

Clarke. *New York.*

L. C. J. Surely it doth appear, that these Men were shipped a great while ago.

Capt. *Blague.* Some of them have had a Dependence upon me a great while, one hath depended upon me I believe seven Months.

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

Capt. *Blague.* No, my Lord.

L. C. J. Look you, Gentlemen, you that are of this Jury; this Gentleman is indicted for conspiring the Death of the King, and doing some Acts in order to it, that is, endeavouring to surprize the *Tower*, and raising of Men, and preparing of Shipping and Guns, and this on purpose to surprize the *Tower*. That there was an evil Design, a very wicked notorious Design of seizing the King's Person, and killing the King, that is most certain, you have heard it by a great many Witnesses, and it is a thing, I think, not to be doubted of by any. The Question is, Whether this Man be guilty of it, and hath undertaken any thing in relation to it. Look you, you ought to have in such Cases of High Treason, as you have been told, you ought to have two Witnesses against a Person. Here are two Witnesses produced, one of them does speak very shrewdly to the Case, and tells you, he had it from this Person himself; that he had spoken with *Goodenough* about this Matter, about surprizing the *Tower*, and that he told him it was an easy thing to surprize the *Tower*, and that he could do it; that he had a Ship ready, and he would undertake that 200 Men should be ready with Mortar-pieces from *Southwark* Side, to throw them and beat down the *Tower*, so that it might have presently been down. First, Mr. *Leigh* doth say, that the Captain there at the Bar, that he was oftentimes with Mr. *Goodenough*, and Mr. *Rouse*, and others, who it is plain were in that Design, both *Rouse* and *Goodenough* was, and that he heard *Goodenough* say, that the Captain had undertaken it; and he says, that the Captain had Discourse with *Goodenough* about it. He says, the Captain asked him, in order to this, what Money could be raised, and he told him there was 40,000*l.* and the Captain told him, that was but a small Matter, the Seamen would eat up that; and *Goodenough* told him, there was a greater Bank in *Holland*, that would be brought over. So that this Evidence goes a great way. But then, Gentlemen, you must consider whether you have another Evidence or not. There is a Person that you call *Mate*, the *Mate* doth give a dark kind of an Evidence: He does say here, that he and the Captain had Discourse about the Way of taking the *Tower*, and he believes it was in order to take the *Tower*; but he does say, when he heard it, nobody was present but himself, and he was of one Opinion how the *Tower* might be taken, that is, by Scaling-ladders and Hand-granadoes; and that the Captain was of another Opinion, whether it might be the better taken by Mortar-pieces, thrown from *Southwark* Side; but whether the Captain had any Notice of this Design of taking it, he cannot tell, or whether he had any Acquaintance concerning it. So that this Evidence does seem to be somewhat-dark. Whether this were sportive, or a Trial of their Skill, or whether it was a Design to have Counsel and Advice one of another, which way to take it, I must leave it to you; whether it was done with an Intent and Design, for to find out the best way in order to the taking of it.

But if it were only a Discourse at large between them, and Endeavour to try their Judgments one with another; and speaking their Minds one with another in that Case, then this Evidence doth not come home to make him guilty of the Plot of taking the *Tower*, or taking away the King's Life. He tells you, he did speak of a Ball to be thrown up; but whether he ever heard of the other Design that *Leigh* speaks of, the first *Leigh*, *Thomas Leigh*, of throwing up a Ball by Sea-men, in order to the taking of the *Tower*, he knows not. *Leigh* says, the first Witness, he does not know any thing whether this Man at the Bar was ever acquainted with the Ball or not. If upon what you have heard, you believe there are two Witnesses to prove this Gentleman at the Bar guilty of this Design of surprizing the *Tower*, and killing the King, and taking the *Tower* in order to it in this manner; then you ought to find him guilty: But if you have not two Witnesses, that do testify the thing, then, Gentlemen, under two Witnesses a Man cannot be guilty.

After which the Jury withdrawing to consider of their Verdict, in a short Time returned, and brought him in Not Guilty.

Saturday 14th July, Lord Ruffel was brought to the Bar.

Cl. of Cr. **W**illiam Ruffel, Esq; hold up thy Hand (*which he did*). Thou hast been indicted for High Treason against our Sovereign Lord the King, and thereupon hast pleaded Not Guilty, and for thy Trial hast put thy self upon the Country, which Country has found thee guilty. What canst thou say for thy self why Judgment of Death should not pass upon thee according to Law?

L. Ruffel. Mr. Recorder, I should be very glad to hear the Indictment read.

Mr. Att. Gen. You may read it.

Cl. of Cr. Will you have it read in *Latin* or in *English*?

L. Ruffel. In *English*.

The Clerk read to the Words, Of Conspiring the Death of the King.

L. Ruffel. Hold, I thought I had not been charged in the Indictment as it is, of compassing and conspiring the Death of the King.

Mr. Att. Gen. Yes, my Lord.

L. Ruffel. But Mr. Recorder, if all that the Witnesses swore against me be true, I appeal to you, and to the Court, I appeal to you, whether I am guilty within the Statute of 25 *E. 3.* they having sworn a Conspiracy to levy War, but no Intention of killing the King: And therefore I think truly Judgment ought not to pass upon me for Conspiring the Death of the King, of which there was no Proof by any one Witness.

Mr. Att. Gen. That is no Exception.

Mr. Recorder. My Lord, that was an Exception proper (and as I think you did make it) before the Verdict; whether the Evidence does amount to prove the Charge, that is proper to be observed to the Jury; for if the Evidence come short of the Indictment, they can't find it

it to be a true Charge: But when the Jury has found it, their Verdict does pass for Truth. We are bound by the Verdict as well as your Lordship, we are to go by what the Jury have found; not their Evidence.

L. Ruffel. Without any Proof?

Mr. Recorder. The Jury must be governed by their Evidence.

L. Ruffel. I think it very hard I must be condemned upon a Point that there was not one thing of it sworn; and therefore I think I may very legally demand Arrest of Judgment.

Mr. Recorder. I hope your Lordship will consider, 'tis not the Court can give a Verdict, it must be the Jury. I believe there is nobody in the Court does delight in giving such Judgments, especially against your Lordship. The Verdict is found, and the King's Attorney General on Behalf of the King does demand it.

Mr. At. Gen. I do demand Judgment of the Court against the Prisoner.

Proclamation made for Silence; whilst Judgment was given.

Sir George Treby. Mr. Recorder. My Lord Ruffel, your Lordship hath been indicted, and tried, and found guilty of High Treason, the greatest of Crimes: Your Quality is great, and your Crime is great: And I hope and expect, that your Behaviour and Preparation in this Condition will be proportionable. My Lord, it is the Duty of the Witnesses to give Evidence according to Truth; it is the Duty of the Jury to proceed according to Evidence; and it is the Duty of the Court to give Judgment according to the Verdict. It is the King's Pleasure signified by his Attorney General, to demand Judgment against your Lordship according to this Verdict, and therefore, my Lord, I shall not delay it with any farther Circumlocution. The Judgment the Law hath provided; and is the Duty of the Court to give, is,

That you be carried back again, to the Place from whence you came, and from thence be drawn upon an Hurdle to the Place of Execution; where you shall be hang'd up by the Neck, but cut down alive, your Entrails and Privy Members cut off from your Body, and burnt in your Sight, your Head to be severed from your Body, and your Body divided into four Parts, and disposed at the King's Pleasure. And the Lord have Mercy upon your Soul.

Mr. At. Gen. Set up the other now.

Cl. of Cr. Set Captain Walcot to the Bar; Rouse and Hone.

Which was done, and they bid severally to hold up their Hands, which they did; and Captain Walcot being asked, What he could say why Judgment of Death should not be passed upon him, said,

Capt. Walcot. I have nothing to say; only I have one Favour to beg of the Court; whether it be proper to beg it now or no, I can't tell.

Mr. Recorder. What is it?

Capt. Walcot. I would beg the Favour, that the Youth my Son might come and see me, and some of my Friends.

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Mr. Recorder. Capt. Richardson does not deny it to any Man after he is condemned. That is a Piece of Humanity you need not ask: I never knew it denied.

Then Hone was asked what he could say against Judgment.

Hone. I beg the same Favour:

Mr. Recorder. Ay, ay, God forbid! You had best ask for some Divine to come to you.

Then Rouse was asked the same Question.

Rouse. I would speak of the Disadvantages I had when I came upon my Trial. When I was put upon my Trial, you know very well, I begged the Favour of some things: One was a Copy of the Indictment, when I saw a Person come before me, who in his own Conscience knew was the Author of all these Things. I have nothing to say against the Judgment or Verdict. I always had a great Veneration for the Constitutions of the Kingdom. I pray God forgive them that came against me. I wish I had no more Weight upon my Legs, then I have in my own Conscience. I prayed a Copy of my Indictment. These Things unexpectedly came upon my Trial, that I had not Opportunity to speak what I should.

Mr. Recorder. We are content to hear you. But observe, you are to answer the Question that is asked, Why Judgment should not pass upon you? You say you won't speak against the Jury, we must not hear you, nor against the Verdict.

Rouse. I have one Word more. and that is, the vast Difference between the Indictment and their Oaths. The Indictment was, That such and such Words and Discourses passed the second of March. The Oaths sworn were, That the Words were not spoken then; but the last of June, which was three Months Difference; but however the Jury have pleased to find it: I must throw myself at his Majesty's Feet: I have nothing more to say.

Then Silence was proclaim'd, and Judgment given against Walcot, Hone, and Rouse, in like manner as upon the Lord Ruffel.

The Execution of Captain WALCOT, JOHN ROUSE, and WILLIAM HONE, on Friday July 20. 1683.

Captain Thomas Walcot being drawn to Tyburn in one Hurdle, John Rouse and William Hone in another, and there put into a Cart, the Reverend Dr. Thomas Cartwright, Dean of Rippon, and one of his Majesty's Chaplains in Ordinary, with Mr. Smith, the Ordinary of Newgate, acquainted Captain Walcot, That this was the last Time he had to spend in the World, and therefore desired him to make a good Use of it, telling him, *That as Death leaves him, so Judgment will find him;* and earnestly exhorted him to make an ingenuous Discovery and Confession of what he knew touching the Conspiracy and Treasons, of which he had been found guilty; and received Sentence to die.

To this Capt. Walcot replied, That he had some Papers in his Pocket, of what he had prepared to say, in Writing, because his Memory was bad;

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bad ; therefore he desired they might be pulled out, and he would read them.

Then Dr. Cartwright and the Ordinary spake to *Hone* and *Roufe* to the Effect before-mentioned, earnestly desiring them to confess the Whole of what they knew ; instancing some Places of Scripture to them, as *Joshua's* Advice to *Achan*, &c. *My Son, confess, and give Glory to God, whom you have dishonoured*, &c. telling them, they would have imbrued their Hands in the Blood of a merciful and good Prince, who had often pardoned, and gave many Acts of Oblivion and Indemnity to his Subjects ; and whose Reign hath preserved the Purity of the Protestant Religion amongst us : That we cannot enjoy more than we do enjoy : With other good Admonitions for them to make clear Discoveries of the Truth of what they knew.

Captain *Walcot*, in the mean while, was preparing to read his Speech.

Dr. Cartwright ask'd him, If he could discover any more than he had done already ?

Walcot. I've not in the General. I told the King the thing was laid very deep : There was a Gentleman with me last Night. I told him what I told the King, and that was all : I told him, I thought an Act of Indulgence would be very necessary, because he had a great many Men to take Judgment of. I know not the Particulars of the Design ; but the King hath the Lord *Howard*, Mr. *West*, and others, that know more than I. I was never in Council with them, nor never with them above four, five, or half a dozen times.

Then looking upon his Paper, he began his Speech as follows :

This great Concourse of People do not only come here to see me die, but also to hear what I shall say ; but because I would not be reproached, and thought to be an Atheist when I am gone, I have two or three Words to speak for my Religion. I do believe in Three Persons, and One God, and I expect and hope to be saved by the Merits and Righteousness of his Son *Christ Jesus*, without the Hope of an Advantage by any Merits or Righteousness of my own. And I believe, that the Scriptures of the Old and New Testament are the Word of God ; that *they were not written according to the Will of Man, but holy Men of God writ them as they were inspired by the Holy Ghost*.

I believe that these Scriptures ought to be the Rule of our Faith, and the Method of our worshipping of God : I believe that as *Christ* is the Head of his Church, so he is their Lawgiver ; that it is not in the Power of any Council or Conclave of Cardinals, or Power upon Earth whatsoever, to set up the Precepts and Traditions of Men, and to make them of equal Validity with the Word of God. I believe it was not because the *Jews* rejected and crucified *Christ*, that he rejected them, but because they rejected his Word ; which appears by the Three thousand that God by one Sermon of *Peter's* converted ; they being pricked in their Hearts, and touched in their Consciences, cried out, *Men and Brethren, what shall we do ?* And they were that Day added to the Church. It was certainly because the *Jews* rejected the Word and Gospel of *Christ*, that the Things were hid from their Eyes, which belonged to their Peace. It is a dreadful thing to reject the Word of God ; and it is a dreadful thing to live

in a sinful Course of Life, till God withdraws his Spirit from us : For it is said, *It shall not always strive with Man. Death is the Wages of Sin*. I believe, had not *Adam* sinned, he and we, his Posterity, had not died. Death is said to be the King of Terrors ; but it is only so to those that are terrified with a terrifying Conscience, that have the Arrows of the Almighty sticking in them, from Convictions of great Guilt, and see no Hopes of Mercy, have no Assurance of Pardon ; but those that are *Christ's*, he takes away the Terror, and Horror, and Sting of Death ; he enables them to say with *Paul*, *To me to live is Christ, and to die is Gain* : He enables not only to get unto *Christ*, but into *Christ* ; and so they have Communion and Fellowship with the Father and the Son. It is no hard matter to get the Notions of the Promises of the Gospel into our Heads ; but unless the Lord is pleased to apply them to our Hearts, we cannot believe ; except we be in *Christ as Branches in the Vine*, we are not Christians indeed. It was the Case of poor *Francis Spira* : He was certainly a knowing Man, but notwithstanding he had not Faith to apply the Promises. *Christ* hath said, *That he that believes in him, tho' he were dead, yet shall he live ; and he that lives and believes in him, shall never die*. So, if we be able to apply the Promises by the Spirit of God, we may have Comfort thro' Faith : But then Faith is the Gift of God, and Faith comes by bearing the Word of God, and receiving it in the Love of God.

I shall not be tedious, Mr. Sheriff ; I shall be very short.

Mr. Sheriff. Take your own Time.

Walcot. As to the present Occasion of my Death, I do neither blame the Judges, nor the Jury, nor the King's Council ; I only blame some Men, that in Reality and in Truth were deeper concern'd, and more engag'd than I, that came in as Witnesses against me, who swore me out of my Life to save their own ; and who, for fear they should not do it effectually, contriv'd that, which I will appeal to you all, whether there be a Probability in it or not ; for they said, that I made it a Scruple of Conscience to have a Hand in killing the King, or to embrue my Hands in his Blood, but was so generous as to undertake the charging his Guards whilst others did it, and to the end another might do it. Truly I will appeal to all that know me, whether they believe me so much an Idiot, that I should not understand it was the same thing to engage the King's Guards, whilst another kill'd him, as to kill him with my own Hands. But however, by their swearing against me, they have secur'd their own Lives and Estates, and made my Blood the Price of theirs. I confess I was so unfortunate and unhappy, as to be invited by Colonel *Lumfey* (one of the Witnesses against me) to some Meetings, where some Things were discours'd of, in order to the asserting our Liberties and Properties, which we looked upon to be violated and invaded. But it was he, and Mr. *West*, and some Gentlemen that are fled, who were the great Promoters of those Meetings. I was near a Quarter of a Year ill of the Gout, and, during that time, Mr. *West* often visited me, and still his Discourse would be concerning *Lopping the Two Sparks* ; that was the Word he us'd, meaning the King and the Duke ; and propos'd it might be done at a Play : This was his frequent Discourse ; for he

he said, then they would die in their Calling; it was his very Expression. He bought Arms to do it with, without any Direction of mine; I never saw the Arms, nor I never saw the Men that were to do it; though they said they had Fifty employed to that End. I told several of them, that the killing the King would carry such a Blemish and Stain with it, as would descend to Posterity; that I had eight Children, that I was loth should be blemish'd with it; and withal, I was confident the Duke of *Monmouth* would revenge his Father's Blood, if it were but to vindicate himself from having any Hand in it. Mr. *West* presently told me, that the Duke of *Monmouth* did not refuse to give an Engagement, that he would not punish those that should kill the King.

And now I desire to forgive all the World from the very Bottom of my Heart; and I pray God of his Mercy from my Heart to forgive them, even Mr. *Sheppard*, who delivered me up, who promised to carry me into *Holland*; but instead of that, he brought me into the Condition wherein I now am. I do desire with all my Heart to forgive the Witnesses, and withal, do earnestly beg, that they may be observ'd, that some Remarks may be set upon them, whether *their End be Peace*, and that *they die the common Death of all Men*. Certainly, though it be the Law of the Land I ought to die, and the King may justly and reasonably put me to Death for being in those Meetings where a War was debated; yet I think these Men are guilty of my Blood, that were as deep in as I, and have betray'd me, and taken it away. Then in the next Place, I beg Leave, Mr. *Sheriff*, to speak one short Word of Advice to my Friends, that hath been often given to me. though I was not so fortunate and so happy as to take it; and that is, that they would neither hear any Man speak, nor speak themselves, that which they would not have repeated; for there is no such thing as Faith in Man to Man, whatever there is in Man to God: Either the Tears of a Wife, or a Family of little helpless Children, something or other, will tempt and provoke Men to betray one another. When God hath a Work to do, he will not want Instruments, for he can make them; nor will he want a way to do it, for he can contrive it, and bring it to pass. And I do most heartily desire, and my earnest Prayer to the Almighty is, That this may be the last Blood spilt upon this Account. I know, Acts of Indulgence and Mercy in the King would make him much easier in his Government, and would make his People sit much easier under it; and that the Lord may incline his Heart to Mercy, ought to be the Prayer of every good Man. What hath happen'd, and what hath been the present Occasion of our Calamity, I suppose every Man knows; what Provocations have been on the one Hand, Fears and Necessities, Jealousies and Sufferings of the other, I will not intermeddle with, resolving to use my utmost Endeavour to make that Peace and Reconciliation with my God, which is impossible for me to make with Man; and to make it my hearty Prayer to the great God, before whom I am in a little Time to appear, that he would stanch this Issue of Blood, and find out some other way to preserve these Kingdoms in Unity and Peace, to the Honour and Glory of his great Name, and the eternal Comfort of his People.

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One Word, Mr. *Sheriff*, I desire Leave to speak as to *Ireland*, because the King press'd it hard upon me, and several People have been with me about *Ireland*, how far *Ireland* was concern'd in this Matter. I am very inclinable to believe, could I have charged any body there; with being engaged in the Matter for which I suffer, I might have had my Life; but by the Blessing of God I will charge no Man wrongfully, no not to save my own Life; and these being some of the last Words I am to speak, I do aver here, as in the Presence of God, before whom I am now going to appear, that I do not know an *Englishman* nor Protestant in *Ireland*, engaged in it: What I did know, was only of one *Scottish* Gentleman in the North; and the King knows it, but he says he does not believe it. For they that were concerned, I was never in any of their Councils: I never saw any of those Lords but the Duke of *Monmouth*, and that was; I believe, above six Months ago. I never saw nor spoke with one Lord, only my Lord *Howard*. I heard my Lord *Howard* say, That they did not value *Ireland*; for it must follow *England*.

I have no more to say, Mr. *Sheriff*; but truly you will do an Act of a great deal of Charity, if you will prevail with the King for an Act of Indulgence and Liberty to his People: I think so: And so the Lord have Mercy upon me.

Dr. *Cartwright*. You blame them for that which is their Virtue, and not their Crime; that they have been Witnesses for the King.

Walcot. I was not for contriving the Death of the King, if you'll believe me.

Dr. *Cartwright*. You blame them for betraying of you in contriving the War, upon which the Death of the King must have follow'd, if your Treason had gone forward, for else you could not have defended yourself from that Justice to which he hath brought you; and therefore for you to lay that as a Crime upon your Witnesses, is indeed very strange.

Walcot. Sir, I think it was but reasonable, that I should suffer that is due from Justice, and reasonable by the Law; but these Men, they did not come in against me, till they did it to save themselves.

Dr. *Cartwright*. Better late than never: A Man had better save his Soul and Body too, than die, as now you do, for Crimes that ought to make every good Man's Heart relent; and therefore for your blaming them, it was for that which was their Duty to do; they have not committed a Crime in that, but a very meritorious Act.

Walcot. They have reveal'd it with that aggravating Circumstance, which I think no rational Man will be guilty of.

Dr. *Cartwright*. That Circumstance which you call aggravating, is no Aggravation at all; that is rather a Mitigation of your Crime, to make them believe that you were tenderer of the King's Person, than to shoot him when he was not armed. But you confess you were consulting this Crime.

Walcot. I was not to have a Hand in the King's Death.

Dr. *Cartwright*. But it was propos'd when you were there.

Walcot. It was so.

Dr. *Cartwright*. And it was agreed to be done.

Walcot. Truly I do not know how far it was agreed; I was there many Meetings.

Dr. Cartwright. These very Meetings you could not but be sensible of.

Walcot. There were several Meetings, wherein the Business of the King's Life was never spoke of.

Dr. Cartwright. That was agreed in those Meetings; but you had a tenderer Conscience.

Walcot. I say, they were for asserting our Liberties and Properties.

Dr. Cartwright. I would fain have you explain that.

Walcot. Truly, Sir, since you press me to speak, we were under general Apprehensions, and so were those Lords that are likely to suffer, as I have heard; they were under general Apprehensions of Popery and Slavery coming in.

Dr. Cartwright. What Sign was there of it? You had no Persecution at all; you were allowed by the Law to meet five in a House, besides those of the Family. It is true, the Conventicles have been disturb'd of late; and I would have you look upon it as a Judgment of God, to bring you to this for forsaking the Church of *England*: You have forsaken Communion with that Church in that Way you were instructed from your Youth.

Walcot. I do not come here to dispute of Religion, but I come here to die religiously, if it please God to enable me.

Dr. Cartwright. I pray God enable you: But I would not have you charge that as a Crime upon the Witnesses, which was their Duty.

Walcot. I can't tell how to excuse my Witnesses for aggravating things against me, and making them worse than really they were.

Dr. Cartwright going to reply.

Walcot. Pray, Sir, give me Leave; for a Man to invite a Man to a Meeting, to importune him to this Meeting, to be perpetually soliciting him, and then to deliver him up to be hang'd, as they have done me—

Dr. Cartwright. It was a Crime to solicit you to those Meetings; but when you were in, it was a Duty in you and in them to reveal it: If God had given you the Grace to reveal them, the Turn had been theirs, which now is yours. And whereas you say you cannot excuse them, that is uncharitable.

Walcot. I do forgive them, and I desire with all my Heart God would forgive them.

Dr. Cartwright. You confess you were guilty enough to take away your Life.

Walcot. I was so. The same Measure we mete to another, that Measure God will mete to us: Then, Sir, I do leave it to God.

Dr. Cartwright. Then you pray this may be the last Blood spilt upon this Account.

Walcot. I do so.

Dr. Cartwright. Would you not have Traitors brought to their End? You talk of spilling Blood, as if it were innocent Blood now spilt, when you do confess and own the Guilt. But I will give you no further Disturbance, but my Prayers to Almighty God for you, that God would give you Mercy. *And then turning to Hone,*

Dr. Cartwright. Mr. *Hone*, give Glory to God, and unburden your Conscience; for you have but a short time to stay here.

Hone. I have nothing further to say, but that I have been guilty of the Crime.

Dr. Cartwright. You are so.

Hone. Yes, I am guilty of this Crime according to the Law of the Land.

Dr. Cartwright. Ay, and according to the Law of God.

Hone. Yes.

Dr. Cartwright. You say, according to the Law of the Land, a Man may be sworn out of his Life by false Witnesses; but you were guilty of conspiring the Death of the King, and raising an Insurrection.

Hone. Truly I must say, as the Captain well minded, I was drawn in. *Thou sawest a Thief, and thou consentedst with him*: So I say, that I was drawn in: I saw the Thief, and consented; I have looked upon myself since to be the more guilty of Blood, and my Circumstance was to be drawn in, and ensnared; for I never was at any of their Meetings, none of their Cabals, but in a publick Coffee-house or Tavern, where they discours'd the Matter of Fact; and I was to meet the King and the Duke of *York*, but I did not know at that time when, or where, nor what was my Business.

Dr. Cartwright. But you were to assist?

Hone. Yes, I promised that, to assist.

Dr. Cartwright. Do you beg God and the King's Forgiveness for it from the Bottom of your Heart, that you have been guilty of this? *For if the Blind lead the Blind, both shall fall into the Ditch*; as well he that leads, as he that is led, altho' he that leads may fall deeper. There are Circumstances make one Man's Crime greater than another; the Greatness of theirs does not lessen yours.

Hone. I believ'd that then I was very near another Snare: I was resolv'd to go down into the Country, and not meddle in the Thing at all; and had been in the Country, but meeting with *Keeling*, (I freely forgive him for whatsoever is done) he call'd me; and discoursing with him, I did say I was for killing the King, and saving the Duke of *York*.

Dr. Cartwright. Why was you for saving the Duke of *York*?

Hone. I do not know what to say as to that: There was no Reason.

Dr. Cartwright. What was your own private Reason for killing the King, and saving the Duke of *York*?

Hone. As to that, I think this: That the Duke of *York* did openly profess himself to be a *Roman Catholick*, and I did say I had rather dispose of the King than the Duke of *York*.

Dr. Cartwright. Had you rather a Papist should reign over us, as you take him to be, than the King?

Hone. I do not know what to say to that.

Dr. Cartwright. That does deserve a Reason, Mr. *Hone*; you ought to give some Reason of that; you cannot but have some Reason. If you had a Design to kill the Duke, and save the King, then it might be to prevent Popery; but you say the quite contrary. God in Heaven forgive you for your murderous Design!

Hone. I know as little of this as any poor silly Man in the World; I was fain to gather it; I had it not so downright; I was drawn into it; however, I am now to die: As for the Witnesses, I desire the Lord to forgive them.

Dr. Cartwright. They have not wrong'd you, they have done their Duty.

Dr. Cartwright. *Rouse*, What say you?

Rouse.

Rouse. As a Man, and a Christian, in the first Place, as God hath made me a Christian through his Grace, that the World may understand, that I do not die, as Captain *Walcot* says, an Atheist; I do here declare, in the Presence of God, and this vast Number of People, what Faith I die in: In that very Faith which was once deliver'd, and in the Belief of that Doctrine which the Church of *England* makes Profession of, and is agreeable to the Word of God, being founded upon the Doctrine of the Prophets and Apostles, whereof *Jesus Christ* is the Corner-Stone. There have been very various Opinions concerning me, upon the Account of the various Employments that I have been exercised in, both here and beyond Sea: It has been my Lot to fall under such Circumstances, and to fall under such Misrepresentations and Censures, upon the Account of some publick Employments that I have been in for the King, and after I return'd from *Flanders*, upon the Account of Disbanding; it was almost morally impossible for such a one in my Capacity to stand right in the Affections and Opinions of all People. When I was employ'd in *Flanders* in the Payment of that Army, I was then between two Rocks; I will leave it to the Judgment of all Sorts of People. You know the Country. I need not particularize, nor reflect upon Opinions, and the like. But I having been bred up in *England*, and had that Education it pleas'd God to give me, I was not fond of, nor carried off with, that Debauchery in those Times; and sometimes, more than once or twice, it was my Lot, that I was like to have been murder'd for pleading for, and justifying the Actions of the King of *England*. Since my Return, and being employ'd under Sir *Thomas Player*, and some others, about disbanding, there it came to my Lot, because I could not humour some Gentlemen, who neither fear'd God, nor honour'd the King, (I will not say so of all; for I know some were very worthy Gentlemen, that scorn'd any of those Actions, which some would attempt. There is one worthy Gentleman I can speak very honourably of) that so they might have their Pockets full of Money, did not value how the Accounts were stated; and at the very same Time I was under many Temptations of Handfuls of Guineas in my Hand to do so and so, to cheat the King; and because I would not do that, I was look'd upon as a Jesuit. I did waive all these Things under those Circumstances. It hath been my Lot likewise, being employ'd by Sir *T. P.* and the rest of the Commissioners, to fall into those Companies and Places, where my Lord *Shaftsbury* and others have been; and have had some kind of Discourse, which was not Treason, but rather a thing that I ever abhorr'd and declar'd a Detestation of. Since these Hurly-burles, concerning Parliaments going off and coming on, did discontent the People upon one Account or another, I confess I have been a Hearer, and have understood too much of some kind of Meetings, which I pray God forgive them for, and especially those that call themselves Protestants, being ten thousand times worse than any others. That there have been such kind of Designs, and Meetings, and Clubs, I have not been ignorant of; God forgive me, that I have not been as careful and as diligent, and as ready and forward, to discover it a great while since! That I ever had a Hand in it, or the least Thought, or Resolution, or Intention, to appear in it; but rather, on the contrary, have

declar'd my Opinion against it, both in the Sight of God and Man, as a Breach of the Laws of God, and the Laws of the Land, and contrary to our Duty, who are bound to pray for the King, and all that are in Authority; I do declare, in the Presence of God, I am a perfect Stranger, and I thank God my Conscience is clear. I have acquainted his Majesty in Council, and I have had the Honour to be admitted into his Majesty's Presence in private almost half an Hour, on *Saturday* was sev'nnight, where I was as clear and above-board, and as faithful to his Majesty, as I could be, in an humble manner, according to my Duty; where I offer'd to have some Time and Place allotted, that I might give him a whole Scheme of the Business; for there were a great many Gentlemen that had a Respect for me. It was their Opinions, that I had a general Knowledge of all the Clubs, and all the Designs, that ever were since the King came in; but they were under a Mistake. I gave his Majesty an Account to the best of my Knowledge; and when I had done, his Majesty seem'd to be pleas'd, and to thank me for it; but before I had Power to put it in Writing, and wait upon his Majesty, the Providence of God did so order it, the Council thought it fit, that I should be committed to Prison, where I was some Days. I have had more Kindness among *Heathens* and *Indians*. I pray God to forgive them for it: I had not Liberty to send to my Wife, big with Child, in two Days, where I was.

Sir, I shall not hold you in Suspense, and multiply Words, but what is most proper to this Occasion. What I have given to his Majesty in Council, and what I have spoken to his Majesty in private, is nothing but the naked Truth to clear my own Conscience, that I may not go out of the World with any thing upon me: I wish those that call themselves Protestants would discharge their Duty better to God and the King, than either I or the best Subject ever did. I have look'd upon it as an Obligation, ever since I knew what it was to be a Man, to carry myself obedient to those that God has set over me, especially the King, and those that are in Authority; and I have made it my Practice to pray for the King, as for my own Soul. That it has been my Lot to be acquainted with those Vanities of Clubs, and Persons, no rational Man will wonder, considering the Circumstances and Places I was call'd to. There is one particular Gentleman, Mr. *Sheriff*, I must desire the Favour to clear myself by something that I took Occasion to speak of Yesterday. I did acquaint you, Mr. *Sheriff*, with what I had spoken to the King, how I was interrupted in the further Discovery of what I had a Mind to say. What was further said Yesterday, it was nothing but the naked Truth: In the first Place, as to what was afterwards discours'd of, as to some particular Persons, namely and particularly Sir *Thomas Player*, I must do Justice to all the World. That he hath been acquainted with the Lord *Shaftsbury*, none here will wonder; but that he hath been very shy of his Company since he came out of the *Tower*: For he told me many times he never was in his Company but once; for he did not like some Things, and saw some Designs, that he was afraid were going on; and thereupon Sir *Thomas Player* was so ingenuous and honest to the King, as to break off. I always look'd upon him as a very loyal Subject, and I must declare in the
Presence

Presence of God, and all these People, I never heard him speak one dishonourable Word of the King; what he may have had with others, is best known to himself. I have been in several Clubs eating and drinking, where it has been discours'd to accommodate the King's Son, the Duke of *Monmouth*. That there was a Design to set up the Duke of *Monmouth*, I will not say, while the King reigns; tho' some extravagant hot-headed Men have taken upon 'em to discourse these Things, but not any worthy Man: I know those that were worthy to be call'd by that Name, have declar'd in my Hearing, that in Opposition to the Duke of *York*, if the King be seiz'd, they should stand by the Duke of *Monmouth*. There are others, (I will not give Nick-names to any; you are wise Men, and know what I mean by speaking in the general) that were for a Commonwealth; and some there were, two or three Persons, (I shall be as plain as I can, and I hope you will bear with me, since it came to my Lot to come to the Knowledge of it; some were) for the Duke of *Monmouth*, some for a Commonwealth, and some, but very few, not worth naming, were for the Duke of *Bucks*: But that I think fell at last between these two, being the greater Part, as far as I did apprehend by discoursing here and there in the City, which I did very frequently do. But the way of these Gentlemen discoursing these Things was only one at a time, especially a very industrious Gentleman, that hath made it his Practice a long time, (for it hath been my Lot to be acquainted but two Months, and that too long) which is the Witness that comes against me; and I pray God to forgive him, and I blame him not for discovering me, but for the Words he spake himself, by way of instigating me to enter into a Design against the King; they were his own Words, and not mine. I blame him not for discovering any thing whereby the King may be served. He did tell me several times there were Clubs in *London*, but I could never get out of him the Places where the Clubs were. Yet I endeavoured what possibly I could to come to the Bottom of that Design; for my Intent was to make a faithful and true Discovery, that I might not go to *Whitehall*, or a Justice of Peace, with an idle Story, or a Sham: But at last I got out of him, that *Rich. Goodenough* was chiefly instrumental. This was a very few Days before Notice was given, that this certain Person, *Thomas Leigh* the *Dyer*, was sworn against by one *How*: I ask'd him the Meaning: He told me, that *How* was a very Rascal. I asked *Leigh*, Sir, What Course shall be taken? For, what by the *Doctors-Commons* of the one Hand, and what by the Persecutions of the other, we must think of a Way how to relieve it. There is some Design in Hand, says *Leigh*; don't you know? No, said I, I would be glad to hear. There is an Invasion, said he, going on, a Design against the King and the Government; but that was only a Fallacy; but he discover'd afterwards to me, that there was a Resolution, and a certain Number of People about the City and the Nation, to make an Attack upon the *Tower of London*, upon the City of *London*, upon *Whitehall*, and upon *St. James's*: I said, What do you design then? Have a Care that you don't shed more innocent Blood; for the Land is stained with Blood too much already. No, said he, the Resolution, as *Mr. Goodenough* saith, is not to spill a Drop of Blood, but only to secure the King's

Person, that the Papists do not kill him; and then, saith he, we will deal with the Duke of *York* as we please. They were his own Words, to the best of my Remembrance. Afterwards this Gentleman was sworn against by one *Mr. Keeling* in *East-Smithfield*; saith he, He's a Rogue and a Dog, and I have seen him but once these nine Months, and I had no Discourse, but only drank a Glass of Drink; which proves since to the contrary. Being then in Company at the *King's-head* Tavern in *Swilbin's-Aley* near the *Exchange*, News was brought, he was sworn against; he did not know what to do, but found out a Place near *London-Wall*, and desired me to go to one or two about the Matter; he knew not how to obscure himself, this House was beset, Messengers after him, and likewise a kind of Judgment or Execution; how to put both Ends together, he knew not. I told him, if he would, I had a Bed; he might go to my House. I never heard a Word from *Rich. Goodenough*, one way nor another, of any Design against the King and the Government, whom I have known this seven Years; only this *Lee* told me, his Hand was as deep as any other. It's true, this Gentleman comes and swears against me, that I should be the only Person to engage in taking the *Tower of London*. Sir *John* ——— you know very well in what Capacity I have been, and how very incapable I was in my Person to take the *Tower of London*. I speak in the Presence of God, before whom I am to appear in a few Minutes, I never had any such Thought, never had any such Desire, never consulted with any Persons of Quality, never discoursed of any Arms in order to it; but only this I was saying. This Fellow being set on, (and I think a more proper Person than any Man in the World) for that he was a little low in the World, he was under a Temptation of being thrown out by an *Anabaptistical Church*, for some kind of Failings; he was under a Temptation to make himself Somebody; therefore he did close with *Mr. Goodenough*, and some others; and when the first Proclamation came forth, he himself told me, (I never knew it before) that *Rumsey*, *Capt. Walcot*, *Nelthrop*, and *Goodenough*, and *West*, were concerned in this Design; he was the Man told me: And when the second Proclamation came out, then he could tell me of those too; I told him he was a Wretch he had not discover'd it betimes. As to his swearing against me, for which God forgive him, that I had a Hand in taking the *Tower of London*; the Thing is this: He knew I was intimately acquainted with a certain Captain, one *Blague*, who was my Servant twenty-one Years ago in *Virginia*; he hath been a very faithful and honest Servant, I believe, to his Majesty for these fifteen Years, and particularly five Years, in three of his Majesty's Men of War. I know very well the Man is of such a Principle, that he abhors to engage in any wicked Design. But only *Leigh* discoursing at random about taking the *Tower*, Captain *Blague* gave this Answer (for he is a very jocular Man): If I were of a Mind to take it, were it for the Service of the King, if there were an Enemy coming in, saith he, I would with six Ships well mann'd, and arm'd with Guns, undertake to take the *Tower*. Upon what Account he said it, I don't know; but I believe in my Conscience he had no more Design to put such a thing in Practice, than I have to cut my own Throat at present. Captain *Blague* had heard these Discourses *pro* and *con*.
saith

saith he, two or three hundred Men would do it: It's weak in such a Place; I wonder his Majesty does not make it stronger. Now, when he came to swear, as soon as he was taken up, he took Occasion to swear against me, all the Discourse he used in pressing me to undertake this Design.

Mr. *Sheriff Rich.* Pray, if you have any thing that was not told in Court, discover it, but you need not go over that which was in Court.

Rouse. Mr. Sheriff, I have nothing at all to say, either to blame the Judges, or the Jury, or the Witnesses themselves, the greatest of all. I thank God, I was not any way to have had any Hand in it: But the very Words themselves, that came out of his Mouth, he makes me the Author of; but I freely forgive him, as I desire God would forgive me: Though he did tell me positively there were five hundred Arms to be brought out of the Country. I heard of such a thing, I confess, here and there; but could never know the Authors of it, nor the Clubs where it was discoursed: It was lately that he told me, *Goodenough* told him, that the King was to be taken off as he came from *Windſor*; that there were several things to be done in order to it; that they wanted a Place of Meeting; and some thought of *Salisbury-Plain*, and some of *Black-beath*, but the most convenient Place pitch'd upon was *Black-beath*. They were discoursing how to gather the People together; some were for communicating it privately, others for a Ball. They asked my Thoughts: Said I, The best Way will be, if you throw up a Silver Ball, to get the People together: For my Design was to get what I could out of them. Thereupon he went to Mr. *Goodenough*, and discours'd him, and told him, That my Opinion was, to throw up a Silver Ball, and declare, All those that will come and drink a Bowl of Punch, shall be welcome; and that by this means they would have gathered thirty or forty thousand Men in two or three Days Time, which otherwise would have been a Fortnight a doing: But for himself, I will not blame him, nor lay any thing to his Charge of which he is not guilty. I must needs give him his Due. I do not remember, that ever he insisted upon shedding of Blood; but that he hath discoursed in very opprobrious Terms, and base Language, of the Duke of *York*, by calling him Rogue and Dog, and such things. And that *We will do his Work*: That is true. And, that after the King's Decease, the Duke of *Monmouth*, having a Vogue with the People, mult of Necessity succeed. I cannot tell what I can say more as to that; that is the chief Thing I have to say, if I have not forgot any thing.

Mr. *Sheriff Rich.* Mr. *Rouse*, you would do well to name those Persons that were with you in that Consultation.

Rouse. There was no Consultation at all, Sir. That I had was from this *Thomas Lee's* Mouth himself, That there were five hundred Arms to be brought in: That he had it from *Richard Goodenough*, and *Nelthrop*, and Mr. *West*; and that Mr. *West* particularly knew from whom these Arms were to come; for he gave me a Hint, that Part of the Arms were bought by Mr. *West*.

Mr. *Sheriff Rich.* Who propos'd the Way of the Ball?

Rouse. Sir, he was saying, there were several Propositions made in the Club where *Goodenough* was, and some thought of one Way, and some another; but they could not find out a proper Way.

Saith he, What do you think? Said I, If the People meet together, they may throw up a Ball; just in that careless way I said so. So he came to me afterwards, and said, that he had discoursed with Mr. *Goodenough*, and Mr. *Goodenough* told him, that there were forty thousand Pounds in Bank, and if such a Ball cost thirty or forty Pounds, it mattered not, to carry on such a Design as that was.

Here Captain *Walcot* spake.

Capt. *Walcot.* Sir, I desire you to take Notice of this, among other things, that so far as I ever heard of this Business, it is of no longer a Date than *August* or *September* last: I would not have this Consequence of it, so as to stifle the Popish Plot.

Mr. *Sheriff.* Do you know any thing of the Popish Plot, that hath not yet been discovered?

Capt. *Walcot.* No, Sir.

Hone. I had but the Knowledge in *March* last of this Business.

Capt. *Walcot.* I do not know, nor ever heard, that it was older than *August* or *September* last.

Mr. *Sheriff.* Ordinary, do your Office.

Ordinary to *Walcot.* Have you fully discharged your Conscience?

Capt. *Walcot.* I have.

But it being said, that *Rouse* was interrupted:

Mr. *Sheriff North.* If you have any thing to say, Mr. *Rouse*, go on, but do not make Repetitions.

Who pull'd his Paper out of his Pocket, and look'd on it.

Rouse. He declar'd further, Mr. Sheriff, that when once the thing came so far, that the *Tower* and *City* were taken, and so many Men gathered together, they would quickly increase; and the Method was to go to *Whitehall* with Swords in their Hands, and to demand Privileges and Liberties, not to take away the King's Life, but only let the Duke of *York* look to it; for he was resolv'd upon it, that he should not succeed the King. Then he delivers another Paper, being his Petition to the King, and some more Notes in Short-hand.

Ordinary. Have you fully satisfy'd your Conscience?

Rouse. I have, Sir, a Word or two to speak to the People. I have discharg'd my Conscience, as to any thing as to what I was acquainted with. It had been happy for me, if I had not heard of it; but that I had a Hand in it, I thank God, I am free.

Dr. *C.* You had a Hand in the concealing?

Rouse. That I had.

Dr. *C.* And in maintaining the Correspondency without discovering it, and you do diminish your Crime.

Rouse. No, Sir, I don't desire it. Mr. Sheriff, I do freely acknowledge and confess, that it is just in God in the first Place, and righteous and just in the King, that I die; and that I die justly for concealing it. I would lay no Blame upon the King, nor any other Person in the World. I did not conceal it upon any Account to his Majesty's Prejudice; nor any Man in the Nation; and I hope God will give more Grace to those Persons that do succeed. I beg a Word or two; I had almost forgot, as a Man, and as a Christian, That it is a thing of such evil Consequence, I have found it by bitter Experience now, for such and such publick Places to be visited, especially by those that are Professors of the Protestant Religion, and particularly Coffee-houses, where it is very

well known too much Time is spent, and Families, and Wives, and Children; suffer too much: I pray God the People may take Notice of it, and lay it to Heart, that spend their Time so, thinking it is but a Penny and a Penny, and so discourse of State Affairs, as if so be they were God's Counsellors in the Government of the World, running from the Coffee-house to the Tavern, and from the Tavern to the Coffee-house, which hath been the Debauchery of this Age; and so bring them into this *Dilemma*, to discourse of those Things neither pleasing to God, nor the King, nor themselves, but their Prejudice. The Profanation of the *Sabbath-day* is commonly discours'd of in this Place. God forgive me for not observing it as I should! I pray God those that follow me may be more careful of their Duty to God and Man, for the Good of themselves, their Souls, and their Families; those that are young especially, and coming up, that they may chiefly mind their Concerns for Eternity, and that they would pay their Duty and Homage to the King, and those that God has set over them; and not neglect that great Command to pray for the King, and all that are in Authority.

Being ask'd if they had any thing more to say, they said, No. Mr. Ordinary then pray'd with them, and sung a Psalm, and then they desir'd to pray themselves; which was granted.

Having ended their respective Speeches and Prayers, the Executioner did his Office.

The Attainder of Captain *Walcot* was afterwards in *Trin. 7 Will. 3.* reversed in the *King's-Bench* for Error in the Entry of the Judgment. Judgment was, *Quod interiora extra ventrem capiuntur, & in ignem ponantur, & ibidem comburantur*; the Words *ipso vivente, or in ejus conspectu*, being omitted, which Words were held to be a necessary Part of the Sentence. 2 *Salk.* 632. 4. *Modern Reports*, 395.

A Writ of Error was afterwards brought in Parliament upon this Reversal, and the Reversal was affirmed. *Sh. 2. Cases in Parl.* 127---137.

The next Day was appointed for the Execution of Lord *Ruffel*.

About Nine in the Morning the Sheriffs went to *Newgate*, to see if my Lord *Ruffel* was ready; and in a little time his Lordship came out, and went into his Coach, taking his Farewel of his Lady, the Lord *Cavendish*, and several other of his Friends at *Newgate*. In the Coach were Doctor *Tillotson* and Doctor *Burnet*, who accompanied him to the Scaffold built in *Lincoln's-Inn-Fields*, which was cover'd all over with Mourning. Being come upon the Scaffold, his Lordship bow'd to the Persons present, and turning to the Sheriff, made this following Speech:

Mr. Sheriff,

I expected the Noise would be such, that I should not be very well heard. I was never fond of much speaking, much less now; therefore I have set down in this Paper all that I think fit to leave behind me. God knows how far I was always from Designs against the King's Person, or of altering the Government. And I still pray for the Preservation of both, and of the Protestant Religion. Mr. Sheriff, I am told, that Capt. *Walcot* yesterday said some Things concerning my Knowledge of the Plot: I know not whether the Report is true or not.

Mr. Sheriff. I did not hear him name your Lordship.

Writer. No, my Lord, your Lordship was not nam'd by any of them.

L. *Ruffel*. I hope it is not; for, to my Knowledge, I never saw him, nor spake with him in my whole Life; and in the Words of a dying Man, I profess I know of no Plot, either against the King's Life, or the Government. But I have now done with this World, and am going to a better: I forgive all the World heartily, and I thank God I die in Charity with all Men; and I wish all sincere Protestants may love one another, and not make way for Popery by their Animosities. I pray God forgive them, and continue the Protestant Religion amongst them, that it may flourish so long as the Sun and Moon endure. I am now more satisfied to die than ever I have been.

Then kneeling down, his Lordship pray'd to himself; after which Dr. *Tillotson* kneel'd down and pray'd with him; which being done, his Lordship kneel'd down, and pray'd a second time to himself; then pull'd off his Peruke, put on his Cap, took off his Cravat and Coat, and bidding the Executioner, after he had laid down a small Moment, do his Office without a Sign, he gave him some Gold; then embracing Dr. *Tillotson* and Dr. *Burnet*, he laid him down with his Neck upon the Block, and it was cut off at two Strokes.

The Executioner held up the Head to the People, as is usual in Cases of Treason, &c. which being done, Mr. Sheriff order'd his Lordship's Friends or Servants to take the Body, and dispose of it as they pleased, being given them by his Majesty's Favour.

The Paper deliver'd to the Sheriffs by my Lord Ruffel.

I thank God I find myself so compos'd and prepared for Death, and my Thoughts so fixed on another World, that I hope in God I am now quite wean'd from setting my Heart on this. Yet I cannot forbear spending some time now, in setting down in Writing a fuller Account of my Condition to be left behind me, than I'll venture to say at the Place of Execution, in the Noise and Clutter that is like to be there. I bless God heartily for those many Blessings, which he in his infinite Mercy hath bestow'd upon me through the whole Course of my Life; that I was born of worthy good Parents, and had the Advantage of a religious Education, which I have often thank'd God very heartily for, and look'd upon as an invaluable Blessing; for even when I minded it least, it still hung about me, and gave me Checks; and hath now for many Years so influenced and possess'd me, that I feel the happy Effects of it in this my Extremity, in which I have been so wonderfully (I thank God) supported, that neither my Imprisonment, nor the Fear of Death; have been able to discompose me to any Degree; but, on the contrary, I have found the Assurances of the Love and Mercy of God, in and through my blessed Redeemer, in whom only I trust; and I do not question, but that I am going to partake of that Fulness of Joy which is in his Presence; the Hopes whereof does so wonderfully delight me, that I reckon this as the happiest Time of my Life, though others may look upon it as the saddest.

I have liv'd, and now die, of the Reform'd Religion, a true and sincere Protestant, and in the Com-

Communion of the Church of *England*, though I could never yet comply with, or rise up to, all the Heights of some People. I wish, with all my Soul, all our unhappy Differences were remov'd, and that all sincere Protestants would so far consider the Danger of Popery, as to lay aside their Heats, and agree against the common Enemy; and that the Churchmen would be less severe, and the Dissenters less scrupulous; for I think Bitterness and Persecution are at all times bad, but much more now.

For Popery, I look on it as an idolatrous and bloody Religion, and therefore thought myself bound, in my Station, to do all I could against it. And by that I foresaw I should procure such great Enemies to myself, and so powerful ones, that I have been now for some time expecting the worst. And, blessed be God, I fall by the Ax, and not by the fiery Trial. Yet, whatever Apprehensions I had of Popery, and of my own severe and heavy Share I was like to have under it, when it should prevail, I never had a Thought of doing any thing against it basely or inhumanly, but what could well consist with the Christian Religion, and the Laws and Liberties of this Kingdom. And, I thank God, I have examined all my Actings in that Matter with so great Care, that I can appeal to God Almighty, who knows my Heart, that I went on sincerely, without being moved, either by Passion, By-end, or ill Design. I have always loved my Country much more than my Life, and never had any Design of changing the Government, which I value, and look upon as one of the best Governments in the World, and would always have been ready to venture my Life for the preserving of it, and would have suffered any Extremity, rather than have consented to any Design to take away the King's Life: Neither ever had Man the Impudence to propose so base and barbarous a thing to me. And I look upon it as a very unhappy and uneasy Part of my present Condition, that in my Indictment there should be so much as Mention of so vile a Fact; tho' nothing in the least was said to prove any such Matter; but the contrary, by the Lord *Howard*. Neither does any body, I am confident, believe the least of it. So that I need not, I think, say more.

For the King, I do sincerely pray for him, and wish well to him, and to the Nation, that they may be happy in one another; that he may be indeed the Defender of the Faith; that the Protestant Religion, and the Peace and Safety of the Kingdom, may be preserved, and flourish under his Government; and that he in his Person may be happy, both here and hereafter.

As for the Share I had in the Prosecution of the Popish Plot, I take God to Witness, that I proceeded in it in the Sincerity of my Heart; being then really convinced (as I am still) that there was a Conspiracy against the King, the Nation, and the Protestant Religion: And I likewise profess, that I never knew any thing, either directly or indirectly, of any Practice with the Witnesses, which I looked upon as so horrid a thing, that I could never have endur'd it. For, I thank God, Falshood and Cruelty were never in my Nature, but always the farthest from it imaginable. I did believe, and do still, that Popery is breaking in upon the Nation; and that those who advance it will stop at nothing, to carry on their Design: I am heartily sorry, that so many Protestants give

their helping Hand to it. But I hope God will preserve the Protestant Religion, and this Nation: Though I am afraid it will fall under very great Trials, and very sharp Sufferings. And indeed the Impiety and Profaneness that abounds; and appears so scandalously barefaced every-where; gives too just Reason to fear the worst Things which can befall a People. I pray God prevent it, and give those who have shew'd Concern for the publick Good, and who have appear'd hearty for the true Interest of the Nation, and the Protestant Religion, Grace to live so, that they may not cast a Reproach on that which they endeavour to advance; which (God knows) hath often given me many sad Thoughts. And I hope such of my Friends as may think they are touch'd by this, will not take what I say in ill part; but endeavour to amend their Ways, and live suitable to the Rules of the true Reform'd Religion; which is the only thing can administer true Comfort at the latter End, and revive a Man when he comes to die.

As for my present Condition, I bless God, I have no Repining in my Heart at it. I know, for my Sins, I have deserved much worse at the Hands of God: So that I cheerfully submit to so small a Punishment, as the being taken off a few Years sooner, and the being made a Spectacle to the World. I do freely forgive all the World; particularly those concerned in taking away my Life: And I desire and conjure my Friends to think of no Revenge, but to submit to the holy Will of God, into whose Hands I resign myself intirely.

But to look back a little; I cannot but give some Touch about the Bill of Exclusion, and shew the Reason of my appearing in that Business; which in short is this: That I thought the Nation was in such Danger of Popery, and that the Expectation of a Popish Successor (as I have said in Parliament) put the King's Life likewise in such Danger, that I saw no way so effectual to secure both, as such a Bill. As to the Limitations which were propos'd, if they were sincerely offer'd, and had pass'd into a Law, the Duke then would have been excluded from the Power of a King, and the Government quite alter'd, and little more than the Name of a King left. So I could not see either Sin or Fault in the one, when all People were willing to admit of t'other; but thought it better to have a King with his Prerogative, and the Nation easy and safe under him, than a King without it; which must have bred perpetual Jealousies, and a continual Struggle. All this I say, only to justify myself, and not to inflame others: Tho' I cannot but think my Earnestness in that Matter has had no small Influence in my present Sufferings. But I have now done with this World, and am going to a Kingdom that cannot be mov'd.

And to the conspiring to seize the Guards, which is the Crime for which I am condemned, and which was made a constructive Treason for taking away the King's Life, to bring it within the Statute of *Edward III*. I shall give this true and clear Account: I never was at Mr. *Sheppard's* with that Company but once; and there was no undertaking then of securing or seizing the Guards, nor none appointed to view or examine them: Some Discourse there was about the Feasibleness of it; and several times, by Accident, in general Discourse elsewhere, I have

heard it mention'd, as a thing might easily be done, but never consented to, as fit to be done. And I remember particularly at my Lord *Shaftsbury's*, there being some general Discourse of this Kind, I immediately flew out, and exclaim'd against it, and ask'd, If the thing succeeded, what must be done next, but massacring the Guards, and killing them in cold Blood? Which I look'd upon as so detestable a Thing, and so like a Popish Practice, that I could not but abhor it. And at the same time the Duke of *Monmouth* took me by the Hand, and told me very kindly; My Lord, I see you and I are of a Temper; did you ever hear so horrid a Thing? And I must needs do him that Justice to declare, that I never observ'd in him but an Abhorrence to all base Things.

As to my going to Mr. *Sheppard's*, I went with an Intention to taste Sherry; for he had promis'd me to reserve for me the next very good Piece he met with, when I went out of Town; and if he recollects, he may remember I ask'd him about it, and he went and fetch'd a Bottle; but when I tasted it, I said it was hot in the Mouth; and desir'd that whenever he met with a choice Piece, he would keep it for me: Which he promis'd. I enlarge the more upon this, because Sir *George Jefferies* insinuated to the Jury, as if I had made a Story about going thither; but I never said that was the only Reason: And I will now truly and plainly add the rest.

I was, the Day before this Meeting, come to Town for two or three Days, as I had done once or twice before; having a very near and dear Relation lying in a very languishing and desperate Condition; and the Duke of *Monmouth* came to me, and told me, he was extremely glad I was come to Town; for my Lord *Shaftsbury* and some hot Men would undo us all, if great Care be not taken; and therefore for God's sake use your Endeavours with your Friends, to prevent any thing of this Kind. He told me, there would be Company at Mr. *Sheppard's* that Night, and desir'd me to be at Home in the Evening, and he would call me; which he did: And when I came into the Room, I saw Mr. *Rumsey* by the Chimney, altho' he swears he came in after; and there were things said by some with much more Heat than Judgment, which I did sufficiently disapprove, and yet for these things I stand condemn'd: But I thank God, my Part was sincere, and well meant. It is, I know, inferred from hence, and was press'd to me, that I was acquainted with these Heats and ill Designs, and did not discover them; but this is but Misprision of Treason at most. So I die innocent of the Crime I stand condemn'd for, and I hope nobody will imagine, that so mean a Thought could enter into me, as to go about to save myself by accusing others; the Part that some have acted lately of that kind has not been such as to invite me to love Life at such a Rate.

As for the Sentence of Death pass'd upon me, I cannot but think it a very hard one; for nothing was sworn against me (whether true or false, I will not now examine) but some Discourses about making some Stirs. And this is not levying War against the King, which is Treason by the Statute of *Edward III.* and not the consulting and discoursing about it, which was all that was witness'd against me. But, by a strange Fetch, the Design of seizing the Guards was construed a

Design of killing the King, and so I was in that cast.

And now I have truly and sincerely told what my Part was in that, which cannot be more than a bare Misprision; and yet I am condemn'd as guilty of a Design of killing the King. I pray God lay not this to the Charge, neither of the King's Council, nor Judges, nor Sheriffs, nor Jury: And for the Witnesses, I pity them, and wish them well. I shall not reckon up the Particulars wherein they did me Wrong; I had rather their own Consciences should do that, to which, and the Mercies of God, I leave them. Only I still aver, that what I said of my not hearing Colonel *Rumsey* deliver his Message from my Lord *Shaftsbury*, was true; for I always detested Lying, tho' never so much to my Advantage. And I hope none will be so unjust and uncharitable, as to think I would venture on it in these my last Words, for which I am so soon to give an Account to the Great God, the Searcher of Hearts, and Judge of all Things.

From the time of chusing Sheriffs, I concluded the Heat in that Matter would produce something of this kind: and I am not much surpris'd to find it fall upon me. And I wish what is done to me may put a Stop, and satiate some Peoples Revenge, and that no more innocent Blood may be shed; for I must and do still look upon mine as such, since I know I was guilty of no Treason; and therefore I would not betray my Innocence by Flight, of which I do not (I thank God) yet repent, (though much press'd to it) how fatal soever it may have seem'd to have prov'd to me; for I look upon my Death in this manner, (I thank God) with other Eyes than the World does. I know I said but little at the Trial, and I suppose it looks more like Innocence than Guilt. I was also advis'd not to confess Matter of Fact plainly, since that must certainly have brought me within the Guilt of Misprision. And being thus restrain'd from dealing frankly and openly, I chose rather to say little, than to depart from Ingenuity, that by the Grace of God I had carried along with me in the former Parts of my Life; and so could ealier be silent, and leave the whole Matter to the Conscience of the Jury, than to make the last and solemnest Part of my Life so different from the Course of it, as the using little Tricks and Evasions must have been. Nor did I ever pretend to a great Readiness in speaking: I wish those Gentlemen of the Law who have it, would make more Conscience in the Use of it, and not run Men down by Strains and Fetches, impose on easy and willing Juries, to the Ruin of innocent Men: For to kill by Forms and Subtilties of Law, is the worst Sort of Murder: But I wish the Rage of hot Men, and the Partialities of Juries, may be stop't with my Blood, which I would offer up with so much the more Joy, if I thought I should be the last were to suffer in such a Way.

Since my Sentence, I have had few Thoughts but preparatory ones for Death; yet the Importunity of my Friends, and particularly of the best and dearest Wife in the World, prevailed with me to sign Petitions, and make Addresses for my Life: To which I was very averse: For (I thank God) tho' in all respects I have liv'd one of the happiest and contented'st Men in the World, (for now near fourteen Years) yet I am so willing to leave all, that it was not without Difficulty that I did any thing

thing for the saving my Life that was begging. But I was willing to let my Friends see what Power they had over me, and that I was not obstinate nor fullen, but would do any thing that an honest Man could do for their Satisfaction. Which was the only Motive that sway'd, or had any Weight with me.

And now to sum up all, as I never had any Design against the King's Life, or the Life of any Man whatsoever; so I never was in any Contrivance of altering the Government. What the Heats, Wickednesses, Passions, and Vanities of other Men have occasion'd, I ought not to be answerable for; nor could I repress them, tho' I now suffer for them. But the Will of the Lord be done, into whose Hands I commend my Spirit; and trust that thou, O merciful Father! hast forgiven me all my Transgressions, the Sins of my Youth, and all the Errors of my past Life, and that thou wilt not lay my secret Sins to my Charge;

but wilt graciously support me, during that small Part of my Life now before me; and assist me in my last Moments; and not leave me then to be disorder'd by Fear, or any other Temptation; but make the Light of thy Countenance to shine upon me; for thou art my Sun and my Shield: And as thou supportest me by thy Grace, so I hope thou wilt hereafter crown me with Glory, and receive me into the Fellowship of Angels and Saints, in that blessed Inheritance, purchased for me by my most merciful Redeemer, who is, I trust, at thy Right-hand, preparing a Place for me; into whose Hands I commend my Spirit.

Signed, WILLIAM RUSSEL.

The Attainder was afterwards reversed by Act of Parliament, 1 *William and Mary*. *Vide State Trials, Vol. 8. p. 517.*

A Defence of the late Lord RUSSEL's Innocency. To which are prefix'd two Letters upon the Subject of his Lordship's Trial. By Sir ROBERT ATKYNS, Knight of the Bath.

First LETTER concerning my Lord RUSSEL's TRIAL.

SIR,

I AM not without the Apprehensions of Danger that may arise by advising in, or so much as discoursing of, publick Affairs; yet no Fear of Danger shall hinder me from performing that Duty we owe to one another, to counsel those that need our Advice, how to make their just Defence when they are called in Question for their Lives; especially if they are Persons that have by their general Carriage and Conversation appear'd to be Men of Worth, and Lovers of their King and Country, and of the Religion establish'd among us. I will follow the Method you use, and answer what you ask, in the Order I find in your own Letters.

I cannot see any Disadvantage or Hazard by pleading the general Plea of *Not guilty*: If it fall out upon the Proofs that the Crime is only Misprision of Treason, and not the very Crime of Treason, the Jury must then find the Prisoner not guilty of Treason, and cannot upon an Indictment of Treason find the Party guilty of Misprision, because he is not indicted for the Offence of Misprision, and Treason and Misprision of Treason are Offences that the Law hath distinguish'd the one from the other, and the one is not included in the other; and therefore if the Proofs reach no farther than to prove a Misprision, and amount not to Treason, the Prisoner may urge it for himself, and say, that the Proofs do not reach to the Crime charged in the Indictment: And if the Truth be so, the Court ought so to direct the Jury, not to find it.

Now, being present in Company with others, where those others do consult and conspire to do some treasonable Act, does not make a Man guilty of Treason, unless by some Words and Actions he signifies his Consent to it, and Approbation of it: But his being privy to it, and not discovering it, makes him guilty of Misprision of Treason, which consists in the concealing

it, but it makes him not guilty of Treason. And if the same Person be present a second time, or oftener, this neither does not make him guilty of Treason; only it raises a strong Suspicion, that he likes it, and consents to it, and approves of it, or else he would have forbore after his having been once amongst them. But the strongest Suspicion does not sufficiently prove a Guilt in Treason, nor can it go for any Evidence; and that upon two Accounts:

First, The Proofs in case of Treason must be plain, and clear, and positive, and not by Inference, or Argument, or the strongest Suspicion imaginable: Thus says Sir *Edward Coke* in many Places in his third Institutes, in the Chapter of High Treason.

Secondly, In an Indictment of High Treason, there must not only be a general Charge of Treason, nor is it enough to set forth of what Sort or Species the Treason is, as killing the King, or levying War against him, or coining Money, or the like; but the Law requires that in the Indictment there must be also set forth some *Overt* or *Open Act*, as the Statute of the 25th of *Edw.* the 3d calls it, or some Instance given by the Party or Offender, whereby it may appear he did consent to it, and consult it, and approve of it. And if the bare being present should be taken and construed to be a sufficient *Overt* or *Open Act*, or Instance, then there is no Difference between Treason and Misprision of Treason; for the being present without consenting makes no more than Misprision; therefore there must be something more than being barely present, to make a Man guilty of Treason, especially since the Law requires an *Overt* or *Open Act*, to be proved against the Prisoner accused.

See Sir *Edward Coke's* third Institutes, fol. 12. upon those Words of the Statute, (*per overt fact*) and that there ought to be direct and manifest Proofs, and not bare Suspicions and Presumptions, be they never so strong and violent: See the same folio, in the upper Part of it, upon the Word (*Proveablement*). And the

‘ Statute of the 5th of *Edw. 6. cap. 11.* requires
 ‘ that there should be two Witnesses to prove the
 ‘ Crime: So that if there be but one Witness, let
 ‘ him be never so credible a Person, and never so
 ‘ positive; yet if there be no other Proof, the
 ‘ Party ought to be found *Not guilty*: And those
 ‘ two Witnesses must prove the Person guilty
 ‘ of the same Sort or Species of Treason. As for
 ‘ Example, if the Indictment be for that Species
 ‘ of Treason of conspiring the King's Death, both
 ‘ Witnesses must prove some Fact or Words
 ‘ tending to that very sort of Treason: But if
 ‘ there be two Witnesses, and one proves the
 ‘ Prisoner conspired the Death of the King, and
 ‘ the other Witness proves the conspiring to do
 ‘ some other sort of Treason, this comes not home
 ‘ to prove the Prisoner guilty upon that Indict-
 ‘ ment: For the Law will not take away a Man's
 ‘ Life in Treason upon the Testimony and Credit
 ‘ of one Witness, it is so tender of a Man's Life,
 ‘ the Crime and the Forfeitures are so great and
 ‘ heavy.

‘ And as there must be two Witnesses, so by
 ‘ the Statute made in the 13th Year of his now
 ‘ Majesty, *chap. the 1st, (intituled, For the Safety
 ‘ of his Majesty's Person)* those two Witnesses
 ‘ must not only be lawful, but also credible Per-
 ‘ sons: See that Statute in the 5th Paragraph. And
 ‘ the Prisoner must be allowed to object against
 ‘ the Credit of all, or any of the Witnesses; and
 ‘ if there be but one Witness of clear and good
 ‘ Credit, and the rest not credible, then the Te-
 ‘ stimony, of those that are not credible must go
 ‘ for nothing, by the Words and Meaning of this
 ‘ Statute: See the Statute. Now were I a Jury-
 ‘ man, I should think no such Witness a credible
 ‘ Witness, as should appear either by his own
 ‘ Testimony, or upon Proofs made by others a-
 ‘ gainst him, to have been *Particeps Criminis*; for
 ‘ that proves him to be a bad, and consequently
 ‘ not so credible a Man; especially if it can ap-
 ‘ pear the Witness has trepan'd the Prisoner into
 ‘ the committing of the Crime: Then the Wit-
 ‘ nesses will appear to be guilty of a far higher
 ‘ Crime than the Prisoner, and therefore ought
 ‘ not to be believed as a credible Witness against
 ‘ the Prisoner; for he is a credible Witness that
 ‘ had the Credit of being a good and honest Man,
 ‘ which a Trepanner cannot have; and this Tre-
 ‘ panning proves withal, that the Trepanner did
 ‘ bear a Spite and Malice against the Person tre-
 ‘ panned, and intended to do him a Mischief, and
 ‘ designed to take away his Life. Shall such a one
 ‘ be a credible Witness, and be believed against
 ‘ him? God forbid!

‘ Then again; it cannot but be believed, that
 ‘ such Persons as have been guilty of the same
 ‘ Crime, will out of a natural Self-love be very
 ‘ forward and willing to swear heartily and to the
 ‘ purpose, in order to the convicting of others, that
 ‘ they may by this Service merit their Pardon,
 ‘ and save their own Lives: And for this Reason
 ‘ are not so credible Witnesses, such as the Statute
 ‘ of the 13th of *Car. 2.* does require. Read over
 ‘ the whole Chapters of Sir *Edward Coke* of High
 ‘ Treason, and of Petty Treason; for in this latter
 ‘ of Petty Treason there is much Matter that con-
 ‘ cerns High Treason.

‘ I wish with all my Soul, and I humbly and
 ‘ heartily pray to Almighty God, that these Gen-
 ‘ tlemen that have given so great Proof of their
 ‘ Love to the true Religion, and of the just Rights

‘ and Liberties of their Country, and of their
 ‘ Zeal against Popery, may upon their Trial ap-
 ‘ pear innocent. I am so satisfied of their great
 ‘ Worth, that I cannot easily believe them guilty
 ‘ of so horrid a Crime. I pray God to stand by
 ‘ them in the Time of their Distress.

‘ I wish I might have the Liberty fairly to give
 ‘ them the best Assistance I could, in that wherein
 ‘ I might be any way capable of doing it. I be-
 ‘ seech Almighty God to heal our Divisions, and
 ‘ establish us upon the sure Foundations of Peace
 ‘ and Righteousness. I thank you for the Favour
 ‘ you have done me, by imparting some publick
 ‘ Affairs, which might perhaps have been un-
 ‘ known to me, or not known till after a long
 ‘ time, for I keep no Correspondence.

‘ When there is an Occasion, pray oblige me
 ‘ by a farther Account, especially what concerns
 ‘ these Gentlemen: And tho' I have written no-
 ‘ thing here but what is innocent and justifiable,
 ‘ yet that I may be the surer against any Disad-
 ‘ vantage or Misconstruction, pray take the Pains
 ‘ to transcribe what Notes you think fit out of
 ‘ this large Paper; but send me this Paper back
 ‘ again inclosed in another, by the same Hand
 ‘ that brings it.

‘ There is, nor ought to be, no such thing as
 ‘ constructive Treason; this defeats the very Scope
 ‘ and Design of the Statute of the 25th of *Edw. 3.*
 ‘ which is to make a plain Declaration, what shall
 ‘ be adjudged Treason by the ordinary Courts of
 ‘ Justice: The conspiring any thing against the
 ‘ King's Person, is most justly taken to be to con-
 ‘ spire against his Life.

‘ But conspiring to levy War, or to seize the
 ‘ Guards, is not conspiring against the King's
 ‘ Life. For these are Treasons of a different
 ‘ Species.'

Your faithful Friend and Servant,

R. A.

The Second LETTER.

SIR,

‘ I Thank you for the unexpected Account you
 ‘ gave me by your first Letter; but this exact
 ‘ Narrative you have now sent me of the Trial
 ‘ of that Honourable Excellent Person my Lord
 ‘ *Russel*, has exceedingly obliged me. It was a
 ‘ thing I much desired, but I knew not from what
 ‘ Hand to gain it; for I was a little impatient to
 ‘ hear what could be prov'd of so foul a Nature
 ‘ as High Treason against a Person of whom I
 ‘ had ever entertain'd a very high Esteem: And
 ‘ tho' I had a very small and short Acquaintance
 ‘ with him, yet no Man that has known any
 ‘ thing of the publick Affairs, or of our late
 ‘ Transactions, could be a mere Stranger to his
 ‘ great Worth. He had as great a Name for a
 ‘ true and honest *English* Gentleman, and for
 ‘ good Temper, and Prudence, and Moderation,
 ‘ as ever I knew any Man have, and was generally
 ‘ belov'd by all that love our Religion and Coun-
 ‘ try. I presume your Relation of the Proofs at
 ‘ his Trial is certainly true in every Part, and
 ‘ in the very Words; and it is a thing that might
 ‘ be had by many Hands, the Proceedings being
 ‘ so publick, and I suppose deliberate: Presuming
 ‘ it to be true, this I will affirm, that upon this
 ‘ Evidence, both that against him, and for him,
 ‘ (might I have been permitted to have made
 ‘ his Defence for him at his Trial after the Evi-
 ‘ dence

dence given) I could easily have satisfied any equal and understanding judicious Man, that my Lord ought to have been acquitted; and had I been one of the Jury that tried him, I make no Doubt I could clearly have convinced all my Fellows, (if they were honest and indifferent) that they ought not to have found him Guilty. The Species or Sort of High Treason that the Witnesses inclin'd to prove against him, was a Conspiracy with others to levy War against the King.

The two first Witnesses, *viz.* *Rumsey* and *Sheppard*, tho' what they say may raise a strong Suspicion upon my Lord, and make it probable that he was guilty, yet neither of them do come home and close to the Person of my Lord *Ruffel*; as they do (I confess) against the Earl of *Shaftsbury*, Sir *Thomas Armstrong*, and *Ferguson*.

The first does not affirm, that the Lord *Ruffel* did join in the Discourse, or agree to any thing in the Consult; but only says, he was present; which extends no farther than to make a Mispri-son of Treason, and this too not directly and positively, as legal Proof ought to be, to convict a Man of Treason: The latter, (*Sheppard*) when he applies what he swore to the Person of the Lord *Ruffel*, only says, *He believes* the Lord *Ruffel* was there at that Time when the Discourse he speaks of was used; which is a very imperfect uncertain Proof, and not positive enough: so that neither of these were full Witnesses. As to the Evidence given by the Lord *Howard* against my Lord *Ruffel*, it is strange to me, (as the Evidence is stated) that any Credit should be given to it; that he should be believ'd against those Execrations, that (it seems) he had so solemnly, and so lately, used to the contrary of his Evidence; especially when by giving this Evidence he must merit his own Pardon, and save his own Life, which extremely takes off from the Credit and Weight of his Evidence.

What Mr. *West* says in reference to my Lord *Ruffel*, was but bare Opinion and Hearsay, and is no Proof at all in Law; so that instead of two plain, direct, manifest and positive, and two credible Witnesses, as the Law requires in Treason, here is not, in my Opinion, so much as one positive credible Witness. The Lord *Howard* (as your Case and Narrative states it) is not credible, tho' direct and positive; none of the other three are positive, tho' more credible. In the Statute of the 25th of *Edward* the Third, of Treasons, the Word *Proveablement*, (as Sir *Edward Coke* observes upon it, in his *Third Institutes*, fol. 12.) imports direct and manifest Proofs, not Presumptions and Conjectures, and (as may be added) not Probabilities: And so the Words (*per Overt Fact*) do (as he observes)

strengthen that Sense of the Word *Proveablement*; and the Act of Treasons made since this King's Time, requires there should be two credible Witnesses. Now, tho' the Lord *Howard* was not, by the Evidence offer'd against him by the Lord *Ruffel*, utterly disabled from being a Witness; yet I will be bold to say, it made him no credible Witness in this Case. That the Lord *Ruffel* made no use of these Things in his Defence, tho' a Man of Parts, is no wonder to me; the ablest Man under that Terror, and upon so speedy a Proceeding, and where it is impossible to be so composed and free from Distraction, may easily pass by many just Advantages, which a Stander-by, with less Abilities, might quickly have apprehended. I am far from reflecting upon the Court that try'd him; this Matter that I observed; rested principally upon the Jury. And he is found Guilty and condemn'd, and it may be before this comes to your Hand, put to Death too: If it hath so happen'd, (as possibly it may) that the Earl of *Bedford*, and his other great Relations; have prevail'd with the King for a Respite of the Execution, I wish, and heartily beg of Almighty God, that these Considerations may yet be made use of to the King, (with whom it then rests) as *Tabula post Naufragium*, to save the Life of this Noble Lord. Much more than this may be said; were there such an Opportunity, before the King (and I so intend it, and no otherwise); and if I might be any ways serviceable in it, I would come up to *London* bare-foot; rather than neglect so good an Office. And I ever thought it a Severity in our Law, that a Prisoner for his Life is not allow'd the Assistance of a grave and prudent Lawyer; or some other Friend, to make his Defence for him, even as to Matter of Fact, as well as to Law. I know, 'tis said, the Court is of Counsel for the Prisoner; but for my part I should never desire to depend upon that only. I know what this is by Experience. If the Case be in any Part of it mistaken, I have lost all my Observations, and beg your Pardon for all this Trouble; it is out of the great Honour and Zeal I have for that good Lord: But the Narrative you give is very ably and well composed; and in very good Method; and, I think, could not have been better done, which inclines me to think it very true also. I could be contented the Earl of *Bedford* (to whom I am known) might have the View of this Letter; if it come not too late, and may be thought of any Use. I heartily thank you for your Favour; which obliges me to be

Your faithful Friend and Servant;

July 21. 1683.

R. A.

A Defence of the late Lord RUSSEL's Innocency: By way of Answer or Confutation of a Libellous Pamphlet, intituled, An Antidote against Poison.*

1. THE Pamphlet styles itself, *An Antidote against Poison*; but it is so far from deserving that Title, that it may be truly said, *That the Antidote itself is the rankest Poison.*

We read in History, that the noble Emperor; called *Henry* of *Luxembourg*; was poisoned in the Sacrament; and Pope *Victor* was poisoned in receiving the Chalice. Who could have suspected

* See *The Antidote against Poison*, in *State Trials*; Vol. 8. p. 448.

such horrid Villany in the Administration of such sacred and solemn Rites? Who could without Horror and Amazement contrive the mingling of a deadly Poison with the Bread and Water of Life? To make those consecrated Elements (which ought to be the Saviour of Life unto Life) to be the dreadful Messengers of sudden Death? Surely had those outward Signs been changed into the very Body and Blood of the Lord of Life, (as they that acted in those execrable Villainies profess'd to believe) there must needs have been a Miracle wrought in altering likewise the Substance and malignant Nature of those Poisons, that they should not have wrought those direful Effects; which yet they did. There appears the like wicked Policy in the Author of this Pamphlet; who, under Pretence of prescribing an Antidote against Poison, under the Visard and Disguise of preventing Mischief, does most deceitfully infuse the worst of Poisons, and labours to intoxicate a whole Nation. This Author would have the World believe, that the noble Lord, in the composing of his Speech, was wholly govern'd by his *Confessor*; and that the Compiler of it was infected with those Doctrines, that the Northern Climate has of late furnish'd us with. The very Language and Spirit of *Coleman*! Sure the Soul of *Coleman* is by Transmigration enter'd into this Author: It is easy to guess at his Religion. He supposes all that were present at my Lord's Trial, must needs be surpris'd to find the Truth of the Case so untruly and unfaithfully set down in my Lord's Speech.

But whoever will take the Pains to read the Trials, publish'd by Authority, (which no Man will suspect of Partiality toward the Person tried) will receive abundant Satisfaction in the Truth of what was said by the Lord *Ruffel*, and discover the shameless Impudence of this malicious Author.

The Indictment (as we find it printed at large in the Trial, *fol. 706.*) charges the Prisoner, *That he, intending to disturb the Peace of the Kingdom, and to move War and Rebellion against the King, and to subvert the Government, and to depose, or put down, and deprive the King from his Title and Kingly Name of the Imperial Crown of his Kingdom of England, and so bring and put the King to Death and Destruction, 2 Nov. 34 Car. 2.* and at other Times, maliciously and traiterously, with divers others, did conspire, compass, imagine and intend;

1. To deprive the King of his Title and Government.

2. And to kill the King, and to subvert the Government.

3. And to move Insurrection and Rebellion against the King.

And to fulfil and perfect these Treasons and traitorous Compassings and Imaginations, the said *William Ruffel* did meet together with divers other Traitors, and consult, agree, and conclude,

1. To move and stir up Insurrection and Rebellion. And,

2. To seize and destroy the King's Guards.

The operative and emphatical Words of this Indictment, are the *intending, conspiring, and concluding.*

The Things intended and conspired were,

1. *To move and stir up War and Rebellion against the King.*

2. *To depose the King.*

3. *To kill the King.* And in order to the accomplishing of these horrid Crimes,

The Things *concluded* on were,

1. To move and stir up Insurrection and Rebellion.

2. To seize and destroy the Guards. This is the very Sum and true Method of the Indictment, if it be truly printed in the Trials.

Note, Here is no *Open Act* or *Deed* charged to be done by the Lord *Ruffel*, unless his meeting together with others be meant to be an *Open Act* or *Deed*: But then again, that Act of Meeting terminates merely in consulting, agreeing, and concluding. They met only to consult, agree, and conclude; but they acted nothing in pursuance of that consulting, agreeing and concluding, for any thing that appears in the Indictment: So that the Meeting properly hath not the Nature of an Acting or Action, or of a Thing done. But the Effect of the Indictment is, that the Lord *Ruffel* and others did consult, agree, and conclude to do something; but the Indictment stops there, and goes no farther, for it sets not forth any thing done at all. So that here is no *Overt Act* or *Deed*, and the Indictment is void; for there is no Act charged but Meeting, and that was merely in order to consult and agree: And they did agree upon a Thing to be done, but it is not said they did it, or did any thing towards it. I repeat this the oftener, that it may be the better understood and minded, being very material. Read the Indictment.

The Indictment is grounded upon the Stat. of 25 *Edw. 3. cap. 2.* (the old Statute of *Treasons*) So the *Attorney General* declares himself, *fol. 721.* of the Trial.

Now let us see how far this Charge in the Indictment will make my Lord guilty of any Treason within that Statute.

The Body of that Stat. of 25 *Ed. 3.* of *Treasons*, is printed together with the Trial, (*see the Trial, fol. 722.*) so that it need not be repeated here, tho' there are some other Clauses in that Statute not printed in the Trial.

The Occasion of making that Statute appears to be the Variety of Opinions that then were, what should be accounted Treason, and what not; which was very mischievous to the Subjects, and gave too great a Liberty to the Judges of the ordinary Courts.

To cure this mighty Mischief, and to prevent that arbitrary Power of Judges, this excellent Statute makes a *Declaration* what shall be adjudged Treason by the ordinary Courts of Justice. Not but that there might be like Cases, or other Facts amounting to Treason, besides those there enumerated; but those other Facts or Treasons must not be adjudged by those ordinary standing Courts (such as the Gaol-Delivery of *Newgate*, and the Court of the *King's-Bench* at *Westminster* itself are): But in such Cases those Courts must forbear proceeding, and the Case must be reserved for the Determination of the King and Parliament. *See that Statute in the printed Statutes at Large.*

So that the Court of Gaol-Delivery at *Newgate* must judge only and proceed upon no other Treasons but what are there enumerated and specified.

Now the Treasons in that Statute enumerated and specified (for the Word *Specified* is the very Word used by that Statute) are these:

1. Compassing or imagining the Death of the King, Queen, or Prince.

2. Violating, or carnally knowing, the Queen, King's eldest Daughter unmarried, Prince's Wife.

3. Levying

3. Levying War against the King. Not a compassing or imagining to levy War, but an actual levying War; it must be a War begun. And several other Sorts of Treasons are there specified, not to our Purpose to be recited.

The Statute further requires, That the Person indicted be *probably* attainted of some one of these Treasons by *Overt Deed*, that is, some open manifest Act or Deed done, which must of Necessity also be expressly set down in the Indictment, and fully and clearly proved at the Trial by two Witnesses.

See Sir *Edward Coke's* third *Institutes*, in his Chapter of *High Treason*, fol. 12. in his Exposition of the Words of that Statute, (*per Overt Fait*) and there, fol. 5. upon the Words (*Fait Compasser*) he tells you the Nature of that *Open Deed* that the Statute intends. It must be a Deed, and not mere Words: It must be a Deed tending to the Execution of the Treason imagined. That Deed must be an *Open Deed*, that is, *it must be fully proved*, and made open and manifest at the Trial by clear Proof.

So that if the Indictment fail of setting forth one of those Treasons that are there enumerated, it is not a good Indictment upon that Statute.

If it do set forth one of those Treasons, yet if it do not set forth some *Open Deed* done by the Party indicted, that is, such a Deed as does properly and naturally tend to Execution of that sort of Treason set forth in that Indictment; in such case also the Indictment is not good.

If both these, *viz.* the Treason intended, and a proper suitable open Deed, be well set forth in the Indictment, (which make a good Indictment) yet if that very sort of Treason intended, and that open Deed or Fact, so set forth in the Indictment, be not also fully, clearly, and *manifestly proved* upon the Trial against the Prisoner, he ought to be acquitted.

It will not suffice either to prove it by one Witness, or to prove any other sort of Treason, (not charged in the Indictment, nor any other *Overt Deed*) other than what is so set forth in that Indictment, though it be by never so full a Proof; but upon that Indictment the Prisoner ought to be acquitted, if that special Treason, and that special *Overt* or *Open Deed*, set forth and expressed in that very Indictment, be not fully proved.

Now let us examine the Indictment in this Case against the Lord *Ruffel*, and the Proofs against him, as they are publish'd by Authority, and observe how they agree with the Statute, and how the Indictment and Proofs agree the one with the other.

It may be admitted, that here is in the Indictment against the Lord *Ruffel*, a Treason sufficiently charged and set forth, *viz.* one of the Treasons specified in that Stat. of 25 *Edw.* 3. namely, that the Lord *Ruffel* did compass and imagine the Death of the King. This is not denied, but it is duly charged in the Indictment. For those other Charges in the Indictment, *viz.* his intending to depose the King, and his intending to move or levy War and Rebellion against the King; these are inserted into the Indictment as Aggravations of that horrid Crime of intending to kill the King, or as open Acts of the other; but of themselves alone, they are no distinct substantial Charges, nor are they any of the Treasons specified in this Act, upon which Act this Indictment is solely grounded. For tho' by the Act of 13 of this King that now

is, cap. 1. intituled, *An Act for the Safety and Preservation of the King's Person*, it is made High Treason (during the now King's Life only) to compass or imagine to depose the King, or to compass or imagine to levy War against the King, if such Compassing or Imagination be expressed by Speaking or Writing, (altho' without any open Deed) yet the Lord *Ruffel* was not indicted upon that Statute, (as the Attorney-General himself acknowledged openly at the Trial) but only upon the old Statute of 25 *Edw.* 3. so that those late-made Treasons are not to our Purpose.

So that the only Treason charged in the Indictment, as a substantial Charge, is that of *imagining to kill the King*. And so the Lord Chief Justice agrees in his Direction to the Jury. See the Trial, fol. 61.

But where is that other Requisite, that other most material Part of the Indictment, of *the Open Act or Deed*? without which the rest serves for nothing: For it is not enough by this Statute to make a Man guilty of conspiring or imagining the Death of the King, unless the Party indicted have expressed that Imagination by some *Open Deed*; and that must be plainly set down in the Indictment too, or else the Indictment (as was said before) is no good Indictment. And it must appear to the Court upon the Indictment not only to be an *Open Deed*, but such a Deed as has a natural Aptitude and Tendency to the Execution of that very Treason so imagined. And there is no such set forth in this Indictment, and therefore the Indictment itself was insufficient and void.

And that which seems to have a Colour of an *Overt Fait*, or *Open Deed*, set forth in this Indictment, was not fully and sufficiently proved neither: And then, though the Indictment had been sufficient, yet for want of due Proof, the Party indicted ought to have been acquitted.

To these two Points or Matters shall the ensuing Discourse confine itself. And if this Undertaking be made good, the *Antidote* will appear to be a rank Poison, the Lord *Ruffel's* Speech justified, and his Innocency and Loyalty cleared, and his Honour vindicated.

The *Overt Fait*, or *Open Deed*, set forth in the Indictment, (if there be any) are the Things said to be consulted of, agreed and concluded on, *viz.*
1. To move and stir up Insurrection and Rebellion.
2. To seize and destroy the Guards. (*Peruse the Indictment carefully*)

Now neither of these are *Open Deeds*, in the Nature of them.

The first, which is to stir up Insurrection and Rebellion: This is a distinct Species of Treason itself; it is the same with a levying of War (specified in this Stat. of 25 *Edw.* 3. which is the only Statute we have to do with in this Case of my Lord *Ruffel*); and if it had been set forth in the Indictment as a Deed done, or Thing acted, that is, if it had been laid in the Indictment that the War was actually levied, or the Insurrection or Rebellion actually raised or stirred up, (as it is not, for it is only mentioned as a Thing agreed and concluded on, and not done) yet it had not been a sufficient proper *Overt Fait*, or *Open Act*, to make it a good Indictment: Because (as is said before) levying of War is a distinct Species from that of compassing to kill the King; and therefore cannot be made an *Overt Fait*, or *Open Deed*, to manifest an Imagination of killing the King: For that one Species of Treason cannot be a proper

per open Act to another Species of Treason; as will be proved hereafter.

Sir *Edward Coke* in his third *Institutes*, fol. 14. in the third Clause or Paragraph of that *Folio*, tells us, that the Connexion of the Words is to be observ'd, viz. [*thereof be attainted by Overt or Open Deed.*] This, says Sir *Edward Coke*, relateth to the several and distinct Treasons before expressed; whereof that of imagining to kill the King, and that of levying War against the King, are two distinct Species of High Treason. And therefore, says Sir *Edward Coke*, the one of them cannot be an *Overt Act* for another, that is, levying of War cannot be an *Overt Act* for that sort of Treason in imagining to kill the King, much less when the Indictment does not charge it as a War actually levied, but only an Agreement or Conclusion for levying a War. Such Agreement can be no open Deed to manifest an Intent or Imagination of killing the King. This is the main Question between us.

The other only Colour or Pretence to an *Overt Fait*, or *Open Deed*, must be that of seizing or destroying the King's Guard: For no other but these two are set forth in the Indictment, or look any thing like *Overt* or *Open Acts*.

And this latter is nothing like to an *Overt Fait*, or *Open Deed*, in the Nature of it; for it is not said to be done, but only agreed on, and concluded on, to be done. If it had been but alledged in the Indictment, That in pursuance of this Agreement or Conclusion of the Conspirators, a View was accordingly taken of those Guards, and reported to the rest; (whereof the Lord *Ruffel* was one) that it was feasible, (whereof there is some Colour or Proof against some of them) this had been more to the Purpose: But being laid so imperfectly as it is, the Indictment itself must needs be insufficient, for the Reasons before given.

But, alas! the noble Lord is gone; and he is gone from whence he would not be recalled, a Place of infinite Puffs and Glory, out of a spiteful malicious World: It is we, it is the King and Kingdom, it is the whole Protestant Part of the World, that suffers the inestimable Loss of him: Not to speak of the unspeakable Grief of his dear and disconsolate Widow, and other noble Relations. *Factum infectum fieri nequit.* So that we may seem to labour in vain, and it comes too late. But something may be done for the Benefit of his hopeful Posterity, and some small Satisfaction may be made to his noble Family, by a Writ of Error for reversing of this Attainder, and the avoiding of the Record; for the Stat. of 29 *Eliz. cap. 2.* extends only to such Attainders for High Treason as then had been before the making of that Statute, and does not hinder a Writ of Error in this Case, if the King will sign a Petition for it.

But to examine this last *Overt Fait*, or *Open Deed*, a little farther;

Viz. *To seize and destroy the King's Guards.*

The Guards! What Guards? What or whom does the Law understand or allow to be the King's Guards, for the Preservation of his Person? Whom shall the Court that tried this noble Lord, whom shall the Judges of the Law that were then present, and upon their Oaths, whom shall they judge or legally understand by these Guards? They never read of them in all their Law-Books: There is not any Statute-Law that makes the least Mention of any Guards. The

Law of *England* takes no Notice of any such Guards; and therefore the Indictment is uncertain and void.

The King is guarded by the special Protection of Almighty God, by whom he reigns, and whose Vicegerent he is: He has an invisible Guard, a Guard of glorious Angels.

*Non eget Mauri jaculis nec arcu;
Nec venenatis gravida sagittis,
Crede, pharetra.*

The King is guarded by the Love of his Subjects:

The next under God, *and the surest Guard.*

He is guarded by the Law and Courts of Justice.

The *Militia* and the *Trained Bands* are his legal Guard, and the whole Kingdom's Guard.

The very Judges that tried this noble Lord were the King's Guards, and the Kingdom's Guard, and this Lord *Ruffel's* Guard against all erroneous and imperfect Indictments, from all false Evidence and Proof, from all Strains of Wit and Oratory misapplied and abused by Counsel.

What other Guards are there? We know of no Law for more. King *Henry VII.* of this Kingdom (as History tells us) was the first that set up the Band of Pensioners. Since this the Yeomen of the Guard; since them certain arm'd Bands, commonly now-a-days (after the *French Mode*) called the King's Life-guard, ride about and appear with naked Swords, to the Terror of the Nation: But where is the Law? Where is the Authority for them?

It had been fit for the Court that tried this noble Lord on this Indictment to have satisfy'd themselves, from the King's Council, what was meant by these Guards; for the alledging and setting forth an *Overt Fait*, or *Open Deed*, in an Indictment of Treason, must be of something that is intelligible by Law, whereof Judges may take notice by Law. And herein too the Indictment fails, and is imperfect.

But admit the seizing and destroying of those who are now called the King's Life-guard, had been the Guard intended within this *Overt Fait*, or *Open Deed*; yet the Indictment should have set forth, that *de facto* the King had chosen a certain Number of Men to attend upon and guard his Person, and set forth where they did attend, as at *Whitehall*, or the *Meuse*, or the *Savoy*, &c. and that these were the Guards intended, by the Indictment, to be seized and destroyed: That by this setting forth the Court might have taken notice judicially what and who were meant. But to seize and destroy the King's Guards, and not shew who and what is meant, makes the Indictment very insufficient.

So much as to the *Indictment* itself.

In the next place, let us look into the *Proofs*, as they are at large set forth and owned in the printed Trial; and let us consider how far those *Proofs* do make out the Charge of the Indictment, viz. the compassing and imagining the Death of the King; and how far they make out that *Overt Fait*, or *Open Deed*, (such as it is) of seizing or destroying the King's Guards, in order to the effecting of that compassing and imagining the Death of the King. And it must appear by Proof to be in Truth so intended by the Conspirators,

rators, and levelled to that End; for if it were done, yet if it were done quite to another Intent and Purpose, and not to that of compassing the King's Death, it does not come home to this Indictment.

There are but three Witnesses that can be thought to bring the Matter home, and to fix any thing upon the Lord Ruffel; Colonel Rumsfy, Mr. Sheppard, and the Lord Howard.

It is true, two of the three, that is Col. Rumsfy, and the Lord Howard, positively prove a traitorous Design, or Discourse at least, by some of the Company, of making an Insurrection or Rebellion, or (to speak it in the Language and Phrase of this Stat. of 25 *Edw. 3.*) of levying War against the King, (for all these signify one and the same thing) and they prove the Lord Ruffel was sometimes present at those Meetings: But is that enough? Admit he were present, and heard the Debate of it, (which yet is not fully and directly proved) yet if he did not join in the Debate, and express and some way signify his Approbation of it, and consent to it, it makes him not at all criminous. It is true, his after-concealing of it might have made him guilty of Misprision of Treason; but that is a Crime of another Nature, and is another distinct Genus of Crimes, of which he was not indicted.

Col. Rumsfy, as to the *Overt-fait*, (as they would make it) says, *There was some Discourse about seeing what Posture the Guards were in*: And being asked by one of the Jury, by whom the Discourse was? he answers, *By all the Company that was there* (whereof, as he said before, the Lord Ruffel was one). So that my Lord Ruffel may (I agree) be understood to be one that discoursed about seeing what Posture the Guards were in: Nay, the Colonel says, *All the Company did debate it*: And he says further, *The Lord Ruffel was there when some of the Company undertook to take the View of those Guards*. And being asked by the Attorney General, to what Purpose the View was to be? The Colonel answers, *It was to surprise our Guards, if the Rising had gone on*.

The Chief Justice observing to the Witness that he ought not to deliver a doubtful Evidence, and to speak it with Limitations, that made it not so positive; as by saying, *I apprehend so and so*: then the Colonel grows more positive, and says further, *That a Rising was intended*; but afterwards he says, *There was no Debate of the Rising*. At last the Witness being asked by Sir George Jefferies, whether the Prisoner were present at the Debate concerning the Message from the Lord Shaftsbury to the Company then met, and the Answer return'd to it; he flatly says, *The Prisoner was present at that Debate* (which Debate did indeed concern the Rising). Being asked by the same Person, whether my Lord was averse to it, or agreeing to it; he answers like an Echo, *Agreeing to it*. Nay, then he says, my Lord Ruffel did speak, and that *about the Rising at Taunton*, and that *he did discourse of the Rising*: But what were his Words? Being question'd again by the Chief Justice, whether my Lord did give any Consent to the Rising, he answers still like an Echo, *My Lord, he did*. And this last Answer is the weighty Part of his Evidence, if there be any Weight at all.

Now mind the Defect of the Witness's Memory in some other most material Passages. He thinks the Lord Grey did say something to the same

Purpose, with the Answer deliver'd by Ferguson to Lord Shaftsbury's Message.

He does *not know* (says he) how often he himself (the Witness) was at Mr. Sheppard's House where this Debate was. He says he was there more than once, *or else I heard*, says he, Mr. Ferguson make a Report of another Meeting to the Lord Shaftsbury. And then he says, *That this was all at that Time that he remember'd*; and before this he had said no more against the Lord Ruffel, but that he was present; and after this upon much interrogating of him, he proceeds to tell a great deal more, indeed all the rest that has been before observed to proceed from him. And after all, he says, he thinks he was not there above a Quarter of an Hour. He says, he was *not certain* whether he did hear something about a Declaration there, or whether Mr. Ferguson did report it to my Lord Shaftsbury, that they had debated it. And the Witness speaking of a View to be taken of the Guards, to surprise them; the Lord Chief Justice seems to be surpris'd at that Word: *The Guards!* he never met it in all his Books. What Guards? Why you know it is mention'd in the Indictment; but he might yet very well ask what Guards: And the Colonel answers, the Guards at the Savoy and the Meuse.

The Colonel says, *He thinks* the Duke of Monmouth, and the Lord Grey, and Sir Thomas Armstrong, were the Persons that undertook to view the Guards. And *he thinks*, Sir Thomas Armstrong began it, and Mr. Ferguson. And he says, further Direction was given to take a View of the Guards, *if the Rising had gone on* (as it never did); and then he mentions the very Day that had been appointed for the Rising, *viz.* the 19th of November; and that the Message from the Lord Shaftsbury was, *he thinks*, a matter of a Fortnight before that Day, or something more; for *he thinks* it was concluded Sunday Fortnight after my Lord Grey met. The Mention of my Lord Ruffel's Consent to this Rising, comes in at the last, and after many Questions ask'd him, and not till that very particular Question was put to him; and he answers in the very same Words as the Question was ask'd. The Chief Justice ask'd him in these Words: Did my Lord give any Consent to the Rising? The Colonel's Answer was, *Yes, my Lord, he did*. But how did my Lord Ruffel signify that Consent? What Words did he use that may clearly express it? For this is the pinching Proof. If it had been certain and clear'd by remembering the Manner of his consenting, or how it did appear; why was not this put home to the Witness? This is the material Part of his Evidence, without which the rest had not come home to the Prisoner: And why did not the Witness deliver this of himself? And before his giving this home Evidence, he had said, *That was all at that Time that he remembered*: And this was at the same Time with that of the Message, and of the Discourse about viewing the Guards. He afterwards doubts whether he was any more than once there with that Company, or *whether he heard* Mr. Ferguson report things to the Lord Shaftsbury; which shews a wild kind of Memory in a Witness, and the Colonel is no Fool, nor Baby; so that there is but one Time positively spoken of by this Witness. How strangely uncertain is he in the Matter of the Declaration, to which he was examined! A most noted thing! And he cannot tell whether he heard any thing of it there, or whether Mr.

Ferguson told him of it. It is to be suspected too, that what he has delivered positively at last so late in his Evidence, and after so much interrogating of him, was but mere Hearsay too, and then it would not have been any Evidence. He has not, it seems, a good distinguishing Head or Memory, as a Witness ought to have in case of Life, and a Life of so high a Value as this of that noble Lord.

And many other material Passages this Witness delivers under that Limitation, as *he thinks*.

The Rising was intended, but never took Effect; and the View was no more than appointed and undertaken; but the seizing of the Guards, as this Witness says, was not to be *unless the Rising had gone on*, which it never did. He speaks nothing of any View made of the Guards, or any Report upon it: But he swears my Lord *Russel* consented to the Rising. That is his stabbing Evidence; but by what Words, or how he signified his Content, not a Word, though mighty material.

But what is this Conspiracy for a Rising? And a Conspiracy to seize the Guards? (in case the Rising had gone on) What are these to the Crime charged in the Indictment against the Lord *Russel*, for conspiring the Death of the King?

Here is not a Word of any such Matter, nor of seizing the Guards in order to it, no not one Word.

And that is the only material Part of the Indictment (as shall appear more plainly hereafter).

The second Witness, Mr. *Sheppard*, mentions the meeting (at his House) of the Duke of *Monmouth*, and among the rest, the Lord *Russel*, and they discours'd of *surprising the Guards*; and that the Duke, the Lord *Grey*, and Sir *Thomas Armstrong*, (as *he remembers*) went one Night to view the Guards; and the next Day at his House they said it was very feasible, if they had Strength to do it: And then he says, there was two Meetings there, and, as *he remembers*, my Lord *Russel* was both times there. Being ask'd by the Attorney General, besides the seizing of the Guards, if there were any Discourse of Rising; he answers, *He did not remember any further Discourse*, for he was often gone out of the Room: And this is the Effect of that he says.

If any thing of this comes near my Lord *Russel*, it is those Words, first giving an Account of who they were that were met, and that my Lord *Russel* was one of them; he says the Substance of their Discourse was how to surprise the King's Guards: This may be true, if one or two of the Company only discourses it; for it does not necessarily affirm, that every one did speak in that Discourse, he does not mention one Word spoken by my Lord *Russel*, nor that he approv'd of, or consented to any thing. At the worst, for any thing that he says, it can be but Misprision: He can say nothing *as to the intended Rising*. Now Colonel *Rumsey's* Evidence is altogether of that Rising, and the seizing of the Guards was to have been, if the Rising had gone on; and this was at the same Time that Mr. *Sheppard* speaks to: And yet Mr. *Sheppard* being asked if there was any Discourse of Rising, he answers, he did not remember any further Discourse.

Nor does Colonel *Rumsey* certainly remember any thing of a Declaration read amongst them, whether he heard it there, or whether by Mr. *Ferguson's* Report of it to my Lord *Shaftsbury*; which

is one of the principal things that Mr. *Sheppard* speaks to (besides that of seizing the Guards). And as to the Declaration, Mr. *Sheppard* says, he cannot say my Lord *Russel* was there when that Declaration was read.

So they agree in nothing but in the Discourse of seizing the Guards, and that my Lord *Russel* was then present.

So that as yet the Sum of the Proof by Colonel *Rumsey* is, that my Lord *Russel* consented to the Rising, which is too general; and the Sum of the Proof by Mr. *Sheppard* is, that my Lord *Russel* was present in Company when the Company discours'd of seizing the Guards, but he knows nothing of the Rising.

The third Witness (the Lord *Howard*) discourses much about a Conspiracy to rise, but he speaks most (of what he says) by Report from the Earl of *Shaftsbury*, and from the Duke; so it goes for no Evidence against my Lord *Russel*; and the Chief Justice did the Prisoner that Right, as to declare as much to the Jury: And the Lord *Howard* clears the Duke from any such horrid Act as the killing the King, the Duke said he would not suffer it; and if the Duke be innocent in that, it is probable that my Lord *Russel*, and the rest of the Company that met, had no Discourse about killing the King, nor any Thought that way; which yet is the great and only substantial Charge of this Indictment, which must still be minded and observ'd.

My Lord *Howard* does indeed prove two several Consults, one at Mr. *Hambden* the younger's, the other at my Lord *Russel's* about the Middle of *January* last, and after, and that my Lord *Russel* was at both; and these Consults were of an Insurrection, and where to begin it, and of providing Arms and Money, and of sending into *Scotland* to settle an Understanding with the Lord of *Argyle*: And being asked what my Lord did say, he answers thus, *viz. Every one (says he) knows my Lord Russel is a Person of great Judgment, and not very lavish in Discourse*. But did he consent? was a Question ask'd by Sir *George Jefferies*. The Lord *Howard* answered, We did not put it to the Vote, but it went without Contradiction, and I took it that all there gave their Consent: That Lord *Russel* join'd in the Council of Six, that he approved of his being chosen for one, that he said one Word in these two Consults, there is not any Proof by the Lord *Howard*; only he says, *He took it that all there consented*. Is that enough? O strange Evidence!

I will not here take notice, or examine, how far the Lord *Howard* is a credible Witness in this Case, but refer the Reader to the Testimony of my Lord of *Anglesey*, Mr. *Howard*, and Dr. *Burnet*; or how far any of the three Witnesses are to be believed, having all three upon their own Testimony been *Participes Criminis*, and it is suppos'd have their Pardons, or are promis'd Pardons: Not that this is offer'd to disable them quite from being Witnesses, but surely, all things considered, it much lessens their Credit in this Case; nor does it make them the more credible, because no other Witnesses can be had. But then consider that most excellent Character given of the Prisoner by Persons of Honour, and of the highest Esteem for Ability and Integrity, and such as contradicts, and is inconsistent with the Charge of the Indictment, and whatever is of Weight in the Evidence against him; and especially if you

give

give any Credit to the Lord *Howard* himself, who upon his Oath does declare, as in the Presence of God and Man, that he did not believe that either the Duke of *Monmouth*, or my Lord *Ruffel*, had any Design to murder the King; which is the only effectual Charge of this Indictment. These things consider'd, it seems very strange to me, how the Lord *Ruffel* could be found guilty of a compassing and imagining the Death of the King, for so is the Verdict.

This answers most of the Observations made by the Author of the *Antidote* upon my Lord *Ruffel's* Speech, restraining the Expression, as he says, of his Innocency to the Design upon the King's Life, and to killing of the King, and of his omitting to mention the general Rising; which, as this Author boldly affirms, was fully proved upon him; and that my Lord's Professions of his Innocency, as to any Plot upon the King's Life, or to kill the King, or his knowing any thing thereof, these (says the Author) are no plain Declarations of his Innocency, as to the Crime charged and proved upon him, of conspiring and consulting to raise an Insurrection. Nor was there any Need of my Lord's answering that, for it was little material.

How uncertain, how disagreeing, how unapplicable to the Charge of the Indictment those Proofs are, has been fully observ'd already; and the Author grossly mistakes in his Judgment, when he takes the conspiring and consulting to raise an Insurrection to be the Crime charged in the Indictment; for (as was observ'd before) the Charge of the Indictment is, the *compassing and imagining to kill the King*; and that of a Conspiracy to raise an Insurrection, or to levy War, is none of the Crimes or Treasons enumerated or specified in the Act of 25 *Edw. 3.* and therefore could not be the Crime charged in the Indictment, which is grounded only upon that Act of 25 *Edw. 3.* (as the Attorney General acknowledges) for it is an actual levying of War, and not a conspiring only to levy War, or raise an Insurrection, that is the Treason specified in that Act of 25 *Edw. 3.* And therefore the Mention of other things are but by way of Aggravation, for the more ample setting forth of the Crime charged, which is of compassing the King's Death: And that the conspiring to make an Insurrection, cannot be an open Deed to prove a compassing the King's Death, has been already spoken to, and shall yet be more fully.

Nor is the Author more mistaken in his Observations upon the Matter of Fact, and his unwarranted Conclusions and Inferences raised from thence, than he is in his Determinations of Matters in Law arising from that Fact.

The Death of the King (says the Author) in that Law of 25 *Edw. 3.* is not restrained to killing of his natural Person, but extends as well to his civil Death as natural: As to conspire to depose the King, to imprison him, or laying any Force or Restraint upon him; these (says the Author) are all High Treason, for compassing his Death, natural or civil: If so, why then we are at never the more Certainty for this excellent Law of 25 *Edw. 3.*

I agree, that conspiring to depose the King, to imprison him, are Treasons; but it is not so plain that they are Treasons within this Law of 25 *E. 3.* upon which this Indictment is grounded. It is true, they are made Treason by the late Act of 13 of the now King, and have by several temporary Acts (such as this of 13 *Car. 2.* is) been made

Treason: But this proves, that they were not judged by those Parliaments, that pass'd those temporary Acts, to be Treasons within the Statute of 25 *Edw. 3.* For why then were these temporary Acts made? What Need was there of them? Sir *Edward Coke*, 3 *Inst. fol. 9.* in the last Paragraph but one of that *fol.* says; A Conspiracy to levy War is no Treason; he means within the Act of 25 *Edw. 3.* But it has been made Treason since Sir *Edward Coke's* time, viz. by 13 *Car. 2.* And let it be remembered, that the great End of making this excellent Law of 25 *Edw. 3.* (as appears by the Preamble) was to avoid Uncertainty, and Variety of Opinions, and to prevent the Arbitrariness of Judges, in the ordinary Courts; and the Act takes care, that doubtful Cases, such as are not plainly within the Enumeration of the Act, are to be reserv'd for the Judgment of the King and Parliament. And herein consists the Excellency of this Law: *Quoad fieri possit, quam plurima Legibus ipsis defmiantur: Quam paucissima Judicis arbitrio relinquuntur.* And as the learned Lord *Bacon*, in his *Advancement of Learning*, fol. 447. says, That is the best Law, which gives least Liberty to the Judge; he the best Judge; that takes least Liberty to himself: *Misera est servitus, ubi Jus est vagum.* And this Law is a Declaration of Law, and therefore ought not to be extended to like Cases in the Construction of it: And it is made in the Punishment of the greatest Offences, and is as penal as a Law can be; and therefore ought not to be expounded by Equity, that is, to be extended to like Cases.

It is true, the Opinion of the Judges hath been, That conspiring to depose or imprison the King, is a compassing or imagining the Death of the King. And if a Man declares by *Overt-act*, that he will depose or imprison the King; this, says Sir *Edward Coke*, 3 *Instit. fol. 6.* upon the Word (*Mort*) is a sufficient *Overt-act*, for the Intent of killing the King. Mind him well; he does not say, that *conspiring* to depose or to imprison the King is an *Overt-act*, to prove the conspiring the King's Death; which is the Opinion the *Antidoter* maintains, and for which he cites all his Cases afterwards cited. But Sir *Edward Coke* says, That conspiring to depose or imprison the King *being declared by Overt-act*; this *Overt-act* is also a sufficient *Overt-act* for the Intent of killing the King.

It is one thing to conspire to depose the King; and another thing to declare that conspiring by some open Act: They differ as much as thinking does from acting. Now in this Case of the Lord *Ruffel*, the Author of this *Antidote*, and some others, (as appears by the printed Trials) would have us believe that very conspiring to levy War is an *Overt-act* to prove the compassing and imagining the King's Death: For which there is not the least Ground from Sir *Edward Coke*. First they are different Species, as Sir *Edward Coke* observes in his third *Institutes*, fol. 14. the third Paragraph; and therefore (says he) the one of them cannot be an *Overt-act* for another; that is, conspiring to levy War, nay the actual levying of War too; which is one Species of Treason, cannot be an *Overt-act* for the compassing the Death of the King, which is another Species of Treason. But this is that the *Antidoter* labours; only, says Sir *Edward Coke*, the *Overt-act* of the one, may be an *Overt-act* for another sort or Species of Treason.

And I agree it, if the Overt-act in the one sort of Treason, may as fitly and as properly in its own Nature, and as equally, be also an Overt-act in the other sort, and had a Tendency to the Execution of that other sort. And it also does appear by the Proofs, to be so intended by the Conspirators. As for Example: Actual seizing of the King's Guards (not a Conspiring to seize the King's Guards, and such Guards as are not plainly set forth in the Indictment what they are) may in its Nature be an Overt-act, to make manifest the compassing of the King's Death, and is an Act proper enough, and has in its Nature a Tendency towards the Execution of the Conspiracy to kill the King: But then it must be proved to be so intended and designed, that is, in order to the killing of the King. But if it appear otherwise upon the Proof, (as here it did) that it was not so intended, but design'd merely in order to a Rebellion, and levying of War, (for which also it is as apt and proper in its Nature, and has as great a Tendency that way) then it cannot be applied nor made use of as an Overt-act, to prove the compassing the King's Death (as in this Case of my Lord Russel's it was): For this (as Sir Edward Coke well says, fol. 14. the latter Part of the third Paragraph of that Folio) would be to confound the several Classes or Species of Treason: And the Confusion of Species is abominable in Nature.

And where Sir Edward Coke seems to comply with the Opinion and Practice of some Judges, that the Overt-act of deposing may be a good Overt-act of killing, (which, with the Distinction that I have offered, is just enough) yet he has some Hesitation; for he concludes that Opinion of his with these Words, fol. 6. in his third Institutes, upon the Word [Mort]: But, says he, peruse advisedly the Statutes of 13 Eliz. cap. 1. And why those Statutes? Because by those Statutes, conspiring to depose the Queen is made Treason; which needed not, (as has been observed already) if it was Treason within that Clause of compassing the King's Death, within the Statute of 25 Edw. 3. The like may be observed in many other such temporary Laws, as that of 25 H. 8. cap. 22. 26 H. 8. cap. 13. 28 H. 8. cap. 7. 1 Ed. 6. cap. 12. and 5 & 6 Ed. 6. cap. 11.

And it is worthy Observation, tho' by way of a short Digression, that in many, if not in every one of these temporary Laws of Treason, there is an express Clause and Provision still, that Concealment, or keeping secret of any High Treason, should be adjudged Misprision of Treason: As if there were great Need of that Caution, lest the Judges might judge concealing of Treason for High Treason.

Now to shew the Tendernefs that the Judges heretofore shewed in the expounding of this Statute of Treasons of 25 Edw. 3. and how cautious they were in extending it beyond the strict Sense and Letter of the Statute, read the Case in Mich. 19 Hen. 6. fol. 47. Case 102. A Man was indicted in the King's-Bench of Petty Treason (which is declared too by the same Statute of 25 Edw. 3. cap. 2.) for killing his Mistress, whom he served. And because the Words of this Stat. of 25 Edw. 3. declare it Petty Treason where the Servant kills the Master, they were in doubt whether it ought to be extended to the Mistress, or not. And there the Judges of the King's-Bench (before whom the Case was) sent to the Judges of the Court of

Common-Pleas then sitting, and to the Sergeants there, to know their Opinion of the Case. And by Advice of all the Judges of both Courts, it was adjudged Petty Treason for the Servant to kill the Mistress, not only within the Meaning, but within the very Words of that Statute; for Master and Mistress are in Effect but one and the same Word, they differing only in Gender.

Sir Edward Coke says, 3 Instit. fol. 20 & 22. The Judges shall not judge à simili, or by Equity, by Argument, or by Inference of any Treason; but new or like Cases were to have been referred to the Determination of the next Parliament: *Ubi terminatæ sunt dubitationes Judiciorum*, says Bracton.

Let us in the next Place examine the Authorities in Law, and Book-cases, cited by this Author of the Antidote, and see how far they make good his Opinion, that meeting and consulting to make an Insurrection against the King, or raise a Rebellion, (which is the same with levying War, within the Words of 25 Edw. 3.) tho' the Rebellion be not actually raised, is High Treason within this Law of 25 Edw. 3. For so he proposes the Question, fol. 5. of his Book. And if he does not confine his Argument to that Statute, he says nothing to the Lord Russel's Case.

To prove the meeting and consulting to make an Insurrection against the King, or raise a Rebellion within the Kingdom, (tho' the Rebellion is not actually raised) is High Treason within the Statute of 25 Edw. 3. cap. 2. (which, put all together, is the Position the Antidote maintains): He cites the Case of Constable, mentioned in Calvin's Case, Sir Edward Coke's 7th Rep. fol. 10. b. and thence infers, that whatsoever tended to the deposing of Queen Mary was adjudged Treason for compassing her Death.

And this no Man denies; and it agrees with the Judgment of Sir Edward Coke, in this Chapter of Treason, fol. 6. upon the Word [Mort], where he says, He that declareth by Overt-act to depose the King, does an Overt-act of compassing and imagining the Death of the King: And so says Sir Matthew Hale's Pleas of the Crown, fol. 11. towards the latter End. But what is this to the Point in Hand, which merely concerns a Meeting and Consulting to make an Insurrection, or raising a Rebellion, which is the same thing with conspiring to levy War? Conspiring to depose the King, and conspiring to levy War, are different things; as conspiring to levy War is clearly held to be a distinct Treason from conspiring the Death of the King: And therefore the former of these (as hath been before observed) cannot by Law be an Overt-act of the latter, as appears by the said Treatise of the Pleas of the Crown, fol. 13. towards the latter End. Nor was conspiring to levy War, without an actual levying of it, any Treason within the Statute of 25 Edw. 3. upon which Statute only the Indictment of the Lord Russel is grounded, as is acknowledged by the Attorney-General. And therefore to supply that Defect, the Statute of 13 Car. 2. does expressly make it to be Treason. But the Lord Russel was not indicted upon that Statute of 13 Car. 2. and for this Reason he ought to have been acquitted upon this Indictment grounded only upon the Statute of 25 Edw. 3.

And if practising with a foreign Prince to make an Invasion, (when no Invasion followed, as the Case

Case of Dr. Story was) *Dyer* 298. be all one with conspiring to levy War, when indeed no War is raised; it is out of all Dispute, that such Practising, and such Conspiring, cannot be Treason within the Statute of 25 *Edw.* 3. tho' it be Treason within the Statute of 13 *Car.* 2.

In the Case of the Lord *Cobham*, 1 *Jacobi*, there was more in the Case than conspiring to make an Insurrection (which is all that the Author of the *Antidote* takes notice of): There was also an actual Rebellion raised, as appears by the said little Treatise, styled, *The Pleas of the Crown*, fol. 13. for the People were there assembled to take the King into their Power, as that Book puts the Case of the Lord *Cobham*.

And so it is in the Case of the Lord *Grey*: For there they had not only conspired to make an Insurrection, but farther, to seize the King, and get him into their Power; which is a direct conspiring against his Person, which naturally tends to the Destruction of his Person, and is the same with conspiring his Death, as hath been usually expounded: But 'tis otherwise merely to conspire to make an Insurrection, which can be no more than conspiring to levy War. The Case of Sir *Henry Vane*, and *Plunket*, had many other Ingredients to mount them up to Treason, which differentiates them from my Lord *Russel's* Case.

As to the Point of Misprision of Treason, with which the Author of the *Antidote* concludes, I have fully declared my Opinion already in the former Part of this Discourse; and, I think, plainly evin-

ced, that tho' the noble Lord might be pretend while others might between themselves privately debate Matters, and conclude upon them, yet it did not clearly appear by any Proofs, that this noble Lord ever gave the least Consent to what was so concluded; without which Consent it could not amount to Treason, but at the most be a Misprision only. Nor must any Man's Life be taken from him upon Presumption or probable Arguments, but by plain, direct, and manifest downright Proofs. But a more strong, and indeed a violent Presumption lay quite the other way, that this noble, prudent, and pious Lord, could never be guilty of such a Crime, as to conspire the Death of King *Charles* the Second: It was extremely against his Interest so to do; for the Life of that King; so long as it continued, by the Blessing of God, was the great Security, both he and all good Protestants had against the greater Danger that might happen by the Change arising by the Death of that King, of losing our Religion, and all our Civil and Religious Rights, as the Experience we have lately had; hath sadly taught us. And if any thing were consulted between this excellent Lord, and those with whom he met, as is more than probable, it was how to secure themselves against those Dangers they saw so near approaching, if the Life of King *Charles* the Second should fail; there was so great a Cause to fear them, considering who was like to succeed in the Throne.

The Magistracy and Government of England Vindicated. In Three Parts. Containing, I. *A Justification of the English Method of Proceedings against Criminals, &c.* II. *An Answer to several Replies, &c.* III. *Several Reasons for a general Act of Indemnity.* By Sir Bartholomew Shower.

IN the present Age, when the Variety and Multiplicity of new Prints is such, that the Money and Time required for their Purchase and Perusal, is more than an ordinary Gentleman can reasonably allow; it may deservedly be thought a Nuisance to the Publick to have their Numbers increased; especially since the Complaint of the ingenious Author of the *Trimmer's Character*, that for this very Cause, he could almost have wished himself unable to read; but yet the Support of Magistracy and Government is a noble Theme, so useful to the Publick, and so generally agreeable to the Humour of Mankind, that the mere Subject will (I presume) be an Excuse for this Publication, if any thing can be so.

At this time of Day none would have thought that a Necessity should happen of writing upon such a Topick, when every *English* Protestant was entertaining himself with the pleasing Prospect of impartial, due, and indifferent Administrations, when Authority was becoming amiable and easy to the People, when the People were inclining to a Zeal and Affection for the Honour of Magistrates; in short, when the Law was recovering its clouded Credit: In this Conjunction none expected to see all the Pillars and Posts in the Town daubed with plentiful Title-pages, (like so many Histriomastixes of *William Prynne's*) directing their Spectators to Books of Obloquy and Reproach; not only on the Per-

sons and Opinions, but the Authority of Judges; when neither of the three are corrigible; or so much as censurable any otherwise than in and by a Parliament; much less was it expected, that Gentlemen of the long Robe would appear in Print to ridicule their own Profession, and expose our Law even to the Scorn of Foreigners. It would not have been so very strange to have seen a Doctor of the Commons exercising his Wit and Raillery on the Common Law Proceedings, when he saw his dearest *Diana*, I mean his Excommunication Process, in Danger of becoming useless, and a fair Occasion given him for such an Essay from the Disgust of the People against *Westminster-Hall*.

But none imagin'd, that Satires and Invectives upon past Proceedings should be writ by Lawyers, who expect a farther Benefit from their Profession by the Grace and Favour of the Government; which if they happen to acquire, according to their Expectations, I would only remember them, that Mocking is Catching in the Proverb. There was once upon a Time a certain Master of Arts, who, whilst at *Cambridge*, did ridicule and expose the Clergy of the *English* Church, by writing the pretended Causes of their Contempt; but the *Templars* said; that he, whilst at *London*, did give an Occasion for a third Part to the same Tune, or at least a new Edition of the Book, with Addition; by the Author himself;

self, even of his own dull — as proper for the like Use. In petty Corporations they who have most complained of other Hardships have frequently outdone their Predecessors, when once they have got their Places. A whining, complaining Servant doth often prove a peevish, imperious Master; and I am sure in the Inns of Court, the most noisy, troublesome and mutinous Students and Barristers make the stiffest and most magisterial Benchers. I make no Application, but I leave the Reader to what he pleaseth. Better things are to be hoped of all concerned in publick Government.

Since the Press seems open, and Lawyers Books are published without a Licence, another may assume the same Liberty with equal Authority, and with more Reason, when his Province is only to correct the Misrepresentations of Things, Actions and Persons, tho' made by Authors of Age, Experience, Figure and Learning, (I will not say Candour or Honesty) especially since they are private Men, and having vented their own Thoughts in Print, they remain no longer theirs, but are equally exposed to the Censure or Applause of every Reader. Besides, 'tis generally presumed, that an Author expects a publick Animadversion, or otherwise he would never have become such. He presumes his Arguments irrefragable, and then an Answer does him no Mischief; and if they are otherwise, he deserves it. And surely he stands as liable to be corrected by others, as others were to be censured by him. And it is more warrantable certainly to write and print for the Vindication of former Proceedings, than it can be either candid or genteel to arraign or expose them; especially, since to do so, is, and must needs be, mischievous to past, present, and future Governments, as Experience will unquestionably teach us; but the other is, and will be, of Service to future Administrations, by maintaining the Reputation and Credit of judiciary Proceedings.

It is well known, that the Lord *Ruffel* being so unfortunate as to fall under the Accusation of Treason, was the most pitied of any under those Circumstances, by all who knew either his Family or personal Character; great Expectations were then had of the Issue of that Trial, the Event gave great Occasion for Discourse afterwards, and almost ever since; the printing of his last Speech, with the several Answers to it, did much augment the Talk. It cannot but be remember'd how various and different the Sentiments of most were upon that Subject; the Debates concerning it generally concluded in a Pity to his Person and Relations, as a great Misfortune upon both, and in Truth upon the Nation, that a Gentleman of such Qualifications should be guilty of so much Inadvertency, (to say no worse) as to engage so frequently in such Consults as he unhappily did. Some blamed the Jury, most censured the Witnesses, but very few arraigned either Counsel or Court; and in Truth, the Fairness and Indifferency of that Trial was such, that his own Relations were pleased, and his Enemies angry, with those that then sat upon the Bench; and thus it continued till the present Revolution.

Then the Memory of that unfortunate Gentleman was revived by the Publication of a Defence of his Innocency. The Name subscribed to the Title-page is so great, that I should be a-

fraid to proceed, but that I am resolved not to be known; and therefore if any thing falls from my Pen indecent or disrespectful, he must excuse it, as a Privilege claimed by Authors, especially of Books that have no Name to them.

To begin at the End; For what Purpose was that Pamphlet printed?

It could not be for the Good of the Nation, as a Means for Consumption of Paper; for, as I have been told, that's a *French* Commodity.

It could not be for the Bookseller's Profit only, for a Reason to be guessed at.

It could not be for the sake of that Lord's Memory, or any of his surviving Relatives; for no Man will think it a Service to them, to renew the Thoughts of that unhappy Accident in so noble, antient, and worthy a Family. In Truth, the whole Treatise is nothing but a painting to the Life the too deep Concern of that Branch on't in a weak as well as criminal Enterprize; for what else doth signify the Expression, *pag. 4.* that being present at a Consult of Traitors a second Time, or oftener, raises a strong Suspicion, that the Party who does so, likes it, contents to it, and approves it; or else he would have forborn after his having been once amongst them? And many other such Expressions there are with the like Reflections, as *pag. 7.* that *Rumsey* and *Sheppard*, the two first Witnesses, &c. raise a strong Suspicion upon my Lord, and make it probable that he was guilty. And in the same Page the Author seems to agree him guilty of Misprision. And *pag. 17.* he republishes the Evidence of *Rumsey*, that there was a Consent, and this the Author agrees to be High Treason; but he then endeavours to invalidate the Credibility of that Evidence, by shewing the Wildness of his own Memory. Now how this could serve the Reputation of the Deceased, or cure the Resentment of his Relations upon that Account, I confess myself utterly unable to imagine. Nor can any Reader suppose the Title verified by the Book, viz. *A Defence of Innocence*, when there's not one Word to be read of it but in the Frontispiece. Surely there's no Thanks due to the Author from that Family, no more than was an extraordinary Fee due to that Lawyer who pleaded for a Defendant to this Effect: *My Client, I must confess, is a Wag, but not so great a Wag as the Counsel of the other Side would represent him; their Proof is very strong, but not so strong as they would boast it to be; our Defence is but dark and weak, but not so weak as they would argue it.* So that the Book could not be writ for a Service to that Family, unless a Concession of Guilt can be called a *Vindication of Innocence*.

It could not be for the sake of the Government: For it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate Methods are more advisable; and if every thing should be re-published which hath given Disgust to the People, few would escape the Lash, the Righteous themselves would scarcely be saved; for Abundance of them have tript either in their publick or private Conversation, and some in both, and that notoriously too: I name nobody. Besides, the Government must of Necessity never allow the Doctrines divulged in this Pamphlet, unless 'tis intended that its Being and Continuance shall be as precarious as a *Beneplacito* Judgeship, and as dependent upon the People's Humour, as that is upon the King's:

Nor

Nor can any Government countenance and encourage the Arraignment of a considerable Number of wealthy worthy Citizens, with the printed Censure and Insinuation of their being a Parcel of corrupt, ignorant, injudicious, dishonest, and partial Fellows; and this is done to the full, when said, that the contrary would have sworn to a Not Guilty, or at leastwise they should, if the Author had been there. But most of his Readers are of another Opinion, notwithstanding the second Letter, *pag.* 7.

It could not be for the sake of popular Applause; for it's thought, that the Treatise will never deserve or procure it, especially if you take it in Pieces, and consider them apart, and with sober Reflections. So that no Man can tell what it was writ for.

When the Title of the Book, and the Name of the Author was first published, Mankind was full with a pregnant Expectation of some rare, abstruse, uncommon Learning, upon the Point of Treasons with which the World was before unacquainted. No Man looked for a Preachment concerning the Body and Blood of our Saviour, the World to come, and the Guards of Heaven, as Topicks proper for an Animadversion upon that Trial, especially from such an Author. But there's nothing strange under the Sun.

The Preface is an Encomium upon the Author himself, declaratory of his Readiness for publick Services, and seems to be calculated for a Cooler, or a Defence against the Heats and Rigours of an harsh and oppressive Government, for an Help to such as may possibly hereafter fall into the like Danger and Trouble: And to teach the People the Fear and Jealousy of a Possibility of such Occurrences again, can never be thought a publick Service. As to part of the Preface, it is so dark, that a slender Understanding can never reach the Sense of it, I mean that long Paragraph, *The Copies of, &c.*

The first Letter begins with a seeming Shew of a bold Resolution in the Author to perform the Duty of a friendly Counsel, maugre all the Inconveniencies that might happen to himself thereby. But it concludes with an extraordinary Caution and Care to prevent all Danger, even to such a Degree as much diminishes the Credit of that invincible and heroick Resolution at first boasted of. And if his Courage had been so strong, why were not these Letters published formerly, and in Times, when, in the Author's Judgment, there was more Occasion for their Use, than the present can possibly afford? But rather it may be again asked, why they are printed at all, the Observations contained in them having been printed not above 500 Times already, and perhaps with as much Advantage? Was it a Secret to the World, that a Variance between the Indictment and the Evidence might be alledged on the general Issue? Did no Man in Town know that Treason and the Misprision of it are different Crimes? Is the Distinction between them such a new Invention, and so very useful, as to be an Equivalent for the want of Counsel in capital Trials, as the *Preface* and *Letter* do insinuate, if they do any thing? Who ever doubted, but that Proofs of Treason must not be by Hearsay or Argument only? Was it ever a Question, for this hundred Years, but that every Indictment of Treason must contain an Overt-act? Or that less than two Witnesses was allowable for Proof

of that Crime? Or did any Man ever scruple but that *Keble's* Statute-book contains a true Copy of the 13 *Car.* 2. *cap.* 1. which requires Witnesses credible? Now if these Questions must be answered in the Negative, how can the Advice of these Letters be assistant to a better Defence than was known long since?

The Book itself begins with Stories of Transubstantiation of Bodies, and Transmigration of Souls, as much to the Purpose, as the Parson's Text was to his Doctrine, who preach'd upon the Certainty of the Day of Judgment from that Verse in *Genesis*, *And Adam knew Eve, and she conceived, &c.* But perhaps the Author intended all that first Page for a Flourish, and to entice his Reader into a patient Perusal of what follows, and prejudice him against the Sheet he pretends to answer. He is very frank in styling it a libellous Pamphlet, and the Author some rank bigotted Papist; but to what Purpose no Man can divine, unless it were to expose him to the Rage of the Mobile; but his Name was never potted, and so he is safe from that Danger.

The Assertions are two, that there was neither Charge nor Proof; that the Indictment and Evidence were both insufficient.

I must confess, that it would be a mighty Addition to the Liberty of the Subject, to have the Law established and declared to be what the late Judge doth argue it is; for then there would be a Freedom for Malecontents to endeavour their own Satisfaction by Conspiracies and Consults, and that with Impunity. But as the Law was, and always hath been taken to be, an *English* Subject hath very little Colour for his Pretence to such a Privilege as that Doctrine gives.

The Indictment is, that at such a Place and Time *he did compass and imagine not only to deprive the King of his Government and Royal State, but to kill and put him to Death, and to procure a miserable Slaughter amongst the King's Subjects; and to subvert the Government of England, and to raise a Rebellion against the King.* Then follows, *That to fulfil and perfect these Treasons and traiterous Imaginations, he, together with other Traitors, did then and there with them traiterously consult, conspire, conclude and agree to raise a Rebellion, and to seize and destroy the Guards of the King's Person, contra, &c.* Now whether these last Acts be not a natural and genuine Evidence of the former, let any rational Man judge. But I will particularly prove, that this Indictment was sufficient to warrant the Judgment which the Court gave, and pronounced upon a Verdict, that the Accused was guilty of that Fact in the Indictment, and then answer the Objections started against it.

First, There's a sufficient Treason alledged. And secondly, Here's a sufficient Overt-act. Both these I'll agree are necessary; and if either were wanting, the Indictment was naught. Now it must be agreed to me, that the first is clear and plain; for by the Law, to compass or imagine the Death of the King, Queen, or their eldest Son, is High Treason. It is true, by the same Law, some open Act of which human Justice can take a Conusance, is requisite to be proved; the very Words of the Statute do expressly require it; and in Truth it is no more than what must have been, had no such Words been used: For Thoughts are secret, and can never be arraigned, proved, or censured, any otherwise than as they are discovered by some Overt-act; so that the

Clause

Clause requiring an Appearance of the Compassing and Imagination by some Overt-act or open Deed, is no more than would have been impliedly requisite, had the Clause been omitted. 'Tis the Imagination and Compassing which is the Treason, that alone is the *Crimen læsæ Majestatis*, which is prohibited and condemned; the Overt-act is not the Treason, that's only a necessary Circumstance, without which no Court can ever take Conuance of the other. And it is necessary to alledge some such Deed, *à necessitate rei*, without respect to the Words of that Statute. — I insist the longer upon this, because it is used as an Objection, that the Clause of *proveably attaint by*, &c. is restrictive, whereas it is not so; for it is only to make that first specified Treason of Imagination and Compassing to be a thing intelligible and triable: And farther to prove this, it is considerable, that this Requisite of the Overt-act is of Use and Necessity barely, and only in the Case of that which is first mentioned, *viz. Compassing*. For the other sorts of Treason are Acts themselves whereof Notice may be had, as levying of War, violating the Queen's Bed, and the like; and in an Indictment you need only alledge the Facts themselves, as that there was a War levied, there was a carnal Knowledge had, and the like. And this farther appears from the very Form of Indictments used ever since that Statute; for there never was an Indictment (and if there were, it could never be good) barely averring an Overt-act without an exprefs Allegation of the Compassing.

Then the Matter results solely into this Question, Whether the Fact here laid be naturally and necessarily declaratory of the Party's Imagination to destroy the King; for if so, the Indictment is undoubtedly good; and it can never be called a constructive Treason, or a thing devised by the Judge's Interpretation of the Statute; for they adjudge no more Treason, than what the Statute declares, and that is an Imagination of the King's Death. Now whatsoever is significative of a Man's Intention or Imagination, is a sufficient Overt-deed to demonstrate, that that Man had such Intention or Imagination; and whatsoever is expressive or significative of a Man's intending, compassing, or imagining of the King's Death, is a sufficient Overt-act to prove and make such a Man a Traitor within this Law. Now that a Consult about, and an Agreement and Conclusion actually to seize the King's Guards, and raise a Rebellion, are a natural and genuine Declaration, that the Person who did so consult, agree, and conclude, did compass and imagine the Death of the King, is surely plain enough: For a Rebellion, if successful, can determine in nothing else but the King's Death, either natural or civil, which is all one within this Law. Now he that designs and intends the necessary Means naturally conducing to a particular End, that Man may certainly be said to intend and design that End, *Causa Cause est Causa Causati*. If the Deed tend and conclude to the Execution of the Treason, that's a sufficient Overt-act, says *Coke*, 3 *Inst.* 12. And in the same Book, *fol.* 6. he hath these Words, *That he who declareth by Overt-act to depose the King, is a sufficient Overt-act to prove, that he compasseth and imagineth the Death of the King; and so it is to imprison the King, to get him into his Power; and to manifest the same by some*

Overt-act, this is also a sufficient Overt-act for the Intent aforesaid.

In 3 *Inst.* p. 12: 'tis held, That a *Preparation* by some Overt-act to depose the King, or take the King by Force and strong Hand, or to imprison him till he hath yielded to certain Demands, that is a sufficient Overt-act to prove the Compassing and Imagination of the King's Death; for that this, upon the Matter, is to make the King a Subject, and to despoil him of his Regal Office; and so he says it was resolved by all the Judges of *England*, *Hil.* 1. *Jac.* 1. in the Case of the Lord *Cobham*, Lord *Grey*, *Watson* and *Clark*, Seminary Priests; and so he tells us in the same Place, that it had been resolved by the Justices in the Case of the Earls *E.* and *S.* Now if we consider the Reason why these were Overt-acts of Treason, it will appear to be only because of their natural Tendency to the Accomplishment of that particular Treason of Compassing, which holds the same in the Author's Case, as well as in those there mentioned.

A Conspiracy with a foreign Prince is agreed by my Lord *Coke*, *ib.* 14. to be Treason, if it be to invade the Realm; and an Overt-act of such Practice to be a sufficient Overt-act of a compassing the King's Death; and the Reason is, because such Actions cannot be thought to be intended for any other Purpose; and yet that particular Act may be accomplished; and it may so happen as that the King's Death may not follow, and yet they are Overt-acts of that treasonable Imagination, because of their Conduciveness and Tendency thereto. The Case of Cardinal *Poole* was, writing a Book of the Pope's Supremacy, in which were contained Incitements of *Charles* the Emperor to an Invasion of this Realm; and that was held an Overt-act of imagining the King's Death. In the Lord *Cobham's* and Sir *Walter Raleigh's* Case, a Conspiracy, Consult and Agreement to promote an Insurrection, and procure an Invasion, was held an Overt-act, 1 *Jac.* 1. and their meeting, consulting and agreeing, was laid as an Overt-act, though discovered before the Thing took Effect. Dr. *Story's* Case, which is mentioned by the Lords *Dyer* and *Coke*, was no more than a Practice or Persuasion to promote an Insurrection and Invasion; and the Overt-act that was alledged, was the writing of Letters for that Purpose, which is no more influential towards it, not so much as frequently meeting, consulting and conspiring, and at last concluding and agreeing to make an Insurrection. The Case of Mr. *Coleman* was no other; for whatsoever the Indictment laid, the Evidence was only of Letters to the like Effect (as to this Point) with those of Dr. *Story*; and the Case of Dr. *Story* was before the 13 *Eliz.* which made a new Treason during her Life; for the Trial was in *Hilary* Term, and the Parliament did not begin till *April* following. A Machination or Agreement to raise a Rebellion naturally tends to the Destruction both of King and People, and an Advice to it hath been adjudged so. As in the Reign of *Hen.* 4. one *Balsbal* going from *London*, found one *Bernard* at Plough in the Parish of *Osley* in the County of *Hertford*; *Balsbal* told him, that King *Rich.* 2. was alive in *Scotland*, (which was false, for he was then dead) and advised him to get Men, and go to King *Richard*; in *Mich.* 3 *Hen.* 4. *Rot.* 4. you'll find this adjudged Treason. *Throgmorton's* Case is as plain, for

for his was only a Conspiracy to levy War within this Realm; he did not join in the Execution, and the Conspiracy alone was declared to be a sufficient overt Act by the Judges. 'Tis no Answer to it to say, that a War was afterwards levied, for *quoad* him 'twas a bare Consult; his Offence was no more than that. In Sir *Henry Vane's* Case, Meeting and Consulting were alledged and held to be overt Acts. The Case of *Constable*, mention'd in *Calvin's* Case, was only an Act tending to deposing the Queen, as dispersing Bills in the Night, that *Ed. 6.* was alive and in *France*, and held an overt Act declarative of his compassing her Death, and he was executed for it. And in the Report of *Calvin's* Case you have several other Cases mentioned, where Endeavours to draw Subjects from their Allegiance have been adjudged overt Acts of this Species of Treason, the Compassing, &c.

The Word *Compass* in the Statute is of a larger Extent than only to mean an actual Assault on the King's Person, and an Endeavour to cut his Throat; it most certainly implies any Consult or Practice of another thing directly which may produce that Effect, as the dissuading People from their Fidelity: Such was *Owen's* Case in *K. Ja. I.* his Time, in the 13th Year of that Reign. This Advice was to this Effect; That King *James*, being excommunicated by the Pope, might be killed by any Man, and that so to do was no Murder; for being convicted by the Pope's Sentence, he might be slaughter'd without a Fault, as an Executioner hangs a Criminal condemned by Law; and for this he was hanged as a Traitor. He that denies the Title to the Crown, and endeavours to set it upon another's Head, may do this without a direct and immediate desiring the Death of him that wears it (so said *Saint-John* in his Argument against the Earl of *Strafford*); and yet this is Treason, as was adjudged in the Case of *Burton*, and in the Duke of *Norfolk's* Case, 13 *Eliz.* This denying of the Title, with Motives, tho' but impliedly, of Action against it, hath been adjudged an overt Act of compassing the King's Death, as it was in *John Sparbarcke's* Case, *Palch. 3. Hen. 4. Rot. 12.* The like was the Case of *John Awater*, who was indicted for a Treason of that Nature in *Kent*, and the Indictment removed into *B. R. Trin. 18 Edw. 4. see Rot. 17.* and he was thereupon afterwards outlawed as a Traitor; and so was *Tho. Heber* at the same time; and Words significative of an actual Intention have been held so, as are the Opinions of *Yelver. 107. 197. Arthur Crobagan's* Case, *Cro. Car. 332.* and Abundance of others might be named as they are reported in our Law-Books, but I do not particularly mention them; for that their Authority in some of them is very slender, and may be ill used, to the straining of rash and unadvised Words into a Signification of a Man's compassing, when perhaps the Man never thought as he spoke: However all of them do evince, that advised and deliberate Preparations moving to a Danger to the King's Person, have all along been held overt Acts of a compassing his Death; and some of them prove, that Preparatives and Motives to the levying of a War have been held Treason, as was Sir *William Ashton* of *Suffolk*, 31 *Hen. 6.* mentioned in *Cro. Car. 119.* for making Ballads reflecting upon the King, and writing Letters to the Men of *Kent*, exciting them to rise to aid the then Duke of *York*, &c. *ad guerram levandam*, and no mention of any War actually levied. *Germain* and *Taylor's* Indictment

hath very little more in it mentioned, than the like Preparations and Incitements to a Rebellion; and yet the Treason there laid was a compassing of the King's Death, *anno 2 Ed. 4.* The Case of *Thomas Burdett*, in 17 *Ed. 4.* as at large it appears in the same Report of *Cro. Car.* amounts to no more than the Indictment in Question, *viz.* that he compassed the King's Death; and to accomplish that Intention, he did disperse diverse Writings, &c. *ad intentionem* that the People should rise and levy War, &c. the Judgment in that Case, Drawing, Hanging and Quartering. The like in *Collingbourne's* Case, 2 *Rich. 3.* in the same Rep. 122. where he is indicted in like manner, for exciting and moving the People to an Insurrection and War, and he incurred the like Judgment; which Cases are infinitely short of this in question: And it cannot but be wonder'd, that any Man, who has read them, should question, whether a consulting and conspiring about Rising, and an actual Agreement and Determination to rise, be an overt Act of compassing the King's Death. In the very Trial of the Lord *Stafford* it is affirmed by Sir *William Jones*, (who was certainly of great Authority with the Author) that the meeting and consulting together is an overt Act, tho' the Thing agreed on be never put in Execution; and 'tis there resolved by the Judges, that the same Treason may be proved by two Witnesses to several overt Acts, tho' one speak of Words or Actions that were spoken or done at one Time and Place, and another speak of Words and Actions at another Time and Place; which argues, that Words, much more a Consult and Agreement, may make an overt Act. Even in the Case of *Stephen Colledge*, in which though the Trial hath been censured, yet the Indictment never was, and in that Indictment the Treason is laid as in this Case, that he traiterously imagined and compassed the King to depose, kill and destroy; the overt Acts are, that he armed himself, and advised others to arm, and spoke several Words, &c. Here was no War levied, only a Preparation, and yet that was allowed an overt Act: And as for the Words, if they are allowed to be one, with much more Reason may meeting, consulting, concluding, and agreeing to do.

As to the Objection, surely there is no Weight in the first, which is *Page 10.* that criticizes upon the Word *fait* Act, and that 'tis only a Meeting to agree, and an Agreement to do, but 'twas not done. Suppose they had concluded and agreed to poison or stab, &c. according to the Opinion in that Page, this was no Treason; for 'tis only agreeing and concluding upon a thing to be done, but it is not done. He doth in *Page 13.* argue, that this can never be an overt Act of compassing the King's Death, because levying War is a distinct Species of Treason, and a conspiring to levy War is not a levying War; and even levying War itself cannot be assign'd as an overt Act of Compassing, unless the Indictment were particularly for that; but surely another sort of Act that favours of another Species of Treason, if it naturally conduce to the accomplishing of the first Species, *viz.* that of Compassing, it may be assigned as an overt Act of it; and Sir *Henry Vane's* Case is quite otherwise; for there a levying War was the overt Act alledged of the Compassing, and allowed by all the Judges; and all the Indictments in the *West* upon *Monmouth's* Rebellion were so, and yet drawn by very good Advice;

Besides, what Answer can be given to the Cases which I have cited, where Consults, Conspiracies, Practices, Advices, Letters, Persuasions, and other Motives and Preparatives to an Insurrection, have been held overt Acts of an Imagination of the King's Death, tho' no War was levied, tho' no Insurrection was made?

'Tis apparent from what was said before, that to take the King Prisoner, or to seize his Person, is a compassing of his Death; and if so, then to sit in Council to conspire the effecting of that, is an overt Act of compassing the King's Death; and this Case amounts to that: Here was a Consultation to seize upon the King's Guards, which could tend to nothing but the seizing of his Person; and then the Consequence is plain. The Author says, *Page 14*. If it had but been alledged in the Indictment, that in pursuance of the Consult and Agreement, there had been a View of the Guards, and a Report made, that the thing was feasible, this would have been more to the Purpose. How much more, no Man can tell; for every Objection in the Book would have been as good against that as this. The great Objection he seems to rely on, is, That the Law takes no Notice of them: For once I will suppose, that it doth not; and then let us observe, if any Argument can be drawn from thence: Perhaps the thing was not used or known when the 25 *Ed. 3.* was made. Can nothing be Treason, if the Plot laid to accomplish it be concerning a thing not *in esse* at the Time of the Statute? Certainly it may. If several Malecontents should consult, and agree, and prepare (in order to an Insurrection) to seize the *Tower, Portsmouth, Hull, and Plymouth Fort*, would not this be an overt Act of Treason? And yet our Law takes no Notice of any Garrisons there or any-where else; they have no relation to the Militia, nor were there any Arms in those Places in *Ed. 3.* his Time that we read of in our Law Books: If this be otherwise, why did not the Author find Fault with *Rouse's* Indictment, which was tried much at the same time with this in question? Suppose all the Gentlemen Pensioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the Doors in *Whitehall* broken up, and all the Swords, Muskets and Pistols were taken away, and yet it happen'd that the King's Person was left untouch'd; would this be an Act of Burglary and Murder only? We have no Law Books that take notice of Arms at *Whitehall*, or such Names as those Servants go by; and suppose, at the same time, upon the Consult, that the Conspirators did move, discourse, debate, and conclude of an Insurrection, would it not then be Treason? If not, nothing can be so, unless the King's Person be murdered or seized; and the Statute should not have said *Compass or Imagine, but Seize or Kill, &c.* It suffices then, that the Guards are in common Understanding known to be used and employed for the Attendance upon and Preservation of his Person. If common Sense and Reason be Judge, no Man can think but that he who intended to move an Insurrection, and seize the Guards, had a further Design upon the King's Person; and then this is Treason; if otherwise, the King of *England* is in a worse Condition than the worst and meanest of his Subjects; for a King must not, cannot, in or by our Law, assault, strike, seize, attack, or imprison in Person, and consequently cannot defend himself; and

shall not his Servants, Guards and Attendants, (which are all of the same Nature) wear a Sword, or carry a Musket, before him? If they do so, is it not then known, that they do it? If it be commonly known to be so, doth not he that seizes and destroys those Attendants, endanger the King's Person? And if that be so, the Inference is easy. It can never be, it will never be allowed for Law, that a Seizing all the King's Guards is only a Breach of the Peace, unless we renounce the Law, and will judge more by Inclinations and Partyships than by Reason and Precedents. As to the Distinctions between an actual seizing them, and a Consult and Agreement to seize them, what I have urged before overthrows it, and what the Author says doth not maintain it; for both have a Tendency to the Execution of the Treason intended.

I will not take the Pains to remark upon all the Inconsistencies of the Concessions and Denials in the Book; they are obvious to the Readers. As to his Quarrel at the King's Guards as an illegal thing, and terrible to the People, somewhat of the *French Growth*, I hope the King will always preserve them for his own personal Preservation, notwithstanding the Author's Opinion. As to his temporary Laws, which declare Words Treason, most Part of them were affirmative of the old Law, and were made only in Compliment to a new-crown'd Head, when they prohibited nothing but what was before so; and for the rest, no Conclusion could be made from them for the Maintenance of his Assertion, if he had repeated them; which since he does not, nor will I.

As to the Cases cited by the Author of the Antidote, (which I have mentioned) he agrees to *Constable's* Case, but does not distinguish it in its Reason from that in Dispute. He denies the Authority and Law of *Dr. Story's* Case, which nobody ever denied before him. He says, that in the *Lord Cobham's* Case there were People assembled, but gives not any Answer to what the Antidote affirmed, *viz.* That the overt Act taken notice of in the little Book, called, *The Pleas of the Crown*, was only the conspiring to make an Insurrection. He doth confess, that in the *Lord Grey's* Case there was only a Conspiracy: He says, that in *Sir Henry Vane's* and *Plunket's* Case, there were several other Ingredients to mount them to Treason; but what they were, nobody must learn, at least not from the Author, for he names none of them.

He consumes half a Page in an Encomium upon the Judiciousness of that Court, which made a conscientious legal Scruple, Whether the Murder of a Mistress by her Servant were Petit Treason, by reason of the Difference of her Gender? But at last he tells us, that the Judges of the *Common Pleas* did upon much Deliberation satisfy those of the *King's Bench*, that Master and Mistress were in Effect but one.

In the Conclusion of the first Letter, he says, that conspiring against the King's Person, is most justly taken to be to conspire against the King's Life; but in the Book he will not allow a conspiring and agreeing to seize (*i. e.* beat and destroy) the Guards, which are ordinarily and commonly known to attend the King's Person, to be a conspiring against his Person; which whether it be or not, the next Trial of this Nature will determine. Now, after all, what can be a greater Reflection

Reflection upon the Learning, Judgment and Integrity of the King's Counsel, Judges and Recorder, than to declare and publish in Print, that the first prosecuted, the second tried, and the last condemned, a Gentleman as a Traitor, when the Charge had nothing in't of that Nature: If true, the bare printing it is unbecoming the—— But as for their Reputations, let them justify themselves. The Reason of my undertaking to explode such a Reflection, was my own and every Man's Duty to the present Government, (the King and Queen's Majesties being both concerned, and eminently too, in the Consequence of such Doctrines) and a Love to my Countrymen, that they may not presume upon the Authority of such a Defence; for if they do, they may find their Mistake, when noosed through the Power of Truth, the contrary Opinion.

As to the Proof, I will not rake into it, since the Author hath represented too much of its Strength, and *De mortuis nil nisi bonum*; it can never be thought a grateful Province to debate or convince of Guilt; but yet I may say so much, that there was Evidence enough to justify all concerned in the Prosecution and Trial, though for several Reasons the Attainder is fit to be reversed, but hardly for those which this Author mentions.

Since the Writing of this Sheet, there came to my Hands a Treatise, calling itself, *The Lord Ruffel's Case*, which favours more of Policy than

Law, and his Topicks are the Rights of the People and Power of Parliaments; they argue the Author to be a greater Statesman than Lawyer, and therefore much too great for me to encounter; and a Debate concerning the Heads he insists on is neither safe nor allowable without Doors. I shall make but three Remarks on what he says: First, He may assure himself, that that Power from which he argues his Law, is now apparently lodged in the Commonalty, not in the Nobility. Secondly, The King's Solicitor (whom he reflects on) twittered more Reason and Law than yet hath been or ever will be answered: And thirdly, The Indictment contained no new constructive Treason, but only that which was plainly and directly declared in and by the 25 *Edw. 3.* if the Letters of it make Words, and the Words Sense, and one Man may be allowed able to read them as well as another.

Since the writing of the *last Paragraph*, there came to my Hands another Pamphlet, written by a new Observator; but I suppose the Judges that shall be, will correct that sort of Licentiousness which he assumes in his Remarks; which if they do not, they'll have fine easy Places on't, as well as their Predecessors, and much good may it do them!

*Ætas parentum pejor avis tulit
Nos nequiores, mox daturos
Progeniem vitiosorem.* Horat.

A Second Vindication of the Magistracy and Government of England, by way of Answer to the several Replies, &c.

IT is very observable, that since the late Revolution, nothing hath more disturbed our Peace than the Liberty of the Press; and amongst all our new Prints, the most malignant and mischievous Libels on the present Government have been written by those Lawyers who pretend themselves the greatest Zealots for its Honour and Service; which may be suspected as false, unless it be withal considered, that some modern Royalists have nothing commendatory of themselves, but the Miscarriages of others; and others of them have such great ones of their own, that an Extenuation or Excuse is impossible; and therefore to cloud their own Deformities, they would blacken other Mens Reputations; and, in order to it, they have censured Innocence, and arraigned Laws; and where a Slip or Fault hath been, though so small as scarcely to deserve the Name of one, they have magnified it into an execrable Villainy: And for a Colour of such their Calumny and Slander, they have vented new Gospel and Law both; nay, they have broached such Notions to the World, as are directly fatal to that Crown of which they boast themselves the Makers and Supporters; and yet, in doing so, they pretend to merit——

It is strange, but true; for the Fact is plain, and the Consequence too: Upon the present Change, the Republicans of both Gowns did deem it their Policy and Interest to bespatter and reproach other Mens Actions, and, like base and mean Spirits, gave ill Names and Words to every thing in which themselves had not been concerned, and made Reviling so customary, that it is become

the modish Sin of the Age. It is most certain, the old *English* Honour, Frankness, Ingenuity and Good-nature is quite abandoned from some Companies and Places in the Town, and instead of Folly, we have assumed Vice in our common Conversation; instead of Drollery and Banter, the new-fashioned Wit at ——'s allows nothing as acceptable but Lying and Slander; nay, the very Spark of a Courtier hath changed his Note; whereas fulsome, gross and false Flattery was wont to be his Talent, he is now got to the other Extreme, *i. e.* revengeful, weak and false Characters, both of Persons and Actions: Which is the worst is difficult to determine, but Falshood is the most predominant Humour in both; and that Age is surely unhappy, which is plagued with a Surfeit of either, especially when the Excess is so great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Protestant, no Lawyer an honest *Englishman*, no Courtier a faithful Servant, unless he can and do rail, and snarl, and scold, and that at Things that were justly used in former Times, and must necessarily be used in these Times, and will be so in all Times whatsoever, even in *Secula Seculorum*: These little stinging Animals do value themselves upon their Honesty, because they find Faults, but it is in Cases where no Eye can spy them but their own; they value themselves upon their Wit, because their Censures are sharp and biting; but that is so easy, so very easy a Province, that Nature teaches even the rudest of her Breed to be satirical, and the Natural ostentimes outdoes the pretended Scholar in Ribaldry,

baldry, and hath perhaps a better Faculty that way, than Fancy for Picquancy of Reflection.

Now as the Fact is thus criminal and ridiculous both, so must the Consequence prove fatal to the Government, which they would be thought (but intend not) to support; for when once resolved to arraign all past Proceedings, they are forced, for the Maintenance of such their Reflections, to vent those Opinions, Doctrines, and Rules in Divinity and Law, which have in every Age (save one) been justly exploded, as destructive to the Honour and Being of the then Possessors of the Crown; and can conduce to no other End than the utter Subversion of this, and every other Government, that doth but smell of a Monarchy.

It cannot be denied, but in most Reigns there have been some Occasions given for Disgust to the People, that Kings have borne too hard upon their Subjects, that the Subjects have worthily complained of some Warps from the Law; but no Man ever with Sense pretended, that this is a Reason to induce a Belief, that every Act of State, and every Judgment of Law in former times, was arbitrary and unwarrantable: No surely, the Publishers of such Reflections are of another Thought themselves; and some Folks imagine, they who formerly were engaged in seditious Practices against the Crown, would now upon the present Occasion, explode that Law, which doth condemn such Practices, that they may with Impunity repeat them, whensoever the King or his Ministers shall chance to disoblige them, and that this is the true Reason of half the new Libels and Invectives upon past Proceedings.

It is now apparent to all Mankind, that every Line, or at least Page, of some Mens Works, are designed only as a Courtship to the Mob, by bridling the Sovereignty, and clipping the Prerogative, even to such a Degree, as doth absolutely deprive it of those Rights, Powers, and Authorities, which the ancient Law, continued Usage, and our present Representatives, consent to allow it.

To check this growing Itch of pamphleting the Nation into another Change, and to vindicate the Rights of the Crown, and justify the Magistracy of *England*, from the Obloquy which was industriously thrown on it in one Particular, there was, three Months since, a Sheet printed and published, at which some Men took Offence; but others were of Opinion, that its Publication was seasonable and well-timed; that its Reflections on the trifling Defence, which it assumed to answer, were just and smooth, and very soft, considering the Occasion given for a more satirical Style, from the Fondness and Incoherence of the Defender's Expressions and Inferences; and that the Mode of managing his Argument was modest and tender, with a decent and due Regard to the Memory of the unfortunate Deceased, which had suffered more than enough of Injury by that pretended Justification.

A choleric and sedulous Inquiry hath been made after the Author's Name; but the Inquisitor is still at a Loss, notwithstanding his Confidence of a certain Knowledge who it was, that came behind and struck him, &c. But to give him some Satisfaction, after all his Fatigue in searching, I will ascertain who it was not; he may assure himself, that none concerned in that Trial, were concerned or privy to its Vindication; and when it was composed and writ, the Party in-

tended it chiefly for his own and the World's Diversion, from the ungrateful Necessity of reading always on one Side, by the Interposal of a few Lines on the other; that our Humours might not be quite soured, and our Genius turn too peevish, through the Influence of Satire and Libel, with which the World hath too much abounded of late Years; nor had there been one Word more published upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the Word of a Priest says, that it needs one; both shall have an Answer presently.

But, first, it is remarkable, that this new Reply hath got a Licence, when none of his other elaborate Works could procure one; however, it is possible, that the Licenser may hereafter renounce or retract his Allowance in this Case, as he hath done in several others already, when his Superiors are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be supposed, that Ministers of State will ever be so incurious of their Master's Honour, and the Rights of his Crown, as to approve their Diminution, when once they perceive it.

The single Point which the Advocate for Magistracy assumed to maintain, was, that the Indictment in question was legal and good, sufficient both for Matter and Form, and did warrant the Judgment which was pronounced upon the Verdict, that affirmed its Truth; this seems the principal Assertion in that Paper, which whether his Precedents and Authorities, Arguments and Reasons, are sufficient to prove, the Reader must judge; that the Cases he cites, are truly reported for so much as he uses them, none can deny; and that the Law is with them upon the whole Matter, shall be farther evinced.

But since that Sheet hath made some Noise amongst angry Men, (which was little expected by him that wrote it) it will not, I hope, be thought impertinent to spend a few *Paragraphs* upon the boisterous and blustering Invectives and Remarks made against its Author, in a pretended Reply. In his Vindication therefore, I shall observe the Temper, the Wit, the Guels, the Reason, the Religion, and lastly, the Law, of that Replication.

As to the Temper, it seems to be writ under some Disappointment; for the Author doth in every Sentence declare his Passion, and plainly tells us, that he was then discomposed; but whether his Displeasure were conceived at a past or present Chief, is not so easy to determine: To expose his Fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Presumptuous, Base, Ingenerous, Insolent, &c. and all this despised by his reputed Author, and smiled at by the real one. He is pleased to call the Sentence and Execution a plain Murder; which if so, sure I am, that he is bound in Conscience to prosecute an Indictment against the Judges, the Recorder, the Grand and Petit Jury, the Witnesses, the Clerks, the Solicitors, the Gaoler, the Sheriffs, and the Executioner; for they were all concerned either as Accessories, or Principals, and demerit a Halter, if the Repliant's Opinion be Law: But it is observed amongst *Honest Men*, that none of these Parties shew any Fear on't; and the Reason they give for it is, because the Indictment was as good as their Jurisdiction, and the Concurrence of those

two makes them as safe as an Act of Indemnity can do ; but all this was Passion.

As to the Wit on't, most of his Readers are at a Loss where to find it, unless it be in his *English Verses*, which do so hit the Sense of the Original, and contain such strong and pregnant Flights of *English Poetry*, that some of his Readers have compared them even with *Sternbold* and *Hopkins* ; and others are of Opinion, that they do not come short of the Essays of the two *Grays-Inn Poets*, one of which translated *Grotius, de Veritate Christianæ Religionis*, and the other *Coke upon Littleton*, into Rhyme ; but the Generality do declare, that for Height of Fancy, Propriety of *English*, and Exactness of Rhyme, he hath much out-done all those : But for my part, I believe, that last Rhapsody was added, not so much for the Ingeny sake, as to menace the Answerer with a Design to sacrifice him whensoever an Occasion should offer itself, and consequently to do what the whole Book complains of ; but that Advocate is not so much a Coward as to be afraid on't.

As for the Guess, it is very cunning, and argues more Figure-knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech or Writing ; for he will have the Author of that Sheet to be the Author of the *Antidote*, though he never saw it till he had the Misfortune to have read the *Defence* ; and his particular Idioms are as different from those of the *Antidote*, as they are from those of the *Defence* ; but this is all Guess. He will have it one of the Counsel of that Trial, because he hath put *Counsel* before *Court* : A cunning Man would have guess'd the contrary, as supposing it done *fallendi gratia*, for the sake of Disguise ; but he may be assured it was mere Accident, that occasioned that Fault. He will have it to be the then Solicitor, because of his Reputation, which is supposed to be touch'd in that *Defence* : But his Readers think, that that Gentleman's Figure for Learning, Honour, and Virtue, is so far above the Reach of a little *Pamphlet*, that all the virulent Reproaches of the *Reply* cannot fully it, nor is it in the Power of his Tongue or Pen to prejudice his Character in the World ; but however, it is prudent to suppose to myself an eminent Adversary, that if a Foil be my Fortune, it may be the easier.

But since we are at guessing ; the World guesses, that he who wrote the *Reply*, did write the Half-sheet called the *Justification* ; and it is really sportive to read the *Justifier*, commending the *Defender* for a learned worthy Person ; and the *Repliant* doing the same good Office for the *Justifier*, and almost in the same Words commending him : Nay, he spends a whole Page in the fulsome Praises upon that *Small Bulk* Author, and rejoices, that the Work was done to his Hands, which is a very pretty Jest. However, it is at most but *R. for A.* and *A. for R.* and *R. A.* still, which is much better than the contrary Practice, of which some Authors have been guilty.

As to the reasoning Part, the Reader must excuse my Brevity ; for in Truth there is very little in it of that Nature ; however, a few Remarks may quicken and revive that Faculty against the next Turn. The Advocate owns it to be writ in Answer to his *Defence*, *ergo* it reflects upon the Nation's Wisdom. He expresses a Repentment at my Lord *Ruffel's* engaging in such a weak and criminal Enterprize, *ergo* he reflects upon the

Nation's Justice. He names the Lord *Ruffel*, (though with the most tender Appellations that could be used) *ergo* he reflects on that Lord's Memory. He vindicates the Indictment as good, *ergo* he justifies all the Proceedings in that Case. He argues, that the Sentence was legal upon such a Verdict, *ergo* he is against the Reversal. He puts a Case, offers a Point, and makes a Proof on't, *ergo* he is transcendently impudent. These and such-like, are the Inferences, and do demerit a Laugh.

As to Religion, I see none in it, unless it be in the Mention of the devilish Powder Plot, which is still as much to the Purpose of his *Reply*, as the Story of Transmigration of Souls was to that of his *Defence* ; only Meekness is transparent in his Style, Humility in the Title Page, and true Christian Charity in his Menaces of an Exception out of the Act of Indemnity, which he repeats three or four times at least, as if his whole Interest were designed to promote it. The Gentleman's Danger is from publick and scandalous Actings in the Eye of the World ; which were (says he) labouring to *support the Government*, every Man knows what Sort ; lashing the Innocent with a *bitter and sharp Tongue*, and *inveigling of Juries* with rhetorical Flourishes. Now to examine a little these three monstrous Transgressions, let us go backwards. As to the last, a Duty can never be a Crime ; every Servant owes Truth to his Matter, while such : Every Advocate is to do his utmost, and a Failure in it had deserved both the worst of Names and Punishment, which the *Repliant* could invent, or his Interest procure. For all Mankind must agree, that the now Servants of the present Crown are obliged to do the like upon the like Occasion ; if otherwise, the *Jacobites* Side will be the safest. I will not reflect on the Weakness of the Juries, that were thus inveigled, if any such there were ; but rather suppose, that the Oaths of Witnesses, not the Pleading of Counsel, did govern their Consciences. As to the second, that is false, and needs no other Answer. As to the first, that Gentleman's Honour and Merit afterwards is as remarkable as his Fault at first, if it were any ; but however he is likely to have abundance of Company, in Desert at least, if not in Censure ; for a Duke of *York's* Creature is certainly as culpable as a King *James's* Servant. And *Andrew Marvel's* Characters in his *Growth of Poetry*, will be as true a Directory to decypher Criminals, as the Four Volumes of noted Trials. And perhaps, if the Ordinance of *May 10. 1650.* should chance to be revived, Danger and Fear may seize other Men, as well as those that served past Governments ; it is therefore thought advisable for all to sit down quiet, and forgive and forget what is past, but serve God and their Majesties for the future, and not belabour the excepting one another ; for if any should be such Fools, the Knaves will get the better of it, and the Righteous scarcely be saved. So much for Religion.

Now for the Law, if we can find it : But because the *Defender* seems somewhat displeas'd at the Repetition of that unhappy Lord's Name, whose Case gives Occasion for the present Question ; let us therefore put it like Mooters : *John a Styles* was indicted, for that he, at such a Time and Place, did compass to deprive his natural Lord and King, that then was, of his Regal State, and to destroy his Life, and to sub-

vert the Government, and raise a Rebellion; and to fulfil that Imagination, he, together with others, did then and there consult and agree to raise a Rebellion against the said King, and to seize and destroy the Guards of the said King's Person, contrary to, &c. The Question was not, Whether *J. S.* was Not guilty, nor if the Witnesses swore false, whether his Attainder were fit to be reversed; but the Dispute was, Whether that Indictment were legal, whether, supposing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treason against him ought to have arrested such Judgment on the Motion of *J. S.* that the Indictment was insufficient. The Sheet argues, that the Indictment was good, and consequently the Sentence pursuant thereto was warrantable by the Laws of this Land. The Argument seems founded both upon the Reason of Things, and the Authority of Precedents.

First, The Reason alledged was, That the last Part, which in Lawyers Terms is called an overt Act, was a natural and genuine Sense or Declaration, or overt Signification of the first Part, which is an internal secret Thought, *i. e.* the Imagination and Compassing, which is the Treason prohibited and condemned. That the latter directly and consequentially tending and conducing, in the common Sense and Reason of all Mankind, (excepting the *Defender*, and two or three more,) to the Accomplishment of the former, makes a good and sufficient Charge within the Statute *Edw. 3.* A Repetition is tedious, and an Abridgment is scarcely possible, the whole Sheet being but a Breviate; I shall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the same Nature, from which the Legality of this may be justly concluded: The Substance of them on the whole Matter is, That overt Acts to depose the King, or despoil him of his Regal Office, or take him by Force or strong Hand, or to imprison his Person till he yields to the Demands of those who practise such Endeavours, are sufficient overt Acts to prove the Compassing and Imagination of his Death: That levying War, causing an Insurrection, promoting an Invasion, nay, that Consults, Conspiracies, Practices, Advices, Letters, Persuasions, and other Motions and Preparations to an Insurrection or Invasion, though none succeed, have been held overt Acts of imagining the King's Death. I will not repeat the Cases, but as Occasion offers from the other Side.

The Objections there mentioned and answered from the Penning of the Statute are too trivial to deserve a Remembrance, nor would they have ever been thought otherwise, but that *J. S.* was a noble Person, and the *Defender* a great Man, and the Prefacer thought so too, either by himself or others. These and such-like Ingredients, have made some Semblance of Difficulty: And in truth, had there been a real Doubt in the Case, the Author of the *Remarks* on that Trial, who wanted neither Sense nor Will to censure it, had his Opinion so inclined, I say, he would certainly have fallen foul on it in those invidious Observations of his upon the late Times. He quarrels with the Legality of the Jurors, the *Defender* with that of the Indictment, and both with the Evidence. The Author of the Sheet differs from them in the two first, but agrees with them in

the last, that Testimony delivered for Fear of Life, or Hopes of Pardon, or other Reward, is hardly creditable; but that is not the Point. Let us see if the *Replication* doth overthrow the Charge as insufficient; and for my Part I cannot find a Line of Argument in it, but only, It is naught, because it is naught. The consulting and concluding to make an Insurrection and Rebellion, and seize the King's Guards, is not a Declaration of the Party's compassing the King's Deposal or Death; and why? Because conspiring to levy War is not a levying War, and levying War is a distinct Treason; that is the Substance of the tenth Page, if I can read: The Sheet said truly, That levying War itself might be alledged as an overt Act of Compassing, and hath been so frequently, and meeting and agreeing to rebel and seize the Guards, hath a direct Tendency to promote a Demise of the King either Natural or Civil, and therefore might as well be alledged an overt Act as most Things whatsoever.

I had almost forgot one Clause, and that is the Unnecessariness of making *13 Car. 2.* if it should be as the Advocate argues; I suppose he means the first Paragraph, for the second is agreed to be introductive of a new Law, &c. but the first is only a Paraphrase upon the *25 Edw. 3.* It is thus, That if any Person or Persons whatsoever shall, within the Realm or without, compass, imagine, invent, devise or intend Death or Destruction, or any bodily Harm, tending to Death or Destruction, Harm or Wounding, Imprisonment or Restraint of the Person of our Sovereign Lord the King, or to deprieve or depose him from the Style, Honour or kingly Name of the Imperial Crown of this Realm, or of any other his Majesty's Dominions or Countries, or to levy War against his Majesty, within this Realm or without, or to move or stir any Foreigner or Stranger with Force to invade this Realm, or any other his Majesty's Dominions and Countries being under his Obedience; and such Compassings, Imaginations, Inventions, Devices or Intentions, or any of them, shall express, utter or declare, by any Printing, Writing, Preaching, or malicious advised Speaking, being legally convicted thereof by the Oaths of two lawful and credible Witnesses upon Trial, or otherwise convicted or attainted by due Course of Law; then every such, &c. shall, &c. Now what is this but a Confirmation of the old Statute in Words at Length; which was agreed to be so in the *House of Commons*, *1 Jac. 2?* When a Motion was made to renew that Law, the Lawyers Answer was, That the *25 Edw. 3.* did the same Thing; and a Man may boldly say it, that here's nothing declared Treason, but what had been adjudged so before, and Attainders and Executions had pursuant to it: The Sheet mentions Cases enough, and to the Purpose, though some think otherwise; but I'll not repeat them.

In the eleventh Page the Reader is referr'd to the Justification in the Half-sheet; and therefore let's examine that a little: A third Part of it is spent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication. As to the rest, the Force of it, if any, seems only to be founded on his first Assertion, The Conspiring to do a Thing is not the doing a Thing; and he quotes two great Mens Names for it: I would have agreed that, tho' he had spared

spared the Authority to justify it; but this is sufficiently answered in the Sheet: He offers an Argument from the late Statutes declaring Treasons, because they were temporary; but I answer, as the Sheet doth, they were in Affirmance of the old Law, and I can shew him three or four temporary, and an hundred other Acts of Parliament that are so, and therefore that is no Argument at all; but I am, as the Party I justify was, confin'd to a Sheet, and therefore cannot enlarge.

He lays down a Rule for Construction of Statutes, that a Thing particularized in one Part is not to be construed within the general Words of another Part; but that Rule hath near fourscore Exceptions in the Books; besides it comes not to this Case; for here's compassing the King's Death made Treason, and declar'd by overt Act; then levying War is made Treason: Now, says the Repliant, nothing can be an overt Act of, and conduce to promote and accomplish the first, that doth any ways concern the latter: I say it is a *non sequitur*; for there are several Instances mentioned in the Sheet, which respect the levying War, and yet are a genuine Evidence of the Intention and Compassing; and if so, the Judges who have ruled such Indictments to be good, did neither assume an arbitrary Power, nor transgress any Rule of Law, as the Half-Sheet insinuates.

Then the Lord *Cobham's* Case is endeavoured to be answered, by a Wonder, that Sir *Edward Coke*, late Lord Chief Justice, and then Sheriff, should differ from Mr. Attorney *Cook*; for we know his Thoughts in Sir *Walter Raleigh's* Time, and his Speeches in *Car. 1.* his Time; they are as different each from other as the Times were, and in this Particular that Gentleman hath had more Followers than Precedents; but the Query is, What is Law?

Then Sir *Henry Vane's* Case is endeavoured to be answered by this, that *Syderfin* mentions not the overt Act in the Indictment, but he doth say, the Treason alledged was a Compassing the King's Death; and every Man knows what Sir *Henry Vane* did to accomplish that: He neither sign'd the Warrant to execute that Murder, nor was he actually concerned in it. The Justifier says, he does not remember it printed any-where but in *Syderfin's* Report: For the Refreshment of his Memory, I'll tell him of another Book where it is, and that is *Keble's* First Volume of Reports, 304. and there the Indictment is said to be for Compassing the King's Death, and endeavouring to accomplish the Treason, by changing and usurping the Government, and levying War; which Case doth directly overthrow all the Defender's, Justifier's, and Repliant's Arguments, from the Distinctness or Difference of the Sort of Treason.

Then for Dr. *Story's* Case, he says, 'tis hard to justify it for Law; whereas there are above forty Places in our printed Law Books, where 'tis cited and agreed to be Law: Now, 'tis pretty odd, that a Case so resolved, and so ratified, should one hundred and eighteen Years after be arraigned in Print; for 'twas *Hil. 13 Eliz.* If any thing be Law, that is so, and not distinguishable from this Case in question, but that the Evidence was different, which the Justifier would make a Reason to invalidate this Indictment; the Logick of it passeth all Understanding: Besides, 'tis observable, that the Benches were filled both with Learning and

Integrity in 1571 and 1662; neither of those Times were *Tory* or *Popish*; and in *Dyer*, 298. the Reason given was, that it could not tend but to the great Peril of the King's Person, and therefore an Attempt to promote such Invasion, tho' none followed, was adjudged as aforesaid. In 2 *Anderson*, pl. 2. fol. 5. *Grant's* Case, 'twas held, That when any Person intendeth or contriveth to levy War, for a Thing which the Queen by her Law or Justice ought or may do in Government as Queen, 'tis not material whether they intend any Hurt to her Person; but if they intend to levy War against the Office and Authority of the Queen, that's enough; and that Resolution overthrows the Justifier's Notion, that *J. S.* his Design was only to defend the Laws, though the 13 *Eliz.* also was then in Force; 'tis a good Argument to answer that Pretence.

Now I have repeated and observed all the Replication or Justification offers in Answer to my Friend's Sheet, the Reader may perhaps expect some new Matter, not so much for Confirmation, as to give Occasion for a farther Defence. In Sir *Fr. Moor's* Rep. fol. 621. pl. 849. on the Trials of the Earls of *Essex* and *Southampton*, before the then High Steward, the Justices did there resolve, that when the Queen sent to the Earl of *Essex* the Keeper of her Great Seal, and others, with a Command to him to disperse the Persons armed which he had in his House, and to come to her, and he did refuse to do so, and continued the Armour and armed Persons in his House, that this was Treason; and they did also resolve, that when he went with a Troop of Captains and others, from his House to the City of *London*, and there prayed Aid of the Citizens to assist him in Defence of his Life, and to go with him to Court, that he might get into the Queen's Presence, that he might be sufficiently powerful to remove from her his Enemies, who were then attendant, that this was High Treason, because it tended to a Force on the Queen, &c. I make no Inference; let the Reader do that; 'tis plain, that an actual mental Intention of Hurt is not material in the one Case or other. As the Duke of *Norfolk's* Case is related by *Camden* in his History of *Q. Elizabeth*, 163. the Treason which the Duke confessed, was a Plot to seize upon the *Tower of London*, and deliver the Queen of *Scots*, and that's all.

There's nothing remains in doubt, but the Legality or Illegality of the King's keeping Guards for the Preservation of his Person; they say the Law takes care of him, and therefore he is to take none of himself; and that the Judges are his Guards, and therefore he needs no other; that *Henry VII.* was the first that had any other. But let us reason a little: Can it be supposed, that he should be so sacred in his Person, so great in his Power, and of such Authority as to make War or Peace abroad, and raise Forces and suppress them at home, as the Danger or Defence of his Realm should require, and not be able to provide for his own personal Safety *de presenti*? Can he only punish by his Judges afterwards, or prohibit by Proclamation before, but not defend himself for the present? Is it Sense to suppose it? The Kings of *England* might have, and actually had, Soldiers or Guards (call them what you will) even in Times of Peace, and long before *Hen. VII.* as well as continua'ly since; I may be so bold as to defy any Man to shew me the Year, the Month,

the

the Week, or the Day, since the Conquest by *William I.* that *England* was without armed Men, actually upon Duty in some Part or other of the Nation. This Sheet is not intended for a studied Argument on this Subject; and perhaps it would be difficult to justify a standing Army as warrantable, when there's no Occasion for it; but to say he can't by Force, even by Force, provide for his own personal Safety, when he apprehends it in Danger, as every *English* King hath continual Reason to do, especially if some Mens Doctrine prevail, it may be modestly affirmed unreasonable: Hath not every Subject Power to keep Arms, as well as Servants, in his House, for Defence of his Person? Is not his Mansion called his Castle? And yet the Law protects him too by Prohibitions *à parte ante*, and Punishments *ex parte post*: There are many Tenements in *England*, which oblige to the annual Payment of certain Sums towards Soldiers Wages, for Defence of the King and Kingdom; there are others obliged to the annual finding certain Quantities of Grain in Kind, for the supplying the King's Castles and Garisons, as well as Household; which being annual, do demonstrate the Lawfulness of their Continuance, even in Times of Peace; and their being immemorial, do conclude a Common Law Right in the Kings of *England* to have those Occasions, as they do conclude him a Right to have them supplied by such-like Services: Nay, Grand Sergeantry is either by Services of Attendance on the King's Person in Time of Peace, or for Military Aids in Time of War. The Crown may raise Forces by Commission, or the Militia, to suppress Insurrections, in case the Civil Power of the Sheriff is not sufficient or ineffectual. The Kings of *England* have the sole Power and Force of the Nation; Complaints have been in Parliament against billeting Soldiers contrary to the Will of the Hosts, but never for maintaining a Guard for their own Person at their own Charge; Complaints have been made of a standing Army, but never of a select Company for his personal Preservation; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great: Besides, for a competent Power in Arms he always may have Occasion, when his Subjects know nothing on't; 'tis his Province to foresee and prevent, as well as suppress and punish, domestick Tumults; and the Business of War is separately his Office, and that exclusive of his Subjects, any otherwise than as they are bound to obey and fight, or desired to assist with Aids and Subsidies; and for this, to avoid a numerous Volume of Citations, I'll name one notable Roll or two in Parliament, 6 Ric. 2. Mem. 9. the Manner and Way of the Prosecution of the War being given in Charge to the Commons to advise upon, they answered, That this *nec doit nec solayt* appertain *al eus, mes al Roy*; and so they did, 31 Edw. 3. Parte prim. n. 11. and 2 Ed. 3. n. 5. 'Tis true, in 5 Ed. 2. n. 4. Ordinances were made, that the King without the Assent of his Barons could not make War; but those that were repealed and dampned, 15 Edw. 2. Parl. Rot. M. 13. because prejudicial to the Royal Power of a King; and this is sufficiently affirmed by the Act concerning the Militia, in Car. 2. his Time. It is well known in what Time Bryan Chief Justice said, that if all the Subjects of *England* should war with the Subjects of another Kingdom, that this is no War unless the King de-

nounces it: It suffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himself judges his Person or People to be in Danger, or stand in need of them: And that he may, when Reasons of State will not admit their Publication to the World. But however, some standing Force the Crown ever had, and ever will have, though not always to such a Degree as shall be burdensome or oppressive; and our old Law-Books say, that Arms as well as Laws are necessary for the Prince, not only in, but against the Times of Necessity, I mean War or Tumult: Besides, in *Brañton*, lib. 2. cap. 3. de *Corona*, 'tis said that *Crimen læsæ Majestatis* is the greatest Crime, because of the Greatness of the Person against whom 'tis committed; his Description of it is, *Presumptio contra personam ipsius Regis*; then when he particularizes the several Sorts of Treason, the first which he names is, *Si quis ausu temerario machinatus sit in (i. e. towards) mortem domini Regis, vel aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, licet id, quod in voluntate habuerit, non perduxerit ad effectum*. I'll make no Inference, there needs no Paraphrase, the Words are plain; an Act tending to the Destruction of the King's Host is High Treason against his Person: *Agere ad seditionem exercitus Regis est præsumptio contra personam Regis, & præsumptio contra personam Regis est crimen læsæ Majestatis*: Now can *Brañton* be thought to speak only of Treasons in Time of War? *Glanvil*, lib. 14. cap. 1. *Crimen læsæ Majestatis dicitur de seditione domini Regis, vel regni, vel exercitus*; and *Fleta*, lib. 1. cap. 20. *De seductione exercitus sui*: & cap. 21. the same Words, *Seductionem ejus, vel exercitus sui*; this was the Sense of the old Law, and is very appositely applicable to the Case in question, as I could easily shew, would my Paper bear it. There is one Thing which I had quite forgot, and that is, that the Instrument of Grievances which the Prudence of the present Parliament hath provided, complains of a *Standing Army*; the Answer is easy, 'tis not of *personal Guards*: And the wise Inquiry of the *House of Commons*, into the *Quantum* requisite to maintain such and such Forces during the present Occasion, and of the Expences of the Crown in Household, Courts, Guards, &c. afterwards do plainly shew, that that was not the intended Grievance. Now, to sum up what is not answered at all, or endeavoured to be so by the Defender, nothing is said to the Reason of the Thing, or the Necessity and Nature of an overt Act, to the Opinion of *Coke* in the Places cited, to the Case of Sir *Walter Raleigh*, the Case of the Cardinal, the Case of Mr. *Coleman*, the Case of *Constable*, the Case of *Owen*, the Case of *Burton*, the Cases of *parbarwke*, *Arwater* and *Heber*, the Indictment against Sir *William Ashton*, *Germain* and *Taylor*, and *Thomas Burdett*, *Colingbourne* and *Colledge*, nor to the Opinion of the Judges in the Lord *Stafford's* Case, as if 'twere all impertinent; but the Reader is Judge if it be so.

Now for the Prefacer, I'll be as short upon him as he was upon my Friend; he said that the Sheet needed a Vindication, and I have given it one; and if this needs another, I hope the Crown will find a Friend to write some Third. He seems so us'd to the Word *Libel*, that he cannot forbear calling it an *infamous* one; he says, it has not one true material Word in it: I'll remember him of one, that Mocking is Catching in the Proverb, that is,
A Grumble-

A Grumbletonian in the Stirrup generally proves a Tyrant — in the Saddle; that's enough for him to remember: If he wants any more Truth, and that he may not say, this hath none in't, Treasons are easier committed than distinguished, by some Men especially; and the Reason why I say this is, because of his *Oflavo* Preface, where he is grumbling still, for I always thought that he had smarted too much for libelling on Ministers of State, and Male-Administrations, to venture again; but when a Priest meddles with Law, he is like an Apothecary at Politicks, he generally runs himself into a Noose; for he'll never leave off 'till he's advanced one way or another. To conclude, the Design of the Sheet was to justify the Prerogative of the King and Queen, and the Rights of their Crown; and the Republican is angry that either should have any, and from thence flames the Passion; nay, rather than it should be allowed, they'll attempt another Change, from which good Lord deliver us, *Præv.* xxviii. 2.

During the Composure of the Premises, News was brought me, that another Pen had been procured to attack the Vindication, *viz.* The Author that runs a-muck at all Mankind, except his own Patrons: A deserved and full Remark upon so voluminous a Book, is not here to be expected; however, this *Appendix* may serve for an Advertisement to the World, that the new Repliant is in several Particulars obliged to Solicitor *Coke*, and the other Regicides Defence on their Trials for much of his Materials. Time is wanting to shew the Parallel; at present 'tis fit to be observed, that his blind Side is also apparent, consequently capable of a sufficient Answer, and to give my Reader a Specimen thereof, I'll take Notice of a few (amongst many) Mistakes, both in Fact and Law, which he hath wilfully committed. In the first Page he says, that to justify what hath been taken ill, accuses the present Government of Injustice; which is false. In *pag.* 2. he says, That the Vindication ventures on a Point of Law, which it pretends is the Result of the Evidence given; there's no such Pretence in the whole Paper, the only Debate was upon the Indictment. He says, in the same Paper, that it's said his Relations were pleased with the Justness of the Trial; it only says, his Relations were pleased, and his Enemies were angry with those who then sat upon the Bench, and that's true; for some of his Relations cannot deny it, the Fact is so well known. The last Line of *pag.* 3. and first of the next are also false; for 'twas neither written, perus'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is just like his wonted Positiveness in his Remarks; where, for Instance, he says, that one of the Judgments he cavils at, was the first that was ever given without Argument or Reasons delivered in Court, which is also false; for in *Plowden's* Comment, 459. in *Sir T. Worth's* Case, the Author takes express Notice, that the Reasons of the Judgment were not disclosed when the same was pronounced; and fifty other Cases I could name him of the same, but one Instance is enough to falsify a general indefinite Position, though there are several more even in that very Book.

But to run over his Volume, *pag.* 2. is only a farther scurrilous Reflection to vindicate his own Remarks, and an impertinent Bombast of Words on the Phrase of *English* Proceedings: The third

Page assigns four Reasons of Printing, the two last are applicable to himself only, and he thinks so of the fourth, or else his Story is foolish like--- In the fourth Page he bolsters himself in his Raillery, by resorting to his Refuge of the Parliament's Authority that reversed the Judgment, which all Men agree to be just, but it was not because the Recorder did not arrest the Judgment on that trivial Exception to the Indictment, but because the Prosecution was supposed malicious, and the Evidence supposed false or deficient, or both.

The fifth, sixth, eighth, ninth and tenth Pages are all impertinent to the Point in Question, and contain nothing but a Vindication of his justly condemned Clamour in his former Book; concerning which, I'll boldly say it, in seventeen Points of twenty he is out in his Law; if 'twere convenient to publish the Proof on't, I could make it plain. His Design is to shew in those Pages his Wit and Fancy, more than Candour or Law: For my part I am of his Friend's Mind, that he comes not short of the old Observator for managing a Dialogue: But all this is not to the Purpose, he is not come at it yet, the twelfth Page favours of the same Kidney, and the thirteenth and fourteenth are no better: There he vents his Gall, and that in Ribaldry; no softer a Name than Tools can be afforded to Men of Worth and Honour: If himself be one, as some suppose him, I am sure it is not to the present Government; for he plainly condemns it, and declares the People, *i. e.* his sort of them, unsatisfied with it, for its Springness in Vengeance; and it is because others are not punished for maintaining the Law, and themselves not preferred for arraigning it: Some Men know my Meaning. He says, he is only for mumbling of Judges and Council, *Causa patet.*

But I must tell him two things, 1. The Inclinations of *Englishmen*, and the Laws of the Land, will never quadrate with a Commonwealth.

2. His supposed Criminals do not depend on their Number, but the Law, which ought and will justify them; if it doth not please, let it be changed by Parliament; or if the Author thinks that a tedious way, let us burn all our Law-Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reason, and himself the greatest and only Lawyer in the Realm; but till then he must give others leave to know, and to say, that they know, he is mistaken: For Resolutions, and Opinions, pursuant and agreeable to the Opinions and Rules of former Ages, I mean frequent and repeated Precedents, approved by the Lawyers of the Age that used them; I say, these will be the Law to the End of the World, unless altered by new Statutes.

And now we are come to debate the Question, all that is past is upon the Times, and not the Point. In *p.* 18. is his Reasoning-part, which is no more than was said before in, *&c.* To redargue him I must repeat; if therefore he will observe what is said by the Sheet, *p.* 22. I will say no more on't, but submit to the Judgment of the Reader; he says, the Inferences are ridiculous; I say, they are rational and genuine: The single Issue is, if his or my Friend's Arguments are the most logical and natural, let the Reader judge.

Now for Authority, let us see if he urges any on his Side, or answers that on the other. He admires (*p.* 24.) at the Assurance of the Sheet-Author, and others admire at his. He says, the Parliament had often adjudged it; but none can

shew any Judgment in the House of Lords, or Vote of the Commons House to that purpose. I have shewn the Sense of the present Parliament in the Point of Guards, and his temporary Laws are already answered; nor would any Man but he, and one more, pretend that they are Judgments in the Case. Surely it will not be pretended, that his Case of the Earl of Northumberland, in Hen. IVth's Time, is any thing to the Purpose: Nor is it any Argument to say, no King of England was ever killed for want of Guards.

Now for Cases, p. 26. He saith, that in the Earl of Essex's Case, there was an actual War levied, and that, as I said before, destroys the Argument from the different Sorts of Treason. As to Cardinal Pool's Case, he only says, there was another Statute in force then, but no Record or History says, that he was indicted on any other than the 25 Edw. 3. As to Dr. Story's Case, he tells a long Tale out of Camden about the Fact, but answers not one Word to the Indictment, whatsoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His Answer to Coleman's Case is that, that things happening afterwards proved more, but the Evidence was no more than what my Friend alledges. As to Sir Henry Vane's Case, his Answer is his own Hear-say of what was proved, but the Indictment he never perused, *argued like a Lawyer!* As to Constable's Case, and the rest, he gives no Answer, but only that Repetition of a Number of Cases makes a Mutter and a Noise, and so it does when they govern and rule the Matter in question, and are not answered. Owen's Case, he says, the Author presses it strangely, and that is all. He says, the Cases of Burton, Duke of Norfolk, Awater, Heber, and Crohagan, are not to the Purpose, let the Reader judge if they are not per-

tinent: As to the Opinion of the Judges in the Lord Stafford's Case, he does not mention it, but says, the reviving that Case might have been spared, and that is all; a pretty Answer! As to Colledge's Case, he talks of a Proof of a Self-defence, but nothing to the Point it was urged for. As to the Cases of Lord Cobham, Grey, and Rawleigh, in 32, 33, 34, 35 Pag. setting aside his scandalous Invectives and Reflections upon those Times, Ministers, and Governments, he no ways attempts to answer the Argument drawn from them, *viz.* That the Charge was the same as in the Case in dispute.

Now I appeal to any Man of Sense and Reason, that will read and think closely, if the *Repliant* hath offered any one Argument more than the Lord Ruffel's Case, Defence and Justification had alledged. If he hath shewn any one Judgment where such Indictment was resolved naught; if he hath given Answer to Dr. Story's, Collingborn's, Sir William Ashton's, Burdett's, and Sir Henry Vane's Indictment; in short, if he hath answered any two of the Cases cited; or if he hath done any thing but reflect on past and late Times, and if the Indictment remain not good, both for Matter and Form, notwithstanding all these pretended *Replies*. Upon the whole, I desire the Reader to peruse the Book cited; and to judge if there be not Precedents enough unanswerable to justify the Indictment in question, and that the Recorder gave a good Judgment upon the Verdict that affirmed its Truth; *quod fuit probandum*.

To conclude, Since the *Repliant* is in love with *Horace*, I would advise him to consider one Hint of his,

— Forum, putealque Libonis
Mandabo sicis — Hor.

The third and last Part of the Magistracy and Government of England vindicated, with Reasons for a general Act of Indemnity, &c.

IT hath been the observed Misfortune of most mix'd Governments, particularly of our own, never long to enjoy the intire Friendship of all its individual Subjects; the lowermost Side hath too frequently acquired the greatest Share of the People's Love, or at least Pity: It's then no Point of Wonder, that the Servants of former Crowns should have incurred their Proportion of Envy, Hatred and Reproach; and amongst all those none more obnoxious to it, than the Ministers, Officers, and Instruments of Justice; for such are the vitiated Sentiments of Persons interested in all Suits, that the Vanquish'd is certainly injured, or thought or said to be so, which is all one, by the Persons themselves, their Friends or Relatives, their Patrons or Creatures. In Truth there's scarce a Trial on the Plea or Crown Side, but one Party, and sometimes both, do leave the Court with a swindging Curse or two on Judge, Counsel, Jury, Witnesses, and perhaps all concerned; upon which Account, it can never be deemed a justifiable, much less a commendable and meritorious Employment, for Lawyers to note and report, and afterwards publish to the World, the Clamours of such Malecontents, with the Addition of Sarcasm instead of Argument, and blushless Lyes instead of Law and Precedents,

and all this under the Pretence of serving their Majesties and the Government; but 'tis a mere Pretence; for first, it's not their Province; these Publications are made by them, not as Legislators or Judges, but as private Persons; and one of their *Libels* seems calculated only for private Lucre, as either the Hopes of a Place, or Increase of Practice, by telling the Town, in the first and last Pages, where the Author lives, of what Profession, and how long standing; an Art learn'd from some of those exquisite Doctors inhabiting towards the Fields, whose Knowledge and Conversation is pretended to be in Heaven: Another writes for Bread, and scribbles that he may eat, &c. A third, or rather the first and prime is inspired with Venom and Revenge, even the pure Spirit on't; as one balk'd, he is angry at all; and because some were not his true Friends, he's resolv'd to make Enemies of those who despise him, and of them the Number is great. But secondly,

It's of no use to the present Government, for Truth only can be a sure *Basis* of Respect to that; and in case of Slander, the Filth rebounds, and the Dirt thrown most surely turns on, and dawbs their own Faces, especially when they arraign those as ignorant, whose Learning, Knowledge, and

and Judgment are so clear and acknowledged, as to render the Censors unworthy even of being their Bag-bearers; the like when they censure those as corrupt, who have always boldly done their Duty, even in Defiance of a Court Cabal, or a popular Faction; who have always adhered to the old *English* Law, and their just Opinions in it, tho' Frowns from *Whitehall*, or Clamours from *Wapping*, tho' Lampoons from *Grub-street*, or a worse Usage from an *Observer*, tho' a *Supersedeas* or a *Take him*, &c. were the only Reward they could expect for such their (formerly called Puritanical, now Arbitrary) Justice: Gentlemen who never poll the Law (which the great and good *Sir Mat. Hale* did truly call robbing the Poor of Justice) for the acquiring a Farm or an Office, or a lumping Sum for Sale of it; who never begg'd an Executorship for to gain a Fortune; Gentlemen who never gave strain'd Opinions concerning the Revenue, when made for their Clients the Farmers, but clamour'd at the same, when used by their King with more Moderation; Gentlemen who parted with their Places, tho' of Honour and Profit, rather than comply with a Court-opinion or a Club-notion, when others (I name nobody) offered intire and everlasting Service, if they could have preceded or succeeded them, (Teste. . . . *apud St. James's*, and the City of *Gloucester*) but missing their Aim then, as now they do, their Gall must have a Vent, and so it hath with a Vengeance, when a true and bold Justice is made the Subject on't: The Reason is plain, those Mens Repute is too great for Truth, Probity, and Usefulness: An Eclipse is necessary, if possible, for if otherwise, the Defender will never be *Keeper*, the Remarker *Solicitor*, nor the *Gray's-Inn* Poet wear Scarlet in *Wales*; their Hopes are but small, unless they can postpone all their Betters by Death, Commitments, or that which is but little worse, Reproach and Slander; but some think their Sting grows weak, for 'tis apparent, that there are a sort of Men, who tho' they might and did love his Majesty when as Prince, yet do not, will not, cannot love him, or any Man else, as King; and this is now pretty plain. But thirdly,

Their Libels are criminal, and injurious to common Justice, for they create a Disrespect and Contempt upon all Judiciary Proceedings: To arraign all past is to excite a Suspicion of all present and future Administrations; whereas *Plowden* saith, fol. 38. *It's a good and sure way to believe the last Judgment*; and if so, 'tis plain what Name the contrary Practice deserves; besides, were it otherwise, the Institution of Judges and Courts were vain, and our State, as *Englishmen*, the most unfortunate; for we have no Rule but *ex ore Judicum*, or from particular Statutes, and of them they are the Expositors. Now let's inquire which is Law, the Defender's Fancy in his Argument *inter S. and B.* or the Judgment in the Exchequer-Chamber, affirmed by the Lords. If the judicial Resolution be so, then the Publication of his Argument was injudicious, and I am not to follow him as my Guide; but perhaps he'll tell me, That manifest Reason and good Lawyers ought to govern me; if so, then I ask him, Who shall I follow in the *E. of D.'s* Case of a *Capias pro sine puis Judgment*, &c. whether the Eleven best Lawyers, or the Vote of the House? If the latter, why not so in the former Case? and if otherwise, then his Judgment was mistaken; so that *quacunqve via*

data, there's no Infallibility in this World, and consequently no Excuse for private Censures of publick Proceedings in Courts of Justice: Besides, the Books are pretty clear, that such things are punishable; but I leave the Reader to peruse them at leisure. Then let us consider the Confusion that must ensue upon the publick countenancing such a Practice as these Scriblers have introduced; for if allowed on a Disbanded Judge, 'tis so on a Sitting one, for the Case is the same in respect of private Lawyers, who pretend to think their Judgments erroneous or corrupt; but surely both are unlawful. Besides all this, in the present Case,

They have palpably wrested the Law in divers Instances: I need name no more than the Indictment in question, which that it was legal and good, most Men do now agree, especially since the Dint of the Opposal seems current only on the Evidence, with a Waiver of the other, and more since that Guards are proved lawful, and the *Observer* concedes it the most legal Part of the Procedure; and the Justice of Parliaments, &c. supposed written by the Defender, strains all its Forces on the Evidence and the Times: And their Follower, the Poet, in his new *Nonconformist*, pag. 10. runs the same way too: Only

There remains one Objection to the first Vindication, which is, that it affirms, Words may be Treason within the twenty-fifth of *Edw. 3.* and the Remarker challenges a Proof of it, and asks where it may be found; and the *Nonconformist* quarrels at the Lawyer that did assert it; and some others have done the same *ore tenus*.

I confess, that the first Sheet did publish the Assertion, but waived its Eviction; for fear of a strained Use of such Opinion to ill Purposes, for the serving a Turn upon particular Occasions; nor had there been any more said on it, but that their Confidence and Malice seems so exorbitant as to extort a Check; for the Regulator is grown so confident of his own Knowledge, as to undervalue the greatest of Judgments; whereas his Common-place-book affords us no Titles but those of Collusion and Malice prepense; and his Practice hath been much of the same Stamp, only that sometimes he hath added a little of the Lunatick, as appears by his *Rhymes*, *Prophecies*, *Dreams*, *Politicks*, and other *Religionary Works*.

To prove the Assertion, I depend not on the Authority of the Sense of the Commons House, 1 *Jac. 2.* (tho' let the Cryer for Justice, or who else pleases, contradict it) it was in Fact then affirmed and agreed unto, and upon that the then King's Council and Courtiers desisted the Motion and Prosecution of a Bill to make Words, &c. But that's a supernumerary Argument, there's more than enough besides.

I am not to maintain, that all rank, malicious, gross Words against the King or Queen's Person are such, nor that whosoever drinks an Health to our Sovereign Lord the People, or to the late King *James*, is a Traitor: But that Words significative and expressive of a present Intention to do an Act to the King's Destruction, such Words deliberately, maliciously, and advisedly spoken, on purpose to accomplish the Demise of the King, as by Promise of Money, with Importunity to commit the Fact, may be an *Over-sait* to prove the Imagination within 25 *Edw. 3.*

To evince this, let us think a little ——— and 'twill be plain.

The Words of this Statute are clear, and of an easy Construction, if we will allow those dull old Times to speak Sense. They are to this Effect: That if it shall compass or imagine the Death, &c. and *de ceo provablement soit attainé per overt fait*: Now the Objection is this, That Words are not Deeds within that Clause; to this the Answer is very clear; for by all the grammatical and other Rules for Interpretation of the Sense of Words, the latter Part of a Sentence is to be construed (if used by way of Opposition) as opposite to the thing mentioned and intended in the foregoing Part, and not as opposed to every thing which it may *ex vi termini* exclude in other Cases; and this is an agreed Difference, both amongst Divines in Exposition of Sentences in Scripture, and Grammarians in almost all Cases whatsoever. Now to apply this:

Overt-fait is used not in Opposition to Words, for there's no such thing mentioned; but 'tis added in Contradistinction to that which was before specified, *viz.* Thoughts, and such are Imagination and Compassing; and therefore *Overt-fait* must mean any open, manifest thing as can truly discover those Thoughts, as may proveably attain the Traitor of such his Imagination; and it is a most natural and proper Mode of Speech, if they did intend, as most undoubtedly they did, that the Thought should be the thing prohibited, then 'tis as plain they intended by the Word *Fait* any Discovery of such Thought by Words or Actions; and so said *Newton* in 19 H. 6. That to imagine the Death of the King is Treason, tho' he do no Act towards it, if such Imagination be disclosed, that it can be tried if he did to think and imagine. If that Thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in Opposition, then the last will exclude both the former; but here, when used only in Contradistinction with Thoughts, it seems plainly otherwise. That *Fait*, when used in Opposition to Thought, doth include both Words and Acts, none can deny; a thousand Instances might be given of it; and in the exactest Propriety of Speech, Words are Deeds when and as contradistinguished from Thoughts; for the Soul thinks, even as abstractly considered from the Body, but Man never speaks without Action and Motion: The Difference is plain, and needs no Explication. But farther:

I would fain know, What is a Consult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his traitorous Imagination by Words, and so of an Agreement to commit the actual Murder, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now suppose one Man thinks and intends to destroy the King, and by Words doth willingly, deliberately, and advisedly declare this to another that is not of his Mind, tho' by Mistake is thought to be such, is not this the same thing? If a Man traiterously offers and promises to another a thousand Pounds to perpetrate the villainous Act; if he accept it, and a parole Agreement is made between them accordingly, surely the Apologists for Treason will agree that to be an Overt Thing, and both guilty, if it can be proved by two Witnesses of Credit. Suppose then the Party offered and promised doth abhor and refuse, will that make a Distinction? If it does, 'tis without a Difference: Perhaps the

Word *Consult* will be called a new Cant; we know whose Coin it is, and who gave it the first Stamp; 'twas no less a Man than Sir *William Jones*, who at the time of such his Invention was no Prerogative Lawyer, tho' considerably so in Times then lately past: Nor is it imaginable what is the Meaning of a Conspiracy or Plot to take away the King's Life, but a Communication by Words between several Traitors concerning such Act, and the Method of its Accomplishment, and a Declaration by Words of each Man's being fixed in that Purpose; which, if it be proved by sufficient Testimony, will undoubtedly be an Evidence of a Compassing, &c. which is the Treason prohibited and punishable; nor can the Meeting make it more so, for they could not discourse, unless they met; and therefore 'tis the Words only that are the manifest *Overt-Fait*. Nor doth *Hugh Pyne's* Case, or the Resolution of the Judges therein, contradict this, notwithstanding the Confidence of the Remarker, that it did; they only say, that the Words in that Case were not Treason, that those Words were not an Evidence of Compassing, that for those Words he could not be indicted upon that Statute; but their Opinion doth plainly imply, that had the Words been Evidence of a Compassing, &c. as they were only slanderous and reflective, it had been otherwise; and the Instances therein mentioned are full to this, as *John Quick's* Indictment was only for Words to King *Henry*, unless standing up and speaking will alter the Case: *Thomas Korver's*, *John Clifsham's*, and *John Mirfield's*, are all for Words, and some others there specified. Besides it's observable, that in most Indictments on this Statute, some Words have been alledged in them as an *Overt-fait* to demonstrate the Imagination, which would be impertinent, if the Law were thought otherwise. I will not insist on *Colledge's*, because the Case hath been cavilled at, tho' with no Colour as to the Indictment: Part of *Patrick Harding's* Indictment was *loquendo publicavit*; but I'll not dwell on that, because foolishly drawn; but *Arthur Crobagan's* Case in *Cro. Car.* is pretty full, and for Words; and the Words of the Book are, That the traitorous Intent and Imagination of his Heart was declared by his Words, and therefore held High Treason within the express Provision of 25 *Edw. 3.* and upon his coming into *England* he was arrested, &c. Now no Answer can be to this, but that he came into *England*; but the Words only shewed his Intent, and by that Book the Words are alledged as the *Overt-fait*; besides the Case of *Blanchflower* and *Atwood*, *Mic. 5 Jac. 1. B. R.* in *Delverton's* Reports 107. *per curiam*, resolved, that Words may be Treason, and that is an express Resolution; for there was then no temporary Law in Being concerning Parole Treasons, that I know of. The Case of *Berisford* and *Preffe*, *Hill. 8 Jac. 1. B. R.* *Delvert.* 197. adjudged, That Treason may be committed by Speech as well as by Act, for any thing which discovers the Mind of a Man to be traitorous to his Sovereign, is capital to the Party: *Hitcham ad Brook Pasch. 1 Car. 1. Hutt. 75.* held *per cur.* that the speaking of Treason was Treason, and that *sermo est index animi*, as well as Preaching or Writing; and no Man can doubt but those are Acts, and Speech is as much so.

Besides, if the Consequence of the contrary Doctrine be well consider'd, 'twill appear to be a plain Evasion of the Statute of 25 *Edw. 3.* as is manifest upon the Reading it: And the common

Books are full of this ; for otherwise no Action could lie for saying a Man hath spoke Treason. But here's enough said to answer the Challenge, Where's the Authority for such an Assertion ? Tho' infinitely more might be said for it ; nay, 'tis as easy to dum-found the contrary, as 'tis to transcribe Law Cases. If this doth not give them Satisfaction, they shall remain unsatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown Law, lest I should provoke our new Scriblers to double the Plague by their Replies: If they attempt an Answer, I'll leave the Tobacconist and Grocer to confute them: And unless a Trunk or Band-box chance to bring them to my View, I'll never be temp'ed to read them ; and of this they may assure themselves. I say it to compliment the Reader with Patience to peruse the rest of the Sheet, being ascertained never to hear more on't, at least not from this Hand.

Some perhaps may wonder at the Reason of the Publication of these Sheets, and conceive them the Product of Malice on one Side, as those virulent Pamphlets are on the other: To solve that Scruple, I need only repeat the Reasons alledged in the first ; but a Repetition is damnably dull, as well as tedious and irksome: I'll therefore add a new one, and that's to shew the Reasonableness as well as the Necessity of a general, indefinite, speedy Act of Oblivion ; for though the Blood-hounds fret, and huff, and bounce, as if all their Madness and Rage were founded on a true Basis ; yet 'tis apparent from the Premises, that their Foundation is false, and the Law is direct and plain in their Teeth, and doth and will justify in most of the Particulars, at which they foam their Curses and Execrations. Reason therefore, as well as Necessity, enjoins a Silence as to what is past, for otherwise the Kingdom can never have its desired Satisfaction: For in Points justifiable, or at least doubtful, the Justice of inflicting Punishments can never be vindicated. Did I call them Punishments? I beg the Reader's Pardon for the Impropriety ; however I'll not name their proper Term, but with Calmness endeavour to evince three Things:

1. That it would be grateful to the Nation in general, and every good Man in particular. 2. Conducing to the Settlement and Interest of the present Government. And lastly, That 'tis consistent with, and promotive of, the highest and truest Justice.

First, The Nation did and doth expect it, for Revenge is never natural but when freshly pursued, and Time wears off the Sense of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this Purpose: The Horror of any Crime, or at least the Detestation of the Criminal, grows faint and languid upon the Removal of the Object, especially if Time interposes with the Accession of present Fears, which at present do more affect us than greater, if more distant. It can never therefore be thought the Desire of the People of *England*, to have their Neighbours or Acquaintance harass'd and persecuted by Fines, Confiscations, Imprisonments, Marks of Disgrace, or the like, for Actions done in the last or former Reigns, about which the World hath been so much divided, if lawful or not: Besides, that this was the general Expectation of the Kingdom on the new Settlement, or at least the Coronation, of which Nature there never was an Instance before this without an Act

of Grace ; and it is most plain, that none are Adversaries to it, but the *Republicans* and the *Jacobites*, not for that they need it not, as I shall shew anon, but for different Ends ; each drives at and wishes a Change, it matters not to what ; for if to the latter, the other hopes a Commonwealth will be the more desirable: If the *Republican* succeeds, then the other believes a Restoration the more easy ; but both dislike the present, and therefore dread a Settlement, and consequently dread the People's Satisfaction and Quiet under their Majesties, and consequently dread an Act of Indemnity: 'Tis true, the Cry for Vengeance is loud, but 'tis only from these two Corners ; which leads to the second Particular, That

It will establish and promote the Interest of the present Government: While the popular Bully is full of his Damme's and Menaces, there's certainly Danger, and where there's Danger, there's Fear ; now Fear causes an Aversion, and Aversion begets Hatred ; and the Object of it is that from whence the supposed Danger arises, which is from the Government irritated by the Venom and Fury of those hot-headed Animals: Whatsoever hath Power and Will to hurt me, must and will be abhorr'd ; and though none are immediate actual Patients, yet the being possibly obnoxious to it, and the want of Security for the contrary, doth of Necessity cool their Respect to the present Power, under which they are not safe ; and this tempts them and their Friends upon Contrivances and Attempts of Danger, both to themselves and the Publick ; and Danger by the Attempt is no Discouragement where the like Danger attends their Forbearance: And this is of Weight, unless *Cromwell's* Politicks be thought Christian, to cherish and promote a Plot, as of Advantage to Settlement, if reasonably discovered, and subtilly managed ; but however 'tis as true, that Enemies who are desperate, ought never to be thought inconsiderable ; for they may shake and batter what they can't destroy, they may do Mischief, though they can't work Ruin, to their Adversaries ; upon which Account, the Temptation of continual impending Danger is fit to be removed. Besides,

The Want of Security, and the Fear of Danger, making Men uneasy in their Thoughts, replenishes them with Complaints and Murmurs at every aukward Action, or supposed Miscarriage, of the Government feared ; it makes them Mutineers at publick Taxes and Impositions, partly because they think it strengthens and increases the Power of hurting them, and partly because it sponges and bleeds them of that, which they fear an Occasion of themselves to bribe Black-rods, Sergeants at Arms, and other Gaolers with ; and in a Conjunction when extraordinary Aids are indispensably requisite, no Temptation to Complaint is deserving of Countenance ; besides, that it cramps Trade, and discourages Projects for publick Good, &c. But farther, it's the living, not the dead, the happy, contented, and chearful, and free, not the oppressed, miserable, forlorn, or imprisoned Subject, that doth Service to the Crown and the Publick.

It hinders all such as are thought to be so obnoxious from any bold Essays for the Use of the present Government ; for that if Success be the Attendant of such their Attempt, they continue unsafe notwithstanding ; for no Man will adventure an Hazard to secure that Authority, which

he is not sure will make him safe, if he doth undertake the present Adventure, and escapes that Danger, and performs the Service; so that Self-preservation renders it their Policy to unhinge themselves from, or to be shy of the present Power; of which a considerable Number might prove useful Friends, which are now Neuters at least, if not Enemies.

It's observable in all foreign Policies, either to work a total Extirpation of the whole Party, or an universal Indemnity, after so grand a Revolution as this was; the former is not to be practis'd here, for two Reasons: 1. Because we want People: 2. Many of our Friends must be banished too, for divers of the supposed Criminals were instrumental to the present Change, &c. Ergo the latter only is, and can be most advisable; for once I'll suppose their Numbers but small, in Comparison to the Saints and Innocents (if any such there are in the Nation); yet under our present Circumstances, all are to be obliged as Friends that possibly may; but if the thirteen Heads, with the Surrenderers Clause, and all its and their Subdivisions had been reduced into a Law, in the designed Act of Attainder, one third at least of the Nation had been involved, who, with their disobliged Relatives and Dependants, is not so contemptible a Flock, though but of Sheep for the Slaughter. Besides,

It's impolitick as well as unjust to deny or delay it to those who have submitted to the Government, yielded it Obedience, and quietly bore its publick Charges according to their Proportion, and yet give a free, full, and general Pardon both in *Scotland* and *Ireland*, to all that took up Arms, for all their Sins then past and present: It provokes the former to repent their Non-concurrence with the latter, for 'twas but resuming their Quiet and Submission at Pleasure, and then they were safe, which now they are not, but under continued Menaces and Dangers of both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or speak with a Damme in his Mouth.

Experience farther tells us, that nothing turns or changes the Humour of the *English* Commoner, like Rage, Insolence, and Cruelty in their Fellow-Subjects, when made Superiors, and such is raking into old Sores thought to be; it matters not whether justly or no as to this Purpose, the Effect is generally such: The Star-chamber in *Car. 1.* his Time, the Major-generals in *Cromwell's*: The Tophamizing of Abhorrrers in *Car. 2.* his Time: The Western Campaign, and the other criminal Prosecutions in the Beginning of *Jac. 2.* I say, all the Violences used in these several Periods (and yet they had their respective Provocations) did most notoriously alter the Kidney of the Commons, and made even their once beloved first dreadful and terrible, then odious and loathsome; they produced considerable Changes in their several Consequences: I could come nearer Home, even to the teasing of *Moore* and *North*, and other Citizens of *London*, which first turn'd the Stomach of that City, as is now apparent; but *Sat verbum*, &c. But farther,

The want of this renders both the Policy and Honour of the great Bellowers for Vengeance to be justly suspected: 1. Their Honour in taking Care of their own Servants, for all their Excesses upon the Revolution, and opposing the Indemnity of all others, as by the Act appears.

2. Their Policy; for that it's observable in *Story*, that the Association in *Queen Eliz.* Time, was under a Protestant Prince for the Protestant Religion, and no ill Success attended it; yet those wise Ancestors of ours thought fit to secure themselves, by turning the Association into a Law, and a general Act of Indemnity; I do not say they needed it, but the Associators in that Reign thought it needful; and 'tis very considerable, that in no Reign was there more Peace and Quiet than in *Hers*, and in none were there ever more free and general Pardons; and in truth the latter was the Occasion of the former; for when Men are once safe and quiet, no small Temptations will provoke any more Adventures, though they like another better, yet Men being easy are generally contented. There was one free and general Pardon of the *Queen's* at first confirmed, 5 *Eliz. cap. 11.* another 8 *Eliz. cap. 18.* 13 *Eliz. cap. 28.* 18 *Eliz. cap. 24.* 23 *Eliz. cap. 16.* 27 *Eliz. cap. 30.* 29 *Eliz. cap. 9.* 31 *Eliz. cap. 16.* 35 *Eliz. cap. 14.* 39 *Eliz. cap. 28.* 43 *Eliz. cap. 19.* Eleven in Number, and never five Years without a Parliament-Pardon, and this made Parliaments and Crowns the Darlings and Desire of the People. Besides, it's the Interest of each Party amongst us, though some don't see it; the *Whig* ought to promote it for two Reasons: 1. Lest being the lesser Part he chance to feel the Want of it, and for that he hath given some Provocation. 2. That if it be the greater, the Memory of his Vengeance and Fury may be forgotten, and himself restored to the good Opinion of the rest of Mankind, by one Act at least of good Nature: The *Tory* ought to pursue the same Measures, and much for the same Reasons, for his Top-gallantry hath been, and if re-practis'd, will be again as odious and loathsome to the moderate and good, as ever it was, or as the others could be. Temper therefore is now the Game, and a Veil over all that's past, is certainly the most Politick, especially considering the Multitude of the supposed Criminals, and the Justice of their several Excuses, which comes next. For,

Lastly, It's consistent with, and promotive of the true and highest Justice; for in most of the Cases the Law was doubtful, and to punish Opinion in Matter of Law is as unjust, as to persecute Mistakes in Matters of Religion is unchristian; and new Laws for Government *de futuro* are more agreeable to natural Equity, than a retrospective Fury; that it was doubtful, is plain, the modern Scriblers have sufficiently proved it. In two of the Cases cited they differ themselves, for *Dr. Story's* Case, the Defender cries, 'tis not Law, the Remarker agrees 'tis, and that he was well hanged; for *Plunket's* Case, the Defender cries, he was well hanged, for there was Treason enough in his Charge, the Remarker insinuates as if he suffered hardly; now, what shall a little Lawyer believe between these two great Bodies of Learning? The like may be said of *Soames's* Case, and the other above-mentioned. But what is more: In the voluminous Argument against the *Dispensing Power*, owned by *Sir R. A.* he doth concede, that there are some Prerogatives so personally and inseparably inherent in the Crown, that no Act of Parliament can cramp or diminish, or at least take away; and that being granted, I'm sure all that the rest of the Book says can never make that a plain Case, and in truth his own Argument shews and leaves it

it a disputable Point; and if that were doubtful, every Particular else may well be buried in Oblivion; besides, in Cases of Construction, the Nature of the thing admits of no Doubt, and then there's no Colour for Punishment. Besides,

In respect of inferior Persons, by our Constitution, they are obliged to submit to and follow *Westminster-hall*, which is the *Lex loquens Angliæ*, and when all these Things are duly considered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle some, aggrieve others, and terrify none; for that will be the Consequence; for that's the Case of all Violence, where the Justice of the Thing is not clear and undoubted. Then for Exceptions;

Let us think a little: Is it reasonable that some should suffer for not being afraid of Punishments never declared or promulgated, and others should escape, because their Countenances are more fawning, or that by Consent their Relations have play'd on the other Side, or that their swindling Fortunes enable them to scatter Mice for their personal Indemnity, or that they have had the lucky Principle of being faithful to all Changes, and true to nothing else, or that they have been forward to subvert their old Master, after their Fire and Folly had ruined him, and endangered themselves? These and such-like are no Pleas for Justice, and yet this is the Case. Farther,

The Drift is to magnify and aggrandize Punishments by Bill, which by the standing Laws and common Justice of the Realm could not be inflicted; and they urge two Reasons for it: 1. Their particular Pardons will otherwise excuse them. To that I answer, Either they are valid in Law, or not; if not, there's no need of Bills; if they are valid in Law, the same Law and Justice of the Land injoin their Allowance; even the same Law by which the Country-man plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator sits in the House; and by the same Reason that these enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a Right accrued by the Law, as well as the other. 2. The common Channel is too smooth; Severity is sometimes necessary, and that now, if ever; and therefore the legislative Authority ought to exert its Power, and punish according to Demerit. To answer that, I say, either they are no Offences by Law, and there needs a Bill to make them such, and inflict Evils upon them as such; or else they are Offences, but deserve a greater Punishment than a common Court may pronounce: Now, if the first be the Case, then I'm sure 'tis rank, palpable, tyrannical Injustice, and that's the Plague of living under an arbitrary Power, for none can know what's not criminal: If they mean the latter, as I suppose they do, then I ask, to what End were Punishments invented in Societies, but to restrain Men from doing particular Actions, through the Power and Influence of Fear? And

how could that Consequence be expected, when the Penalty was never known before 'tis inflicted? And to inflict an Evil afterwards, which was not known before, is to make a Man suffer that which he could not fear, because he could not know it, and this because he did not fear it: And the Justice of that is plain too.

I agree with the Satirists, that there are some Precedents of this last Method of proceeding, but most of them are repealed; I'll name two that are so, the Earl of *Strafford's*, which the very Law itself did injoin Posterity not to observe, or follow, or do the like. I can't forget one Expression of his, to this Effect, upon the Trial: If there be an Error in a Judge, so that he give a Sentence otherwise than a Man of better Understanding conceives Reason for, there's no Cause the Offence should be heightened, because he was not so wise a Man as he might have been, nor so understanding as another; which if allowed, will make it more eligible to follow a Plow than serve a Government, to dig in a Ditch than bear an Office; for all Men stand obnoxious to the Constructions and Passions of succeeding Times. There's one Instance more, and that was *Sir Tho. Haxey's*, who was attainted for Treason, for bringing in a Bill into the Commons House against the Prerogative, though while and as a Member: I suppose the Sparks will not much applaud the Justice of that Procedure for their own sakes; but, as I said before, that, and most others of their Precedents, were repealed, when a cooler Assembly met upon the next Session, and so was *Haxey's*, in 1 *Hen. 4. Cott. abr. rec. 362, 363.*

But if Vengeance be requisite, it ought to be without respect of Persons, the *Justice* of it ought to be *impartial, true, and Catholick*: And then come in the Pensioners and Surrenderers, the Regulators and Promisers, the old High Commissioners, and the new Creed-makers, &c. and, God knows, *quis non, &c.* To conclude, our Saviour's Rule, if observed, will be the most infallible Indemnity that can be contrived, and that is, *John viii. 7. Let him that is without Sin amongst you, cast the first Stone.* And in truth a Censor of the Manners of others ought himself to be pure, clean, and innocent, *in omni re quacunq;* and if there be no Danger but from such, I am sure there's no Danger at all, and that it should be so, is the truest Justice in the World, *quod fuit probandum.*

I'll not mention the Argument from the Vacancy, that the Government was dissolved, every thing reduced into its primitive State of Nature, all Power devolved into Individuals, and the Particulars only to provide for themselves by a new Contract; for if so, there's yet no new Consent for Punishment of Acts done before the Dissolution, and consequently Revenge, for that is at an End; Indemnity therefore ought to be promoted by those who made that Vote, for otherwise their Truth may be suspected, &c.

The Lord Ruffel's Innocency further defended; in answer to the Magistracy and Government of England vindicated.

THERE is a Pamphlet very lately published, which styles itself, *The Magistracy and Government of England vindicated.*

It appears by the following Part of the Title, to be no less than a *Justification of the Proceedings against Criminals*; impudently declaring, in plain and express Words, as also by all his subsequent Discourse, That by the *Criminal* he means the late Lord Ruffel, Pag. 2. Column 2. in the middle of it.

And the Author does professedly own, That the Book is written by way of Answer to a small Discourse or Argument lately printed, which bears the Title of *A Defence of the late Lord Ruffel's Innocency.*

It argues a transcendent Boldness in this Answerer, to call this Noble Lord a *Criminal*, and to justify those Proceedings against him, which all honest Men ever accounted no less than Murder, under a Pretence and Colour of a legal Proceeding, and to presume to publish such a Discourse as this, after the King and the Two Houses of Parliament have, by the most solemn Judgment that can be given, pronounced that Noble Lord to have been innocent; and thereby have done so great Right to his Memory, and that with so high a Zeal, and so mighty a Concernment for him, as the like cannot be shewn in former Precedents.

It is most evident, that the Author was composing this scandalous Libel even when he very well knew the Bill was brought down from the Lords to the Commons, for reversing this Noble Lord's Attainder; and the Author could not but observe with what Zeal and Affection the Bill was entertained at its first Entrance into that House.

The Author, endeavouring to conceal himself, is from thence, as he plainly professes, encouraged to take the more Liberty to lay about him in the dark, (as he fancies) and thinks to escape unseen; and not only strikes at the Author of the Lord Ruffel's Defence, but, as far as in him lies, wounds that Noble Lord in his Honour, whose Justification and Defence was so undertaken, and labours to overthrow that Right and Justice that hath been done by the supreme Authority of the Nation.

This is no way agreeable to a noble and generous Soul, to come behind a Man and strike him; it rather follows the Example of that devilish *Powder-plot*, to destroy and blow up the King, and both Houses, and to do it in such a close and clandestine way, as it should not be known who hurt them; for he was too much a Coward to set his Name to it.

But it is very easy to tell you what are the first Letters of this Author's Name, without casting of a Figure. His Argument in Law plainly speaks his Profession, and what Robe he wears; and his Style and Phrase of speaking having appear'd in so many noted Trials, as do in so many visible and legible Characters disclose the Author; Sir R.S. does under his Hand readily and utterly disclaim it, and is heartily believ'd in what he says.

This slanderous Author acknowledges, that upon the Lord Ruffel's Trial, some blamed the Jury,

most censured the Witnesses, but very few arraigned the *Counsel* or Court. Here it evidently appears how our Author is concerned, first for the Counsel, and then the Court; and *Self* hath the Preference, tho' it be here with a B each of good Manners to name the Counsel before the Court.

Page 1. He takes it heinously, that any Gentleman of the *Long Robe* should appear in Print to ridicule their own Profession; this grossly speaks our Author one that was of Counsel in the Trial. *Et tu, Brute?*

If it had been an open Enemy, a Doctor of the Commons exercising his Wit and Raillery on the Common Law Proceedings, then (as he expresses himself) this Author could have borne it; but he did not imagine that Satires and Invectives upon past Proceedings should be writ by Lawyers.

In Reply to which it may be justly said, That when Lawyers will make use of their Wit and Rhetorick, as this Answerer has done, to bolster up an unjust and revengeful Proceeding, and out of ambitious Designs, to get or continue in Favour, and to gain greater Preferment, or shew their Parts, will engage in Causes of Blood, and help to destroy the Innocent, and be instrumental in subverting the Laws and Government, it is every Lawyer's Duty, as far as in him lies, to vindicate the Profession, by utterly disclaiming and abhorring all such Practices: And the Defender can appeal to all that have known his Conversation for above these forty Years and under, whether ever he used any such pitiful, mean and ungenerous Arts and Methods, better becoming the Stage than a Court of Justice; and whether he did not, when it was in his Power, constantly restrain and condemn that scandalous and disgraceful Way of Practice. And he can as freely appeal to all that will be at the Pains to read his printed Argument, (which this concealed Author so unjustly censures) whether any such bitter reviling and revengeful Humour appears in any Part of what he so publish'd, or the least reflecting on any particular Person, but only in the general, and no further than the mere Justice of the Cause did extort from him; so far was he from this Author's scurrilous and rude Course of reflecting upon any Person's private Conversation; but some Mens Faculties lie this Way, and they are very well known, tho' after such manifest and gross Provocations, that have been given by this Author, and such publick and scandalous Actings of his in the Eye of the World, it might justly be said with the Poet:

Difficile est Satiras non scribere.

The Author of this Answer, in his first Paragraph, would have the World believe, that he writes upon no other Design than to *support Magistracy, and the Government; a noble Theme!* (as he terms it). Every Man knows what sort of Government he labour'd to support but the other Day, and how far he was instrumental in it; but it is rather thought fit to leave him to a general Act of Indemnity and Oblivion, than take any Revenge upon him.

He

He seems to allow the Lord *Russel's* Defender, in his fourth Paragraph, to be an Author of Age, Experience, Figure, and Learning (but he will not say Candour or Honesty). Thus he writes.

The Lord *Russel's* Defender is very glad he hath so little of this Adversary's Commendation, for it would gain but small Esteem amongst Men of true Worth, to be commended by him. It might be said to him, with the Philosopher upon the like Occasion, being commended by an infamous Person, *What Ill have I done, that thou shouldst thus commend me?* Yet that Candour and Honesty, which he covertly refuses to allow, is that which the Lord *Russel's* Defender prefers before all this *Answerer's* mercenary Wit and Rhetorick.

In his fifth Paragraph he judges the Lord *Russel* very unfortunate to fall under the Accusation of Treason; and says, that noble Lord was most pitied of any under those Circumstances.

That noble Lord's Misfortune (among *Reply.* other Things) was his falling under the

Lash of so bitter and sharp a Tongue as yours, who, however you seem now to mention that Lord with Pity, had then no Pity for him, but used him with Severity, as may appear by your own printed Narrative of that Trial, and your Rhetorical Flourishes in a Case of innocent Blood, which contributed in an high Degree to inveigle the Jury, and bring that noble Lord to the Scaffold.

He confidently says in the same Paragraph, that *in Truth the Fairness and Indifferency of that Trial was such, that his own Relations were pleased.*

How untrue this is, in both the Parts of *Reply.* it, that the Trial was very fair and indifferent, and that his nearest Relations were highly exasperated and offended, shall appear before we part.

In the sixth Paragraph of his Sheet, he complains, that *the Memory of that unfortunate Gentleman was received by the Publication of the Defence of his Innocency.*

Why, what Hurt in the reviving of his Memory? His Memory is precious, he died a Martyr for his Religion, and for the Rights and Liberties of his Country, and fell a Sacrifice under cruel and merciless Hands.

It is indeed this *Answerer's* Conscience that flies in his Face; the reviving of this noble Lord's Memory speaks Terror and Amazement to the *Answerer.* Thus did bloody *Herod*, when he heard of the Fame of *Jesus*, he presently cries out, *This is John, whom I beheaded.*

He does prepare himself to make use of *indecent or disrespectful Language*, (as himself expresses it) and comforts himself with the Thought, that his Name shall not be known. A pitiful and unmanly Dealing, not becoming a Person pretending to Ingenuity. The Lord *Russel's* Defender dealt otherwise, and owns his Name, and will let the World know what this *Answerer* is.

In the four next ensuing Paragraphs, he is much to seek for what End and Purpose the Lord *Russel's* Defence was printed in that Pamphlet (as his wonted Rhetorick thinks fit to call it).

It could not be (as he most contemptuously says) for Consumption of Paper.

Nor for the Bookseller's Profit, for a Reason to be guefs'd at.

Forbear, for Shame, to use these sly and silly Intimations; they are fitter for School-boys, or the Mountebank's Stage, or for *Billingsgate*, than for a Man of your Figure; one may be ashamed to have any Dispute with such an Empirick, or rather a jesting and jeering Merry-Andrew. Pray keep this Sport for the next *Bartholomew Fair*, and learn more Gravity and Civility.

It could not be (as he farther proceeds upon the same Inquiry) for the sake of the Lord *Russel's* Memory, or any of his surviving Relations; for what was written in the Lord *Russel's* Defence, is (says he) but a painting to the Life the too deep Concern of that noble Lord, in a weak as well as criminal Enterprize.

This is wonderful Boldness and Daring in this *Answerer*, still to pronounce him a Criminal, (that noble Lord) whom the supreme Power of the Nation, and the highest Judicature and Authority, have adjudged innocent. And yet he has the Impudence to intitle his undutiful Pamphlet, *The Magistracy and Government of England vindicated:* And to publish this, after he, as well as any Man, knew that the Act of Parliament had pass'd, asserting the Innocency of that noble Lord, and the Barbarity and Injustice of the Proceedings against him; wherein this *Answerer* had so great an Hand, and so bitter and sharp a Tongue.

One would think, that an ordinary Wit might have served to put him in Mind, that as yet there is no Act of general Pardon and Indemnity pass'd: And who knows upon whom the great Exception may light?

But he gives a very just Occasion to the Lord *Russel's* Defender, to let the World know for what End and Purpose he long since writ, and so lately printed, so despised a Pamphlet; by which, even his Adversary may be convinced, it was not merely for Consumption of Paper, or for the Bookseller's Profit, but truly for the sake of that Lord's Memory, in asserting his Innocency, and at the Desire, and for the sake, of his surviving Relations. And for the Truth of what is thus affirm'd, he does appeal to those noble Relations of his who are yet alive.

While that noble Lord was upon his Trial, or very soon after, there came a Letter to his Defender's Hand, who was then in the Country, near eighty Miles from *London*, and this from a Person of great Honour, and one of the nearest Relations to that noble Lord, requesting the Author of his Defence to afford the best Advice he could; and accordingly he heartily and freely gave it: Much of which does appear by what is printed by him.

This was not the only Letter he received from that Lord's great Relations, upon that sad Occasion: But after that bloody Stroke had been given, a Paper was published, as the Speech intended by that dying Lord.

In Answer to which, the now *Answerer* and Adversary (as is too evident) did publish his first Pamphlet, intitled, *An Antidote against Poison*; compos'd (to use his own Words) of some Remarks upon the Paper printed by the Direction of the Lady *Russel*, and mentioned to have been deliver'd by the Lord *Russel* to the Sheriffs at the Place of the Execution. Thus far of the Title of that pretended *Antidote.*

In the latter End of his second Page, that which is mentioned in the Discourse out of his Pamphlet called the *Antidote*, and which is barely repeated

repeated in order to be answered and confuted, he grossly mistakes in this latter Pamphlet, and fallably affirms, it is admitted to be true; and from thence endeavours to have the Lord *Ruffel's* Defender understood as arguing against the Lord *Ruffel*, and acknowledging his Guilt: Which is a very unworthy way of dealing by this pretended *Answerer*, but easily discern'd by any wary and intelligent Reader. Nay, this *Answerer* himself immediately after, before he is aware, clears the Lord *Ruffel's* Defender again from the Imputation, by taking Notice, that the Defender of the Lord *Ruffel* endeavours to invalidate the Credibility of the Evidence given against the Lord *Ruffel*.

This Reply declines the taking Notice of many of this *Answerer's* Paragraphs, that are spent merely in vilifying the Lord *Ruffel's* Defender, it being obvious, that they were intended only to render mean and contemptible the Person he undertakes to answer; it being beneath this Reply to repeat them, and to follow the *Answerer* in his rude and scurrilous way of writing.

It was indeed no Secret to the Learned, that a Variance between the Indictment and the Evidence might be alledged on the *General Issue*; nor that *Treason*, and the *Misprison* of it, are different Crimes; nor that Proofs of *Treason* must not be by *Hearsay* nor *Argument* only; nor that less than two Witnesses are not to be allow'd for Proof of that Crime; nor that the Witnesses ought to be credible: But these are not so generally known to such as are not profess'd Lawyers, and may be usefully remember'd to such as are brought upon their Trials for their Lives, and are denied the Help of Council when they most need it, and are apt to be more under a Consternation, when they are beset with such sad Apprehensions of their Danger, and baited at by a Multitude of crafty Wits, and such as abuse their Parts and Eloquence to destroy the Innocent, and the Court (it may be) not always so indifferent as they should be. And these useful and well-intended Assistances, as are ordinary and usefess, as the pretended *Answerer* would represent them, were very thankfully entertain'd, and made use of by several Persons of great Abilities, and of the best Quality, who afterwards fell under the like cruel and malicious Prosecution; but they were no profess'd Lawyers. And most of these are still living, and will and do testify the Truth hereof.

The *Answerer*, in his fourth Page, falls to argue the Points in Law upon the great Head and Title of *Treason*.

This Reply forbears to repeat what the *Answerer* says upon this Subject, or to repeat what this *Repliant* has formerly printed, but therein refers himself to what is so printed.

Only finds it necessary to state the Point in Question in as few and plain Words as he can, and leave it to any impartial Reader to judge of it.

The great Statute of *Treason*, viz. that of the 25th of *Edw. 3.* was the only Statute upon which the Lord *Ruffel* was indicted; and this is acknowledg'd and profess'd by the Attorney General, as appears by the printed Narrative of the Trial, and he could best know his own Meaning.

They could not proceed against the Lord *Ruffel* upon the late Statute of *Treasons*, made in the

13th of *Car. 2.* for that Statute limits the Prosecution to a certain Time after the *Treason* committed, which was elaps'd in the Lord *Ruffel's* Case:

Now the Statute of 25 *Edw. 3.* does specify and enumerate the several and particular Heads, and Sorts or Species of *Treason*; that might be proceeded upon, and tried and adjudged, in the ordinary Courts, viz. in the *King's Bench*, or Judges of *Oyer and Terminer*, or *Gaol-Delivery*: Such as that of *Newgate*, or the Sessions for *Gaol-Delivery* at the *Old Bailey*, where the noble Lord *Ruffel* was brought to his Trial.

The Scope and Drift of that Statute of 25 *Edw. 3.* (as appears by the Preamble) was to confine those arbitrary Courts, and the ordinary Judges, to plain manifest Rules, what they should adjudge *Treason*, and what not, it being of so great Concernment to the Lives of Men; and not to allow the Judges or Lawyers a Latitude or Liberty to make what they thought fit to be *Treason*; or to exercise the Tongues and unuly Noises of Lawyers in a Matter of that Moment. And that Statute of 25 *Edw. 3.* being in its Nature a confining, restraining an explanatory *Law*, ought therefore not to be largely extended or improved, and stretched beyond the plain Words, and apparent Sense of them.

Now among other several Species, or Heads, or Sorts of *Treason*, particularly enumerated by that Statute, there are these two, pertinent to our Case; viz.

1. Compassing or imagining the Death of the King.

2. Levying War against the King.

Whereupon the common Reader (for whose Satisfaction this is written) may easily observe this Distinction, that the first of these is *Treason*, (in the very Imagining or Conspiring) tho' the King's Death do not ensue.

But the latter is not *Treason* in the conspiring and imagining, but the *Treason* must be in the actual levying of War.

So that barely to consult, conspire, or imagine to levy War, tho' there be never so plain nor so open or overt an Act of such consulting, or conspiring, or imagining of it, will not amount to this Species or Sort of *Treason*, upon this Statute of 25 *Edw. 3.* which is the only Statute upon which the Lord *Ruffel* was concern'd.

For that Statute of 25 *Edw. 3.* did not intend to make it *Treason*, to consult or conspire to levy War, without the actual levying of War.

This will not be denied nor disputed by the Lord *Ruffel's* Adversaries, nor by this *Answerer*.

But, perfectly to evade this Statute, and the manifest Intent and Meaning of it, they insist,

That tho' conspiring to levy War be not *Treason* within the Statute of 25 *Edw. 3.* yet to conspire, consult, agree, or conclude, to stir up, or raise, or move Insurrection and Rebellion against the King, and to consult or conspire to seize the King's Guards, (which signify one and the same thing with consulting or conspiring to levy War) these (say they) may be an *Open* or *Overt Act*, to prove a consulting or conspiring to kill the King.

What is this but to confound the several and distinct Sorts and Species of *Treason*, which the Statute of 25 *Edw. 3.* doth so carefully and industriously labour to distinguish?

And what is this, but to make a bare conspiring and consulting to levy War, without any actual

actual levying of it, to be Treason within this Statute of *Edw. 3.* which plainly this Statute would not have to be so taken? And so the good Design and Scope of the Statute, the Security of Mens Lives, is wholly overthrown by this Artifice; and what shall be taken to be Treason, and what not, will be still as uncertain as it was before the making of that *Act* of *25 Edw. 3.*

And it was then a needless idle Thing in those that made the Statute of *13 Car. 2.* and so of former Statutes, to make the conspiring to levy War to be Treason; for by this Practice and Construction it is already made so to their Hands, by *25 Edw. 3.*

Now the Lord *Ruffel* was indicted for conspiring to kill King *Charles II.* and the Overt or Open Act, alledged to shew and signify it, is nothing but his consulting and conspiring to raise and stir up Insurrection and Rebellion, and consulting to seize the King's Guards, (tho' they were not actually done) which are just the same Thing with conspiring to levy War; which plainly is no Treason within the Statute of *25 Edw. 3.* and therefore most clearly the Lord *Ruffel* was not guilty within that Statute, upon that Indictment and Evidence.

Since the Lord *Ruffel's* Defender has composed this short State of his Case, upon this great Point, there hath come to his Hands a printed Half-sheet, which has excellently well done the same Work, which, had it been but a few Hours sooner, had saved the Labour of this Part of the present Discourse and Argument: This Half-sheet is justly intituled, *A Justification of the late Act of Parliament, for the reversing the Judgment against the Lord Ruffel.*

There is but one Point more to speak to, and then the Lord *Ruffel's* Defender will bid his *Answerer* and *Reader* adieu: And it is that Point which the *Answerer's* first Print, *viz.* his *Antidote against Poison*, did not mention, and so no Occasion was given them to consider of it; but it is largely debated by Court and Council, at the Lord *Ruffel's* Trial; yet being then but suddenly started, tho' it were well argued by the Lord *Ruffel's* Council assigned, no Authorities however were then cited (tho' called for by the Court) to justify and make good the Arguments and Reasons urged by the Council; and it is a Point in *Law*, which the *Act* of Reversing the Judgment against the Lord *Ruffel* is principally, and in the first place, grounded upon, *viz.* That there had been an undue and illegal Return of Jurors to try that noble Lord, (too often practised of late) and that the noble Lord was refused this lawful Challenge to them for want of Freehold. The Truth of this, as to Matter of Fact, doth evidently appear by the large Narrative of the Trial, printed by that Lord's Adversaries; and this is not in the least touched upon by the printed Half-sheet, styled, *A Justification of the Act for Reversal of the Judgment against that Lord.*

That Point in *Law* now only remains to be spoken to, *viz.* That in all Cases of the Trial of a Man, especially in a Trial for his Life, the Jurors ought to be Freeholders, even at the *Common Law*, and before the Statute of *2 H. 5. cap. 3.* and that not only in Trials within the City of *London* (as the Lord *Ruffel's* was) but in all other Cities or Towns Corporate, where there was a Jurisdiction of trying for Life in Cases criminal.

It was not material at the *Common Law*, how much, or of what yearly Value, that Freehold was, or is to be; but some Freehold (tho' never so small) the Jurors ought to have, or else it was a just Cause of Challenge.

It was indeed the Statute of *2 H. 5. c. 3.* that first fixed the yearly Value of the Freehold, and required it should be of *40 s. per Annum*, which *40 s. per Annum* was then in that King's Reign (being so long since) equivalent to a much higher Value now.

And therefore, the Books and Authorities that speak of Freehold of a less Value than *40 s. per Annum*, must of Necessity be understood not to speak of Cases within that Statute, but of Cases at the *Common Law*.

3 H. 4. fol. 4. b. Rolle's Abridgment, Title-trial, *fol. 648.* It is there held, that Freehold of any Value was sufficient for a Juror. This proves that Freehold is requisite, and that it was so before the Statute of *2 H. 5.* it being in the Reign of King *Henry V.'s* Father; and with this agrees *Kelloway, fol. 46.* towards the End.

Some other Cases, after the Time of King *Henry 5.* prove the same, as *16 Edw. 4. fol. 8.* Half an Acre of Land, so it be within the Hundred, says that Book, is sufficient; and it is well known, that as to this Qualification of having Freehold, the same Rule governs in the rest of the Jurors, as in those of the Hundred, *10 H. 6. Brooke's* Abridgment, *Challenge 192.* *Hale's Pleas of the Crown, 260.*

Nor do these Authorities distinguish, at all, between Cases Criminal and Civil, nor in Cases Criminal between that of Treason and in Cases less criminal.

This being so at the *Common Law*, and the Statute of *2 H. 5. c. 3.* only adding the yearly Value, *viz. 40 s. per Annum* Freehold, which before at the *Common Law* might be of any lower Value: Now, tho' that Statute of *2 H. 5.* be repealed, as to Trials in Treason, as in Truth it is, by the latter Statute of *2 and 3 of Philip and Mary, cap. 10.* which enacts, that all Trials in Treason shall be according to the Course of the *Common Law*; the Result is, that still there must be Freeholders to try, tho' they may be Freeholders, as at the *Common Law*, of any yearly Value whatsoever.

That the Statute of *2 H. 5.* (while it was in Force) did extend to Cases of Treason, (tho' Treason was not expressly mentioned in it, and the Statute speaks very ambiguously and obscurely) appears by the Authorities following, *viz. Stamford's Pleas of the Crown, 161;* and *Poulton de Pace Regis & Regni, 187;* and by the Statute of *33 H. 8. c. 23.* in the Proviso, that reserves to the Party the Challenge, for want of *40 s.* Freehold, even in case of Treason, tho' it make the Treason triable in any County.

See Sir *Christopher Blunt's* Case, Justice *Croke, 37 Eliz. fol. 413.* In an Information of Intrusion, by the Queen; a Juror was challenged for want of Freehold, and upon Examination of the Juror, it appeared he had Freehold of *15 s. per Annum* Value, and that was adjudged sufficient; which admits it had been a good Cause of Challenge, had there been no Freehold at all; and it necessarily implies, that it was required by the *Common Law*, for no Statute interposed as to any lower Value than *40 s. per Annum.* Nor does this Case distinguish between the Case of Intrusion upon the Queen, and any other Case.

But it may reasonably be argued, if Freehold be necessary in a Juror, who is to try a Case of Intrusion only, *à fortiori*, it is requisite in a Case of High Treason; but in that Case of Sir *Christopher Blunt*, another Juror was challenged that had no Freehold, and he was therefore set aside.

Now that the Challenge, for want of Freehold, extends to the City of *London*, and other Cities and Boroughs, as well as to the Counties, is abundantly proved by the Statutes of 11 *H. 6. c. 1.* 7 *H. 7. c. 5.* and 23 *H. 8. c. 13.* to which the Reader, for Brevity's sake, is referred.

It is no-where maintained, that an Agreement to poison or stab, &c. is no Treason, if the very Act do not ensue, as the *Answerer* very falsely alleges in the second Column of his sixth Page, towards the lower End; for those have a manifest Tendency towards killing, nor are they any distinct Species, or Sorts, or Kinds of Treasons from the killing of the King, as that of levying of War, and seizing the King's Guards, (especially not shewing what Guards) are a distinct Species from that of killing the King, and need not necessarily be understood to terminate and conclude in a killing the King. Taking the King Prisoner, or seizing his Person, may more reasonably be thought to aim at a killing of the King, or have a Tendency towards it.

And the Indictment ought surely to have declared and expressed clearly and plainly what Guards were meant, there being Variety of Guards; for every Indictment ought to contain Certainty.

Herein the very Indictment was faulty.

The bold *Answerer* hopes the King will always preserve those Guards, tho' the Parliament have declared their Sense to the contrary, when the present extraordinary Occasion shall be over.

This daring presumptuous *Answerer*, in Defiance of the Act for Reversal of the Lord *Ruffel's* Attainder, the Trial having been partial, unjust, and illegal, as the Act affirms it, yet dares to aver in his last Page, that there was Evidence enough to justify all concerned in the Prosecution and Trial.

The *Answerer*, towards his Close, takes great Care, and is much concerned, to justify the King's Solicitor that then was.

And this would incline one to think, that the then King's Solicitor was not the Author of that *Antidote against Poison*, nor of this last Print intitled, *The Magistracy and Government vindicated*; which are so much alike in their Style and Strain. And, in Truth, that late King's Solicitor doth utterly deny, that he had any Hand in either of them. And Sir *George Jefferies*, the last Lord Chancellor, could not compose this last. This being so, it may easily be judged where it must fix: For this, look into the printed Trial

I now refer the *Answerer* to justify himself at Law, if he happen to be in Danger of an Exception out of an Act of General Pardon and Indemnity, where he may have a fairer Opportunity to defend himself in his own more immediate Concern, for endeavouring to subvert the Law, which ever proves too hard for all its Opposers. And I will so far follow his Humour and Vein, as to conclude with Verses too.

*Rode, Caper, Vitem; tamen hic cum stabis ad aras,
In tua quod fundi cornua possit, erit.*

Which I thus English:

*Go. spiteful Satire, browse that Sacred Vine
(The LAW); but know there shall not want for Wine
To pour upon thy Head, which may suffice
To render Thee a perfect Sacrifice.*

The Case of William Lord Ruffel, tried for High Treason, July 13. 1683.

THE Indictment is very long: But for Substance it is, *for conspiring the Death of the King, and intending to levy War, and to that End to seize the Guards: For the Indictment concludes, and the Guards for the Preservation of the Person of our said Lord the King to seize and destroy, against the Duty of his Allegiance, against the Peace, &c. and also against the Form of the Statutes, &c.*

Those that gave their Evidence against the Prisoner, were *Rumsey*, *Sheppard*, and my Lord *Howard*.

The Overt Act of conspiring the Death of the King, is consulting to levy War, and to that Intent to seize the Guards: So that the Design to seize the Guards, is the Overt Act assigned of conspiring the King's Death.

The *Quere* then is, Whether my Lord *Ruffel* was guilty of High Treason within the Statute of 25 *Ed. 3.* (for upon that Statute he was tried) and I conceive he was not; and therefore his *Attainder* ought to be reversed.

But before I speak to the Matter of Law, on which I shall chiefly insist, I must desire you to observe some Inconsistencies and Contradictions in the Evidence.

First, That none of these Persons had their Pardons; which was otherwise in the Popish Plot;

For no Person gave Evidence before he had his Pardon. Therefore, being unpardoned, though they might be legal, yet not credible Witnesses: Both which are required by the Statute. For whilst the Fear of Death attends a Man, he is thinking how he may save his Life, rather than to speak nothing but the Truth; and he that is so base to purchase his own Life at the Price of another Man's, will be sure not to speak less than the Truth.

Next, I observe how the King's Council, by the Questions they put to the Witnesses, did lead, if not, in a manner, dictate to them what to say.

And I take Notice, that my Lord *Howard*, who must be supposed to have a full Knowledge of the Plot, yet never says a Word of their Intent to seize the Guards, which was the principal Thing in the Evidence of *Rumsey* and *Sheppard*: For, had there been any such Intent, it is strange, that my Lord *Howard*, who had brought in so many other Things by Head and Shoulders, should forget so remarkable a Piece of Evidence, and so home as that.

This is only in general: But, in particular, do but observe *Rumsey's* Evidence.

He says, he was not there above a Quarter of an Hour; and whilst he was there, two Things were debated and resolved, and a third Thing discoursed. Surely they were Things which they did not much value; or else they were Men of wonderful Dispatch, that could receive and debate the Message which he brought from my Lord Shaftsbury, then debate the Matter of the Guards, and come to a Resolution in both; and afterwards discourse about the Declaration; and all this in a Quarter of an Hour, or else *Rumsey* is perjured.

In the next Place, it is very remarkable, where he says, *He was not certain whether he was at another Meeting, or else heard Mr. Throgmorton make a Report of another Meeting to my Lord Shaftsbury.* And again he says, that *he was not certain, whether he did hear something about a Declaration, when he was at that Meeting; or that Mr. Ferguson did report it to my Lord Shaftsbury, that they had debated it.* To say no more of it, it is very strange, that a Man cannot be certain, whether he knows a Thing of his own Knowledge, or by Hearsay: And if in so plain Matters as those he spoke on uncertain Knowledge, it is not unreasonable to suppose, that he might as easily be mistaken in the rest of his Evidence.

Then as to *Sheppard*; he first swears, point blank, that my Lord *Ruffel* was at two Meetings at his House. But, being pressed by my Lord *Ruffel*, he can remember but one; and when that was, he could not recollect himself, tho' not above eight or nine Months before, as he confesses. It's strange that a Man should be so much in a Wood about so remarkable a Thing. But surely it must be hard upon the Prisoner, that the Time could not be fixed: For if Witnesses may give Evidence at that rate, it will be much ado for any Prisoner to make his Defence.

As to my Lord *Howard*; his Evidence is so notorious, that I need say nothing of it, but refer you to the printed Trial for your Satisfaction: Only I will take Notice of one thing which he says, to reconcile what he said to my Lord of *Bedford*, my Lord *Anglesey* being present, and what he afterwards swore against my Lord *Ruffel* at his Trial. Says he, *Your Lordship knows, that every Man that was committed, was committed for a Design of murdering the King. Now I laid hold on that Part: For I was to carry my Knife close between the Paring and the Apple; and I did say, that if I were an Enemy to my Lord Ruffel, and to the Duke of Monmouth, and were called to be a Witness, I must have declared, in the Presence of God and Man, that I did not believe either of them had any Design to murder the King.*

As to the first, what he said to my Lord of *Bedford*, was as to the Plot in general; and if to any particular Part of it, it must be as to the *Insurrection*; for there was to be my Lord *Ruffel's* Province.

Secondly, My Lord *Howard* knew, that all that were committed. their Commitments run as well for *levying of War*, as for *conspiring the King's Death*. So that his Lordship must find out something that will reconcile himself to himself, better than his *Knife betwixt the Apple and the Paring*; or else it will follow, that he solemnly said one thing, and swore another.

I have but only touched these Things; because I hasten on to the Matter of Law. For tho' it were without Contradiction, that every thing sworn a-

gainst my Lord *Ruffel* were true, yet it did not amount to *High Treason*.

First, Because a *Conspiracy to levy War* is not an *Overt Act of imagining the Death of the King*.

In arguing of this, I will not meddle at all with the Original of *Allegiance*, nor the true Nature of it; neither make any Discourse, that heretofore it was a less Offence to plot against the King's Life, than against the Government; but I will leave those fore Places, and endeavour to prove my Point, by considering these five Things:

First, Whether any Court, the Parliament excepted, can try a Man upon an Indictment for High Treason, that is grounded upon the Common Law.

Secondly, To what End and Intent the Statute of 25 *Edw. 3. cap. 2.* was Enacted.

Thirdly, Whether [*Conspiring the Death of the King,*] and [*Levying of War,*] are distinct Species of Treason.

Fourthly, Whether every Law is not to be construed, most strictly, to restrain the Mischief against which it was Enacted.

Fifthly, What is the true Meaning and Signification of being *provably attainted by Overt-Deed*.

1. As to the first, it seems to be out of doubt: At this Day there can be no such Thing as an Indictment at Common Law for High Treason; tho' for other Things there may: Because there is no Precedent of it, since the Statute of 25 *Edw. 3.* For nothing is more common than for every Prisoner that is arraigned for High Treason, to demand upon what Statute he is indicted, and the Court, or King's Counsel, to tell him the particular Statute. Besides, every Impeachment before the Lords in Parliament, is grounded upon some Statute: And if so, *à fortiori*, no inferior Court can try a Prisoner upon an Indictment for High Treason, grounded upon the Common Law. For the Law, which greatly delights in Certainty, especially in case of Life, will not allow of an Indictment at Common Law: Because no Issue can be joined upon it, by reason of the Uncertainty.

As to the second, *viz.* To what End or Intent the Statute of 25 *Edw. 3.* was made? I thus answer:

Edward III. was a victorious Captain, and potent Prince, whereby he became very renowned; but that which made his Name the greater, and his Fame the more lasting, was those good and wholesome Laws which were enacted in his Time; by which he restored and beautified the Government, that had been defaced, and almost destroyed, by the illegal Proceedings during his Father's irregular Reign. And of all the Oppressions under which the Nation groan'd, there was none that lay heavier upon the People, than the extravagant Licence which the Judges took in the Interpretation of Treason. And this appears by the particular and universal Joy expressed by the whole Land, at the making of the said Statute; for tho' he called Parliaments very frequently, and none of them proved abortive of good Laws, yet that Parliament which was held in the 25th Year, did more than any of the rest: And of all the beneficial Laws that were then enacted, the second Statute, whereby *Treason* was reduced to Certainty, gave the People the greatest Cause to lift up their Heart and Voice in Thankfulness to God, and the King; because the Jaws of their devouring

ing Monster were broken, which had torn in pieces so many Families, and threatened Destruction to the rest. So that this Statute was made to restrain and limit the Judges from calling any thing *Treason*, that might be so by Inference or Implication, and only to judge upon that which is literally so within that Statute. For it is there provided, that if any such-like Treasons shall come before any of the Justices, that they must stay, without going to Judgment, till the Cause be declared before the King and his Parliament. And all subsequent Statutes of *Treason* are all as so many Confirmations of this Statute: For they had been needless, if the Judges could have called any thing *Treason*, but what is literally such within that Statute. And the Statute itself had been made to no purpose, if it had not strictly restrained the Judges. And my Lord Chancellor *Nottingham* was of Opinion, that even the Lords in Parliament could not proceed upon an Indictment for *High Treason*, unless the Fact therein alledged were first declared by some Statute to be *Treason*.

3. As to the third Thing, it never was, nor ever will be denied, That *Compassing the Death of the King*, and *Levyng of War*, are two distinct Species of *Treason*, unless all *Treasons* are of the same Kind. But if there are several Sorts of *Treasons*, then it will follow, that these are also distinct: Because in every Statute of *Treason*, which mentions *Conspiring the Death of the King*, and *Levyng of War*, they are named distinctly. Besides, they are different in the manner of Proof: For, that which is necessary to prove the one, does in no Sort prove the other. And furthermore, the one may be effected, and the other never so much as intended or designed. As for Example, the King may be murdered, and no War levied nor intended. And moreover, in the one Case it is *Treason*, as well to intend as to execute it, without tacking it to any other Thing: But it is not so in the other; for it is in itself, and abstractly from every thing else, *Treason*, as well to compass the *King's Death*, as to kill him. But an Intention to levy War, and doing all Things in order to it, is not *Treason*, unless the War be levied, except by Implication or Inference. And I am persuaded, that the want of observing, that these are distinct Species of *Treason*, has been the Occasion of that Mistake of calling a *Conspiracy to levy War*, an *Overt Act of conspiring the King's Death*.

4. As to the Fourth, no doubt, every Statute is to be construed most strictly to restrain the Mischief against which it was enacted. For the uninterrupted Course of all Judgments and Resolutions hath been accordingly; and nothing can more directly thwart common Sense, than to make it otherwise. And therefore, if the Statute be absolute, the more forcibly it is construed to restrain that Mischief, the more truly is the Intent of that Statute pursued. For how shall any Evil be suppressed, if the Remedy must be applied but by Halves? The Law then would be rather a Mockery, than a Means to redress the Evil, if it shall not be taken most strongly against it. Either it is, or it is not, a Restraint of the Grievance complained of. If it is not, why was it made? If it is, why must it not be understood in that Sense, whereby the Mischief or Evil may be more effectually suppressed and prevented?

5. As to the Fifth, the Answer will be best understood by considering, first, the Signification of the two Words apart, *viz. Provably* and *Overt*.

Provably, signifies to prove, or make good by Evidence, Argument, Reason, or Testimony.

Overt has all these Significations, *open, clear, plain, apparent, manifest, notorious, evident, publick, known, undoubted, certain, perspicuous*.

These then being the Significations of those Words, what can follow more naturally, than that to be *provably attainted by Overt Deed*, is, that the Fact must not only be direct, apparent, and notorious to the Point, but it must also be proved clearly, evidently, plainly, and perspicuously, void of all Doubt or Obscurity? And those two Words being taken together, do the better expound each other, and seem to be choice Words, and Words of Art, cull'd out by the Penners of that Statute, as the most expressive, to exclude all Implications or Inference, that might be made in case of *Treason*.

These Things being premised, which are as easily proved as alledged, there will remain very little, besides Shifts and Evasions, to prove, that a *Conspiracy to levy War* is an *Overt Act of Compassing the King's Death*.

The Things that are chiefly and commonly urged to maintain that Opinion, are these two:

First, It would be of dangerous Consequence, if a *Conspiracy to levy War* may not be interpreted an *Overt Act of compassing the King's Death*: Because there is no means left to prevent it, and the Mischief attending it, when the War is levied.

Secondly, If a War be levied, the Death of the King must needs be intended, and will certainly ensue, if the Rebels prevail.

In Answer to these it may be replied, That the one of them is but a bare Objection, and the other no substantial Argument; because it begs the Question, which is surely a feeble way of arguing.

But I will give a more particular Answer to them. And it will be more proper to begin with the second; because in speaking to it, the other will in great measure receive an Answer.

Now as to the second, it may be observed, that the Death of the King is made so certain and necessary a Consequence of *Levyng a War*, that by reason of that *Certainty*, a *Conspiracy to levy War* is an *Overt Act of Compassing the King's Death*. If therefore the *Certainty* will not hold, but that many Cases may be put, and Instances produced, wherein the King's Death is not intended, nor did ensue upon the prevailing of the Party, then is the whole Weight and Strength of the Argument of no Effect.

The *Huguenots* in *France* have heretofore assembled in Arms; and tho' they repeated it several times, yet on which of those Occasions does it appear, either by the Cause of their coming together in that manner, or by the Effect of it, that it was levell'd at the King's Life? No, the Cause of their Rising in Arms was for the Asserting of their Religion and just Rights. For as soon as their reasonable Demands were satisfied, they laid down their Arms more willingly than they took them up; neither did they attempt any thing against the King's Life, when he was in their Power; but after they were answered in those Things to which they

they had Right, both by the Laws of Nature and the Government, immediately they returned home in Peace, and upon all other Occasions proved the most firm and loyalest Subjects of all other in that King's Dominions; and so this present King of France must testify for them, if he will do them Right.

If the Protestants in France should at this Time rise in Arms, upon so just a Provocation as now they have, it would be senseless to suppose, that they levied the War with a principal Design to murder the King, and not for the Defence of themselves and just Rights, which are so inhumanly, and against all Law and Justice, at this Time, invaded and ravished from them. Story is full of like Cases and Instances to this. But to speak more particularly to England: What was the Barons War? The Answer to which must be, That they took up Arms to assert their Rights and Liberties, which the King, contrary to his Oath, withheld from them; and tho' it lasted near forty Years, yet the King's Death was never intended, nor his Life in any Danger: For as soon as their just Demands were answered, they put up their Swords, and every Man returned home, and pray'd for the Life of the King. And out of English Story, what one Instance can be produced, where the Cause of War was declared to be against the King's Life; or if the Party prevailed, the King was to be put to Death by their general Consent and Approbation? For tho' it be true, that there are some Instances, where they have been murdered after the War; yet it is also as true, that it was by private Assassination, and not by the Consent and Privy of those who levied the War: For all those who were concerned in the Murder, were afterwards condemned and executed for it, as Traitors: As in the Case of *Edw. 2.* and *Ric. 2.*

As for that of *Charles* the First; which is so much press'd and urged, tho' the Cause of War had been expressly against his Life; yet as one Swallow does not make a Summer, so neither does one Precedent prove the Point. But besides, in that Case of *Charles* the First, to infer from thence, that the King's Death is principally intended by levying of War; is altogether as weak an Argument, as to say, because a Thing falls out by Accident, therefore that very Thing was the principal Design and Aim of the whole Action. For in that War, those who first took up Arms, did it to oppose the King's arbitrary Practices; and though he was afterwards put to Death, yet it was altogether against their Consent or Desire; and most of the Army was against it, and would have prevented it, but that they were at that time so broken into Factions and Parties, that they durst not trust one another. For after that Tragedy was acted, those who first took up Arms, immediately upon it laid them down, and were afterwards the chief Instruments of the late King's Restoration.

But if the King's Death be the principal Thing intended by levying of War, to what Purpose is the War levied? Cannot the King be taken off more easily by Poison, or a private Assassination? To the effecting of which, Opportunity cannot be wanting; and so with more Certainty the End is obtained, and a less Hazard run in the Execution, than could be done by a War; except those who levy the War to kill the King are not con-

tent with the Murder of him, unless they cut the Throats of all those that would defend him. Indeed to do it by an open War, rather than by Poison, or a private Assassination, is the more generous Way; for they give him fair Warning to look to himself, like a noble Enemy, that scorns to kill his Adversary basely. 'Tis indeed to go round about, for the nearest Way. Therefore a War; when levied, must be for some other Intent, than to take away the King's Life: Since *Englishmen*, if they enjoy their Properties, no Prince is so great and happy in the Heads, Hearts, Hands and Purfes of his Subjects, as an *English* King.

But yet, allowing that upon every War levied the Death of the King would certainly ensue, if the Rebels prevail; yet this Question does naturally arise, *viz.* Where is that Statute which does in express Terms say, That a Conspiracy to levy War is Treason? For if it be not so expressly and literally within some Statute; then it is a constructive Treason, and consequently no such Treason, as upon which the Judges may proceed, if the Statute of 25 *Edw. 3.* was made to any Purpose: For that the Statute restrains all constructive Treason, or none. But if the Judges may, in any one Case, make a constructive Treason, they may do it in all; and so we are left in the same Uncertainty about Treason, as we were before that Stat. 25 *Edw. 3.* was made.

If the Judges might judge upon constructive Treason, yet it seems to be a far-fetched Construction to make Conspiracy to levy War, an Overt Act of compassing the King's Death: For this is not to be probably attained by Overt Deed.

First, Because the conspiring the Death of the King, and levying of War, are two distinct Species of Treason; and therefore, it would be very unnatural, and too much forced, to join these together, and, as it were, to make them one and the same Thing, that are so different and divers, not only in the Manner and Matter of Proof, but also in themselves.

For then, Secondly, a Conspiracy to commit any other Treason, may also be called an Overt Act of imagining the King's Death: Which was never yet pretended.

Thirdly, A conspiring of any one Treason may then be an Overt Act of any other Treason.

Fourthly, Any other criminal Act may then as well be called an Overt Act of conspiring the King's Death.

Fifthly, This is to make a Conspiracy to levy War Treason in itself. For there is very little Difference between calling a thing Treason in itself, and to make it an Overt Act of some Treason within the Statute.

Sixthly, Because a Conspiracy to levy War, was not Treason at Common Law.

Seventhly, The Statutes of 23 *Eliz.* and the 1 and 3 *Jac. 4.* which make it High Treason to reconcile any to the Church or See of Rome; or to be so reconciled, were enacted to no Purpose, if a Conspiracy to levy War is an Overt Act of the compassing the King's Death. For what can tend more plainly and directly to levy War, than to persuade the People to renounce their Allegiance to the King, and to promise Faith and Obedience to some other Power? So that these; and all other Statutes concerning Treason, which have been made since the Statute of 25 *Edw. 3.* are as so many Confirmations of it; and consequently prove, that

that the Judges can call nothing Treason, but what is literally such, within that, or some other Statute.

Eighthly, My Lord Coke says, That *Conspiracy to levy War* is not Treason, unless the *War be levied in fact*. And questionless his Opinion is very good Law; because in many Cases it is not Treason to levy War; & *a fortiori*, a Conspiracy cannot. For look into the Statute of 12 *Q. Mary*, and there you will find several Things provided against, which are plainly and directly a *levying of War*, and yet they are declared to be but *Felony*.

But it may be objected, That by Stat. 3 and 4 *Edw. 6.* the Offences mention'd in 1 *Queen Mary* were made Treason. It is very true; yet it does not alter the Case, but rather prove the Point. For, *First*, They being made Treason by Statute, proves that it was not so in itself. *Secondly*, Because in the two next succeeding Reigns it is declared to be but Felony. For the Statute of *Queen Mary* is confirmed by 1 *Elizabeth*. 16. And thereupon the Argument is the stronger; because those two Queens were of different Religions. *Thirdly*, Because when a Thing is declared an Offence by Act of Parliament, and is afterwards made a less Offence by Statute, it proves that it was not so great in itself; but that the necessary Circumstances of Time and Affairs requir'd it should then be such.

But the Case is yet stronger, because in some Cases it may be but a Trespass to *levy War*; as it was in the Case of my Lord *Northumberland*, and 5 *Hen. 4.* He did actually raise Forces, and such as were taken to be a *levying of War*: For which he was question'd before the Lords, and tried for High Treason. But though the Lords did find the Fact, yet they adjudged it but a Trespass; because the Powers raised were not against the King, but against some Subjects. This Precedent seems to carry great Weight in it: *First*, Because it is a Judgment given in the highest Court of Judicature: *Secondly*, Because it was given so soon after the making the Statute of 25 *Edw. 3.* who must be supposed to understand the Intent and Meaning of that Statute full as well as succeeding Ages.

The Case of those who aided Sir *John O'dcast's* might also be urged; who were acquitted, because in their Defence it did appear, that by reason of Fear, and to save themselves, they were constrained to what they did. Which is Ground for another Argument, if there were Occasion; because it proves that the Maxim in Law, *Actus non fit reus, nisi Mens sit rea*, holds in Case of Treason, as well as in all other Cases. But I think there is no need of it: For if War may be levied, which is neither *Treason* nor *Felony*, it must be a very unnatural Construction of a Conspiracy to levy War, to make it an *Overt Act of compassing the King's Death*.

Thus the *second* Thing objected has received a full Answer, and likewise the *first*, in a great measure. Yet I will add a few Words, that no Doubt may remain.

If the Consequence on all Hands be duly considered, the Danger will be found to lie on the other Hand: Yet be it as great as can be pretended; it must be remembered, that the Law has settled the Point; and so it must stand, till by the same Authority it be altered. For the Rule in Law is not to be forgotten, *Nemo Legi-*

bus Sapientior. It is pretended, that out of a tender Regard which the Law, and all Subjects, ought to have for the King's Life, a *Conspiracy to levy War* is taken to be an *Overt Act of compassing the King's Death*: To this it may be answered by way of Question, How comes it about, that this Age should have a greater Care of the King's Life than our Forefathers had? Can it be imagined, that they did not understand the Nature of the Government as well as we do? Nor did know of what Consequence to the Publick the Preservation of the King's Life is? Can it be thought, that they did not impartially weigh and consider the Consequence on all Hands? Yet however, let the Defects be never so many, seeing it is settled by Law, it cannot be altered but by the same Power: For if it may, then let the Consequences be seriously debated, of leaving it in the Breast of the Judges to rectify the Mistakes, or Defects, be they fictitious or real. For then, when a Turn is to be served, the Law will be sure to be defective; and so in Effect they shall *Legem dare*. Treason will then be reduced to a Certainty; that is, if the Judges please; otherwise not: There will be then no need of Parliaments: For the Judges shall both declare and make Law. What will all our Laws signify, tho' made and penn'd with all the Wisdom and Caution that a Parliament is capable of, if the Judges are not tied up and bound by those Laws? It renders Parliaments useless, and sets the Judges above that great Council. They can undo what the other has done. The Parliament chains up some unruly Evil, and the Judges let it loose again. But besides, where is this dangerous Consequence, as is objected? Indeed there had been some Weight in the Objection, had a *Conspiracy to levy War* been wholly unpunishable. But the Law has provided a Punishment commensurate to the Offence; which tho' it does not extend to Life, yet is sufficient to deter Men from the Commission of it. Yet if a *Conspiracy to levy War* is to be punish'd in as high a Degree as a *War when levy'd*, this would be to punish Thoughts as highly as Deeds; which if it be just, yet is *summum jus*.

Mr. Solicitor *Finch* twitter'd out two or three imperfect Precedents, *viz.* that of my Lord *Cobham*, Dr. *Story*, and *Plunket*. These, as they are not altogether to the Purpose, so they are so very modern, that no great Regard is to be had to them; and they rather prove the Ignorance or Boldness of those Judges, than that a *Conspiracy to levy War* is an *Overt Act of compassing the King's Death*: Because the Statute of 25 *Edw. 3.* has provided, That if any such-like Treasons come before the Justices, they must tarry without going to Judgment, till the Cause be shewed before the King and his Parliament: And therefore for those Judges to take upon them to judge upon that which was doubtful, and not literally nor expressly a *Treason*, was to assume the Part which the King and Parliament had reserved to themselves. And therefore, upon what has been said; this Conclusion will follow, that no Man can (before the Judges) be convicted of *Treason*, unless the Fact be expressly and literally *Treason* within some Statute, and he be thereof provably attainted by some *Overt Deed*; and consequently a *Conspiracy to levy War* is not an *Overt Act of compassing the King's Death*, but a *Trespass*, or *High Misdemeanour*: And therefore, the Judgment against my Lord *Ruffel* was manifestly unjust; and so, of course, it ought to be reversed.

If a *Conspiracy to Levy War* were *Treason* of itself, or an *Overt Act of imagining the King's Death*, yet my Lord *Ruffel* was not guilty of *High-Treason* within the Stat. of 25. *Edw.* 3. because the *Overt Act* assigned against him, was *his being of a Counsel of six to manage an Insurrection*, and in order to it to seize the *Guards*, for had he actually seiz'd the *Guards*, yet it could not be *Treason* within the Statute 25 *Edw.* 3.

First, Because the *Guards* are not settled by Act of Parliament, and consequently they have no legal Force: For the Law has pronounced that all standing Force other than the *Militia* is in *terrorem populi*, Illegal, and a Grievance; and the Reason of it is clear; because the Law does never protect or countenance any thing that is, or may be burdensome, or that is useless: And it is so evident, that in the *Pensionary Parliament*, this Vote pass'd in the House of *Commons*, *Nemine Contradicente*: That all standing Force other than the *Militia* is *Illegal*, and a *Grievance*: And though they have the King's Commission, as may be objected; yet his Commission cannot make that lawful that is illegal, no more than he can tolerate a Riot, or pardon a common *Nisance*: For if several Persons were try'd for a Riot, and it manifestly appear upon the Evidence to be such, would their producing the King's Commission keep them out of the Compass of the Law? Or should those who did assemble together to suppress them, be guilty of *Levying War*, because those other Persons had the King's Commission? Therefore if my Lord *Ruffel* had assembled a Force sufficient to seize the *Guards*, the most that could have been made of it, was to bring it within the Statute of the 1 *Qu.* *Mary* 12. which makes it but *Felony*. And this being duly compared with the Precedents urg'd by Mr. *Attorney*, and Mr. *Solicitor*, will retort them strongly upon themselves.

Secondly, It could not be *Treason* within the Statute 25 *Ed.* 3. because at the Time of making that Statute, there was no such thing as the *Guards*: For the first Thing of that Sort was the Band of Pensioners which *Hen.* 7. set up, in Imitation of what he had seen, and learned in *France*: For in *Ed.* the 3^d's Time, though he was the Third that without Interruption had succeeded to the Crown; yet Succession had not then obtained so sacred a Reputation, as not to stand in need of the People to uphold them in the Throne; and therefore Kings were then too wise to do any thing that would be so apparent a distrust of the People, as to call in *Guards* to their Aid. And besides, the constant Wars, either with *France* or *Scotland*, made them stand continually in need of the People's Supplies; and therefore they would be sure cautiously to avoid all Things, that might give the Nation occasion of Offence: And nothing could be more distasteful to the People than to be nosed by a standing Force, which the Law had adjudged to be *Illegal* and a *Grievance*. And therefore, as there were no such Things as *Guards* at the making of that Statute 25 *Ed.* 3. so that Statute cannot be supposed to take notice of them.

Thirdly, If the *Guards* were Established by Act of Parliament, yet if they were so Established since the 25 of *Ed.* 3. my Lord *Ruffel* was not within that Statute, because it provided for nothing but what was lawfully in being at the time when it was made. So that if it were an Offence to seize the *Guards*, my Lord *Ruffel* ought to have been Indicted upon that Statute which did so make it an Offence. For if a Prisoner is Indicted upon a wrong Statute, and the Evidence proves nothing

of the Statute on which he is Indicted, but comes very home, and point blank to the Statute on which he ought to have been Indicted, he may plead specially to it, and the Court must direct the Jury to bring him in *Not Guilty*.

Fourthly, My Lord *Ruffel* was not within the Statute of 25 *Ed.* 3. Because the Indictment concluded falsely; and more falsely than any Indictment that I ever saw or heard of. For it says, [*And the Guards for the Preservation of the Person of our said Lord the King to seize and destroy, against the Duty of his Allegiance, against the Peace and also against the Form of the Statutes.*] This Conclusion contains in it four Parts, and none of them is true. *First*, That the *Guards* are for *Preservation of the King's Person*. It will be an easier Matter to find a World in the Moon than that the Law has made the *Guards* a lawful Force, or any Statute that has Established any Force, particularly for the Guard of the King's Person. And though the Law had Established any such Force; yet it was not done by the 25 *Ed.* 3. and therefore in this the Indictment concluded falsely.

The *Second* Thing is this, That to seize and destroy the *Guards* was against the *Duty* of his *Allegiance*. To speak fully to the Nature of *Allegiance* would require a long Discourse. But a few Words will lay this upon its Back. It cannot be deny'd, that Nature and the Law did nothing in vain: And if so, can it be imagin'd that the Law would establish such a Thing as the *Guards*, which had made so much a better Provision for the Preservation of the King's Person, even the Duty and Interest of every one of his Subjects? In the next Place, *Subjection* and *Protection* are Convertible Terms, and therefore if the Subjects do not receive Protection by the *Guards*, it is not against their *Allegiance* to seize and destroy them: Whereas to seize the *Militia* is against their *Allegiance*; because they receive *Protection* by them. Besides no Man becomes an Offender, till the Law has been promulged so as that no Man can reasonably be supposed to be ignorant of it. Now then, though the King by his Commission might make the *Guards* such a lawful Force; yet *non constat* that they are so Commission'd by him. For it has not been publish'd in that due manner and form, as that the Nation can regularly take notice of it. And besides, there is no Record enter'd, or remaining of it in any Court, or any other Place, whereby the People may come to a certain knowledge of it, Which is also a forceable Argument against the *Legality* of such a Commission. So that tho' in other Cases *Ignorantia Juris* is not allowed; yet in this Case it is a very good Plea, That it was not against my Lord *Ruffel's Allegiance* to seize the *Guards*, tho' the King's Commission did make them a lawful Force.

The *Third* thing is, That it was against the *Peace*, which is an untrue Conclusion. For it is not against the *Peace* to seize any Force that is not countenanced by Law. And a Needle may sooner be found in a Cart-load of Hay, than any Statute that hath Established the *Guards*. And if the King's Commission can make a Force a lawful Force, then it's hard to say, whether the Rebellion in *Ireland* did not Act upon sufficient Authority, since no clear Answer has yet been made to the Commission under the Broad Seal, which the Rebels produced to justify their Proceedings. In the next place, every *Treason* is against the *Peace*. But to conclude, because it is against the *Peace*, therefore it is *Treason*, is neither Law nor Reason. For every Offence is against the *Peace*; but every Offence