my last of the $\frac{3}{17}$ Instant, I gave you an Account of my Proceedings against the *Sieur Treacher*, which I again hereby confirm to you;

^a Duke D'Aumont.

^b Duke D'Aumont.

^c Duke D'Aumont.

^d Torn in the Original.

and that I shall get you ^b between this and July, or he shall fly his Country. Here is a Letter for Mr. le ^c D. D. which, 'tis wisht, may succeed better than the former, which have not been answered, though entirely for the Affairs: Besides which, I must needs tell you by the Bye, that Persons of 50 or 60 Thousand Crowns a Year cannot with Prudence run the hazard of losing such Estates, unless more Encouragement be given them. You will be perfectly understood if you say this to some Person familiar with that Lord, or to himself: And I add from my self, that the Misfortunes of a certain Person are more owing to Neglect on your side of the Water, than to the Party that's against him. So if this continues, your Wife must lose all Hopes.

Prisoner. If this had not been translated wrong on purpose, and with design to take away my Life, there could not have been such a Mistake made. There is a scratch at the bottom of the S to make it an L. It was *Ses Affaires, His Affairs*, and it is made, *Les Affaires, The Affairs*.

Whereupon the Original was shewn to the Interpreter, and viewed by the Court, and appear'd to be a very plain L, and not alter'd from an S.

[*Clerk reads.*] This is directed to Francis Francia, and dated

SIR, Paris, April 2, 1715.

I have deliver'd to M. le ^d D. D. the last Letter you directed to me for him; and when I insinuated that there was in it a Complaint for not having receiv'd an Answer to the former, I was particularly assured, that an Answer had been written, and even in relation to what is due to Mr. ^e H. That the same express'd a Sorrow for not having clear'd with him sooner; that some Misunderstandings had been the Occasion of it: But that however he was desir'd to mention the exact Amount of his Disbursements, as well for the private Account, as for that of Count *de Thoulouse*, and that the whole would be immediately put into the Hands of the Chevalier *Cantillon*, to be paid in London to Mr. ^e H. This, Sir, is what I was told Yesterday, and which I desire you to repeat to Mr. ^e H. assuring him, that if he thinks me proper to serve him in something else, he will do me a real Pleasure in employing me.

The Marquis *d'Allegre* does not seem yet very forward to set out for London; therefore if you are in haste for the black *Ras de St. Maur*, which you have wrote to me for, let me know which way you desire I should send it to you, and I shall do it immediately; you may depend upon it.

I shall add nothing to the last Letter I writ to you concerning the Rogues our Merchants; but I shall continue still to desire you to rid me of that Affair as soon as you can.

We have nothing new here; the Works of the Canal of *Marlyke* are, by Orders from Court, redoubled. I know not what Success Mr. *Cadogan's* Journey to *Vienna* has had; but we seem not to be very much uneasy at it: I have spoken, as you desired me, to the Person for whom you sent that Letter which you directed to me, and who has made me the fairest Promises in the World; pray acquaint me with what passes in relation to Mr. *Prior*, since

his return to London; and believe me still most perfectly,

SIR,

Your most humble,
and most obliged Servant,
D'AULMAY.

Paris, Mr. D'Aulmay de Coulanges.

London, March $\frac{1}{2}$. 1715.

I Receiv'd the Honour of yours of the 20th Instant: I can assure you had the King himself to do with the *Sieur Treacher*, it would not be in his Power to get him adjudged to pay before the Month of July, and even in case the said (*Treacher*) do not appeal to the Chancery, which 'tis not probable he will do, because in such a Case a Merchant entirely loses his Credit, and besides he should be obliged to deposit 300 Pounds, for which I formerly arretted him, which would not at all suit with him: Therefore, Sir, be assured that I shall do all that can be done, notwithstanding all his Threats against me, for having been, says he, so bold as to sue him. I am only sorry, not to have begun sooner, and to have shewn him any Civility. Mr. Harvey and I shall be very much obliged to you, if you can find an opportunity to have Justice done him. I am persuaded, that to deal with him in this manner is no good Policy, and if ever I have the Honour to confer with you, I shall convince you, how by neglects (which however are not usual with Men of your Nation) most serious Affairs have miserably miscarried. As for News, we hear nothing but an approaching War. 'Tis even pretended that the Emperor is coming again into our Measures, but I do not believe it: Nor do I see any possibility of raising Funds for a new War, at a time when People are at their Wits ends to pay the bare Interests of the Debts contracted in the last. I am very much obliged to you for your intention to send me 20 Ells of Cloth of *St. Maur*, by the opportunity of the Marquis *d'Allegre*, or otherwise by any other that may offer: I likewise offer you whatever there is in this Country, and if it were a thing of small bulk, we have often opportunities of Friends who go over into France. Our Parliament will begin their Session very soon, they meet this Day to choose a Speaker: We are going to see what will be the upshot of all the Threats. I kiss your Hands, and am—

You may desire Mr. *Cantillon* to write to Mr. *Arthur*, to deliver to Mr. *George Francia* the Letter of *Attorney* he has in his Custody; for I have reasons not to demand it my self of the said *Arthur*.

Paris, Mr. D'Aulmay de Coulanges.

London, $\frac{\text{March 28th,}}{\text{April 8th,}}$ 1715.

I Have the Honour to tell you that yours of the 2d Instant is come to my hands, and that I have given ^a Mr. *H.* an account of the Subject Matter of your Negotiation. He is, as well as my self, the more obliged to you for it, in that we believe we still have occasion for the Continuation of your good Offices with the ^b D. D. What you say at the end of your Letter, of your having spoken conformably to what I had desired of you, is sufficient, and therefore every thing ought now to be expected

^b A word is here wanting in the Original.

^c Mr. Harvey.

^d Mr. Harvey.

^e The Duke D'Aumont.

^f The Duke D'Aumont.

^g Mr. Harvey.

from your Side of the Water, that is to say Explanations, &c. I was advis'd in order to prevent the *Sieur Treacher's* removing the Law-Suit to Chancery himself, in which Case he would become Plaintiff, to call him before that Court, that he may answer the Interrogatives I shall put to him; which I have done, and he must answer the same within a Month at farthest, and I shall pursue him close: 'Tis the most able Lawyer in this Country, who does me the Favour to give me this Advice, which will hinder him from Appealing, in case he should have a mind to it, which might have kept you in Play several Years.

We see by the King's Speech to his Parliament, that there are yet no Alliances made; and by the Addresses of the Lords and Commons, we perceive plainly that they have an itching towards a War; but at the same time they give to understand, that they know not which way to go about it: And besides the Party of the *Pacifick* is far more numerous than the others, altho' the others have at present the majority of Votes in the Parliament; of which three Parts in four of the House are highly incens'd, and yet more to see they pretend to impeach certain Persons of the last Ministry, which will infallibly make a great Noise: And if the Whigs would follow my Advice, and I were willing to give them a good one, they should lie still. Mr. *Prior* is one of these pretended Victims; his Papers are looked over with malicious Eagerness; he is taxed with having received great Presents in *France*; particularly a great sett of Silver-gilt Plate; I believe that if it be so, he is so much the richer for it. This is all that occurs at present, and that I am without reserve.

Paris, Mr. *D'Aulmay de Coulanges*.

London, April 7^a 1715.

I Am ordered to tell you from Mr. Harvey, that you will oblige him in desiring Mr. Le^a D. D. from him, to send hither some Body to fetch the Horses and Dogs which he has had so long, or else to give order to some Body to take them. Things are here in such a Posture, that great Caution ought to be used, not to give Umbrage to those in Power, who may put a wrong Construction upon the least Trifles, especially since the departure of my Lord *Bolingbroke*, who is looked upon here as innocent, and People do not see how he could be any ways hurt, notwithstanding the Superiority of the Low Party in Parliament, which however is divided into two, who terribly cross each other, one of which Parties will at last join with the Tories, if the latter are willing: We may draw Consequences: The Dutchess of *Portsmouth*, who is at present here, gives a great deal of Offence, as I am informed, by pretending to prove that the late King *James* had poison'd his Brother *Charles*; it was not expected, that after so many Years Retirement into *France*, she should come hither to revive that vulgar Report, which at so critical a Time cannot be for any good Purpose.

I have nothing to add to the Affair of your Merchants, but what I have already acquainted you with. On the other hand, I confirm to you all that I have recommended to you to tell the Person I wrote to last. Kissing your Hands, I remain —

We expect here shortly the Marquis *d'Allegre*,

^a Duke D'Aumont.

for our Ambassador at your Court has Orders to take a Character upon him. I hope you will find means to charge some Body in the Retinue of the former with the 20 Ells of *Ras de St. Maur*, and 20 Ells of *Taffety*, with blue and white Stripes, for a Woman's Summer Suit; less than 20 Ells would do, if it be broader than half Ell, and if it be possible, to send at the same Time a Scarf made of a good black Silk pinked, for a Woman of a moderate Size, and slender, you will oblige me, and when you shall acquaint me with the Price of the whole, I shall either pay it to the Person who shall be charged with it, or shall remit it at your Choice, &c. As for the Scarves, they are sold ready made at the Palace —

Since what's above written, the Honour of yours of the 12th Instant is come to my Hands. I shall cause your Letter of Attorney to be got out of Mr. *Arthur's* Hands. There are at present great Debates in the Parliament: There was a Member of the High Party, who had the boldness to suggest, that this present Parliament was illegally assembled, since the King in his Proclamation gave the People to understand, that it would be a great Satisfaction to him if they chose Whigs, which he said is against the Fundamental Laws of the Kingdom; whereupon there arose high Debates, and by the Majority of Votes, to the great Surprize of the Public, who expected that that Member should be sent to the Tower, it was carried by a hundred Voices, that the said Proclamation should be examined; which 'tis thought will cause great Divisions. When I have any thing particular to impart, I shall do it by a strange Hand, and subscribe James Chrétien, which you must take notice of, and provided you acquaint me that you have received this present Letter, without being opened, I shall be easy.

Directed to Francis Francia, and dated

S I R,

Paris, April 24, 1715.

I Have received your two Letters of the 8th and 18th Instant. I am very much obliged to you for having removed to the Chancery the Law-Suit I have with *Treacher*, since you think it the most expeditious way to make an end of it: I still beg of you the continuation of your Care, in order to compass the same; as also to acquaint me how that Affair stands at present. I reckon that Mr. *Arthur* has by this time delivered to you my general Letter of Attorney, according to the Order he has for it from the Chevalier *Cantillon*, of which you will also be pleas'd to inform me.

The Time of the Marquis *d'Allegre's* departure for *London* is not yet known here. I shall not then fail to desire some Body in his Retinue to charge himself with the *Ras de St. Maur*, Lute-string and Scarf which you have desired of me.

Your last was delivered to me very safe yesterday in the Evening: Be easy as to that Matter, as well as to whatever Mr. James Chrétien may write to me; pray desire him when he does me the pleasure to write to me, to be very particular as to Facts, and to be well informed before hand: In all which I rely on your Prudence. If during these troublesome Times Mr. ^bH. should think fit to make use of Mr. J. Chrétien, he may: But his Letters should be directed to my self, and I should afterwards make what use of them he should think fit. Assure him still

^b M. Harvey.

of my readines to serve him, and that I should be very glad to give him Marks of my Gratitude, for the Trouble he takes, as well as your self, in my Affair with *Treacher*.

When the Character of the Dutches, who is lately gone to *London*, shall be well known, People will not be surprized at the Part she actually plays there; but I hope it will produce a different Effect from what she expects, and that we shall come at last to a happy Unravelling. ^a Mr. *le D. D.* was to send about a Fortnight ago one of his Men to *London*, to bring him his Horses and Dogs. If he is not yet gone, I shall not fail pressing for that Matter.

Pray let us hear from you as often as possible, and still believe me most perfectly,

S I R,

Your most humble,

and most obedient Servant,

D'AULMAY.

My Lord Stairs has not yet taken any Character.

This is directed to *Francis Francia*, and dated,

S I R,

Paris, May 1, 1715.

I Have received yours of the 25th past, with that of Mr. ^b *H.* for the ^c *D. D.* which I have sent to him into the Country, where he is at present. At his return, I shall not fail telling him what you tell me about what is due to the said Mr. ^d *H.*—, and in what manner he desires the same to be remitted to him. Assure him that in this, and every thing else, I shall ever do my utmost to do him Service.

By your Letter of the 8th of *April* last, you acquainted me with the Care you had taken to remove to the Chancery my Law-suit with *Treacher*, by which means he would be obliged to answer within a Month, and therefore I hope that in a short Time you will acquaint me with the Conclusion of that Affair, for which I shall be very much obliged to you: I little know how Justice is administer'd in such a Case in *England*: But this I know, that in *France*, that honest Fellow would long before now have been brought to Reason; however, we must wait with Patience to the End.

Pray assure Mr. ^f *Ch.* that I am, and shall be very much obliged to him for what he shall write to me: He may likewise depend upon it, that I shall make good use of it; therefore let him continue to let me hear from him the oftenest he can; but above all let his News be certain, and very particular.

There's yet no Talk here of the Earl of *Stairs* being near taking his Character. I must also add, that 'tis not yet known, when the Marquis *d'Allegre* will set out, but what's believed as certain is, that they will out of hand work upon the Fortification of *Mardyke*: Draw your Conjectures upon it.

I am very impatient to know what passes relating to the Prosecution of the late Ministry, particularly concerning the Duke of *Ormond*, whose Name my Wife bears, and is his near Relation, her Name is *Butler of Kilcom*: That Family may not be unknown to Mr. ^e *H.*— however the Ch. (Sir

Thomas) *Hammer* knows it perfectly well.

We have at present no important News in this Country, unless it be considerable Bankrupcies among those called *Agioteurs* (or Stock-Jobbers) of which there are daily a great Number, and such a Scarcity of Money, as passes all that can be expressed. I am still,

S I R,

Your most humble,

And most obedient Servant.

Letter from *Francis Francia*.

Paris, Mr. D'Aulmay de Coulanges.

*London, ^{My 30th,}
^{June 10th,} 1715.*

MY last to you was of the Instant; this is to tell you, that without loss of Time you must send another Letter of Attorney, with a Blank for the Name; for Mr. *Arthur*, after having kept us long at a Bay, saying he would look for it, now says it is lost: Be that as it will, you must revoke that Letter of Attorney, for we are here in Danger, if *Treacher* should be-think himself of asking by what Authority he is Prosecuted, lest, not being able to produce any Letter of Attorney, this Suit should be dismiss'd with Cost; you therefore see the Consequence: As for the rest, the Affair is on a good Foot, and I believe he'll not stay till he's cast. Yesterday in the Evening, being the Anniversary of the Restauration of King *Charles II.* there were here great Riots; nothing was heard among the People but Curses against the present Ministry, and long live *James the Third*, and the Duke of *Ormond*. This being so public, that it cannot fail reaching your Parts, I acquaint you with it, and assure you that,

I am, &c.

Mr. Harvey salutes you, and bid me tell you, that when there is any thing New, if he cannot write to you himself, he will cause the Sicur J. C. to do it for him.

This is directed to *Francia*, and dated,

S I R,

Paris, August 7. 1715.

AT this very Instant I receive your last of the first Instant. I will not cease returning you Thanks for the Care you are willing to take of my Affair, desiring you still to continue to the End.

You have Reason to be angry at the Indolence (or Supineness) you expostulate about, but be persuaded, 'tis only so in Appearance. I even hope that by this Time you have convincing Proofs of it, and that suitable Returns are made to the good Dispositions; so that with God's Blessing upon our Friend's good Cause, he will at last cast his Adversary, at least no Succours, or powerful Sollicitations shall be wanting. Let me hear, I beseech you, about it as often as you can; and depend upon it, that by so doing you will oblige Persons, who in a proper Time and Place will be thankful to you for it. The Post (going off) presses me, therefore I con-

^a The Duke D'Aumont. ^b Mr. Harvey. ^c The Duke D'Aumont ^d Mr. Harvey. ^e Mr. Harvey.

clude, assuring you still, that no Man can be more truly than I am,

SIR,

Your most humble,

And most obedient Servant,

D'AULMAY.

Prisoner. That is wrong translated. In the *French* it is *Gagner sa Cause*, which is *gain his Suit*; and they have translated it, *cast his Adversary*.

Mr. Cowper. He talks of powerful Sollicitations on our Side, that is in *France*; and what could that be to a Law-Suit here?

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

SIR,

Paris, August 10. 1715.

I LAST Night I receiv'd your last of the fifth Instant; pray be easy, and c're it be long you'll be satisfied.

The Chief of the Name of our Friend the Abbot, arrived here on Tuesday Night in good Health. He is very well pleased, and has Reason to be so. He prepares to return Home with all Speed, and will carry thither his Friends to spend the Vacation Time. This very Moment I'm going to wait upon him; I reckon to attend him in his Journey, or to be with him soon after his Departure. Pray continue informing me the ofteneft you can, of your Health, and of that of our Friends: You know how dear they are to me, and what Concern I have in them; therefore do not deny me that Favour, nor that of believing me perfectly as I am,

SIR,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Cowper. Though this Letter is sign'd *Payen*, yet it comes from *D'Aulmay*; he says the Chief of the Family is arrived here; that is, the Duke of *Ormond*. And that he was to return from thence, and keep his Vacation in *England*. Hitherto the Correspondence was with the Duke *D'Aumont*, but from this Time it is with the Duke of *Ormond*.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

SIR,

Paris, August 21. 1715.

THIS is in Answer to your two Letters of the 12th and 15th Instant. I should have sooner answered the first, had it not been delivered to me after the Departure of the last Post. Our Friend's Law-Suit will shortly, God willing, be ready for Trial, every Thing is preparing for it. The Friend, my Wife's Relation, has read your two Letters, with which he is very well satisfied. He desires you, as well as myself, to let us hear from you as often as you can. Since his Arrival he has had two Fits of a tertian Ague, of which the Bark has rid him. He was purged Yesterday Morning, and in the Afternoon went to take the Air,

so that he is now in perfect Health, and in a Condition to attend his Affairs with full Liberty. I have not heard from Mr. ^a *H.* and I do not believe he has chang'd his Habitation; at least it is not come to my Knowledge. The King has been indisposed for some Days past, but without Appearance of any ill Consequence. Thanks be to God, who will preserve him to us a long Time in his Mercy.

Half a dozen Souls of *Lower Normandy*, and as many of *Mans*, must needs possess the Body of *Treacher*, and inspire him with all the Chicanes he plays me. I shall write to him by the next Post, in the Stile you advise me, and agreeably to my own Thoughts; for I swear to you, there's nothing I shall leave undone to get my Right of so great a Knave; I hope you will second me, and that you'll give him no Quarter. Pray acquaint me with what you have done upon this last Incident.

Sir, I salute you, and am perfectly,
Your most humble,

And most obedient Servant,

PAYEN.

Mr. Cowper. This explains that there was another Cause depending, besides that of the Law-Suit: For he says, our Friend's Cause will soon be ready to be tried, all Preparations are making for it. Now there was no Cause depending in *France*, for this a *French* Letter from *D'Aulmay*, and it is not pretended that there was any Law-Suit depending on that Side the Water.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

August 24, 1715.

I Am very much surprized not to have heard from you by the Post that came in Yesterday. Our Friend was at my House expecting the same. We desire you both, Sir, not to let one Post go off without writing to us, and acquainting us with what passes with Relation to our common Friend's Law-Suit. When you see Mr. ^b *H.* assure him that all our Friends are perfectly well. The King's Health grows better and better, Heaven be praised.

I have had so much Business for some Days past, that I could not write to *Treacher*: I would do it speedily, but I still desire you not to give him any Quarter, and to believe me perfectly,

SIR,

Your most humble,

And most obedient Servant,

PAYEN.

Mr. Soll. Gen. This shews a Distinction between the Cause of their common Friend, and the Cause of *Treacher*.

[Clerk reads.]

This is directed to *Francis Francia*, and dated

SIR,

August 28, 1715.

I Received your Letter of the 22d Instant. Were I permitted to give you a Detail of all that passes concerning the Affair you know, you would be more easy

than to me you appear to be, and charge us with less Negligence than you do. I know there are favourable Moments, which 'tis dangerous to let slip; but then will you not agree with me that 'tis Matter of Prudence to foresee all Inconveniencies, and in order to that to take such right Measures as to be able to surmount them all? This is now doing, be persuaded of it, and that your Friends are more zealous than ever to procure you all the Satisfaction you may desire, therefore be easy some time longer. You did me the Pleasure to acquaint me, that on the 29th past, Treacher was adjudged to deliver to us his Account within a Fortnight, that he had since made a new Chicane, demanding Security for his Charges, and with the Measures you were pleas'd to take upon this Demand. I therefore believed that after this we might hope to see an End of this Affair, and that nothing now remain'd but to perform the Judgment or Rule of the 29th of July, nevertheless we are still put off to the Month of October. Pray acquaint me with the Cause of it.

We are here in a cruel Uncertainty about an Affair of the last Importance, God grant it may have a happy Issue. Pray continue writing to me every Post, and believe that I am ever with all my Heart, Sir, your most humble and most obedient Servant,

P A Y E N.

Mr. Denton. This appears to be a Letter in Answer to Francia's, wherein he complains that Things are not carried on with Vigour; I know, says he, there are favourable Moments that are not to be let slip; and then at last he concludes with the private Affair of Treacher.

[Clerk reads.]

This is directed to Francis Francia, and dated,

S I R,

September 3. 1715.

I Received this very Instant your last of the 29th past, and as the Post is going off, I have only Time to write an Answer. I did not write to you by the last Post, neither did I receive any of your Letters. I am extream sorry for all the Trouble I give you with respect to the Law-Suit I have with that Rogue, I shall still hope that thro' your Care we shall both be shortly rid of him.

We have at last had the Misfortune to lose the greatest of Kings, who, as undoubtedly you know it already, died on Sunday last at a Quarter past Eight in the Morning, with all the Sentiments of Religion and Greatness that were ever observ'd in the greatest Heroes; and indeed 'tis generally acknowledged, that he never was greater than in the last Moments of his Life. Monday Morning my Lord Duke of Orleans, accompanied by the Princes of the Blood, and the Dukes and Peers, repair'd to the Parliament, where he was declared Regent of the Kingdom with all the Authority due to that Dignity and his illustrious Birth. All France is overjoy'd to be under his Government, from which they can certainly expect nothing but happy Days, since no Person in the World has more Grandeur, Equity, Penetration, and Virtues in general, than that Prince. The Journey to Germany would be proper enough, and I wish it may be performed,

^a Mr. Harvey.

^b Duke of Ormond.

^c Lord Bolingbroke.

the rather because for the Reasons you know; our Measures have been somewhat suspended, tho' not in the least broke, Things going on still better and better; be persuaded of it, as also that due Notice is taken of your good Will. In particular ^a Mr. H— must undoubtedly be where you were told, for he has not appear'd here. 'Tis true my ^b D. D. and ^c M. B. are in a House within a small half League of this City, which a private Person has lent them, but they receive there all their Friends, with whom they go to dine and sup every Day; they are both in perfect Health, and their Thoughts are very different from those that are ascribed to them, I mean that they are such as they ought to be; assure their Friends of it. It is not possible for me to send to you to Day what you desire of me, 'twill be for the next Post. Let no one slip without acquainting me of your Health, for which you know I am more concern'd than any Body else, and be persuaded that I am, more than any Man, Sir, your most humble and most obedient Servant,

P A Y E N.

Mr. Cowper, junior. This Letter gives an Account of the Death of the French King, and tho' Things may be suspended, still they will go on, and it will be for the better.

Mr. Denton. The next Letter is not directed to any Body, it came under a Cover, which is lost; it appears to come from D'Aulmay, but not to be directed.

L. C. Baron. Is this one of them that was found in his House?

Mr. Denton. This is one of them found there, and owned by him.

[Clerk reads.]

S I R,

September 6. 1715.

YOUR Letter of the second Instant was just now deliver'd to me. My last inform'd you, that 'twas only on the first Instant we had the Misfortune to lose the greatest of Kings, but that for the Comfort of France, God had reserv'd M. the Duke of Orleans for our Regent. I cannot write any thing that can be depended upon in relation to what you desire of me by your two last, as soon as there is any thing I shall inform you of it. Since the Abbot B— came into this Kingdom, he has been very often in the Country; he is still actually there; as soon as he is return'd I shall not fail speaking to him according to what you write; as I have no Intimacy with any Merchant, and he must be one that I can depend upon to make use of his Direction, I cannot give it you this Day, but I hope I may by the next Post; in the mean time pray continue writing directly to me, and if you have any trusty Hand, other than your own and your Sons, it would not be amiss to make use of it; I even am of Opinion, that a Key or Cypher for the principal Names which you may send me, and of which you should keep a Copy for your own Use, would be necessary, for I will ingenuously own to you that such a Precaution appears to me very necessary. You'll find here enclos'd the Picture you have desired of me; it being impossible to send it to you without folding, when you have received it you must wet a Cloth, which you'll lay on a Table, and will lay also

the Print upon it, which will take the Plaits away. The Post (going off) presses me, and I have but just Time to tell you that I am your most humble, and most obedient Servant,

PAYEN.

Prisoner. My Lord, this Letter is another Hand, and there is no Direction on it.

L. C. Baron. It was found among your Papers, and you own'd it; that is prov'd by the Secretaries.

Prisoner. This was pretended to be stopp'd at the Post-Office.

L. C. Baron. No, it was found among your Letters.

Mr. Soll. Gen. The next Letter is very particular; he says the Cause of the Common Friend will be at an End in a little Time; but as to his own particular Cause, he was unhappy to have to do with so troublesome a Man.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

SIR,

Sept. 14, 1715.

I Did not write to you by the last Post, by reason I did not receive your last Letter, which by the by is without Date, till the Day after its Departure. Nor did I receive any from you by the Post that came in Yesterday, so that you owe me Answers to my two last, which I expect with Impatience, particularly an Answer to my last, by which I sent you what you had desir'd of me. *The Contents of your last without Date has given me a great deal of Satisfaction, as well as to all our Friends, who return you Thanks for it, and have charged me to assure you of it, and desire you to continue. We knew already Part of what you write about our Friend's Cause, which with God's Blessing, will soon End to his Satisfaction, otherwise all Appearances would be very deceitful. As for my own Cause, I cannot forbear telling you, that I am very unfortunate in having to do with so dishonest a Man, after having trusted my Goods with him, and loaded his Partner with Services and Civilities during his Stay here. But my Comfort is, that you will not give him a Moment's Respite, and that you will at last rid me of his unworthy Chicanes. I could have wished the Abbot had not embark'd me with such People; although I am persuaded he did not do it with any ill Intention, yet I find myself embarrass'd with those Scoundrels, whom I trusted only at his Desire.*

The King went the Day before Yesterday to the Parliament to hold his Bed of Justice, where the Regency was confirm'd to the Duke of Orleans, with all the Authority which such a Dignity deserves. We have nothing else new at present. If any thing happens I shall not fail acquainting you with it. I am most perfectly, Sir, your most humble, and most obedient Servant,

PAYEN.

As we go at this time pretty often into the Country, be not uneasy if perchance I should fail some Post or other, answering your Letters re-

^a Duke of Ormond.

gularly, which however will not be, except when I shall be absolutely obliged to it.

Here's a Direction which you may use for the future if you think fit. But in case you do, you must conform yourself to this Model, and mark two Strokes both before and after the Word *Paris*.

To Madam, Madam the Widow de *Beagué*, Merchant, at the *Fair Star, Rue Tirechape.*
=*Paris*=

Mr. Att. Gen. The Correspondence now began to be dangerous, and therefore it was to be directed to a Woman, that there might be the less suspicion.

[Clerk reads.]

This directed to *Francis Francia*, and dated,

SIR,

September 17, 1715.

YOUR last of the 9th Instant, which I should have had on *Tuesday* last, was not deliver'd to me till *Sunday* in the Evening. I ascribe this Delay only to the Winds, which may have hindered the Packet-Boat from having as quick a Passage as usual. I have caused the three Letters which you have directed to me, to be put into the Post-House.

My ^a *D. D.* had already shew'd me the Epitaph you have sent me, which with Gentlemen will ever pass for the Spring of *Cerberus*. I hope also that infamous Author will sooner or later be rewarded according to his Deserts. His Insolence may even be attended with some unexpected Consequences. We have, Thanks be to God, a just and equitable Regent, from whom we may hope every thing, he has already given us Proof of it, by the good Order he has settled in all Affairs, which indeed had a great Occasion for it.

You must undoubtedly have receiv'd by this time the Picture you desired of me, and I hope you will acquaint me with it by the next I shall receive from you.

All our Friends are, thank God, in perfect Health, My ^b *D. D.* had some Days ago a slight Fit of an Ague, which had no Consequence. *We are here, as well as you, impatient to attain the End propos'd. But we must take Patience, and be rul'd by those who are at the Helm.* I still assure you, Sir, that I am with Sincerity your most humble, and most obedient Servant.

Mr. Soll. Gen. We shall conclude the Letters with a very particular one from *D'Aulmay*, which taxes *Francia* with Impatience, and takes notice, that *Mr. Harvey* was eager for going into *France*, but it was the Duke of *Ormond's* particular Advice, that he should not go, because probably they might come over to him.

[Clerk reads.]

This is directed to *Francis Francia*, and dated,

SIR,

September 23, 1715.

IN Answer to your last of the 16th Instant, I begin with telling you, that our Friends are much to blame to throw themselves so precipitately into Im-

^b Duke of Ormond.

patience,

patience, especially ^a M. H. to whom you shall communicate this Letter as soon as you have receiv'd it, and tell him he must by no Means think of coming hither, as by your last you acquainted me he is preparing to do. 'Tis my ^b D. D. who charges me expressly with what I write to you, and who desires him to stay. He may easily guess at the Reason, which will give you all to understand, that this is not a time to be impatient, but to shew more Resolution than ever.

Perhaps some Letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the Directions I have sent you, or directly with my own.

You know perhaps by this time, that 'tis pretended that there are at *Havre-de-Grace* two Ships on Board of which are Arms, which has alarm'd some People, but without ground. For if that News be true, they must be Arms that are sent as a Present to the King of *Persia*, as I am told; therefore this ought not to make any Body uneasy. As for the rest, Sir, let all of us recommend our selves to God, and hope we shall soon be quiet, you at home after your wise Government, shall have dissipated all the Feuds that disturb the Tranquility, and we by the paternal and indefatigable Care which my Lord Duke of *Orleans* takes upon him to procure us, the Repose which we have so great Occasion for, and of which we have so long been depriv'd.

You will judge of it by the List I send you of the Councils he has lately establish'd, and which are certainly made up of the most able, and most worthy Persons in the Kingdom. I expect to hear from you, and ever am, Sir, your most humble and most obedient Servant,

PAYEN.

Whereabouts are we with our honest Man? I hope you will acquaint me by your next.

Mr. Denton. My Lord, the time when the King was pleas'd to acquaint the Parliament with the Design of the Invasion, was the 20th of July.

We have a Copy of the Speech examin'd.

Then Mr. Paxton was sworn.

Mr. Soll. Gen. Have you examin'd this, and is it a true Copy.

Mr. Paxton. Yes.

Mr. Soll. Gen. Where did you examine it?

Mr. Paxton. At the Parliament Office.

Mr. Hungerford. What did you examine it by?

Mr. Paxton. By the Journal of the House of Lords.

Clerk reads. *Die Mercurii 20 Julii 1715.*

His Majesty after conferring with the Lord Chancellor, spake as follows.

My Lords and Gentlemen,

I Have given Direction to my Lord Chancellor to declare to you in my Name and Words, a Matter I think of the greatest Importance.

Then the Lord Chancellor spake as follows;

I have receiv'd his Majesty's Commands, to deliver to you in his Majesty's Name this his Majesty's Speech now put into my Hands by his Majesty from the Throne.

My Lords and Gentlemen,

THE Zeal you have shewn for preserving the Peace of my Kingdoms, and your Wisdom

in providing so good a Law to prevent all riotous and tumultuous Proceedings, give me great Satisfaction, but I am sorry to find that such a Spirit of Rebellion has discover'd itself, as leaves no Room to doubt, but these Disorders are set on Foot and encouraged by Persons disaffected to my Government, in Expectation of being supported from Abroad.

The Preservation of our Excellent Constitution, and the Security of our Holy Religion, has been, and always shall be my chief Care; and I cannot Question, but your Concern for these invaluable Blessings is so great, as not to let them be expos'd to such Attempts as I have certain Advices are preparing by the Pretender from Abroad, and carrying on at Home by a restless Party in his Favour.

Gentlemen of the House of Commons,

In these Circumstances I think it proper to ask your Assistance, and make no doubt but you will so far consult your own Security, as not to leave the Nation under a Rebellion actually begun at Home, and threatned with an Invasion from Abroad in a defenceless Condition; and I shall look upon the Provision you shall make for the Safety of my People, as the best Mark of your Affection to me.

Sir J. Jekyll. My Lord, We shall not trouble the Court nor the Jury, with reading any more Letters; I only take leave to observe shortly upon the Letters which have been read. The Correspondence began with a Desire from *D'Aulmay* to have some Correspondence about Affairs here, because his Wife was related to the Duke of *Ormond*. *Francia* tells him, there was a Discourse about the Marriage of the Pretender with the Arch-Duchess, which, says he, is essential to the Interest of your Wife. *D'Aulmay* writes in Answer, that there had been some Talk of that Marriage but he don't care to come into it: He thinks a Party War would be much better. *Francia* writes again, that it can't be expected that Persons of Fifty or Sixty Thousands Crowns a Year should run the hazard of losing such Estates, unless more Encouragement were given them. And that is followed by another Letter from *Francia*, wherein he writes, that now we are to expect every thing from your side the Water, that is Explications, &c. Then he desires him if he thinks proper, that he would change his Name, and write by a strange hand.

There is this observable in these Letters, that the Prisoner plainly shews his desire that there should be an Assistance for the Pretender from France; and so all the Letters taken upon him fall into that Design; nay, he was anxious and impatient for the critical Minute. The Death of the French King is taken notice of to be a great Loss, yet he is assured that things will revive again; for that Person that succeeded in the Government, had favourable Thoughts and Intentions.

The Letters that are entered in his Copy-Book speak very plainly; and Gentlemen, what can be the purport of those Letters of the Prisoner's that are not entred, that can't be sought for any where but in those Letters, which were sent hither in Answer to them, and he is so far from pretending that these were not Letters sent in Answer to his Letters, that when he came to be examined,

^a Mr. Harvey.

^b Duke of Ormond.

he told what the Design of them was; *that it was the Design of the Pretender to invade his Majesty's Dominions*; and therefore it now appears plainly to you, that he did sollicite Aid and Assistance in order to an Invasion from Abroad, and an Insurrection at Home, in favour of the Pretender, and in order to depose his Majesty.

Mr. *Att. Gen.* We shall leave it here, and submit it to your Lordship and the Jury, upon the Evidence we have offer'd.

Mr. *Ward.* May it please your Lordship, and you Gentlemen of the Jury, I am Council for the Prisoner, and what I shall humbly offer to your Lordship before we go into our Evidence, is a single Point, we shall lay before you and insist upon; a particular Circumstance in the Indictment, which is such, that considering the Circumstance of my Client, it is impossible as the Law stands, that he should be guilty in such manner as is charg'd in the Indictment.

The Prisoner happens to be an Alien born, he was born at *Bourdeaux* in *France*; he came from thence into *England*, and never was Naturaliz'd. He owes therefore no natural Allegiance, nor can be guilty of any Treason against the King as his natural Liege Lord, as it's laid in this Indictment.

There is a Distinction of a double Allegiance, one that is due from a natural born Subject, and the other that is due from an Alien. The latter owes only a local Obedience with respect to his Protection, whereas the former owes it in respect of his Birth. This is a Distinction well known in *Calvin's Case*. It appears, that if an Indictment for Treason be against an Alien, it must be charged to be against his Allegiance in general, but not against his natural Allegiance. This is taken notice of in a great many Cases. In the Reports of my Lord *Hobart*, *Vaughan*, and *Keyling*, there are several Cases which shew this Distinction.

In my Lord Chief Justice *Holt's* time, in the Trial of *Cranborn* and *Lowick*, April 22. 1696. an Exception was taken to the Indictment; that it was not laid *Contra naturalem ligeantiam*; and in that Case, *Calvin's Case* was agreed to be Law. It was held, that in case of an Alien, he ow'd only a general Allegiance; and it was agreed, that in case of an Alien, it must not be *Contra naturalem ligeantiam*; and my Lord Chief Justice *Holt* says, if it were so, it would be ill. And it may be given in Evidence, that he is an Alien, in order to acquit him of a Crime, charg'd to be against his natural Allegiance; there is none such due.

Mr. *Hungerford.* My Lord, the Objection is founded on a Fact. If the Fact is admitted, we will argue upon it; if not, we will call some Witnesses to prove it.

Then *Simon Francia* was sworn.

Mr. *Hungerford.* Pray give an Account what you know of the Prisoner, what Countryman he is, and where he was born?

Simon Francia. He is my Brother, he was born in *France* at *Bourdeaux*.

Mr. *Att. Gen.* Are you Elder or Younger than he?

Simon Francia. I am Four Years Elder.

Mr. *Att. Gen.* How then can you remember what was done when you was Four Years old?

Simon Francia. I can't remember the Day of his Birth, but I was bred up with him at *Bourdeaux*, we were all born in the same House.

Mr. *Hungerford.* What Age was you of when you first remember him?

Simon Francia. I remember him when I was about Six Years old.

Mr. *Hungerford.* And you don't remember that your Father and Mother came to *England* in that time?

Simon Francia. No.

Mr. *Hungerford.* Did your Father and Mother live at *Bourdeaux* when you was about Six Years old?

Simon Francia. Yes.

Then *Jaques Gonsales* was sworn on the Books of *Moses*. And an Interpreter was sworn, because the Witness spoke English very imperfectly.

Mr. *Hungerford.* Pray give an Account what Countryman the Prisoner is, and where he was born?

Gonsales. The Prisoner is the Son of *George Francia*, and *Mary Gonsales* my Sister. He was born at *Bourdeaux* the 26th of *March*, *New Style*, 1675.

Sir *J. Jekyll.* How do you know he was born there?

Gonsales. Because I was present when he was born. My House was over-against my Sister's, who was the Prisoner's Mother; afterwards he was baptized in the Church of *St. Andrew*.

Mr. *Hungerford.* We have two or three Witnesses more, his Godfather and Godmother; but I think it plainly prov'd by these Witnesses, so that we need not go any further. Mr. *Attorney*, do you admit it, or shall we examine more Witnesses?

Mr. *Att. Gen.* Prove what you can?

Mr. *Hungerford.* Then Mr. *Attorney*, you admit what we contend for. I am sure if he be a good Englishman, he cannot be a false Traitor.

Mr. *Att. Gen.* He speaks good English.

Then *Fines Lamira* was sworn.

Mr. *Hungerford.* Give an Account whether you know where the Prisoner was born?

Lamira. He was born at *Bourdeaux*, I liv'd there when he was born.

Then *Jaques Gonsales* was call'd again.

Mr. *Att. Gen.* How long hath the Prisoner liv'd in *England*?

Gonsales. I can't tell positively.

Mr. *Att. Gen.* As near as you can?

Gonsales. I can't tell, for he has liv'd at one part of the Town, and I at the other.

Then *Simon Francia* was call'd again.

L. C. Baron. How long ago did your Brother come into *England*?

Simon Francia. He hath been here twice. He was here about Twenty Years ago, and this last time, he hath been here about Six or Seven Years.

L. C. Baron. How long did he stay when he first came?

Simon Francia. About Eight or Nine Years.

Then *Cecilia Ceres* was sworn.

Mr. *Hungerford.* What do you know of the Prisoner? What Countryman is he?

Ceres. I went to School with him at *Bourdeaux*.

Mr. *Hungerford.* Where was he reputed to be born?

Ceres. At *Bourdeaux*, in the same Street where I was.

Mr. *Hungerford.* How old was he when you knew him first?

Ceres. We were both Children.

Mr. *Hungerford.* I think the Place of a Man's Birth can't be better prov'd, it is prov'd by some that were in the Room at his Birth, some that

went

went to School with him, and some that knew him there a Child.

Mr. *Att. Gen.* If the Jury should be satisfied with this Evidence, it will not acquit the Defendant, the Opinion in *Cranborn's* Case being, that the Word *Naturalem* was not necessary to be in the Indictment; and adding an immaterial Word will not therefore make the Indictment bad. If this does not satisfy the Defendant's Council, I shall insist that this Point be found specially.

Mr. *Just. Pratt.* If you insist that you have given a sufficient Evidence to satisfy the Jury, and indeed it is a strong Evidence, Mr. *Attorney* says, if the Evidence is to the Satisfaction of the Jury, he is willing to find it specially. Therefore are you willing to leave it to the Jury on that single Issue?

Mr. *Hungerford.* That is giving up all the rest. I would a little enforce and apply this Evidence.

Mr. *Just. Pratt.* I believe, if Mr. *Attorney-General* desires it to be found specially, it was never known to be denied.

Sir *J. Jekyll.* I desire it may be found specially.

Mr. *Hungerford.* I will be bold to say, this Objection is in all the Authorities which we have in the Law touching this Matter, held good: A Man who is not a natural born Subject cannot owe a natural Allegiance: And it is very hard, that without offering any Reason, to raise a Doubt, but upon bare asking to have a Matter found specially, it must be so.

Mr. *Att. Gen.* If you have a mind to it we will debate it with you now.

Mr. *Hungerford.* With all my Heart, I am ready to speak to it now.

Sir *J. Jekyll.* If we were to expect the Judgment of the Court upon it now, I would debate this Matter now, and I should not doubt but to be able to satisfy the Court that the Indictment is well fram'd against the Prisoner, notwithstanding he is an Alien born.

Mr. *Hungerford.* I would be glad to hear one Authority to support Sir *Joseph's* Opinion.

Mr. *Ward.* May it please your Lordship, I am Council for the Prisoner, who stands indicted of High-Treason. The Charge in the Indictment (besides the general Charge of imagining the King's Death) are conspiring to levy War, soliciting Aid from Abroad, and writing Letters for that Purpose into Foreign Parts.

What they have gone upon has been a long Course of Letters between the Prisoner and *D'Aulmay*, alias *Payen*, at *Paris*. They have produc'd a Copy-book of Letters, which they say he wrote, and have read some Letters out of it, which we must submit to you, whether there is any thing contain'd in them that amounts to Treason. They have also produc'd Letters to him from *D'Aulmay*, but we must submit that likewise, whether they can any ways affect him; he can answer only for what he wrote himself.

We did insist upon it, that they ought not to produce any Letters that were not specify'd in the Indictment, and though we are over-rul'd in that, yet your Lordship will be pleas'd to consider the Prisoner under this Disadvantage, that he stands indicted for writing treasonable Letters, without one Letter specify'd, or the Date, and much less the Substance of it, so that he can't be suppos'd to be ready to offer any Evidence, or to give any Answer, to explain all the Letters that in the

Course of his Life he may have wrote, and perhaps some of them may be so darkly penn'd, as not to be capable of an Explanation on a sudden.

It may be necessary also to shew your Lordship the Difficulties we have been under since we were taken up, and that will make it necessary to shew, that when we were committed, it was to a strict Confinement; we were prohibited from any Body coming to us, and from Pen, Ink, and Paper; no Body had Access to us, unless some Persons from the Secretaries Office, to press us to some Discoveries, which we declared we could not make. We will shew by them that were by at those Times what we were press'd to, and that will be an Evidence of our Innocence, when we withstood such Importunities.

They have offered some things, which will, I hope, go a great way to shew that he was not guilty of Treason. My Client was a Stranger, born in *France*, came here to Trade, and his Business not being very successful, he was willing to undertake something of less Value, and so engag'd in sending Letters from the Gentleman that has been nam'd, for the Profit of double Postage, which is allow'd in those Cafes.

It was observ'd by the King's Council as a very strange thing, that a Man should enter in his Book Letters of a treasonable Nature, we say the same, and that is a Circumstance to shew that they were not of that nature; besides, the Entry of a Letter in a Copy-book is not like a Copy that the Law allows to be given in Evidence, that must be carefully examin'd; but in those Entries of what a Man writes over to his Correspondents, there may be Mistakes in them, and such as a Man's Life, in Case of High-Treason, may be lost upon; therefore you can't found so great a Certainty upon this Book as upon the Letters themselves or Copies examin'd and legally prov'd.

Another Circumstance to shew how unlikely it was that this was a treasonable Correspondence, or any thing that the Prisoner was concern'd to conceal, is, that he never took care of attending at the Post-Office, or engaging any one to attend there, to dispatch or take care of his Letters, but rested at Home till the Letter Carriers brought them about, or else they were left at one *Everald's* a Watchmaker in the *Strand*, where he had lodg'd, and they have been observed to lie there on a Table in a common Room for a Week together before they have been call'd for, or they have been sent to him.

It has been observed by the King's Council, that towards the latter End of the Correspondence, when he began to write more openly, that he neglected to enter his Letters in the Book; but there is no reason for that Surmise, for it appears upon one of the Letters they have produc'd from *D'Aulmay*, that he complains he had not heard from the Prisoner in Three Months Time; and to suppose those Letters which do not appear, worse than those which do, is a Presumption, we hope, will never be admitted in a Case of Life.

As the Prisoner himself could not apply himself to consider of any Account or Explanation of these Letters, much less can it be expected that we who are his Council can be of any Service to him in that Point, because we only hear those Letters read that the King's Council think fit to produce; there were others before and after, and those we are Strangers to; whatever there may be in them that may clear up the Expressions in those that

are

are produc'd by the King's Council, we are entirely depriv'd of the Benefit of them; for the Prisoner has not been admitted to peruse his own Book, or to have recourse to any of his Papers. The Power of seizing Papers, that may be of use to a Man in his Defence, seems to me something dark; but I shall say nothing to it in this place.

We shall give your Lordship an Account of the Prisoner's Character and Circumstances. He was under low Circumstances, even to the pawning his Cloaths and Goods. People that are concern'd in Things of this Kind are usually better supported than he seems to have been. And we shall shew that he has at all times given all Instances and Proofs of his being quiet under the Government, and well affected to it.

Under these Circumstances, if there was stronger Evidence than is in the Copy-Book, it would not be sufficient. I hope, Gentlemen, you have distinguish'd between those Letters in the Copy-book and those that were sent to him, which latter, how criminal soever they may be, can't be made use of to his Prejudice.

If we prove these Circumstances, which is all that can be expected from us, we hope you will not think any thing in these Letters a sufficient Evidence to find him guilty of this Crime. And, Gentlemen, if any of those Letters can have such a Construction, yet, considering the nature of the Copy-Book, and the Manner of keeping such Books (which has fallen more under your Observation than mine) and how void of Care he was in managing those Letters that came to him, you will not think it probable that he was engag'd in a Correspondence of such a Nature; and if any thing looks that way, it may either be a Mistake in him that entered the Copies, or might be explain'd, if we were Masters of the rest of the Letters, and of the Book.

Mr. *Hungerford*. My Lord, I shall take up but a very little of your Time till we have gone through our Evidence, and then shall apply myself to make some Remarks upon it. But in general, the Accusation contained in this Indictment is, that this Man has conspired to take away the Life of the King; the Overt-Acts laid are, that he conspir'd to levy War, and endeavoured to engage Assistance from abroad, and wrote Letters, and sent them to divers Persons beyond Seas for that Purpose.

Gentlemen of the Jury, I am sure you must observe, that as to a direct Proof of his intending to take away the truly precious Life of the King, there is none, but what is endeavoured to be infer'd from these Letters. If there were, I am sure I should not, and, I believe, none of my Profession would have spoke one Word for him. But all that is said arises from himself. There is no Consultation appears, but that this Man consulted with himself and his Compting-House to take away the Life of the King. As to any of those Letters, there is nothing in them that looks that Way. And as to what is contain'd in the Letters receiv'd from *France*, they cannot affect him. All that can be infer'd from them is, that he was privy to what was contained in those Letters: And if that were High-Treason, yet it can only amount to Misprision of Treason in the Prisoner. You who live in this great Trading City, the most eminent for Trade and Commerce in the World, in which, I believe, you are very much concern'd, know that a great Part of the Commerce is

carried on by Letters, and all or most of them are entered in Books; you must have a due Apprehension of the Consequences of such a Transaction as this is. To have a Man living in his House in Peace, under the Protection of the King's Laws, to have his Books and Papers taken from him, and those Books and Papers turn'd against him, to the Destruction of him and his Family.

Mr. *Att. Gen.* I desire you would forbear inveighing in this Manner. This is not a proper Manner of Proceeding.

Sir *J. Jekyll*. You have had an Account that an Information was given to the Secretary of State, of a treasonable Correspondence carried on by this Man, and here is an Harangue complaining that his Person and Papers are seized. You know if there had been an Information given to the meanest Officer in the Kingdom, he could not have justified himself, without doing the same Thing.

L. C. Baron. You are not to arraign those Proceedings.

Mr. *Hungerford*. I don't doubt but that noble Lord had Grounds for what he did, but what Grounds he had doth not appear: And surely I have a Right to observe, that all the Evidence that appears against the Prisoner, arises from those Letters and Books that were taken away from him.

Mr. *Att. Gen.* Pray Mr. *Hungerford* act within the Bounds of your Profession.

Mr. *Hungerford*. Mr. Attorney, I am to be corrected by the Court, and not by you. I owe Duty to my Lords the Judges, and I shall always pay it.

Mr. *Just. Tracy*. You ought not to reflect on that Matter of seizing the Papers.

Mr. *Hungerford*. I am not understood. I say all that is offer'd against him is from the Papers found in his Custody.

Mr. *Just. Pratt*. If that was all that you had said you ought not to have been interrupted; but I never knew in my Life, but what was done in this Case was ordinarily done in the like Cases, and ought to be done, and you ought not to go on with Invectives to the Jury, complaining that his Papers are seiz'd, and then that those Papers are turn'd against him. When a Correspondence is carried on by Letters, ought they not to be seiz'd? and if they appear to be treasonable, ought they not to be kept and made use of against him? We must not sit here to hear Invectives against Magistrates of the highest Quality, for doing that, which if they had not done, they had failed in their Duty.

Mr. *Hungerford*. I have not said any thing to impeach the Legality of what was done. All I said, and do say, is, that the Evidence is from the Papers found in his own Custody.

You have heard the Letters read, and you observe, that great Part of them is about Dogs and Horles, and a Sum of 130 *l.* 4s. and about a Suit that was carrying on in the Court of Chancery. As to the Book, I shall touch no more upon it now, but I believe we shall be able to offer Proof that there is not any Part of it wrote by himself. How that will agree with the Evidence already given, we must submit. We shall likewise give some Account of some Discourses that had been had with the Man himself. And, I believe, I need not observe to Gentlemen of your Figure and Circumstances, that the Mr. *Harvey*, who is represented by the King's Council, to be the first Promoter of, and carried on this treasonable Corre-

spondence,

spondence, is at Liberty, even without a Trial; and what the Law hath done for him without a Trial, I hope shall, by your Justice, be done for the Prisoner, now upon his Trial, that is, that he shall be acquitted.

Mr. *Ward*. Though it is difficult for us to be put to explain any of those Letters, yet we will call some Witnesses to explain one, which mentions Persons of 50 or 60 Thousand Crowns a Year, and shew that it was meant of one that was concerned in the Revenue in *France*, and suffered by it.

Mr. *Just. Pratt*. If you are going to explain that Letter, it will be necessary to read it again to the Jury.

Which was done accordingly.

Mr. *Ward*. We will shew it was meant of one *George Francia*, who had been concern'd in the Revenue in *France*.

Simon Francia being sworn.

Mr. *Hungerford*. Did you know *George Francia*?

S. Francia. Yes.

Mr. *Hungerford*. Was he concern'd in the Revenue in *France*, and had he any Loss there?

S. Francia. Yes, he lost all he had.

Mr. *Hungerford*. By what Occasion was it?

S. Francia. I don't know.

Mr. *Hungerford*. Was it by his own Management, or depending on others?

S. Francia. I don't know, but I know he had an Estate and lost it all.

Mr. *Ward*. We offer this only as a Sample for the rest.

Mr. *Att. Gen*. What was this Man worth?

S. Francia. I computed him to be worth Eight or Ten Thousand Pounds.

Mr. *Att. Gen*. Doth he answer the Description in the Letter of a Person of Fifty or Sixty Thousand Crowns a Year?

Sir *J. Fekyll*. Had he any Estate in Land?

S. Francia. No, only in Money.

Mr. *Hungerford*. Do you know of any Offers that have been made, or Threats used to the Prisoner?

S. Francia. I know of some.

Mr. *Hungerford*. By whom?

S. Francia. By Mr. *Buckley*. That if he would swear against Mr. *Harvey* of *Comb*, he should have a good Reward.

Mr. *Hungerford*. Do you know of any other?

S. Francia. Yes, my Lord *Townshend* told me he had given my Brother five Guineas, and he would give him more if he would swear against Mr. *Harvey*.

Mr. *Hungerford*. Where did he tell you so?

S. Francia. In the Office at the Cockpit.

Mr. *Hungerford*. Do you know any thing of two Warrants that Mr. *Buckley* brought, one for his Release, and the other for his Confinement.

S. Francia. I don't know any thing of that.

Mr. *Att. Gen*. How came this Discourse between my Lord *Townshend* and you?

S. Francia. I was several Times with him at the Office about my Brother.

Mr. *Att. Gen*. I hope it will be proper at this Time that my Lord *Townshend* and Mr. *Buckley* may be asked to this Matter.

Mr. *Just. Pratt*. I suppose you was present when this past between Mr. *Buckley* and the Prisoner?

S. Francia. It was between my Lord *Townshend*

and me, and Mr. *Buckley* and me.

Mr. *Just. Pratt*. Who else was by, besides Mr. *Buckley* and you?

S. Francia. No Body else.

Mr. *Just. Pratt*. Who was by when that which you mention'd past between my Lord *Townshend* and you?

S. Francia. No Body else. The first Time I applied to my Lord *Townshend*, I think there was another Secretary there.

Mr. *Just. Pratt*. But at that Time that you say this Offer was made, was any Body present?

S. Francia. Indeed I don't remember that there was.

Mr. *Cowper*. I think you say, the first Time you was with my Lord *Townshend*, there was the other Secretary there?

S. Francia. Yes, there was.

Mr. *Cowper*. Where was this, in what Room?

S. Francia. In the Cockpit.

Mr. *Cowper*. What is your Relation to the Prisoner?

S. Francia. I am his Brother.

Mr. *Hungerford*. You say there was another Secretary by, was it the other Secretary of State?

S. Francia. I know not who it was, there was another Gentleman.

Mr. *Att. Gen*. He said another Secretary of State.

L. C. Baron. What did my Lord *Townshend* say to you?

S. Francia. He said he had given my Brother five Guineas, and he would give him more if he would swear against Mr. *Harvey*.

L. C. Baron. You say at that Time there was another Secretary?

S. Francia. No, no, not at the Time of that Discourse.

L. C. Baron. Nor there was no Body with you and Mr. *Buckley*?

S. Francia. No.

Then *Lucy White* was sworn.

Mr. *Hungerford*. Was you by, or in hearing, when any Offers were made to the Prisoner.

White. Upon the Seventh of *September* I went to see the Prisoner in *Newgate*. He told me Mr. *Buckley* was to be there with him, and desired me to conceal myself in the Room, that I might hear what past, and I did so. When Mr. *Buckley* came he spoke about one *Flint*; and afterwards Mr. *Buckley* asked him several Questions about Mr. *Harvey*. He said he knew nothing but that he was innocent. Mr. *Buckley* told him he must swear right or wrong for the Government; if he would not, he himself would swear High-Treason against the Prisoner; for he had taken Money of my Lord *Townshend*, and done nothing for it.

Mr. *Hungerford*. Did you see any thing of two Warrants Mr. *Buckley* had at that Time?

White. No.

Mr. *Hungerford*. Did Mr. *Buckley* see you?

White. No, I concealed myself under the Feet of the Bed.

Mr. *Att. Gen*. You say this was the Seventh of *September*. What Year?

White. In the Year 1716.

Mr. *Att. Gen*. Where was he then?

White. In *Newgate*.

Then *Mary Meggison* was sworn.

Mr. *Hungerford*. Do you know of any Offers that were made to the Prisoner, and by whom?

Meggison.

Meggison. Upon the Twenty Eighth of September last I was in Mr. *Francia's* Room, and Mr. *Buckley* came in and told him he should be tried suddenly, and there were a great many Witnesses against him; and he would swear against him, because, says he, you have cheated my Master of five Guineas, and won't swear against Mr. *Harvey*.

Mr. *Att. Gen.* Was you in the Room then?

Meggison. I sat upon a little Box at the Bed's Feet, and it was so dark he could not see me.

Mr. *Att. Gen.* How came you to *Newgate*?

Meggison. I have been a great many Times in *Newgate*.

Mr. *Att. Gen.* You dwell there sometimes, don't you?

Meggison. No, I never did.

Mr. *Att. Gen.* Are you a married Woman?

Meggison. Yes.

Mr. *Att. Gen.* What is your Husband?

Meggison. A Dealer, but he is not in *England* now.

Prisoner. What Room was I in?

Meggison. A little dark Room.

Prisoner. What do they call it?

Meggison. The Lion's Den.

Prisoner. Every Body knows that Room is a dark Room, that People can't easily be seen in it.

Mr. *Hungerford.* Did you hear Mr. *Buckley* say any thing more?

Meggison. Nothing, but that he would bring my Lord *Townshend* into Court, on purpose to influence the Jury by his Presence.

Mr. *Hungerford.* As to these two Witnesses, we have several to speak to their Reputations; but I believe you have no doubt as to that.

Sir *J. Jekyll.* I dare say no one Person in Court believes a Word they say.

Then Mr. *Buckley* was called again.

Prisoner. I desire to know whether you was not with me in the Lion's Den.

Mr. *Buckley.* My Lord, the Prisoner sent to me by *Revell* the Turnkey, and desired to speak with me; when I came to him, he spoke to me first about *Blint*, and desired he might be releas'd from his strait Confinement; and then about his own Affairs. He thank'd me for my Humanity in coming to talk with him, so we parted immediately. I told my Lord *Townshend* what had pass'd; *Blint* had the Benefit of it. He had been confined close, but *Francia* speaking on his behalf, he was releas'd from that Confinement; and that was the Business I went about. The Room is a little dark Room, but if any Body had been at the Foot of the Bed, I believe I might have seen them.

L. C. *Baron.* Did you say those Words?

Mr. *Buckley.* No, my Lord, it is impossible I should.

Mr. *Hungerford.* Not impossible surely?

Mr. *Buckley.* Yes, impossible, I appeal to my Character: I entirely and utterly deny it. I desire that *Revell* may be called.

Mr. *Ward.* We are now in our Evidence.

Mr. *Att. Gen.* If the Prisoner calls a Witness that has been called before, and he to make his Evidence entire, appeals to *Revell*, we ought to call him now, for it would have been improper before.

Mr. *Hungerford.* If it be nothing but that he was sent for Mr. *Buckley*, there is no great Harm

in it. Otherwise we are in the Course of our Evidence.

Then *Revell* was sworn.

Mr. *Att. Gen.* Do you know the Occasion of Mr. *Buckley's* coming to *Francia* in *Newgate*? Give an Account of what you know of it.

Revell. My Lord, Mr. *Francia* called to me one Day, and I think it was when I was in the Chapel, and told me, I believe I can do a Piece of Service to the Government: I believe I can suppress the publishing of the *Shift-Shifted*, I am sure I can: Pray let me speak with Mr. *Buckley*. Says I, if you would have me, I will go to him, and desire him to come. When would you speak with him? At any time, says he; then I believe the Morning is the best to meet with him; and the next Morning I went to him.

Sir *J. Jekyll.* Did you tell him the Occasion of *Francia's* desiring to speak with him?

Revell. Yes.

Sir *J. Jekyll.* Was you in the Room with them?

Revell. No, but afterwards he said to me, I think I have done the Government some Service, you don't hear it come out as it us'd to do.

Prisoner. I desire to know whether Mr. *Buckley* was not angry with you that you did not stand at the Door?

Revell. He order'd me to be about the Door, but there came some Workmen to survey the Chapel, I was oblig'd to go with them, and he came out and was angry that I was not there; and after that I stood there till they had done, but I did not hear what Discourse pass'd.

Then the Lord *Townshend* stood up.

Lord *Townshend.* My Lord, Mr. *Buckley* came to me; and told me of the Message he had receiv'd from the Prisoner about the *Shift-Shifted*, a scandalous Paper that was sent about the Kingdom. He ask'd me if he should go: I told him I thought it was right to go, but I told him he must be cautious, for I did not doubt but that the Prisoner was capable of that Villany I now find he is. He came back to me, and told me what he has now said; and I believe it to be all that pass'd between them, for I have always found him faithful and honest. I thought it was a Service to put a Stop to that Paper; and I did give some Ease to that Man that is named.

I am amazed how there can be such Villany as is in the Brother. He came to the Office two or three Times with Petitions. I never said any thing more, than that it was not in my Power to do any thing; that he must deal ingenuously, tell all that he knew, and shew that he would speak all the Truth; that that was the Way to recommend him to the King's Mercy; that I could not do any thing without it. And I believe the manner I treated Mr. *Harvey* will justify me, with all that know any thing of it, from the Suspicion of such Intentions against him. All that I did was in regard to the Prisoner's wretched Circumstances, and before Mr. *Stanhope*; and I never desir'd any thing of him, but to tell the Truth, and the whole Truth.

Prisoner. You told me I should be hang'd, drawn, and quarter'd; and your Lordship told me many a time, Damn you, you Dog, now I have got Mr. *Harvey* in my Clutches, and you will let him go from me. If there was no particular Animosity against me, why should I be distinguished, for none were put in Irons for treasonable Practices, but me.

Lord *Townshend*. I would not take up your Lordship's Time, but only to say, that the Warrant for Irons, and to be kept without Pen, Ink, and Paper, was after that Letter had been delivered to me, the Contents of which will sufficiently justify the Precautions used in that Warrant. I was sorry to see the ill Use he made of the Liberty that I had before given him, and I did use that Warrant in that manner. Treasonable Practices were then no more bailable than Treason; and it's no new Thing to fetter State-Prisoners under such an Accusation.

Mr. *Ward*. I beg leave to ask your Lordship one Question, Whether you apprehend that *Curtis* deserved any Credit?

Lord *Townshend*. I can say no more, than that he made some Discoveries, and there was no Prosecution against him. I knew nothing of the Man before, and I know nothing more of him now.

Mr. *Ward*. Did those Informations appear to be true?

Lord *Townshend*. A great Part did, by the Confession of one of the Persons he accused.

Mr. *Hungerford*. As to the two Women that were examined just now, there was a Remark made, that their Testimony was extraordinary; I have five or six People to speak to their Reputation, if it sticks with Mr. *Attorney*.

Mr. *Att. Gen.* Perhaps such as themselves; but however call them.

Then Mr. *Everall* was called.

Mr. *Hungerford*. What do you know of *White* or *Meggison*?

Everall. I know nothing of them.

Mr. *Ward*. Do you know where the Prisoner's foreign Letters used to be left?

Everall. His Letters always came to my House.

Mr. *Ward*. Was he usually watchful for the coming in of his Letters, as if there was any Thing of Concern in them?

Everall. No, they often used to lye some time before he called for them.

Mr. *Ward*. How long did they use to lye?

Everall. Sometimes three or four Days.

Mr. *Ward*. Were they kept up close till he called for them?

Everall. No, they lay in a public Room, so that any one might see them.

Then Mrs. *Everall* was sworn.

Mr. *Hungerford*. What do you know of any Letters directed for Mr. *Francia*; where were they left?

Mrs. *Everall*. They used to be brought to our House, and they have lain two or three Days together on a public Table before they have been fetch'd away.

Mr. *Cowper*. How long ago was that?

Mrs. *Everall*. About seven Years ago.

Mr. *Cowper*. Have any been directed to your House of late?

Mrs. *Everall*. No.

Mr. *Ward*. We shall now examine some Witnesses to the Copy-Book, to prove that it is not of his Hand-writing; and I don't doubt but that will have its Weight.

L. C. *Baron*. He own'd it to be his Copy-Book of his Letters to his Correspondents.

Mr. *Cowper*. We lay the Stress upon this, that he said it was his Copy-Book of his Letters to his Correspondents Abroad.

Mr. *Ward*. But you know Mr. *Buckley* laid a

Stress upon its being his Hand-Writing.

Then one *Rafter* was sworn.

Mr. *Hungerford*. Shew him the Copy-Book, look upon it, are you acquainted with the Prisoner's Hand-Writing?

Rafter. Yes.

Mr. *Hungerford*. Is any Part of that Book his Hand-Writing?

Rafter. No, I take it to be his Son's, *George Francia's*: The Prisoner writes a smaller Hand. I take no Part of it to be his Hand so far as I have gone.

Mr. *Hungerford*. I believe it may be of use for all the Witnesses to look it over; we have four or five to this Point; and if I am rightly instructed, there is not one Word in that Book wrote by the Prisoner.

Mr. *Just. Pratt*. If it is not his Writing, whose do you take it to be?

Rafter. I don't take it to be his.

Mr. *Just. Pratt*. Whose do you take it to be? Are you acquainted with his Son's Hand?

Rafter. I don't know whether it his Son's or not.

Mr. *Just. Pratt*. Are there any other Persons that write for him?

Rafter. He had sometimes.

Mr. *Att. Gen.* Here is a Letter of his own Writing; pray let him look on that, and see whether that is his Hand; do you believe that to be his Writing?

Rafter. No, I don't think it is.

Mr. *Att. Gen.* *Curtis* has prov'd that he own'd that Letter.

Prisoner. What Letter did I own?

Then *Simon Francia* was call'd again.

Mr. *Hungerford*. What do you say to that Book?

S. *Francia*. There is not one Syllable of his Writing in this Book; I have known his Hand-Writing about twenty Years.

Then *Barwell* was sworn.

Mr. *Hungerford*. Are you acquainted with the Prisoner's Hand-Writing? Is any of that Book of his Writing?

Barwell. None of it is his Writing.

Mr. *Hungerford*. Do you know what Condition of Health he was in about the latter End of the Year 1714, and 1715?

Barwell. He was sick.

Mr. *Hungerford*. For a Year before he was taken, what Condition was he in? Was he able to write Letters?

Barwell. He was sick.

Mr. *Hungerford*. Did he use to write Letters in that Time?

Barwell. I don't know.

Mr. *Att. Gen.* Whose Hand do you take it to be?

Barwell. How do I know that?

Mr. *Att. Gen.* Are you acquainted with his Son's Hand?

Barwell. No, not at all.

Then *Simon Francia* was call'd again.

Mr. *Att. Gen.* You have looked on the Book; whose Hand-Writing do you take it to be?

S. *Francia*. I don't know.

Mr. *Att. Gen.* Do you know his Son's Hand-Writing?

S. *Francia*. I never had any Correspondence, or great Acquaintance with him.

Mr. *Att. Gen.* Did you ever see him write?

S. *Francia*.

S. Francia. I don't remember that I did.

Mr. Ward. We will trouble you with but one Piece of Evidence more; we will call *Dr. Cade*, who attended him in his Sickness. We have offered Evidence, that no Part of that Book is his Writing; we will now offer some Proof that he was not capable of writing at that Time.

Then *Dr. Cade* was sworn.

Mr. Ward. Pray Doctor, did you attend the Prisoner as his Physician at any Time?

Dr. Cade. My Lord, I was sent for to him on the second Day of *November*, 1714. I attended him till the 18th of the same Month, and within that Time I visited him nine Times, I found him in a great deal of Pain, and he was lame in his Hand; some Time after my coming he grew better.

Mr. Ward. Was he confin'd to his Bed?

Dr. Cade. Sometimes he kept his Bed, and sometimes he sat up.

Mr. Ward. You say he was in Pain, and lame in his Hand; which Hand was it?

Dr. Cade. I don't remember which; nor do I know any thing of him, only at that Time.

Sir J. Fekyll. Every one of the Letters were wrote after that Time.

Prisoner. What Condition did you leave me in?

Dr. Cade. In a very bad Condition.

Prisoner. Did you not hear of the Condition I was in afterwards?

Dr. Cade. I don't remember that I heard any thing of you after that.

Mr. Ward. We will call a few Witnesses to prove what Circumstances he was in, and that he was well affected to the Government.

Mr. Hungerford. By my Instructions he appears to be a Foreigner, and so disinterested in those unfortunate Divisions that are amongst us: And accordingly there is nothing of *Whig* or *Tory* in his Letters.

Mr. Att. Gen. Don't you remember when he came to *Newgate* he wrote he liked his Company, for he found them all *Tories*.

Mr. Hungerford. We will shew you that he was zealous for the Good of the Kingdom, and was against all that was disadvantageous to Trade in the late Treaty of Peace. That he never went into any public Places, except to the *Grecian* Coffee-House, which is a Place sure not tainted with Sedition.

Then *Mr. Everall* was call'd again.

Mr. Ward. How long have you known the Prisoner?

Everall. Several Years.

Mr. Ward. Has he been peaceable, and easy in his Conversation, with Respect to the Government?

Everall. I remember at the proclaiming the Peace he said, he thought the Nation was ruin'd, for he thought it a scandalous Peace.

Mr. Att. Gen. That is much; for you make him a *Frenchman*, sure he might have approved it.

Mr. Hungerford. This is not what I have in my Brief, but perhaps he may recommend himself to your Esteem by it: He doth not to mine.

My Lord, I will take up your Time only with this Remark: The great Foundation of this Evidence is the Confession made by the Man himself. Without the Key made by him, this had been applicable to no Body. I remember *Sir*

Joseph Fekyll was pleas'd to say, he would not excite the Passions of the Jury, but rather appeal to their Judgments, so will I. Great Part of this Correspondence relates to *Mr. Harvey*, and one would have thought they had something extraordinary to have charged on him, considering the Length of his Restraint; but I need not observe to the Jury that he is at large. He was under Restraint, nothing could be imputed to him, and he is discharged.

L. C. Baron. *Francia*, have you any Thing more to say?

Prisoner. As for my Nativity I have more Witnesses. I have more Witnesses as to my Character. I have more Witnesses to prove that I was a quiet Man, and never disaffected to the Government.

Then *Mr. John Slater* was sworn.

Mr. Hungerford. What do you know of the Prisoner's Behaviour?

Mr. Slater. I have known him about four or five Years. There being a Commission of Bankruptcy against him, I was recommended to assist him in that Commission. I did give him the best Assistance I could, and I several Times met him, sometimes at the *Grecian* Coffee-House, and sometimes at my own House. I took him for a *Frenchman*, he used very much to espouse the Interest of the King of *France*, which I used to chide him for. As for Parties here, I had some Discourse with him, and he used to think we were a strange People to fall out among ourselves.

Then *Thomas Richardson* was sworn.

Mr. Hungerford. What do you know of the Prisoner and his Behaviour?

Richardson. I have known him five or six Years, and I believe I have taken five or six Pounds of his Money. When he was sick he took a Liking to me, and would not be quiet unless I came often to see him, and I used often to sit with him in an Evening and bear him Company, and it was a great Surprize to me when I heard he was taken up, for he used often to drink a Health to King *George*, and hoped he should get up to see him, and hoped this would be a quiet Nation again. He was then so weak that he could not stir Hand or Foot. But he used to call me *Vulcan*, and bid me drink King *George's* Health.

Mr. Hungerford. How long is it since he was so weak that he could not stir Hand or Foot?

Richardson. About a Year and five or six Months. And when he got abroad I then was forced to follow him for what he owed me, and I have gone after him several Times to the *Grecian* Coffee-house.

L. C. Baron. Have you any thing more to say?

Prisoner. No.

Mr. Soll. Gen. My Lord, I must beg Leave (by Way of Reply to what has been offered, on Behalf of the Prisoner) to say, That this is a Cause of very great Concern to the King, to the Royal Family, and to the whole Kingdom in general; and I may with Justice affirm, that this Day one of these two Points must be determin'd; either that the Prisoner at the Bar is guilty of High-Treason, or that no Man can, as the Law now stands, be convicted of holding a foreign, traitorous Correspondence, if this Evidence be not sufficient; for here has been the strongest Evidence given of such a Correspondence, as I believe

believe ever was, or perhaps ever can be given, according to the Nature of the Thing.

The Gentlemen of the Jury will consider the Nature of the Treason, as it is laid in the Indictment, it is for compassing and imagining the Death of the King; now, that rests in the Imagination, and is compleat in the Mind; but there must be some open or public Act that must appear to you in Proof, to convince you that the Prisoner had that Imagination. There are three Overt-Acts laid in this Indictment, and we have produced Evidence sufficient for the Proof of two of them, though if any one of them be prov'd, it is enough. The first is, conspiring, consenting and agreeing to raise an Insurrection and Rebellion within this Kingdom, in Favour of the Pretender; and for conspiring, consenting, and agreeing to solicit and procure from *France*, Arms, Ammunition, Men and Money, to aid and assist in such Rebellion; and the last is for composing and writing several treasonable Letters, declaring his Intention and Resolution to levy that War, and to raise that Rebellion.

The Evidence that has been given is of two Sorts; it consists first, of Letters wrote by the Prisoner himself to his Correspondents in *France*; and secondly, of Letters wrote to him by such Correspondents, signifying the Receipt of Letters wrote by the Prisoner to him, touching this traiterous Design. For Proof of the Letters wrote by the Prisoner, we have produced his Copy-Book of Letters, wherein they are entered, proved to be Part his own Hand-writing, and the rest his Son's; and indeed, it is a surprizing Thing, that that Copy-Book should remain, which indeed is so rare a Way to perpetuate the Testimony of Treason, as I believe the like Evidence is never to be expected again; and it is absurd to expect, when a Traitor writes in a foreign Country, that he should be able to produce the Original Letters. The Proof of this Copy-Book to be his is beyond doubt; it is prov'd by his own Confession, before three Witnesses, and in very strong Terms, *This, says he, is my Copy-Book of my Letters to my Correspondents abroad.* Is it possible that stronger Evidence can be given? Nay, he goes farther, as a Noble Lord informed you; for when he was examining the Prisoner, and the Prisoner pretended that he was only a Conveyer of Letters, but did not write himself; says he, *As to what I have wrote, I appeal to my own Copy-Book of Letters.* They have brought indeed some Witnesses to say, That they believe that the Copy-Book is not of his Hand-Writing, though they don't tell you whose Hand it is. But that is not material, nor of any Weight, for Copies of Letters are sometimes enter'd by the Parties themselves, and sometimes by their Servants, or others whom they appoint, and that is the same thing; but to answer that sully, the Prisoner has confessed that Part of this Copy-book was of his own Hand-writing, and the rest of his Son's.

As to the other Letters from *D'Aulmay*, his *French* Correspondent to him, which are many in Number, we have given the best Proof the Thing is capable of; we have produc'd the very Original Letters themselves, directed to him, with the Post-Mark from *France*, found all in his Custody, and confessed to be his Letters which he received from *France*, before three Witnesses. This shews evidently that there was a traiterous Cor-

respondence, and is a plain Evidence, that the Prisoner sent those Letters mentioned to be received in *D'Aulmay's* Letters to him, to which these were Answers, and the Letters exactly tally as to Dates, Circumstances and Subject. If there had been but one of those Letters sent to the Prisoner, containing treasonable Matter, it would have been Misprision of Treason, if he had not discovered it; but his going on with the same treasonable Correspondence for Months together, and in so many Letters, in every one of which he charges the Prisoner with writing High-Treason, and he preserving all those Letters, concealing and keeping them close; this is a strong Evidence of his Approbation and Assent to that Treason and traiterous Correspondence. And so it is in the common Case, if a Man meet accidentally, not knowing of the Design, and light into the Company of Traitors, and hear their Discourse and say nothing, if he don't discover it, he is guilty of Misprision of Treason only, as a bare Concealment; but if he comes a second time into their Company, and meet them again and hear their Consultations, or the same Treason is proposed and talk'd of, and he conceals it, he is guilty of High-Treason; because it shews a Liking and an Approbation of their Design, and so it was resolved in Sir *Everard Digby's* Case. So here, all these Letters that came from *D'Aulmay*, and were kept up close by the Prisoner, containing treasonable Matter, shew his Approbation of the Treason, and are a strong Evidence, that he sent those Letters to his Correspondent *D'Aulmay*, to which these are Answers: It has been said, that admitting these Letters were sent by *D'Aulmay* to the Prisoner, yet he is not answerable for what others write: That, surely, is a great Mistake; for if what he writes be Treason, it is his Duty to disclose it; and if he do not, but continue to receive such Letters, this is a clear Proof of his traiterous Correspondence, and by that he makes the Treason his own. They object farther, that the Prisoner was only a Conveyer of Mr. *Harvey's* and the Duke *D'Aumont's* Letters; but that this is otherwise, appears from the Letters themselves, for most of them relate to himself, and are meant of himself, and of a Correspondence with him; for it appears from his own Confession in his Examination proved by three Witnesses, that this *French* Correspondence held from a little before the late Queen's Death, till a few Days before his Examination; which shews that the Correspondence was his own, and carry'd on by himself.

In the next place we come to consider the Exposition and Meaning of these Letters, whether the Subject Matter be Treason or not; one of the Council for the Prisoner said, there was nothing in them but about Dogs and Horses; but that is a Mistake, for those were Mr. *Harvey's* Letters, which talked sometimes of Dogs and Horses; but give me leave to say, there seems even in them to be a good deal of Treason, intermixt with the Discourse of Dogs and Horses. Let us examine some of his own Letters, and see whether the Subject Matter be not treasonable. It is not to be expected that Men will in these Cases speak out plain; no, the Treason is always to be dressed up in a Cant, and many of these Cases have appeared in this place. In my Lord *Preston's* Case, the Overt-Act charged there, was sending treasonable Letters to *France*, to give the Prince of that Nation an Account of our Strength and Forces here;

here; those Letters run all in a sort of Cant, and it was in that Case pretended, that the Meaning was uncertain, and that no Body knew what to make of some of the Expressions in them; but notwithstanding that, both Judges and Jury took upon them to understand them, and he was found Guilty of High-Treason.

In the Letter of the 26th of February, *D'Aulmay* writes to the Prisoner, and desires to know some News, because the Interest of his Wife and Family, which, says he, is *Irish*, is concern'd in it, his Wife being a *Butler*, and of Kin to the Duke of *Ormond*. *Francia*, in Answer to that Letter writes him word, as for News, that he heard there was a Marriage in good forwardness between the Prince in *Lorraine* and one of the Arch-Dutcheffes. "Let me know, says he, what there is in it, since 'tis essential to the Interest of your Wife, that is to say, that *Ireland* as well as *England* was concern'd in the Pretender's Marriage; for every one knows who is meant by the Prince in *Lorraine*. Now see what Answer *D'Aulmay* sends back, he gives his Opinion freely, and thinks that this intended Marriage of the Chevalier de *St. George* (which by the way explains who the Prince in *Lorraine* was) with the Arch-Dutcheffes, would not be a sure way to bring his Affairs to an happy Issue. What was to be done then? *Why*, says he, a Party-War would be much more to his Advantage. Is not this easily to be understood? Is not this Party-War a Civil-War, an Insurrection, a Rebellion? *D'Aulmay* then giving his Opinion, that a Rebellion was the most eligible Way; what is the Prisoner's Answer? why he closes with the Advice, but says, *That Persons of Fifty or Sixty Thousand Crowns a Year can't with Prudence run the Hazard of losing such Estates, unless more Encouragement be given them*: What is this but soliciting Aid and Encouragement from *France*, for an Enterprize in which Men of Estates must run the Risque of losing them? It is said Persons in the Plural Number, not one single Person, tho' the Prisoner's Council endeavour'd to put such a Colour upon it; but it is plain in a Party-War many must be concern'd.

In his Letter of the 28th of *March*, after he had express'd a great deal of Uneasiness and Impatience, the Negligence and Delay of this Assistance from *France*, not usual in that Nation, after he had wrote again and again, and wonder'd the Delays were so great; at last, says he, *We are now to expect every thing from your side the Water*. What can be the meaning of this, but that the design'd Rebellion here was to be encourag'd from *France*. And this surely is as much as can be expected in an Affair of Treason, unless People were to write out plain, which is never to be expected, unless from Fools and Ideots who cannot commit Treason. All *D'Aulmay's* Letters to the Prisoner tally with those of the Prisoner's own, and pursue the same Design, tho' under a Cant which runs thro' most of them, as was in the Lord *Preston's* Case. In that Case there was the Cant of a Law-Suit, as in this; but my Lord Chief Justice *Holt*, and my Lord Chief Justice *Pollexfen* said, that would not acquit his Lordship of Treason, if the Jury understood them in that Sense as every Body else would. And why Words and Letters are not to be understood in Court, as every Body understands them out of Court, is a hard Matter to be explain'd.

It was indeed insisted by the Council for the

Prisoner, that there really was a Cause recommend- ed to the Prisoner's Care, that is very true; but then the Distinction between this private Cause, and the public Cause of the Pretender, appears from many of *D'Aulmay's* Letters; sometimes he calls it our Cause, sometimes the Cause of our Common Friend, and in a very remarkable Letter of *D'Aulmay's*, dated from *Paris*, 7 August 1715. he says, *The Prisoner was in the right to inveigh against that Indolence he reproached them with; but be persuaded, says he, 'tis only so in Appearance. I even hope, that by this time you have convincing Proofs of it, and that we make suitable Returns to the good Disposition on your Side, and that at last, God blessing the just Cause of our Friend, will let him gain his Suit*. To explain this Letter, the Time is very material, for on the 20th of July before his Majesty inform'd his Parliament, that he had undoubted Intelligence of the Pretender's Design to invade these Kingdoms from Abroad. And in other Letters he distinguishes between the private Cause, and the Cause of the Pretender, and calls it my Cause. And in a Letter of the 14th of September 1715. *We know already, says he, what you tell us about the Cause of our Friend, which will soon end to his Satisfaction, or all Appearances will deceive us; and then says, as to my own Cause, I can't help telling you, that my Fate is very unhappy to have to do with so dishonest a Man; if Treason be not meant by those Letters, what is; Let the Prisoner tell us the Meaning of them. Neither he, nor his Council, have offer'd at any other Interpretation, nor have offer'd to explain but one single Letter in the whole Packet; and that has been observ'd was a poor Interpretation, and contrary to the very Grammar and Sense of the Letter. But what puts this Matter beyond doubt, if there could be any, about the Meaning of these Letters, is, that he himself tell you in his Examination, in express and positive Terms, that the Subject Matter of the Letters that were to be communicated to Mr. *Harvey*, which are the Letters now produc'd in Evidence, was the Intention of the Pretender to invade his Majesty's Dominions; and when he himself has allow'd this, who is to gainsay it? Can you have a better Witness than himself, to the Subject of his own Letters, and to explain his own Meaning?*

There have been some Reflections offer'd which by no means ought to have been, and I think were very improper on this Occasion; and it is our Duty to take notice of them when they are offer'd. It was said, by way of Reflection, that first of all, the Prisoner's Books and Papers were seized, and then they were turn'd upon him, and made use of against him, as if this was illegal, unusual, and new; when every Body knows in those Cases, there can be no other Evidence; and is the same that has been done in all Ages past, and must be done in all Ages to come. I am sure they have no reason to charge the Government with Inclemency; there has been shewn, even in this very Case, as much Clemency and Tenderness as was possible. When the Noble Lord, my Lord *Townshend*, had the first Information of treasonable Practices against the Prisoner, he had been justified, if he had immediately sent his Warrant and sent him to *Newgate* for High-Treason; but instead of that, he was cautious, and was willing to be further inform'd before he committed him; and therefore he sends to the Post-Office and orders his Letters to be stop'd, in which he found the

the treasonable Correspondence confirm'd; and then he was taken into the Custody of a Messenger only, in order to be examin'd. His Lordship thereupon gave him all the Opportunities he could desire, of throwing himself at his Majesty's Feet; but he grossly prevaricated with his Lordship, as appears by that Letter wrote to his Wife; wherein he takes notice, that in *Newgate* they were all Tories, and the Majority for the Government, *i. e.* sent thither upon that Account: "You know, says he, why I am here, which can't be a Dishonour to me, be then at ease; I have not said any thing against Mr. *Harvey*, nor nothing can be done to him; he can only be suspected to be the Pretender's Friend.

And now give me leave to take notice, that in this Letter he gives a further Explanation of this Business; for he says, *According to their Information, i. e. the Tories, though every thing should fail, my Lord Townshend could do nothing, for Affairs will be at an end in less than a Fortnight.* Now the time is very material, every one knows that the Rebellion was just then breaking out; it began in *Scotland* in *September*, and in *England* in *October* following. They have call'd some Witnesses to the Prisoner's Reputation, but they have not proved any thing material on that Head, nor given a tolerable Account of him. But if they had, it would in this Case be of little or no weight; when a thing is doubtful, Reputation may sway a little, but in Cases where the Evidence is so full and plain as in this Case, it can have no Signification or Weight. It was observ'd by us, that when the treasonable Correspondence began to be more plain and full, then the Prisoner desisted from entering his Letters in his Copy-book; in Answer to which, it was urg'd by the Prisoner's Council, that it was improbable it should be so, for that the Correspondence was entirely interrupted for several Months together, because as they insisted in one of *D' Aulmay's* Letters, dated 17th *September*, he complains he had not heard from the Prisoner in three Months; but that is grounded on a Mistake, for the Person that uses that Expression, is not *D' Aulmay*, but another Person, and it is wrote in *French* in a Postscript under *D' Aulmay's* Letter; for in the Beginning of the Letter it self, *D' Aulmay* expressly says, he had received the Prisoner's Letter of the Ninth Instant, which shews the Correspondence continued, but was too gross to enter such Letters in his Copy-book, or to write under the same Name; for now, he says, when he has any thing material, he would write in a strange Hand, and would sign it by the Name of *Jacques Chrétien*, and that Mr. *Harvey* might write under the same Name too; but none of these Letters appear.

Thus I hope I have answer'd every thing that has been materially objected by the Prisoner's Council, and if you, Gentlemen of the Jury, do believe that the Prisoner at the Bar wrote these Letters, the Copies whereof have been produced to you, and that those Letters produced from his Correspondent *D' Aulmay*, were receiv'd by the Prisoner, and that he wrote the Letters therein mentioned, and that he has therein carried on a traitorous Correspondence, you will acquit yourselves to your King and Country, and find him Guilty of the High-Treason charg'd upon him.

Mr. *Coxopet*. My Lord, it may be proper on this Occasion, Mr. *Sollicitor* having repeated the particular Parts of the Evidence, to take notice

of some Things, that have appeared in general in the Course of this Trial: We think it of Importance to the Public, that this traitorous Correspondence should appear in a proper Light, that the deluded Populace may be no longer to seek, who were the Persons that incited, and fomented the late unnatural Rebellion.

The Gentlemen of the Jury will observe, that our Evidence begins with a secret Information which was given to a Noble Lord who was then Secretary of State, of a traitorous Correspondence carried on by the Prisoner, and his Accomplices: That Information was not immediately or hastily relied upon, but Orders were given that all Letters, directed to *Francia* the Prisoner, should be intercepted at the Post-Office; accordingly you have heard, that several Foreign Letters from *France*, directed to the Prisoner, were stopp'd, and sent to the Secretary's Office; those Letters fully disclosing the Treason, it was thought Time to issue a Warrant, and send a Messenger to seize the Prisoner and his Papers; and it is to us wonderful, that one of the Council for the Prisoner should undertake to censure that Proceeding, the Neglect of which must have been censured, if it had not been done: After an Information receiv'd, of so vile and dangerous a Conspiracy, confirmed and made evident by Letters intercepted, was it possible for one, entrusted in so high a Station, under his Majesty, to do less than to cause the Person and Papers of the Prisoner to be secured?

You have heard, Gentlemen of the Jury, that from the Time of seizing the Letters, and Copy-Book of Letters, in the Lodging and actual Custody of the Prisoner, there is a regular and certain Proof, as to the Identity of the Book, and Papers produced at this Time, and given in Evidence; they were carried by the Messengers just as they were taken, to Mr. *Walpole*, who deliver'd them to Mr. *Buckley*, and the Witnesses all speak likewise, to the Book and Papers themselves, so that there remains no Manner of Dispute concerning them.

Amongst these Papers, Gentlemen, you will observe, there is one Letter that relates to Mr. *Harvey*, which is now produced because it is Evidence against the Prisoner *Francia*: He, it seems, was to manage Mr. *Harvey's* Correspondence, and did so for a considerable Time, but at last Curiosity prevail'd; and it is very remarkable, by what Accident that Original treasonable Letter happens to appear now in this Place: It seems the Prisoner, in Breach of the Trust and Confidence which was reposed in him, and to gratify his Curiosity, opened the Letter, and finding he could not seal it up, and put it together again in that manner, but that it might be suspected he had opened it; for that Reason he himself kept the very Original Letter under Mr. *Harvey's* own Hand. When that Letter comes to be read, it appears to be mysterious, as to the Figures and Numbers made use of, instead of the Names of Persons, but the Prisoner's Examination explains it, which shews he was Master of the Key, and of the Secret.

This Discovery was attended with Circumstances that will have their Weight, in a Cause of this Nature, when this Letter found upon the Prisoner, is produced to the Person that wrote it, before a Committee of the Lords of the Council, you have heard that he was in the utmost Disorder,

order, as indeed well he might, that he express'd himself ready to disclose all that he knew; for what Person being in his Condition, and seeing one of his own Letters, which he believed safe in the Hands of his Correspondents Abroad, would not have believed the Government Masters of the rest; I dare say *Francia's* impertinent Curiosity was then unthought of and unsuspected. I am sorry, Gentlemen, to mention a particular Accident, which, however, serves to shew that the Correspondence was of a dangerous Nature, otherwise what Account can be given, that that Gentleman should, in about twelve Hours after, make a desperate Attempt upon himself?

Mr. *Hungerford*. My Lord, I apprehend that nothing of this Matter ought to be mentioned here; whatever Mr. *Harvey* was liable to, he is now at Liberty.

Mr. *Cowper*. I say, my Lord, it had that Consequence, and if it had not been a Discovery of the utmost Importance, if it had not been thought very dangerous in its Consequence to himself, that Attempt upon himself had never been made: But so it was, and it is so far material, as it was occasioned by Part of that Correspondence which the Prisoner was employ'd to transmit to the Conspirators in *France*.

You have heard, Gentlemen, that *Francia*, when he was first examined, capitulated for himself; that he promised to make a full Confession, and accordingly gave in a first, and second Information, which have been read to you; and I dare say, when he signed those Examinations, he really intended to save himself by a Discovery of his Treason; but when he had taken Counsel with his Party and Fellow-Prisoners in *Newgate*, you find by his Letter to his Wife, he changed his Mind, and the Expression is to this Effect, *He hopes he had said nothing that could hurt either himself or Mr. Harvey, and that he laugh'd at any thing the Government could do to himself.*

Your Lordship has heard how artificially and maliciously it has been insinuated, that the Noble Lord, the Secretary of State, gave some Hopes of Intercession to be made in Favour of the Prisoner; I firmly believe, no Man living that knows that Lord, but thinks he would have been better than his Word, if the Prisoner had honestly deserv'd it. Whatever was said upon that Occasion, proceeded from the Prisoner's Assurances, that he would make a full Confession, that was the Ground and Condition upon which the Prisoner was told he should be recommended to Mercy. But let the World judge, whether that Noble Lord could justify it to the King, his Country, or to himself, to interpose in his Favour, when he came to discover by a Letter under the Prisoner's own Hand, that he was resolv'd to conceal all that he knew: Surely, the Condition being broke by the Criminal himself, it became the Duty of the Noble Lord not to intercede for an obstinate Offender; one, that was determined to abide every Extremity, rather than do his Duty, by disclosing those Treasons that were latent in his Breast; so that we owe the Discovery which is made by the Examinations to the same Providence that has brought to Light the rest of the Evidence in a strange and wonderful Manner.

After so much Time has been spent, it would be tedious to observe the particular Passages of the Letters which have been given in Evidence, only this I would observe, that when the Rebel-

lion was not so near at hand, there seems to be some little Caution used in penning the Letters which have been read out of the Copy-book; but as the Time grew near, the Correspondence also grew more warm and open, as may be perceived by the Letters from Abroad; which is the Reason, Gentlemen, you find him discontinue entering his own Letters in his Copy-book. It has been said by his Council, Can it be imagined that a Man would copy and enter Letters of a criminal Nature? but Gentlemen, the Question is, Whether he has done it? And you hear it proved by three Witnesses, that he owned it to be his own Copy-book of Letters to his Correspondents Abroad; so that there can remain no doubt, but that every Letter in that Book is a Copy of the Original wrote by the Prisoner: Whoever will observe the Time when he discontinues entering his Letters as formerly, which was just as the Rebellion was breaking out, will think it a strong Evidence, if Evidence were wanting, that the Letters enter'd, contained a criminal and traitorous Correspondence.

Had the Correspondence been innocent, the same Method would have been continued; for the Rebellion had nothing to do with the sham Law-Suit. But as the Rebellion grew nigh, it became necessary to be more express and plain, as appears by all the Letters to *Francia* from abroad; which is the true Reason he discontinued entering his own Letters. Can any Body than can hear or read, doubt, but that the Prisoner continued to write to his Friend *Payen*? I think there is not one Letter directed to the Prisoner that don't in the first Line of it acknowledge the Receipt of the Prisoner's, *Yours of such and such a Date I have received*; and some of them acknowledge the Receipt of two Letters from the Prisoner at the same Time, which shews his Diligence, and proves, that he writ oftener to his Correspondent than his Correspondent to him. You see, Gentlemen, the Letters from *D'Aulmay*, alias *Payen*, to the Prisoner, make it manifest he went on to the last in the same traitorous Correspondence; but it can't be expected his Original Letters should be produc'd. *D'Aulmay's* Letters plainly intimate the Tenour of the Prisoner's: I will trouble you but with an Instance or two amongst many that might be observed.

Of this kind are all those Letters which dissuaded the Prisoner from being impatient; that give him Assurance they are not dilatory; that promise him every thing will answer his Expectation. All these, and many other Expressions of the like kind, manifesting that he was soliciting Aid from *France*, and that he did what in him lay to incite, promote, and encourage an Invasion from Abroad, and the Rebellion at Home.

This Gentlemen, is the Nature of the Evidence that has been laid before you: The Discovery was accidental, the tracing of it is strange and wonderful. Deep and secret are the Councils of Traytors; and yet we see, let them be never so cautious, whatever Method they may take to disguise their Treason, whatever subtle Inventions may be used to carry on their Conspiracy, yet the same Providence that has placed his sacred Majesty upon the Throne of his Ancestors, will continue to guard and protect him, and to baffle the Devices of his Enemies. Upon the whole Matter, we think we have fully prov'd the Treason and the Overt-Act laid in the Indictment.