

fence is not Treason. Furthermore, the King's lawful Commission is not to be opposed in any Case; and the Indictment upon it will run, that it is *against the King's Crown and Dignity, and against the Peace*. Therefore to conclude, that it is Treason, is a *non sequitur*: For it is not Treason in many Cases, to seize and destroy those that Act by the King's lawful Commission.

The *Fourth* thing is that it was *against the Form*

of the Statutes. The Statutes thus mention'd must be those Statutes, or at least must comprehend some Statute that settles the Guards for the Preservation of the King's Person: For the *Seizing of the Guards is the Overt Act* assigned of *Compassing the King's Death*. Now if there be no such Statute, then is this Part of the Conclusion of the Indictment also false. And consequently the Judgment against my Lord *Ruffel* ought to be revers'd.

CXXII. *The Trial of Colonel ALGERNON SIDNEY**, at the King's-Bench for High-Treason, Novemb. 21, 1683. Mich. 35 Car. II.

ON November the 7th *Algernon Sidney*, Esq; was by *Habeas Corpus* † brought up to the Bar of the Court of King's-Bench, and the Clerk of the Crown having read the Return, Mr. *Attorney General* informed the Court there was an Indictment against the Prisoner, and pray'd he might be charged with it.

Cl. of Cr. *Algernon Sidney*, Hold up thy Hand.

[Which he did.]

Midd. ff. *The Jurors for our Lord the King, upon their Oaths do present, That Algernon Sidney, late of the Parish of St. Martin in the Fields, in the County of Middlesex, Esq; as a false Traitor against the most illustrious, most excellent Prince, our Lord Charles II. by the Grace of God, King of England, Scotland, France and Ireland, and his Natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and seduced by the Instigation of the Devil, utterly withdrawing the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our said Lord the King should bear towards him the said Lord the King, and of Right is bound to bear; contriving, and with all his Strength intending, to disturb the Peace and common Tranquillity of his Kingdom of England, and to stir up and move War and Rebellion against the said Lord the King, and to subvert the Government of the said Lord the King, in this Kingdom of England, and to depose and deprive the said Lord the King, from the Title, Honour and Regal Name of the Imperial Crown of his Kingdom of England, and to bring and put the said Lord the King to Death, and final Destruction, the thirtieth Day of June, in the five and thirtieth Year of the Reign of our Lord King Charles II. now King of England, &c. and divers other Days and Times, as well before as after, at the Parish of St. Giles in the Fields, in the County of Middlesex, maliciously and traiterously, with divers other Traitors to the Jurors aforesaid unknown, did conspire, compass, imagine and intend to deprive and cast down the said Lord the King, his supreme natural Lord, not only from the regal State, Title, Power and Rule of his Kingdom of England; but also to kill, and bring and put to Death the same Lord the King, and to change, alter and utterly subvert the ancient Government of this his Kingdom of England, and to cause and procure a miserable Slaughter among the Subjects of the said Lord the King through his whole Kingdom of England, and to move and stir up an Insurrection and Rebellion against the said Lord the King, within this Kingdom of England. And to fulfil and perfect those his most horrid, wicked and diabolical Treasons,*

and traiterous Compassings, Imaginations and Purposes, the same Algernon Sidney, as a false Traitor, then and there, and divers other Days and Times, as well before as after, maliciously, traiterously and advisedly, did assemble himself, meet and consult with the aforesaid other Traitors to the Jurors aforesaid unknown, and with the same Traitors did treat of, and for those his Treasons and traiterous Compassings, Imaginations and Purposes, to be executed and fulfilled. And that the aforesaid Algernon Sidney, as a false Traitor, maliciously, traiterously and advisedly, then and there, and divers other Days and Times, as well before as after, upon himself, did assume, and to the aforesaid other Traitors did promise that he would be aiding and assisting in the Execution of their Treasons and traiterous Compassings, Imaginations and Purposes aforesaid, and to fulfil, perfect and reduce to Effect those their most horrid Treasons and traiterous Compassings, Imaginations and Purposes aforesaid, the same Algernon Sidney, as a false Traitor, then and there, falsely, maliciously, advisedly and traiterously did send one Aaron Smith into Scotland to invite, procure, and incite divers evil-disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England, to advise and consult with the aforesaid Algernon Sidney, and the aforesaid other unknown Traitors in this Kingdom of England, of Aid and Assistance to be expected and supplied from the Kingdom of Scotland to fulfil, perfect, and reduce to Effect those their most wicked, horrid and traiterous Treasons aforesaid. And that the aforesaid Algernon Sidney to fulfil and perfect those most wicked, horrid and devilish Treasons, and traiterous Compassings, Imaginations and Purposes aforesaid; and to persuade the Subjects of the said Lord the King of this Kingdom of England, That it is lawful to make and stir up an Insurrection and Rebellion against the said Lord the King that now is, the said thirtieth Day of June, in the five and thirtieth Year of the Reign of the said Lord the King that now is, at the Parish of St. Giles in the Fields, in the County of Middlesex, falsely, unlawfully, wickedly, seditiously and traiterously, did make, compose and write, and caused to be made, composed and written, a certain false, seditious and traiterous Libel, in which said false, seditious and traiterous Libel among other Things is contained as followeth in these English Words, viz. The Power originally in the People of England is delegated unto the Parliament, he (the most serene Lord, Charles II. now King of England, meaning) is subject unto the Law of God, as he is a Man to the People, that makes him a King, inasmuch as he is a King, the Law sets

* *Burnet's history of his Own Times, Vol. I. p. 570.*

† *Note, This Habeas Corpus was granted the Day before, which was before the Indictment was found by the Grand Jury, for it was not presented to them till after he was brought to the Hall.*

sets a Measure unto that Subjection, and the Parliament judges of the particular Cases thereupon arising, he must be content to submit his Interest unto theirs, since he is no more than any one of them in any other respect than that he is, by the Consent of all, raised above any other; if he doth not like this Condition, he may renounce the Crown; but if he receive it upon that Condition (as all Magistrates do the Power they receive) and swear to perform it, he must expect that the Performance will be exacted, or Revenge taken by those that he hath betrayed. And that in another Place in the said false, seditious and traitorous Libel, among other Things, these false, seditious, and traitorous *English* Sentences are contained (that is to say) We may therefore change or take away Kings, without breaking any Yoke, or that is made a Yoke which ought not to be one, the Injury is therefore in making or imposing, and there can be none in breaking it, *Against the Duty of his Allegiance, against the Peace of the said now Lord the King, His Crown and Dignity, &c. And against the Form of the Statutes in this Case made and provided, &c.*

How say'st thou? Art thou Guilty of this High Treason whereof thou standest indicted, or not Guilty?

Col. Sidney. My Lord, I find here an Heap of Crimes put together, distinct in Nature one from another, and distinguished by Law; and I do conceive, my Lord, That the Indictment itself is thereupon void, and I cannot be impeached upon it.

L. C. J. We are not to admit of any Discourses, till you answer the Question, Whether you be Guilty or not Guilty.

Sir Robert Sawyer. *Mr. At. Gen.* If he will demur, my Lord, we will give him Leave.

Col. Sidney. I presume your Lordship will direct me, for I am an ignorant Man in Matters of this Kind, I may easily be surprized in it, I never was at a Trial in my Life of any Body, and never read a Law-Book.

L. C. J. Because no Prisoner under your Circumstances is to have Counsel, but in special Cases to be assigned in Matters of Law, the Court is bound by their Oaths and Duty of their Places, that they shall not see any Wrong done to you: But the Business that we are to tell you now is, you are to plead Guilty, or not Guilty, or Demur, which is a Confession in Point of Law.

Col. Sidney. Under favour, my Lord, There may be Indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be answered to.

Mr. Just. Withins. If you please to demur to it you shall have Liberty to make any Exceptions.

Col. Sidney. I don't demur, 'tis only Exceptions. I think in Matters of Life, a Man may give in his Exceptions to the Bill, and plead not Guilty afterwards. I am sure in *Sir Henry Vane's* Case, the Court said it, and offered him to do it; that which, under Favour, I hope to do.

L. C. J. You must plead or demur.

Col. Sidney. My Lord, if I put in Exceptions to the Bill, I don't plead 'till those Exceptions are over-ruled. This was in the Case of *Sir Henry Vane*.

L. C. J. Sir, I must tell you, you must either plead or demur.

Col. Sidney. My Lord, there are in this Indictment some Treasons or reputed Treasons, that

may come within the Statute of the 13th of this King, which is limited by Time, the Prosecution must be in six Months, and the Indictment within three. Now, my Lord, if that this Business that is mentioned, be above six Months before my Commitment, or above three before the Indictment, I think, under Favour, I ought not to answer to these Matters.

L. C. J. You are mistaken in the Law. That will be saved when the Fact comes to appear. If they alledge the Thing to be at a Time, which, according to that Allegation would maintain the Indictment, if upon the Trial, it appear otherwise, the Court is bound to take notice of it when you come to your Trial, but we are not bound to examine that before you have pleaded.

Col. Sidney. My Lord, every body will acknowledge, that there have been, or may be, vitious Indictments. Now if I plead to an erroneous Indictment, and am acquitted, I may be indicted again. Bills of Attainder have been upon Errors in original Indictments, as that of the Duke of *Somerset*. Now if there be here several Things distinct in Nature, distinguished by Law that are put together, 'tis impossible to make a positive Answer to any one. If any one should tell me, that I by my self, or by others, by Sword or by Pistol conspired to kill the King, I can say, I did it, or I did it not. If any one say, I have levied War, and by several Acts undertake to prove I have done it, I can say I have done it, or I have not. But here I don't find any thing specified, or can tell upon what Statute I am indicted. I pray I may see the Record.

L. C. J. That we can't do. You shall hear it read again if you will, if you think it to be a void Indictment, Demur to it if you will.

Col. Sidney. My Lord, I desire you to accept of this. [*Shewing a Parchment.*]

L. C. J. What is it? Put in what Plea you shall be advised; but if you put in a special Plea, and Mr. Attorney demurs, you may have Judgment of Death, and by that you wave the Fact.

Col. Sidney. I can't make any Objection to the Bill after I have pleaded, Not Guilty, for I accept the Bill thereby to be good.

L. C. J. If you can assign any Matter of Law, do. But otherwise what a kind of thing would it be? All Criminals would say, in all Cases, I doubt whether the Bill be good or bad. And after I have thus considered of it, I will plead. You are misinformed, and this the Court tells you as a Duty incumbent on them.

Mr. Just. Withins. If you demur, and shew what your Causes are, we will assign you Counsel.

Col. Sidney. I desire you would not try me, and make me to run on dark and slippery Places, I don't see my Way.

L. C. J. Don't apprehend yourself to be so, as if the Court would run you on any Inconvenience. But they are bound to see the Methods of Justice preserved, they are those that you, and all the King's Subjects are bound to conform to. If any one of us were in the same Condition, we must observe the same Methods of Law.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. Sidney. Then pray, my Lord, will you tell me this, Is it true, that a Man, how vitious soever an Indictment is, must answer or demur to it?

L. C. J. He must either answer or demur.

Col. Sidney. Are there no Exceptions to be admitted?

L. C. J. None: And if you don't do the one, or the other, Judgment passés, as if you had pleaded Guilty.

Col. Sidney. Here is a Plea*.

Mr. Just. Withins. Will you stand by it? Consider yourself, and your Life, if you put in that Plea, and Mr. Attorney demurs, if your Plea be not good, your Life is gone.

Col. Sidney. Pray, my Lord, give me a Day to consider of it.

L. C. J. No, we must not introduce new Methods or Forms for any body. The same Case that is with you may be with other People.

Col. Sidney. My Lord, I do not pretend to any thing but what is Law, and due to every Man upon *English* Ground. I would be very sorry to do that which may be hurtful.

L. C. J. You have the Rule of the Court. You must do one or the other. Call him to it.

Col. Sidney. I desire this may be read. [*Shewing the same Parchment.*]

L. C. J. It shall not be read unless you put it in as a Plea.

Mr. Sol. Gen. I must do my Duty. Mr. *Williams* exceeds his Liberty, he informs the Prisoner several Things.

Mr. Williams. I only said, if it was a Plea, put it in, Mr. Attorney can hear all I say. [*Whereupon Mr. Williams was reproved by the Lord Chief Justice.*]

Col. Sidney. I only give it as Exceptions to the Bill.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. Sidney. If any one should ask me any particular Thing, I could tell how to answer.

L. C. J. He asks you a particular Thing. 'Tis the Duty of the Court to pronounce Judgment, if you do not plead.

Col. Sidney. Why then, if you drive me upon it, I must plead.

L. C. J. I am sure there is no Gentleman of the long Robe would put any such thing into your Head. There was never any such thing done in Capital Matters.

Col. Sidney. My Lord, I am there indicted for Conspiring the Death of the King; I have not Conspired the Death of the King: I am there indicted for Levying of War; I have not done that: I am indicted for having invited in others of another Nation; I have not done that neither: I am there indicted to have written a seditious Libel to stir up the Spirits of the People against the King; I have not written any thing to stir up the People against the King. —

L. C. J. We are not to hear all this, you must plead as other People, or else in plain *English* we will pronounce Sentence. We ought to give all Men Satisfaction that will be satisfied; but if they won't be directed we can't help that.

Col. Sidney. My Lord, if you put me upon this inevitable Necessity, it lies upon you; I must plead then.

Cl. of Cr. Art thou Guilty, or not Guilty?

Col. Sidney. Not Guilty.

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

Col. Sidney. By God and my Country.

Cl. of Cr. God fend thee a good Deliverence.

L. C. J. If you be not guilty, I pray God you may escape.

Mr. Att. Gen. My Lord, will you please to ap-

point a Day for his Trial, that he may take notice of it now?

L. C. J. What Time would you have?

Mr. Att. Gen. A Week's Time, do you think that will be enough?

Col. Sidney. No, pray, my Lord, give me a Fortnight's Time.

Mr. Att. Gen. I won't oppose it.

Col. Sidney. In the next Place I desire a Copy of the Indictment.

L. C. J. We can't grant it by Law.

Col. Sidney. I desire you would please to give me Counsel.

L. C. J. We can't do it; if you assign us any particular Point of Law, if the Court think it such a Point as may be worth the debating, you shall have Counsel: But if you ask for Counsel for no other Reason than because you ask it, we must not grant it. The Court is bound to see that nothing be done against you, but what is according to the Rules of Law. I would be very loth to draw the Guilt of any Man's Blood upon me.

Col. Sidney. Has not every Body Counsel?

L. C. J. No.

Col. Sidney. I have several Points of Law.

L. C. J. Tell us them.

Col. Sidney. My Lord, will you oblige me that am an ignorant Man, and confess my self so, upon hearing my Indictment for Things I know not of, a long Thing, presently to raise a Point of Law.

L. C. J. 'Tis not we oblige you, Mr. *Sidney*, 'tis the Law obliges you. We are the Ministers of the Law, 'tis the Law says we are not to allow you Counsel without making your Objections, that the Court may understand whether it be fit: 'Tis the Law says we may not allow you a Copy of the Indictment. Therefore don't go away and say that we as Men sitting here impose upon you, we sit here only to administer the Justice of the Nation.

Mr. Just. Withins. Sir, you will have a Fortnight's Time to consider of Objections in Law.

L. C. J. If you will have it read, you shall. Those Things that you may have by Law, God forbid but you should have the Benefit of them.

Col. Sidney. I desire, my Lord, to hear it read again.

Mr. Att. Gen. Would you have it read in *Latin*?

Col. Sidney. Yes, if you please, I do understand a little *Latin*.

Then the Indictment was read in Latin.

Col. Sidney. What is that Statute?

L. C. J. When you come to your Trial, Mr. Attorney will tell you what Statute he goes upon. And he may give in Evidence any Act of Parliament that comprehends Treason.

Col. Sidney. Methinks he should say what Statute he goes upon.

Mr. Just. Withins. Sir, would you have a new Indictment for you?

L. C. J. He must take notice of his Trial this Day Fortnight. Lieutenant of the Tower, you may take the Prisoner back again.

Then the Lieutenant of the Tower took away his Prisoner.

* See this Plea in the *Appendix*;

ON the 21st of *November*, *Algernon Sidney*, Esq; was brought to the Bar of the Court of *King's Bench* by *Habeas Corpus*, and Proclamation for Information being made, he desired Pen, Ink and Paper, which were granted him. And he also desired, that two Persons, (*viz.*) *Mr. Wym* and *Mr. Gibbs*, might write for him, which was also allowed by the Court.

Col. Sidney. My Lord, when I was last here before your Lordship, I did desire a Copy of my Indictment, and I thought the Law did allow it me. But being in an hurry, carried first to a Tavern, then led through Soldiers, and surprized absolutely, I could not give that Reason why I thought the Law allowed me a Copy. My Lord, I was denied a Copy, and thereby I was deprived of the Benefit of a special Plea I designed to have put in. This would have been a great Help to your Lordship, and to me; the Denial of which hath been a great Prejudice. Now, my Lord, that which I thought was Law then, I think I can give a better Testimony that 'tis so now upon the Statute of 46 *Edw. 3.* wherein 'tis expressed, that *tout partes & tout gents*, that is, all People shall have a Copy of every Record; and it enumerates several Matters, as well that against the King as other People. This is a general Law still in Force: My Lord *Strafford* had a Copy, and my Lord *Strafford*, and the Lords in the *Tower* had Copies of their Indictments. And, under favour, I think it was never more necessary than to me, there never having been, perhaps, a Charge so long and so confused. Now, my Lord, I have a Copy transcribed of this Statute.

[*Shewing a Paper.*]

Sir George Jefferies. *L. C. J.* We remember the Law very well. *Mr. Sidney* did move for a Copy of the Indictment, and the Court denied him then, and so shall now. And yet all this while we shall deny you nothing that is Law. You shall have the Right that becomes a Subject in your Condition. And we must tell you, that notwithstanding all that Case we ought not to have given you so much Favour (perhaps in strictness) as we did. And because you did particularly take notice of the Case of *Sir Henry Vane* last Time, I will shew you the Court did indulge more to you than was done to that Person. In *Sir Henry Vane's* Trial LIX. Case, by the Opinion of all the Judges, it was declared, that no Copy ought to be given, neither of the whole, nor any part of the Indictment, except they shew Matter of Law. But your Counsel, since you went away, moved for the Copy of the Indictment; and to satisfy them, I directed the Case that you took notice of to be read in the Court: And I thought they had been sufficiently satisfy'd. You had the Indictment read to you in *Latin*, which was denied in the Case of *Sir Henry Vane*. And there is a later Case known to most Persons here. By the Opinion of all the Judges of *England*, a Copy of the Indictment was denied to my Lord *Ruffel*. Therefore arraign him upon the Indictment; we must not spend our Time in Discourses to captivate the People.

Col. Sidney. Is not this a good Law, my Lord?

[*Holding out the Paper.*]

L. C. J. You have the Rule of the Court.

Mr. Just. Withins. Any thing the Law will allow you, you shall have; but I am sure if you did advise with your Counsel, they must tell you the same Thing.

So the Clerk of the Crown called the Jury, and after several Challenges, the Names of the Jury were as follow,

<i>John Amger,</i> <i>Richard White,</i> <i>William Linn,</i> <i>Lawrence Wood,</i> <i>Adam Andrews,</i> <i>Emery Arguise,</i>	}	Jur ^s	<i>Josias Clerke,</i> <i>George Glisby,</i> <i>Nicholas Baxter,</i> <i>William Reeves,</i> <i>William Grove, and</i> <i>John Burt.</i>
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L. C. J. Look you, Gentlemen of the Jury, there are some Gentlemen at the Bar, as we are informed, are apt to whisper to the Jury; 'tis no part of their Duty; nay, 'tis against their Duty: And therefore, Gentlemen, if you hear any of them by you that offer to whisper, or make Comments in this Cause, as you are upon your Oaths, and I doubt not but will do your Duty between the King and the Prisoner; so I expect if you hear the Counsel say any thing, you will inform the Court. Let us have no Remarks, but a fair Trial in God's Name.

Cl. of Cr. You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Algernon Sidney*, of, &c. (as in the Indictment) your Charge is to inquire, &c.

Then Proclamation for Evidence was made.

Mr. Dolben. May it please your Lordship, and you Gentlemen that are sworn. This is an Indictment of High-Treason, preferred against *Algernon Sidney*, the Prisoner at the Bar. The Indictment sets forth, That he, as a false Traitor against our most Illustrious Prince, *Charles* the Second, his natural Lord, not having the Fear of God in his Heart, &c. On the Thirtieth of *June*, in the Thirty Fifth Year of the King, and divers other Days and Times, as well before as after, in the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, traiterously, with divers Traitors unknown, did conspire the Death of the King, and to levy War within the Kingdom. And, to complete these Traiterous Purposes, did then, and there maliciously, advisedly and traiterously, send one *Aaron Smith* into *Scotland*, to excite some ill disposed Persons of that Kingdom to come into this, and to consult with the said *Algernon Sidney*, and other Traitors, of and upon Assistance from the Kingdom of *Scotland*, to carry on those Designs. And the Indictment sets forth further, that to persuade the People of *England* it was lawful to raise Rebellion, the said *Algernon Sidney* did cause to be written a false seditious Libel, in which are contained these *English* Words, *The Power originally in the People of England is delegated unto the Parliament. The King is subject to the Law of God, as he is a Man to the People that makes him a King. In as much as he is a King, the Law sets a measure unto that Subjection, &c.* (as in the Indictment.) This is laid to be against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. If we prove him Guilty, we doubt not but you will find it.

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, the Prisoner at the Bar stands indicted of the highest Crimes, the conspiring the Death of the King, and the Overthrow of the *English* Monarchy. Gentlemen, we shall use this Method in our Evidence. We shall shew by many Witnesses, that

Sir Robert Sawyer.

that there was a Design of raising and making a Rebellion within this Kingdom. For, Gentlemen, you must take notice, and I think there is no *Englishman* but does believe, that for several Years last past a Design was laid, and for that purpose several secret Insinuations were made use of, and publick Libels spread abroad to persuade the People, that the King was introducing Arbitrary Power, that he subverted all their Rights, Liberties, Properties, and whatever was dear to them. They endeavoured to make the World believe the King was a *Papist*. And when, Gentlemen, by such Stratagems they had worked upon many incautelous Persons, when they thought they had gotten a sufficient Party, then there was a Design of an open Rising, (for they thought all Things were ripened) and that was to be in several Parts of the Kingdom. Some Persons, to effect this Design, were for a present Assassination of the King. Others would do it in a more fair and gentle way. They thought it below Persons of that great Quality as the Prisoner is, and therefore were for doing it by open Force.

When we have given that general Evidence, we shall then come to shew you what Share and Part the Prisoner had in this Design. For certainly he was looked upon as a very eminent Person, whose Education abroad, and former Practices at home had rendered him fit to advise and proceed in such Affairs. We shall prove when these Matters were ripe, this Gentleman was of the Council of State, of the six that were to manage this Matter of the Rising. We shall shew the several Consultations they held; one at Mr. *Hambden's* House, another at the House of my Lord *Ruffel*. There we shall acquaint you what Debates they had; for they acted like very subtile Men; and there they debated, whether the Rising should be first in the Country or City, or both together. They came to a Resolution it should be in both Places at once. Then, when they had Asserted that Point, they come to consider the Time of Rising; and upon that they thought fit to call in Aid of *Scotland* first; and that was this Gentleman's particular Province. For he, being a Man of great Secrecy, was to send an Emissary into that Kingdom, and invite some Persons over to treat with them about it. We shall prove that an Emissary was sent, and this Gentleman gave him a considerable Sum to bear his Charges. We shall prove that several *Scotch* Gentlemen, in pursuance of this Resolve, came here to treat with this great Council of State, about this Affair: And shall make it appear to you, that as soon as ever the least Discovery of this Plot was, These Persons concealed themselves and withdrew, as the rest of the Plotters that have fled from Justice.

Gentlemen, this was not enough for this Gentleman to consult on these several Passages, but to demonstrate to the World, that his Head and Heart was entire in this Service, and that he might carry it on the more effectually, he was at this very time, when this Emissary was gone into *Scotland*, preparing a most Seditious and Traiterous Libel; we instance in some particular Words of it; but we shall shew you, that the whole Design of this Treatise is to persuade the People of *England*, that it is lawful, nay, that they have a Right to set aside their Prince, in case it appear to them, that he hath broken the Trust laid upon him by the People. Gentlemen, he

does use in that Treatise several Arguments drawn from the most Rebellious Times that ever were in *England*, from the late Rebellion (I must needs use that Word, notwithstanding the Act of Oblivion, when a Gentleman shall now attempt to do those Things for which he was pardoned then) and from other Kingdoms, where Rebellion hath been prosperous against Princes. Then he falls to Reasoning, and uses great Reason in the Case, that all the Power of the Prince is originally in the People, and applies that Discourse, that the Power of the King was derived from the People upon Trust, and they had already declared the King had invaded their Rights, and therefore he comes to argue, they might assume that Original Power they had conferred. And he tells the King, that is no hard Condition; if he thinks it so, he should lay down his Crown, if not, he threatens the Condition would be exacted, or otherwise should be revenged by those he had betrayed; and who but this Gentleman and his Confederates, that thought himself not only able to govern this Nation, but many Monarchies, should call him to Account for it? For he lays down this Principle, that tho' all the People do rise against their Prince, it is no Rebellion. The whole Book is an Argument for the People to rise in Arms, and vindicate their Wrongs. He lays it down, *That the King has no Authority to dissolve the Parliament; but 'tis apparent the King hath dissolved many; therefore he hath broken his Trust, and invaded our Rights.* And at last concludes with that Passage laid in the Indictment, *We may therefore shake off our Yoke; for 'tis not a Yoke we submitted to, but a Yoke by Tyranny (that must be the meaning of it) they have imposed on us.*

Gentlemen, if we prove all these Matters to you, I doubt not you will do right to the King and Kingdom, and shew your Abhorrence of those Republican Principles; which, if put in Practice, will not only destroy the King, but the best Monarchy in the World.

Mr. Sol. Gen. Pray call Mr. *West*.

[*Who appeared.*] *Mr. Finch.*

Col. Sidney. I pray one Word, my Lord, before Mr. *West* be sworn: I have heard, my Lord, Mr. *West* hath confessed many Treasons; I desire to know whether he is pardoned, or no?

L. C. J. I don't know that.

Col. Sidney. My Lord, how can he be a Witness then?

L. C. J. Swear him: For I know no Legal Objection against him. He was a good Witness in my Lord *Ruffel's* Trial.

Col. Sidney. My Lord, if another did not except against him, 'tis nothing to me.

Mr. North. Pray give an Account to the Court of what you know of a general Insurrection intended in *England*.

Col. Sidney. What he knows concerning me.

L. C. J. We will take care of that, that no Evidence be given but what ought to be.

Col. Sidney. Is it ordinary that he should say any thing, unless it be to me and my Indictment?

L. C. J. Mr. *Sidney*, You remember in all the Trials about the late *Papist* Plot, how there was first a general Account given of the Plot in *Coleman's* Trial, and so in *Plunket's*, and others: I don't doubt but you remember it. And Sir *William*

liam Jones against whose Judgment, I believe, you won't object, was Attorney at that time.

Mr. North. Mr. *West*, What do you know of the general Insurrection lately design'd?

Mr. West. My Lord, I have had the Honour to know Colonel *Sidney* several Years; but I don't remember that I ever saw him from the time I came acquainted with any part of the Conspiracy, till the Discovery that was at the Council.

Mr. North. Pray give an Account of what you know of the Plot in general.

Mr. West. My Lord, in *October* last, Captain *Walcot* came to me, and told me that my Lord *Shaftsbury* had designed an Insurrection in *November*; I used some Arguments to dissuade him from it. But a little afterwards he came and told me, the Thing was wholly disappointed, and then it went off, and my Lord *Shaftsbury* went for *Holland*. Colonel *Rumsey* afterwards about *Christmas*, said there were some Lords and Gentlemen intended to make an Insurrection; the Persons were the Duke of *Monmouth*, my Lord of *Essex*, my Lord *Howard*, my Lord *Russel*, the Prisoner at the Bar, and Mr. *Hambden, Jun.* After some time he told me they had altered their Measures, and were resolved not to venture upon an Insurrection in *England*, 'till they had a Concurrency in *Scotland*. Afterwards I was not privy to any thing else, but what I had the Report of from Mr. *Nelbrop* and Mr. *Ferguson*. Mr. *Nelbrop* told me the Prisoner had said —

Col. Sidney. My Lord, I am very unwilling to interrupt the Gentlemen —

L. C. J. You must not interrupt the Witness. Go on, Sir.

Mr. West. Mr. *Nelbrop* told me, the Prisoner at the Bar had sent *Aaron Smith* into *Scotland*, and given him a Sum of Money to bear his Charges, and sent Letters to some *Scotch* Gentlemen to invite them to Town. The Letter bore a Cant of settling some Business in *Carolina*; but the Business was coming up about the Insurrection. After this Mr. *Smith* returned, and some *Scotch* Gentlemen with him; and soon after Mr. *Ferguson* gave an Account of that Affair, and said, the *Scotch* propos'd, if they might have Thirty Thousand Pounds in ready Money, they would undertake to make an Insurrection in *Scotland*, without the Concurrence of *England*. He said this Proposal was agreed to, and Money would be soon ready; and he said that *Sheppard* would return the Money. That the Arms were ready bought, and my Lord of *Argyle* would go into *Scotland*, and head the *Scots*. He told me when Things were thus settled, some difference arose about raising the Money; and at last he told me, my Lord *Grey* did offer to raise ten thousand Pounds out of his own Estate, if the rest would pay their Proportion. Then the *Scots* came down to less, but that would not be complied with. The Places for the Rising were *Bristol, Taunton, York, Chester, Exeter, London*. That there had been some Debates, whether they should begin at *London*, or the other Places, and at last it was resolved they shou'd begin at *London* with the rest of the Places.

My Lord, This was the Account I had of the Matter in general of Mr. *Ferguson*; but he said they were disappointed. Afterwards he told me the Prisoner at the Bar, and Major *Wildman*, were very instrumental in working of it off, because

they could not agree upon the Declaration to be made upon the Insurrection. The *English* were for a Commonwealth; but the *Scotch* Gentlemen answered fairly, it might come to it in time, but the Noblemen there would not agree to it at present. As to the Prisoner in particular, I know nothing, and did never speak with him 'till since the Discovery.

Mr. Att. Gen. Colonel *Rumsey*. [Sworn.]

Mr. North. Pray, Sir, will you give the Court an Account of what you know of any Insurrection intended, and how they designed to carry it on.

Col. Rumsey. My Lord, the latter end of *October*, or the beginning of *November*, I was desired by my Lord *Shaftsbury* to go to Mr. *Sheppard's* to know of the Gentlemen that were met there, what was done about the Rising intended at *Taunton*; and I had their Answer, that Mr. *Trenchard* had failed them, and that it must cease for that time. That was all at that time.

Mr. Sol. Gen. What else do you know of any Insurrection afterwards?

Col. Rumsey. After that we had several Meetings at Mr. *West's* Chamber, where we had divided the City into twenty Parts, and seven Parts Mr. *Goodenough* had brought an Account of; the other thirteen he said nothing of; for he had not spoke with those that were to tell him how many Men they would afford. There was there Captain *Walcot*, Mr. *West*, the two *Goodenoughs*, Mr. *Borne*, Mr. *Wade*, and myself.

L. C. J. What was the Result of those Debates?

Col. Rumsey. To see what Number of Men they could produce in the City for the Insurrection.

L. C. J. Was there a Rising designed?

Col. Rumsey. Yes.

L. C. J. And did these People meet?

Col. Rumsey. There was no time set.

Mr. Sol. Gen. When was the Meeting?

Col. Rumsey. There were several Meetings in *March*, and *April*, and *May*.

Mr. Sol. Gen. After the Meeting at *Sheppard's*?

Col. Rumsey. Yes, a great while. It ceased, I think, six Weeks or three Months.

L. C. J. Who did you meet with at Mr. *Sheppard's*?

Col. Rumsey. There was the Duke of *Monmouth*, my Lord *Grey*, my Lord *Russel*, Sir *Thomas Armstrong*, Mr. *Ferguson*, and Mr. *Sheppard*.

Mr. Sol. Gen. Who did you expect should head this Army?

Col. Rumsey. That was never said any thing of.

Mr. Att. Gen. Who were to manage the Rising?

Col. Rumsey. We that met there.

Mr. Att. Gen. Had you no expectation of great Men?

Col. Rumsey. Mr. *West* told me, and Mr. *Goodenough*, that there was a Council, which were the Duke of *Monmouth*, my Lord *Essex*, my Lord *Howard*, Colonel *Sidney*, Mr. *Hambden*, and my Lord *Russel*, there were Six.

L. C. J. What did he tell you of them Six?

Col. Rumsey. He told me they were managing a Business with *Scotland*.

L. C. J. A Business, pray speak plain, tell all you know.

Col. Rumsey. For the Insurrection.

L. C. J.

L. C. J. Say so then, we know nothing of the Business you were about.

Col. Rumsey. My Lord, Mr. *West* had that Discourse with my Lord *Howard* I never had; he is more fit to speak to that than me.

L. C. J. Speak your own Knowledge and no more.

Mr. Jones. After the Death of my Lord *Shaftsbury*, who were the Managers, and were to carry it on?

Col. Rumsey. I told you, Mr. *West* and Mr. *Goodenough* did tell me the Duke of *Monmouth*, my Lord *Effex* —

Mr. Att. Gen. He told you so before. Do you know there was an Insurrection then intended?

Col. Rumsey. Yes, because we met towards the Management of it, the Company that met at Mr. *West's* Chamber, and other Places.

Mr. Att. Gen. What Discourse had you with Mr. *Ferguson* about it?

Col. Rumsey. Not about those Gentlemen.

Mr. North. The next Thing we shall shew, shall be that the *Scotchmen* came to Town.

Col. Sidney. My Lord, I must ever put you in mind, whether it be ordinary to examine Men upon Indictments of Treason concerning me that I never saw, nor heard of in my Life.

L. C. J. I tell you, all this Evidence does not affect you, and I tell the Jury so.

Col. Sidney. But it prepossesses the Jury.

Mr. Keiling called and sworn.

Mr. Att. Gen. I ask you in general, what you know of the Rising to have been last Spring?

Mr. Keiling. My Lord, It was some time last Summer, Mr. *Goodenough* came to me, and brought me three Papers numbered on the back-side; I asked him to what end he delivered them me? He told me, One was for myself, and I was to deliver the other Two to whom I could trust in the two Divisions. I asked him, what was the Design? He said, to raise Men; says I, Do you design a general Insurrection? He said, if he did not, if the King was taken off this would do well; for then People would know how to have recourse to a formidable Body. And I have heard him say, that Colonel *Sidney*, whom I don't know, had a considerable Part in the Management of that Affair.

Mr. Att. Gen. We charge him with Conspiring, and there must be Confederates in the Case, Now then we come to the Prisoner, we will call my Lord *Howard*, that was one of the Persons that did Consult.

The Lord Howard sworn.

Mr. Att. Gen. Pray acquaint my Lord and the Jury of your Knowledge, of what Transactions there have been with the Prisoner about this Affair of the general Rising.

Lord Howard. Truly, my Lord, in the entering of the Evidence I am about to give, I cannot but observe, what a natural Uniformity there is in Truth. For the Gentlemen that have been before, have so exactly instanced, in every Particular, with what I have to say, that two Tallies could not more exactly fall into one another, though I confess I had not seen their Faces, 'till the Plot broke out, for some Months before.

My Lord, and Gentlemen of the Jury, About the middle of *January* last, it was considered by

some of us that met together, that it was very necessary and expedient to an Enterprize that had been long in Hand, and fallen flat then, that it should be revived by some Consult or Cabal, that should be set up to give Life to it, and Governance to the Motions of it. The first (for ought I know) Movers of this were the Duke of *Monmouth*, the Gentleman at the Bar, and my Self: And there we did agree, that we should bethink our selves of some few, we were willing it should not exceed *five*, at the most *seven*. This Agreement being at first between us *three*; I remember the Duke of *Monmouth* undertook to engage my Lord *Russel*, and my Lord *Salisbury*; and this Gentleman Colonel *Sidney* for my Lord of *Effex*, and Mr. *Hambden*; and these being put together, did presently constitute a little Cabal, of as great a Number as was intended. This being settled among them, it was within a few Days after, I can't certainly tell when, but between the middle and latter end of *January* that I was told, that the Persons had agreed to enter into this Conjunction of Councils; and in order to that, they had appointed a Meeting at Mr. *Hambden's* House, to which I was invited. This, in time, was between the middle and latter end of *January*, but I can't tell exactly. When we came there, there were all those Gentlemen I before named, the Duke of *Monmouth*, my Lord *Effex*, my Lord *Russel*, Colonel *Sidney*, Mr. *Hambden*, and my Self. It was at Mr. *Hambden's* House which ranges on the same Row with *Southampton* House: And being met, Mr. *Hambden*, I suppose, did think it most properly belonged to him to take upon him the Part as it were to open the Sessions, that was, to give us a little Account of the Reason, End, and Intention of that Meeting: In which Discourse, he took Occasion to recapitulate some Design, that had been before chiefly carried on by my Lord *Shaftsbury*, before this time Dead; and also took notice of the ready Disposition and Inclination of the Minds of Men to go on with it; and did give one Instance of his Judgment of it, That it being a Design communicated to so many, it had not been so much as Revealed, or a Murmur or Whisper gone about it: From whence he took occasion to tell us, that it was absolutely necessary for the future, there should be some Council that should be as a Spring, a little to guide and govern the Motions of the rest, for that were divers Things to be taken care of, which if not taken care of by particular Persons, would all miscarry. This was the Substance of the Prologue and Introduction he made. From hence he made a Transition to some particular Things, that he thought were most principally to be taken care of. And though it is impossible for me to remember the Order and Method in which we discoursed, or who said this or that, but that which the Sense of all resulted to was this: That since we did not come prepared for it, we should consider what were the Things that would hereafter challenge our particular Care, that was, the Time when, the Places where, and the Persons by whom these Things should be carried on. This led into some particular Discourse, concerning some of these Heads: For the Time, that it should be shortly, lest the Minds of Men should chill; and then as to the Place where, whether in City or Country, or both jointly. In all these, some Opinions were given, but not settled to any Resolution, but they were

were committed to our Thoughts to be digested afterwards. But these being the Things that every one was to take upon his Thoughts, there was this Pre-requisite to the Undertaking, and that was to consider what *Magazines* were to be got; and that led to another Particular, which was, with what they should be gotten, and that was Money; and thereupon was propounded a considerable Sum to be raised: and, as I remember, the Sum propounded by the Duke of *Monmouth* was *Twenty-Five Thousand Pounds*, or *Thirty Thousand Pounds*. And then it was considered, how it should be raised without drawing Observation or Jealousy. These are only the Heads that were then agreed on, hereafter to be better considered. But the present Resolution that was taken, was, that before any Procedure was made in any of these Things, or any Advance towards the Undertaking; the first thing to be considered was, How to make a Coalition of Councils between *Scotland*, and what we were doing here; and for that purpose, we should bethink ourselves of some fit Person to be sent thither, to Unite us into one Sense and Care. This is as much as occurs to my Memory upon that Meeting. About a Fortnight or three Weeks after, which I suppose carried it to the middle of *February* next, we had another Meeting, and that was at *Southampton-House* at my Lord *Ruffel's*, and there were every one of the same Persons; and when we came there, there happened to fall in a Discourse which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unseasonable; and that I remember was by Mr. *Hambden*, who did tell us, That having now united our selves into such an Undertaking as this was, it could not but be expected, that it would be a Question put to many of us; To what end all this was? Where it was we intended to Terminate? Into what we intended to Resolve? That these were Questions he met with; and it was probable, every one had or would meet with from those Persons whose Assistance we expected; and that if there was any thing of a Personal Interest designed or intended, that there were but very few of those, whose Hearts were now with us, but would fall off: And therefore, since we were upon such an Undertaking, we should resolve our selves into such Principles, as should put the Properties and Liberties of the People into such Hands, as it should not be easily invaded by any that were trusted with the Supreme Authority of the Land; and it was mentioned to Resolve all into the Authority of the Parliament. This was moved by him, and had a little harshness to some that were there; but yet upon the whole Matter we generally consented to it, That it was nothing but a Publick Good that we all intended. But then after that, we fell to that which we charged ourselves with at the first Meeting, and that was concerning sending into *Scotland*, and of settling an Understanding with my Lord of *Argyle*: And in order to this, it was necessary to send a Messenger thither to some Persons, whom we thought were the most leading Men of the Interest in *Scotland*: This led us to the insisting on some particular Persons; the Gentlemen named, were my Lord *Melvin*, Sir *John Cockram*, and the *Campbels*; I am sure it was some of the Alliance of my Lord of *Argyle*, and I think of the Name. As soon as this was propounded, it was offered by this Gentleman Colonel *Sidney*, that

he would take the Care of the Person; and he had a Person in his Thoughts, that he thought a very fit Man to be intrusted; one or two, but one in special, and he named *Aaron Smith* to be the Man, who was known to some of us, to others not; I was one that did know him, and as many as knew him, thought him a proper Person. This is all that occurs to me that was at the second Meeting, and they are the only Consults that I was at.

Mr. Att. Gen. What was he to do?

Lord Howard. There was no particular Deed for him, more than to carry a Letter. The Duke of *Monmouth* undertook to bring my Lord *Melvin* hither, because he had a particular Dependence upon him, and I think some Relation to his Lady: But to Sir *John Cockram* there was a Letter to be sent under the disguise of carrying on some Business of the Plantation in *Carolina*. This Letter I suppose was writ by my Lord *Ruffel* (tho' I know it not) for he was personally known to my Lord *Ruffel*, and I don't know that he was known to any of us. About three Weeks after this, then he was dispatched I suppose.

Mr. Att. Gen. To what purpose were these Gentlemen to come up?

Lord Howard. These were to acquaint us how they found *Scotland* tempered, and what Opportunities or Advantages there were or might be of putting them into a Commotion, and how Men might be raised, and how they would fall under *Argyle*, and also to keep Time and Place with us. After this, I was with Colonel *Sidney*, when he was going into *London*, and he did take out several Guineas, I can't tell how much it was, I suppose they might be about sixty, and put them into his Pocket (and set me down at my Lodging) which he said were to give *Aaron Smith*; whether he gave it or no, I don't know; and after that he was sent.

Mr. Att. Gen. Who told you so?

Lord Howard. Col. *Sidney*. For I was inquiring of him; and he said, he had not heard of him in three Weeks, or but once, when he was about *New-Castle*. After this, I had Occasions that called me into the Country, and there I was. Some time after that I went to the *Bath*: And this is all the Account I can give.

Mr. Sol. Gen. Do you know that *Aaron Smith* did go?

Lord Howard. I know nothing but by hear-say. Col. *Sidney* told me he was gone, and was upon the Road, and he heard from him about *New-Castle*.

L. C. J. Did you understand by the Discourse after he was gone, that he went in pursuance of that Debate?

Lord Howard. Yes, my Lord, That was the whole end of his going.

Mr. Just. Withins. I think you say, that Gentleman [*speaking of Col. Sidney*] undertook to send him.

Lord Howard. Yes, he did.

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

Col. Sidney. I have no Questions to ask him.

Mr. Att. Gen. Silence—You know the Proverb. The next Step is to shew you, my Lord, that these Persons came up immediately after *Aaron Smith* went down thither; and according to that which was said to be the shadow and pretence of their coming hither, they pretended

they came about *Carolina* Business. Sir *Andrew Foster* and Mr. *Blathwaite*.

Sir Andrew Foster sworn.

Mr. Att. Gen. Pray, Sir, give an Account what *Scotch* Gentlemen came up lately.

Sir Andrew Foster. My Lord, about the End of the Spring, or Beginning of Summer, as I remember, these Gentlemen, Sir *John Cockram*, and Commissary *Monro*, and the two *Campbels*, Father and Son, came up hither. I did not see the Father at all, but I saw the Son the Day of the Lord *Russel's* Trial; but the other two, I think, I saw a little before the Discovery of the Plot.

Mr. Att. Gen. What did they pretend they came about?

Sir Andrew Foster. They pretended they came to make a Purchase in *Carolina*, and I saw their Commission from the Persons said to be concerned in that Design.

L. C. J. Who do you speak of?

Sir Andrew Foster. Sir *John Cockram* and Commissary *Monro*.

Mr. Att. Gen. As soon as the Rumour came of the Plot, What became of those Gentlemen?

Sir Andrew Foster. Sir *John Cockram* absconded, but Commissary *Monro* never absconded; and the *Campbels* I heard were seized changing their Lodging from Place to Place.

Mr. Atterbury sworn.

Mr. Att. Gen. Mr. *Atterbury*, will you give my Lord and the Jury an Account what you know of these *Scotchmen*, their absconding and lying hid.

Mr. Atterbury. My Lord, upon the latter End of *June*, or the Beginning of *July*; the Beginning of *July* it was, I was sent for into *London* upon a Discovery of some *Scotch* Gentlemen that lay about *Black-Friers*; and when I came down there, there was the *Common Serjeant* and some others had been before me, and found them making an Escape into a Boat.

Mr. Att. Gen. Who were they?

Mr. Atterbury. Sir *Hugh Campbell*, and Sir *John Cockram*, and one that was committed to the *Gatehouse* by the Council, as soon as brought thither.

Mr. Att. Gen. We shall end here, my Lord: How long had they been in Town?

Mr. Atterbury. They had been in Town some little time.

Mr. Att. Gen. We have done with this Piece of our Evidence. Now, to shew that while this Emissary was in *Scotland*, at the same time the Colonel (which will be another Overt-Act of the Treason) was writing a treasonable Pamphlet. I will call you the Witnesses. It is all of his own Writings. *Sir Philip Lloyd.*

Mr. Att. Gen. Sir *Philip Lloyd*, pray, will you look upon those Papers, and give my Lord and the Jury an Account where you found them.

Sir Philip Lloyd. I had a Warrant, my Lord, from the Secretary by the King and Council, to seize Mr. *Algernon Sidney's* Papers; and pursuant to it, I did go to his House, and such as I found there I put up. I found a great many upon the Table, amongst which were these, I suppose it is where he usually writes; I put them in a Pillow-bier I borrowed in the House, and that in a Trunk; I desired Col. *Sidney* would put his Seal upon them, that there should be no Mistake; he

refused, so I took my Seal, and sealed up the Trunk, and it was carried before me to Mr. Secretary *Jenkins's* Office. When the Committee sat, I was commanded to undo the Trunk, and I did so, and found my own Seal upon it. And I took the Papers out of the Bag I put them into before.

L. C. J. Was Col. *Sidney* present when you seized these Papers?

Sir Phil. Lloyd. Yes.

Mr. Att. Gen. Are these some of those Papers?

Sir Phil. Lloyd. Yes, I verily believe it.

Mr. Att. Gen. In the next Place, I think we have some Papers of his particular Affairs which will prove his Hand. Call Mr. *Sheppard*, Mr. *Cooke*, and Mr. *Cary*.

Mr. North. Sir *Philip Lloyd*, When were they seized?

Sir Philip Lloyd. Towards the latter End of *June*, my Lord.

Juryman. Which *June*?

Sir Phil. Lloyd. Last *June*.

Mr. Sheppard sworn.

Mr. Att. Gen. Pray, will you look upon those Writings. [*Shewing the Libel.*] Are you acquainted with Col. *Sidney's* Hand?

Mr. Sheppard. Yes, my Lord.

Mr. Att. Gen. Is that his Hand-writing?

Mr. Sheppard. Yes, Sir, I believe so. I believe all these Sheets to be his Hand.

Mr. Att. Gen. How come you to be acquainted with his Hand?

Mr. Sheppard. I have seen him write the Indorsement upon several Bills of Exchange.

Mr. Cary sworn.

Col. Sidney. My Lord, I desire you would please to consider this, that Similitude of Hands can be no Evidence.

L. C. J. Reserve your self 'till anon, and make all the advantageous Remarks you can.

Mr. Att. Gen. Have you had any Dealing with him?

Mr. Cary. I never saw him write to my Knowledge, more than once in my Life, but I have seen his Indorsement upon Bills, and 'tis very like that.

L. C. J. Do you believe it is his Hand, as far as you can guess?

Mr. Cary. My Lord, it is like what came to me for his Hand-writing.

L. C. J. And you believe it to be his Hand?

Mr. Cary. Yes.

Mr. Cooke sworn, and the Papers shewn him.

L. C. J. What say you, Mr. *Cooke*?

Mr. Cooke. My Lord, I did never see Col. *Sidney* write, but I have seen several Notes that have come to me with Indorsement of his Name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for Mispayment?

Mr. Cooke. No, my Lord.

Mr. Att. Gen. I pray it may be read. We will read as much as is necessary to prove the Indictment.

Col. Sidney. I pray it may be all read.

L. C. J. Mr. *Attorney* must have what Part he desires read, and you shall have what Part you will have read afterwards.

Col. Sidney. I desire it may all be read.

Mr. Att.

Mr. Att. Gen. Begin there. *Secondly*, There was no Absurdity in this, because it was their own Case.

Clerk Reads.

Secondly, There was no Absurdity in this, tho' it was their own Case; but to the contrary, because it was their own Case, that is, concerning themselves only, and they had no Superior. They only were the competent Judges, they decided their Controversies, as every Man in his own Family doth, such as arise between him and his Children, and his Servants. This Power hath no other Restriction than what is put upon it by the Municipal Law of the Country, where any Man, and that hath no other Force, than as he is understood to have consented unto it. Thus in *England* every Man (in a degree) hath a Right of chastising them; and in many Places (even by the Law of God) the Master hath a Power of Life and Death over his Servant: It were a most absurd Folly to say that a Man might not put away, or in some Places kill an adulterous Wife, a disobedient Son, or an unlawful Servant, because he is Party and Judge, for the Case doth admit of no other, unless he hath abridged his own Right by entering into a Society where other Rules are agreed upon, and a superior Judge constituted, there being none such between King and People: That People must needs be the Judge of Things happening between them and him whom they did not constitute, that they might be great, glorious and rich; but that they might judge them, and fight their Battles; or otherwise do Good unto them, as they should direct. In this Sense, he that is *singulis Major*, and ought to be obliged by every Man, in his just and lawful Commands, tending to the publick Good; and must be suffered to do nothing against it, nor in any respect more than the Law doth allow.

For this Reason *Brañton* saith, that the King hath three Superiors, to wit, *Deum, Legem, & Parliament*, that is, the Power, originally in the People of *England*, is delegated unto the Parliament. He is subject unto the Law of God as he is a Man, to the People that makes him a King, in as much as he is a King: The Law sets a Measure unto that Subjection, and the Parliament judges of the particular Cases thereupon arising: He must be content to submit his interest unto theirs, since he is no more than any one of them, in any other respect, than that he is, by the Consent of all, raised above any other.

If he doth not like this Condition he may renounce the Crown; but if he receive it upon that Condition, (as all Magistrates do the Power they receive) and swear to perform it, he must expect that the Performance will be exacted, or Revenge taken by those that he hath betrayed.

If this be not so, I desire to know of our Author, how one or more Men can come to be guilty of Treason against the King, as *Lex facit ut sit Rea*. No Man can owe more unto him, than unto any other, or he unto every other Man by any Rule but the Law; and if he must not be Judge in his own Case, neither he nor any other by Power received from him, would ever try any Man for an Offence against him, or the Law.

If the King, or such as he appoints, cannot judge him, he cannot be judged by the Ways ordinarily known amongst us. If he, or other by Authority from him, may judge, he is a Judge in his own Case, and we fall under that which he accounts the utmost of all Absurdities: If a Reme-

dy be found for this, he must say that the King in his own Case may judge the People, but the People must not judge the King, because it is theirs; that is to say, the Servant entertained by the Master may judge him, but the Master must not judge the Servant, whom he took only for his own Use. The Magistrate is bound by no Oath or Contract to the People that created him, but the People is bound to its own Creature; the Magistrate.

This seems to be the Ground of all our Author's Follies; he cannot comprehend that Magistrates are for or by the People; but makes this Conclusion, as if Nations were created by or for the Glory or Pleasure of Magistrates, and affects such a Piece of Nonsense; it ought not to be thought strange, if he represent as an absurd Thing, that the heedless Multitude may shake off the Yoke when they please. But I would know how the Multitude comes under the Yoke, it is a Badge of Slavery. He says, that the Power of Kings is for the Preservation of Liberty and Property. We may therefore change or take away Kings without breaking any Yoke, or that made a Yoke which ought not to be one; the Injury is therefore in Making or Imposing; and there can be none in breaking it.

That if there be not an Injury, there may perhaps be an Inconvenience; if the headless Multitude may shake off the Yoke, I know not why the Multitude should be concluded to be headless; it is not always so. *Moses* was Head of the Multitude that went out of *Egypt*, *Othniel* led them against the King of *Mesopotamia*, under the Conduct of *Phœbidas*; they obtain'd a Victory against the *Moabites*; they had the like Success under *Shamger*, *Barak*, *Gideon*, *Jephtha*, *Samuel*, *Sampson*, and others against the *Canaanites*, *Midianites*, *Philistines*, and others; the Multitude that opposed *Saul* and *Ishbosheth* had *David* for its Head; and the ten Tribes that rejected *Rehoboam* chose unto themselves *Jeroboam*; the *Athenians* rising against the thirty Tyrants had *Thrasylbulus*; those that drave — from *Thebes* were conducted by *Pelopidas*: When the *Romans* drave out the *Tarquins*, they chose *Brutus* and *Publicola*, and they destroyed the *Decemviri* under *Horatius* and *Valerius*. All the Multitudes that afterwards revolted from them under *Mauritius*, *Telerius*, *Spartanus* and others, were not headless; and we know of none that were, but all either found Heads; or made them. The *Germans* set up *Arminius*; the *Britons*, and others in later Times, the *Cartinians*, that rose against *Peter the Cruel*, had the Lord *Detrañta Niara*.

The *French*, when they grew weary of the corrupted Races of *Pharamond* and *Pepin*, and the same *Pepin* and *Hugh Capet*: The *Scots*, when they slew *James III*, had his Son to be their Head; and when they deposed and imprisoned Queen *Mary*, the Earl of *Murray* and others supplied the want of Age that was in her Son: And in all the Revolutions we have had in *England*, the People have been headed by the Parliament, or the Nobility and Gentry that composed it; and when the Kings failed of their Duties, by their own Authority called it. The Multitude therefore is not ever headless, but doth either find or create Heads unto itself, as Occasion doth require: and whether it be one Man, or a few or more, for a short or a longer Time, we see nothing more regular than its Motions. But they may, saith

our Author, shake off the Yoke; and why may they not, if it prove uneasy or hurtful unto them? Why should not the *Israelites* shake off the Yoke of *Pharaoh*, *Jabin*, *Sifera*, and others that oppressed them?

When Pride had changed *Nebuchadnezzar* into a Beast, what should persuade the *Assyrians* not to drive him out amongst Beasts, until God had restored unto him the Heart of a Man? When *Tarquin* had turned the Regal Monarchy of *Rome* into a most abominable Tyranny, why should they not abolish it? And when the Protestants of the *Low Countries* were so grievously oppressed by the Power of *Spain*, under the proud, cruel and savage Conduct of the Duke of *Alva*, why should they not make use of all the Means that God had put into their Hands for their Deliverance? Let any Man, who sees the present State of the Provinces that then united themselves, judge whether it is better for them to be as they are, or in the Condition unto which his Fury would have reduced them, unless they had, to please him, renounced God and their Religion: Our Author may say, they ought to have suffered: The King of *Spain* by their Resistance lost those Countries; and that they ought not to have been Judges in their own Case. To which I answer, That by resisting they laid the Foundation of many Churches, that have produced Multitudes of Men, eminent in Gifts and Graces; and established a most glorious and happy Commonwealth, that hath been since its first Beginning, the strongest Pillar of the Protestant Cause now in the World, and a Place or Refuge unto those who in all Parts of *Europe* have been oppressed for the Name of *Christ*: Whereas they had slavishly, and, I think I may say, wickedly as well as foolishly suffered themselves to be butchered, if they had left those empty Provinces under the Power of *Antichrist*, where the Name of God is no otherwise known than to be blasphemed.

If the King of *Spain* desired to keep his Subjects, he should have governed them with more Justice and Mercy; when, contrary unto all Laws, both Human and Divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from his Tyranny: And when the Matter is brought to that, that he must not reign, or they over whom he would reign, must perish; the Matter is easily decided, as if the Question had been asked in the Time of *Nero* or *Domitian*, Whether they should be left at Liberty to destroy the best Part of the World, as they endeavoured to do, or it should be rescued by their Destruction? And as for the People's being Judges in their own Case, it is plain, they ought to be the only Judges, because it is their own, and only concerns themselves.

Mr. Att. Gen. The latter end, the last Sheet of all, §. 35.

L. C. J. The Argument runs through the Book, fixing the Power in the People.

Cl. of Cr. The general Revolt of a Nation from its own Magistrates, can never be called Rebellion.

Mr. Att. Gen. §. 37.

Cl. of Cr. The Power of calling and dissolving Parliament is not in the King.

Mr. Att. Gen. So much we shall make use of; if the Colonel please to have any other Part read to explain it, he may.

Then the Sheets were shewn to Col. Sidney.

Col. Sidney. I do not know what to make of it, I can read it.

L. C. J. Ay, no doubt of it, better than any Man here. Fix on any Part you have a mind to have read.

Col. Sidney. I do not know what to say to it, to read it in Pieces thus.

L. C. J. I perceive you have disposed them under certain Heads: To what Heads would you have read?

Col. Sidney. My Lord, let him give an Account of it that did it.

Mr. Att. Gen. My Lord, we will not delay *Col. Sidney* from entering on his Defence, only we have this Piece of Evidence to give further. One of his Accomplices was my Lord *Ruffel*, we will give in Evidence his Conviction. We will only ask my Lord *Howard*, Was your Lordship sworn as a Witness at the Trial of my Lord *Ruffel*?

Lord Howard. Yes.

Mr. Att. Gen. Whether or no, when you met, were there in those Debates any Reflections upon the King, that he had broken his Duty?

Lord Howard. Not that I remember.

Mr. Att. Gen. Why would you rise?

Lord Howard. If you mean upon the Misgovernment, not personally upon the King?

Mr. Att. Gen. Ay.

Lord Howard. Yes, and principally and chiefly that, which we thought was the general Disgust of the Nation, the imposing upon the City at that Time.

Mr. Just. Withins. That was complained of at that Time.

Lord Howard. Yes, my Lord, we took it all along to be the chief Grievance.

L. C. J. Have you any more Witnesses?

Mr. Att. Gen. Only the Record.

Mr. Sol. Gen. I know there is no Time mispent to make Things clear. If the Jury have a mind to have the Words read again —

L. C. J. If they have a mind, let it.

Then Mr. Trinder was sworn, and testified it to be a true Copy of the Record, and said he examined it at Filmmongers-hall with Mr. Tanner.

Then the Record of the Conviction of the Lord Ruffel was read.

L. C. J. What will you go to next, *Mr. Attorney*?

Mr. Sol. Gen. We have done, unless the Jury desire to have the Words of the Libel read again. [But they did not.]

Col. Sidney. My Lord, I desire to know upon what Statute I am indicted.

Mr. Att. Gen. My Lord, I will give as plain an Answer, You are indicted upon the old Statute of 25 *Edw.* 3.

Col. Sidney. Then I desire to know upon what Branch of that Statute?

Mr. Att. Gen. Why, I will acquaint you, 'Tis upon the first Branch of that Statute, for conspiring and Compassing the Death of the King.

Col. Sidney. Then I conceive, what does not come within that, does not touch me.

Mr. Att. Gen. Make what Inferences you please, Colonel, we will answer you.

Col. Sidney. I desire to know what the Witnesses have sworn against me upon that Point?

Mr. Att. Gen. Go on, you have heard the Witnesses as well as we.

L. C. J. He says you are indicted upon the Statute of 25 *Edw.* 3. which Statute makes it High-Treason

Treason to conspire the Death of the King; and the Overt-Act is sufficiently set forth in the Indictment; now the Question is, whether 'tis proved.

Col. Sidney. They have proved a Paper found in my Study of *Caligula* and *Nero*, that is Compassing the Death of the King, is it?

L. C. J. That I shall tell the Jury. The Point in Law you are to take from the Court, Gentlemen: Whether there be Fact sufficient, that is your Duty to consider.

Col. Sidney. I say, my Lord, that since I am indicted upon that Statute, I am not to take notice of any other. I am indicted for conspiring the Death of the King, because such a Paper is found in my House; under favour, I think that can be nothing at all to me. For tho' Sir *Philip Lloyd* did ask me, whether I would put my Seal to it, he did not ask me 'till he had been in my Closet, and I knew not what he had put in, and so I told him I would not do it. Then come these Gentlemen upon Similitude of Hands. My Lord, we know what Similitude of Hands is in this Age. One told me within these two Days, that one came to him, and offered to counterfeit any Hand he should shew him in Half an Hour. So then, my Lord, I have nothing to say to these Papers. Then for point of Witness, I cannot be indicted, much less tried or condemned on 25 *Edw.* 3. for by that Act there must be two Witnesses to that very Branch unto which the Treason does relate, which must be distinguished. For the levying of War, and conspiring the Death of the King are two distinct Things, distinct in Nature and Reason, and so distinguished in the Statute. And therefore the conspiring the Death of the King is Treason, and the other not. 1 *Edw.* 6. 12. 5 *Edw.* 6. 11. does expressly say, there must be two Witnesses to either of these Acts. Now here is my Lord *Howard*, (I have enough to say of him by and by) 'Tis he only who speaks of six Men, whom he calls a select Council, and yet selected by no Man in the World. I desire to know who selected my Lord *Howard*? Who selected me? If they were selected by nobody, 'tis a Bull to say they were a select Council: If they were not selected, but erected themselves into a Cabal, then they have either Confidence in one another, or find they are near equally able to assist in the Design. Here is nothing of all this,—These six Men were Strangers to one another. For my own part, I never spake with the Duke of *Monmouth* above three Times in my Life, and one Time was when my Lord *Howard* brought him to my House and cozened us both. He told the Duke I invited him, and he told me the Duke invited himself, and neither of them was true. Now that such Men as these are, not hardly knowing one another, should presently fall into a great and intimate Friendship, and Trust and Management of such a Business as this is, is a Thing utterly improbable, unless they were mad. Now I do find in my Lord *Howard*'s Deposition against my Lord *Ruffel*, that they were in Prosecution of my Lord *Shaftsbury*'s Design; and yet he acknowledges the Duke of *Monmouth* said he was mad, and he himself said so too. Now that they should join with four more in the Prosecution of the Design of a Mad-man, they must be mad too. Now whether my Lord *Howard* would have you think he was mad, because a Mad-man cannot be guilty of Treason, I cannot tell. My Lord *Howard* in his last Deposition at

my Lord *Ruffel*'s Trial, fixes the two Meetings; one about the Middle of *January*, the other ten Days after: Now he fixes one to be the latter End of *January*, the other the Middle of *February*. Then he makes it to be the Prosecution of my Lord *Shaftsbury*'s Design. I do not find that any one there had any thing to do with my Lord *Shaftsbury*, for my part I had not. I had not seen his Face in two Years. Then, my Lord, that I go upon is, whatever my Lord *Howard* is, he is but one Witness. The Law of God and the Law of Man, understood and taken by all Men, does require two Witnesses; *Moses* says so, so the Apostles the same after him, and *Christ* says the same, That every Matter is to be established by two Witnesses. There ought to be two Witnesses to the same Thing. Now for one to come and tell a Tale of a Tub, of an imaginary Counsel, and another of a Libel, a Paper written nobody knows when, is such a Thing you can never go over it. But if the Law of God be, that there must be two Witnesses to the same Fact, there is an end of this Matter. And under the Judicial Law, the Penalty would be in this Case, to put a Man to Death. Now here there are but two Things, which if allowed of, nobody will be safe for Perjury. The one is to suffer Men to give their Testimony, one to one Thing, and another to another, that the Fraud cannot be discovered; and the other is to take away the Punishment. Now the Punishment is taken away in some Measure: And do but take away the other Point, whereby the Fraud cannot be discovered; and then there is no Defence can be made. That both Witnesses should be to the same Point; see the Story of *Susanna*. Two Elders testified they saw her in the Act of Adultery: They were carrying of her to Death; both of them said the same Thing; until they were taken asunder and examined, the Fraud was not discovered; and then one said, she was under a Tree of the right Hand, and the other, under the Tree on the left; and she escaped and they were punished. But now if you apply it to several Facts, my Lord *Howard* may say what he pleases, and if another shall come with a supplemental Proof, no Justice can be had. But, my Lord, I desire this, if there be two Witnesses to prove the Conspiracy, and in that there were those Matters done that are Treason, I must answer to it; but if there be not; I presume I need say nothing to it. If you do not allow it me, I desire Counsel to argue it.

L. C. J. That is a Point of Fact, whether there be two Witnesses. I tell you before-hand, one Witness is not sufficient.

Col. Sidney. Why then there is my Lord *Howard*, and never another.

L. C. J. Nay, do not make those Inferences; I will tell the Jury, if there be not two Witnesses, as the Law requires in this Case, they ought to acquit you.

Col. Sidney. You confound me, I cannot stir. You talk of a Conspiracy; what is a Conspiracy to kill the King? Is there any more Witnesses than one for levying of War?

L. C. J. Pray do not deceive yourself; you must not think the Court and you intend to enter into a Dialogue. Answer to the Fact; if there be not sufficient Fact, the Jury will acquit you. Make what Answer you can to it.

Col. Sidney. Then I say, there being but one Witness, I am not to answer to it at all.

L. C. J.

L. C. J. If you rely upon that, we will direct the Jury presently.

Col. Sidney. Then for levying War, what does any one say? My Lord *Howard*, let him, if he please, reconcile what he has said now, with what he said at my Lord *Ruffel's* Trial. There he said, he said all he could; and now he has got I do not know how many Things that were never spoken of there. I appeal to the Court, whether he did then speak one Word of that, that he now says of Mr. *Hambden*. He sets forth his Evidence very Rhetorically, but it does not become a Witness, for he is only to tell what is done and said, but he does not tell what was done and said. He says, they took upon them to consider, but does not say what one Man said, or what one Man resolved, much less what I did. My Lord, if these Things are not to be distinguished, but shall be jumbled all up together, I confess I do not know what to say.

L. C. J. Take what Liberty you please. If you will make no Defence, then we will direct the Jury presently. We will direct them in the Law, and recollect Matter of Fact as well as we can.

Col. Sidney. Why then, my Lord, I desire the Law may be reserved to me, I desire I may have Counsel to that Point of there being but one Witness.

L. C. J. That is a Point of Fact. If you can give any Testimony to disparage the Witnesses, do it.

Col. Sidney. I have a great deal to that.

L. C. J. Go on to it then.

Col. Sidney. Then, my Lord, was there a War levied? Or was it prevented? Why then, if it be prevented, 'tis not levied; if it be not levied, 'tis not within the Statute; so this is nothing to me.

L. C. J. The Court will have Patience to hear you; but at the same time I think it is my Duty to advertise you, that this is but mispending of your Time. If you can answer the Fact, or if you have any mind to put any Disparagement upon the Witnesses, that they are not Persons to be believed, do it, but do not ask us Questions this way or t'other.

Col. Sidney. I have this to say concerning my Lord *Howard*: He hath accused himself of divers Treasons, and I do not hear that he has his Pardon of any: He is under the Terror of those Treasons, and the Punishment for them: He hath shewn himself to be under that Terror: He hath said, that he could not get his Pardon, until he had done some other Jobs, 'till he was past this Drudgery of Swearing: That is, my Lord, that he having incurred the Penalty of High-Treason, he would get his own Indemnity by destroying others. This by the Law of God and Man, I think, destroys a Man's Testimony. Besides, my Lord, he is my Debtor, he owes me a considerable Sum of Money I lent him in Time of his great Necessity; he made some Covenants with me for the Payment of that Money, which he hath broken; and when his Mortgage was forfeited, and I should take the Advantage the Law gives me, he finds out a Way to have me laid up in the *Tower*: He is a very subtle Man: At my Lord *Ruffel's* Trial, he carried his Knife, he said, between the Paring and the Apple; and so this is a Point of great Nicety and Cunning, at one Time to get his own Pardon, and at the same Time to save his Money. Another Thing, my Lord, is, when I was Prisoner, he comes to my

House, and speaks with my Servant, and says, how sorry he was that I should be brought in Danger upon this Account of the Plot, and there he did in the Presence of God, with Hands and Eyes lifted up to Heaven, swear he did not believe any Plot, and that it was but a Sham; and that he was confident if I had known any thing, I would have told it him. He hath said somewhat of this before, I have several Witnesses to prove both. He was desirous to go further, and he would not only pay my Debt by his Testimony against me, but he would have got my Plate and other Goods in my Hands into his Hands, and he desired my Men, as a Place of Trust, to put them into his Hands. And the next News was, that there was a Warrant against my Lord *Ruffel* and me. But then, my Lord, he made other Affirmations in the same Presence of God, that I was innocent in his Opinion, and he was confident of it; for if he had known any thing of it, he would have told it. Now I know, in my Lord *Ruffel's* Case, there was Dr. *Burnet* said something like it. And when he came to answer it, he said he was to face it out, and make the best of it he could. Now he did face it out bravely against God, but he was very timorous of Man. So that, my Lord, he does say at the same Time, at my Lord *Ruffel's* Trial, upon his Oath, that he did believe that the Religious Obligation of an Oath, did not consist in the Formality of applying it to the Place, &c. but in calling God to witness. So that when he did call God to witness before Dr. *Burnet* and my Servant, and others, and this is not consistent with the Oath he has taken here, as the Gentleman said at my Lord *Ruffel's* Trial, unless he has one Soul in Court, and had another at my House, these Things are inconsistent, and cannot be true; and if he swear both under the Religion of an Oath, he swears himself perjured. Then, my Lord, he talks of *Aaron Smith*, what have I to do with *Aaron Smith*? He says, I sent him; my Lord, there is no body else speaks a Word of it. Then by a strange kind of Construction and Imagination, they will have it, that some Papers here, which are said to be found in my Study, have relation to this Plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an Account of these Papers, I do not think they are before you, for there is nothing but the Similitude of Hands offered for Proof. There is the like Case of my Lady *Carr* some few Years ago: She was indicted of Perjury, and as Evidence against her, some Letters of hers were produced, that were contrary to what she swore in *Chancery*, and her Hand was proved; that is to say, it was like it: But my Lord Chief Justice *Keiling* directs the Jury, that tho' in Civil Causes it is a Proof, yet it is the smallest and least of Proofs; but in criminal Cases it was none at all. So that my Lord *Howard's* Testimony is single; and what he talks of those two Businesses that he calls a Consult, and *Aaron Smith*, is destroy'd by want of Proof. What could six Men do? Can my Lord *Howard* raise five Men by his Credit? By his Purse? Let him say as much for me, with all my Heart; for my part, I do not know where to raise five Men. That such Men as we are, that have no Followers, should undertake so vast a Design, is very unlikely: And this great Design that was carried on thus, it had neither Officers nor Soldiers, no Place, no Time, no Money for it. That which he said last

last Time, which he forgot now, he talked of twenty five, or thirty thousand Pound, but no Man knew where it was to be had, but last time he said, it was spoken in jest. Now this is a pretty Cabal, that six Men should meet about a Business, and they neglect every one of the Points relating to the Thing they met about, make no Step about the Business, and if any one did speak of it, it was but in jest. This is a very deep maintaining of the Plot. Then, my Lord, as to these Papers, I do not think I am to give any Account of them, I would say nothing to the Disparagement of Sir *Philip Lloyd*, I never saw him till he came to my House, but yet I say he is the King's Officer, and when I am prosecuted at the King's Suit, I think he ought to be no Witness. The Government of *France* is violent and absolute, but yet a few Years ago, a Minister of State had his Papers taken from him, and abundance of them had dangerous Plots against the King in them; but because they were inventoried in his Officers Presence, or those deputed by him, there was no use could be made of them, it was an irreparable Fault in the Process, and that saved him. The Similitude of Hands is nothing: We know that Hands will be counterfeited, so that no Man shall know his own Hand. A Gentleman that is now dead, told me, that my Lord *Arlington* about five Years ago, desired him to write a Letter, and seal it as well as he could; he writ it with Care, and sealed it with a Wafer and Wax upon it, and within a few Days, my Lord *Arlington* brought him five Letters, and he did not know which was his own. The Attorney shews these Papers to me, I do not know whether they are my own or no; but these very Papers, such as they are, do abhor, as much as any one can, such a Design. Look upon them, you see they are all old Ink. These Papers may be writ, perhaps, these twenty Years, the Ink is so old. But my Lord, it is a polemical Discourse, it seems to be an Answer to *Filmar*, which is not calculated for any particular Government in the World: It goes only upon these general Principles, that according to the universal Law of God and Nature, there is but one Government in the World, and that is intire and absolute; and that the King can be bound by no Law, by no Oath, but he may make all Laws, and abolish them as he pleases: And this whether of Age or no, a Man, or a Child of Sense, or out of his Sense. Now, my Lord, what if any Man in his Cabinet should have written this Book? Then he has another Principle, he says, 'tis the same Thing whether a King come in by Election, by Donation, by Inheritance, or Usurpation, or any other way; than which, I think, never was a Thing more desperately said. *Cromwell*, when one *White*, a Priest, wrote a Book, wherein he undertook to prove, *That Possession was the only Right to Power*, though he was a Tyrant, and a violent one, (you need not wonder I call him Tyrant, I did so every Day in his Life, and acted against him too) it would be so odious a Principle, he would not endure it, and he used him very slightly for it. Now this *Filmar*, that no Man must write against, is the Man that does assert it, that 'tis no Matter how they come by their Power, and gives the same Power to the worst Usurpers, as they that most rightly come to the Crown. By the same Argument, if the arrantest Rascal of *Israel* had killed *Moses*, *David*, &c. and seized upon the Power, he had been

possessed of that Power, and been Father of the People. If this be Doctrine, my Lord, that is just and good, then I confess it may be dangerous for any thing to be found in a Man's House contrary to it; but if a Commoner of *England* write his present Thoughts, and another Man looking on his Book writes his present Thoughts of it, what great Hurt is there in it? And I ask Mr. Attorney how many Years ago, that was written.

L. C. J. I don't know what the Book was in answer to. We are not to speak of any Book that Sir *Robert Filmar* wrote, but you are to make your Defence, touching a Book that was found in your Study, and spend not your Time, and the Court's Time, in that which serves to no other Purpose, than to gratify a luxuriant way of Talking that you have. We have nothing to do with his Book, you had as good tell me again, that there was a Parcel of People rambling about, pretending to my Lord *Ruffel's* Ghost, and so we may answer all the Comedies in *England*. Answer to the Matter you are indicted for. Do you own that Paper?

Col. Sidney. No, my Lord.

L. C. J. Go on then, it does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your Time to no Purpose, and do yourself an Injury.

Col. Sidney. I say first, 'tis not proved upon me: And secondly, 'tis not a Crime if it be proved —

L. C. J. You began very materially in one Thing; it is material for you to apply yourself to take off the Credibility of my Lord *Howard*, that is a Witness; call your Witnesses to that Purpose, or if you have any other Point to take away the Credibility of any other Witness.

Col. Sidney. My Lord, I have seven or eight Points of Law.

L. C. J. I hear not one yet.

Col. Sidney. Why, my Lord, Conspiring to levy War is not Treason, and I desire to have Counsel upon that.

L. C. J. 'Tis not a Question. You had as good ask me, whether the first Chapter in *Littleton* be Law.

Col. Sidney. My Lord, I have neither made War, nor conspired to levy War.

L. C. J. You are still in a Mistake, you shall not think that we intend to dialogue with you, to let you know how far the Proof hath been given or not given, but when we come to direct the Jury, then we shall observe how far the Law requires there should be two Witnesses. But whether there be such a Proof, that must be left to the Jury.

Mr. Just. Withins. If you agree the Conspiracy, I will tell you my Mind of it; I cannot give you my Opinion in Law, till the Fact be stated.

L. C. J. The Law always arises upon a Point of Fact; there can be no Doubt in Point of Law, till there be a Settlement in Point of Fact.

Mr. Just. Holloway. My Lord has put you in a right Way: The Conspiracy is proved but by one Witness, if you have any thing to take off his Credibility, 'tis to the Purpose.

Col. Sidney. Truly, my Lord, I do as little intend to mis-spend my own Spirit, and your Time, as ever any Man that came before you. Now, my Lord, if you will make a Concatenation of one Thing, a Supposition upon Supposition, I would take all this asunder, and shew, if none of these Things are any thing in themselves, they can be nothing joined together.

L. C. J.

L. C. J. Take your own Method, Mr. *Sidney*; but I say, if you are a Man of low Spirits and weak Body, 'tis a Duty incumbent upon the Court, to exhort you not to spend your Time upon Things that are not material.

Col. Sidney. My Lord, I think 'tis very material, that a whimsical imagination of a Conspiracy should not pass for a real Conspiracy of the Death of the King; besides, if these Papers were found in my House, 'tis a Crime created since my Imprisonment, and that cannot come in, for they were found since. My Lord, if these Papers are right, it mentions 200 and odd Sheets, and these shew neither Beginning nor Ending; and will you, my Lord, indict a Man for Treason for scraps of Paper found in his House, relating to an ancient Paper, intended as innocently as any thing in the World, and piece and patch this to my Lord *Howard's* Discourse, to make this a Contrivance to kill the King? Then, my Lord, I think 'tis a Right of Mankind, and 'tis exercised by all studious Men, that they write in their own Closets what they please for their own Memory, and no Man can be answerable for it, unless they publish it.

L. C. J. Pray don't go away with that Right of Mankind, that it is lawful for me to write what I will in my own Closet, unless I publish it: I have been told, Curse not the King, not in thy Thoughts, not in thy Bed-Chamber, the Birds of the Air will carry it. I took it to be the Duty of Mankind, to observe that.

Col. Sidney. I have lived under the Inquisition ———

L. C. J. God be thanked we are governed by Law.

Col. Sidney. I have lived under the Inquisition, and there is no Man in *Spain* can be tried for Heresy ———

Mr. Just. Withins. Draw no Precedents from the Inquisition, here, I beseech you, Sir.

L. C. J. We must not endure Men to talk, that by the right of Nature every Man may contrive Mischiefs in his own Chamber, and he is not to be punished, 'till he thinks fit to be called to it.

Col. Sidney. My Lord, if you will take Scripture by pieces, you will make all the Penmen of the Scripture blasphemous; you may accuse *David* of saying, There is no God; and accuse the Evangelists of saying, Christ was a Blasphemer and a Seducer; and the Apostles, That they were drunk.

L. C. J. Look you, Mr. *Sidney*, if there be any part of it that explains the Sense of it, you shall have it read; indeed we are trifled with a little. 'Tis true, in Scripture 'tis said, there is no God, and you must not take that alone, but you must say, The Fool hath said in his Heart, there is no God. Now here is a thing imputed to you in the Libel; if you can say, there is any Part that is in excuse of it, call for it. As for the Purpose, whosoever does publish, that the King may be put in Chains or deposed, is a Traitor; but whosoever says, that none but Traitors would put the King in Chains, or depose him, is an honest Man; therefore apply *ad idem*, but don't let us make Excursions.

Col. Sidney. If they will produce the whole, my Lord, then I can see whether one Part contradicts another.

L. C. J. Well, if you have any Witnesses call them.

Col. Sidney. The Earl of *Anglesey*.

L. C. J. Ay, in God's Name, stay 'till To-morrow in Things that are pertinent.

Col. Sidney. I desire to know of my Lord *Anglesey*, what my Lord *Howard* said to him concerning the Plot that was broken out.

Lord Anglesey. Concerning this Plot you are now questioned for.

Col. Sidney. The Plot for which my Lord *Ruffel* and I was in Prison.

Lord Anglesey. The Question I am asked, is, What my Lord *Howard* said before the Trial of my Lord *Ruffel*, concerning the Plot; I suppose, this goes as a Branch of that he was accused for. I was then in the Country, when the Business was on foot, and used to come to Town a Day or two in the Week, living near in *Hertfordshire*, and I understanding the Affliction my Lord of *Bedford* was in, I went to give my Lord a Visit, we having been Acquaintance of above fifty Years standing, and bred together in *Maudlin* College in *Oxford*. When I came to my Lord of *Bedford*, and had administered that Comfort that was fit for one Christian to give another in that Distress, I was ready to leave him, and my Lord *Howard* came in. It was upon the *Friday* before my Lord *Howard* was taken, he was taken (as I take it) upon *Sunday* or *Monday*, my Lord *Howard* fell into the same Christian Office that I had been just discharging, to compassionate my Lord's Affliction, to use Arguments to comfort and support him under it, and told him, he was not to be troubled, for he had a discreet, a wise and a virtuous Son, and he could not be in any such Plot (I think that was the Word he used at first, though he gave another Name to it afterward) and his Lordship might therefore well expect a good Issue of that Business, and he might believe his Son secure, for he believed he was neither guilty, nor so much as to be suspected. My Lord proceeded further, and did say, that he knew of no such barbarous Design (I think he called it so in the second place) and could not charge my Lord *Ruffel* with it, nor any body else. This was the effect of what my Lord *Howard* said at that Time, and I have nothing to say of my own Knowledge more than this; but to observe, that I was present when the Jury did put my Lord *Howard* particularly to it; What have you to say to what my Lord *Anglesey* testifies against you? My Lord, I think, did in three several Places; give a short Account of himself, and said it was very true, and gave them some further Account why he said it, and said, he should be very glad it might have been advantageous to my Lord *Ruffel*.

Col. Sidney. My Lord of *Clare*, I desire to know of my Lord of *Clare*, what my Lord *Howard* said concerning this Plot and me.

Lord Clare. My Lord, A little after Colonel *Sidney* was taken, speaking of the Times, he said, That if ever he was question'd again, he would never plead, the quickest Dispatch was the best, he was sure they would have his Life, though he were ever so innocent, and discoursing of the late Primate of *Armagh's* Prophecy; for my part, says he, I think the Persecution is begun, and I believe it will be very sharp, but I hope it will be short, and I said, I hoped so too.

Mr. Att. Gen. What Answer did your Lordship give to it?

Lord Clare. I have told you what I know, my Lord

Lord is too full of Discourse for me to answer all he says; but for Colonel *Sidney*, he did with great Asserations assert, that he was as innocent as any Man breathing, and used great Encomiums in his Praise, and then he seemed to bemoan his Misfortune, which I thought real; for never was any Man more engaged to another, than he was to Colonel *Sidney*, I believe. Then I told, they talked of Papers that were found, I am sure, says he, they can make nothing of any Papers of his.

Mr. Att. Gen. When was this?

Lord Clare. This was at my House the beginning of July.

Mr. Att. Gen. How long before my Lord *Howard* was taken?

Lord Clare. About a Week before.

Mr. Att. Gen. I would ask you, my Lord, upon your Honour, would not any Man have said as much, that had been in the Plot?

Lord Clare. I can't tell, I know of no Plot.

Col. Sidney. Mr. *Philip Howard*.

Mr. Just. Withins. What do you ask him?

Col. Sidney. What you heard my Lord *Howard* say concerning this pretended Plot, or my being in it.

Mr. Phil. Howard. My Lord, when the Plot first brake out, I used to meet my Lord *Howard* very often at my Brother's House, and coming one Day from *Whitehall*, he asked me, what News? I told him, my Lord, says I, there are abundance of People that have confessed the horrid Design of murdering the King, and the Duke. How, says he, is such a thing possible? Says I, 'tis so, they have all confessed it. Says he, do you know any of their Names? Yes, says I, I have heard their Names. What are their Names? Says he; why? says I, *Col. Rumsey*, and *Mr. West*, and one *Walcot* and others, that are in the Proclamation; (I can't tell whether *Walcot* was in Hold) says he, 'tis impossible such a thing can be; says he, there are in all Countries People that wish ill to the Government, and, says he, I believe there are some here; but, says he, for any Man of Honour, Interest or Estate to go about it, is wholly impossible. Says I, my Lord, so it is, and I believe it. Says I, my Lord, do you know any of these People? No, says he, none of them, only one day, says he, passing thro' the *Exchange*, a Man saluted me, with a Blemish upon his Eye, and he embraced me, and wish'd me all Happiness: says he, I could not call to mind who this Man was; but afterwards, I recollected myself that I met him at my Lord *Shaftsbury's*, and heard afterwards, and concluded his Name to be—— his at whose House the King was to be assassinated——

Mr. Att. Gen. Rumbold?

Mr. Howard. Ay, *Rumbold*. My Lord, may I ask if my Lord *Howard* be here?

L. C. J. He is there behind you.

Mr. Howard. Then he will hear me. My Lord says I, what does your Lordship think of this Business? Says he, I am in a Maze; says I, if you will be ruled by me, you have a good opportunity to address to the King, and all the discontented Lords, as they are called; and to shew your Detestation and Abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, you have put one of the best Notions in my Head that ever was put. Says I, You are a very good Penman, draw up

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the first Address (and I believe I was the first that mentioned an Address, you have had many an one since, God send them good Success) Says he, I am sorry my Lord of *Essex* is out of Town, he should present it. But says I, here is my Lord *Ruffel*, my Lord of *Bedford*, my Lord of *Clare*, all of you that are disaffected, and so accounted, go about this Business, and make the Nation happy, and King happy. Says he, Will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next Day, I think, my Lord *Ruffel* was taken, and I came and found him at my Brother's House again (for there he was Day and Night) says he, Cousin, What News? Says I, my Lord *Ruffel* is sent to the *Tower*. We are all undone then, says he. Pray, says he, go to my Lord Privy-Seal, and see if you can find I am to be taken up; says he, I doubt 'tis a Sham-Plot, if it was a true Plot, I should fear nothing; says I, What do you put me to go to my Lord Privy-Seal for? He is one of the King's Cabinet Council, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me go to enquire? Why, says he, because I fear 'tis not a true Plot, but a Plot made upon us, and therefore, says he, there is no Man free. My Lord, I can say no more as to that time, (and there is no Man that sits here, that wishes the King better than I do.) The next thing I come to, is this, I came the third Day, and he was mighty sad and melancholy, that was when *Col. Sidney* was taken; says I, Why are you melancholy, because *Col. Sidney* is taken? Says I, *Col. Sidney* was a Man talked of before, why were you not troubled for my Lord *Ruffel*, that is of your Blood? Says he, I have that particular Obligation from *Col. Sidney*, that no one Man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, would you have us undertake for all the People that hear you? I think you have spoken very materially, and I will observe it by and by to the Jury.

Col. Sidney. Pray call Dr. *Burnet*.

Mr. Just. Walcot. What do you ask Dr. *Burnet*?

Col. Sidney. I have only to ask Dr. *Burnet*, whether after the News of this pretended Plot, my Lord *Howard* came to him? And what he said to him.

Dr. Burnet. My Lord, the Day after this Plot brake out, my Lord *Howard* came to see me, and upon some discourse of the Plot, with Hands and Eyes lifted up to Heaven, he protested he knew nothing of any Plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My Lord Paget was sent for at the Prisoner's Request, being in the Hall.

Col. Sidney. My Lord, I desire *Joseph Ducas* may be called. [Who appeared, being a Frenchman.]

Col. Sidney. I desire to know whether he was not in my House when my Lord *Howard* came thither, a little after I was made a Prisoner, and what he said upon it.

Ducas. Yes, my Lord, my Lord *Howard* came the Day after *Colonel Sidney* was taken, and he asked me, where was the *Colonel Sidney*? And I said, he was taken by an Order of the King, and he said, oh Lord! What is that for? I said,

They have taken Papers; he said, are some Papers left? Yes. Have they taken something more? No. Well you must take all the Things out of the House, and carry them to some you can trust: I dare trust no body, says he; I will lend my Coach and Coachman I said, if the Colonel *Sidney* will save his Goods; he save them, if not, 'tis no matter. A little after the Lord *Howard* came in the House of Col. *Sidney* about eleven o'Clock at Night, When he was in, I told him, What is this? They talk of a Plot to kill the King and the Duke, and I told him, they spake of one general Insurrection; and I told him more, that I understood that Col. *Sidney* was sent into *Scotland*: When my Lord *Howard* understood that, he said, God knows, I know nothing of this, and I am sure if the Colonel *Sidney* was concerned in the matter, he would tell me something, but I know nothing. Well, my Lord, I told him, I believe you are not safe in this House, there is more Danger here than in another Place. Says he, I have been a Prisoner, and I had rather do any thing in the World than be a Prisoner again.

Then my Lord Paget came into the Court.

Col. Sidney. Pray, my Lord, be pleased to tell the Court, if my Lord *Howard* has said any thing to you concerning this late pretended Plot, or my being any Party in it.

Lord Paget. My Lord, I was *subpena'd* to come hither, and did not know upon what account; I am obliged to say, my Lord *Howard* was with me presently after the breaking out of this Plot, and before his appearing in that Part which he now acts, he came to me; and I told him, That I was glad to see him abroad, and that he was not concerned in this Disorder. He said, he had Joy from several concerning it, and he took it as an Injury to him, for that it looked as if he were Guilty. He said, he knew nothing of himself, nor any Body else. And tho' he was free in Discourse, and free to go into any Company indifferently; yet he said, he had not seen any body that could say any thing of him, or give him occasion to say any thing of any body else.

Col. Sidney. Mr. *Edward Howard*.

Mr. Ed. Howard. Mr. *Sidney*, What have you to say to me?

Col. Sidney. My Lord, I desire you would ask Mr. *Ed. Howard* the same Thing, what Discourse he had with my Lord *Howard* about this Plot?

L. C. J. Mr. *Howard*, Mr. *Sidney* desires you to tell what Discourse you had with my Lord *Howard* about this Plot.

Mr. Ed. Howard. My Lord, I have been for some time very intimate with my Lord, not only upon the Account of our Alliance, but upon a strict Intimacy and Correspondence of Friendship, and I think I was as much his as he could expect from that Alliance. I did move him during this time, to serve the King upon the most honourable Account I could, but that proved ineffectual: I pass that, and come to the Business here. As soon as the Plot brake out, my Lord having a great Intimacy with me, expressed a great Detestation and Surprizing in himself to hear of it, wherein my Lord *Howard* assured me under very great Asseverations, that he could neither accuse himself, nor any Man living. He told me moreover, that there were certain Persons of Quality, whom he was very much concerned for, that they should be so much reflected upon or troubled,

and he condoled very much their Condition, both before and after they were taken. My Lord, I believe in my Conscience he did this without any mental Reservation, or Equivocation, for he had no Reason to do it with me. I add moreover, if I have any Sense of my Lord's Disposition, I think if he had known any such thing, he would not have stood his being taken, or made his Application to the King in this manner, I am afraid not so suitable to his Quality.

L. C. J. No Reflections upon any Body.

Mr. Howard. My Lord, I reflect upon no Body, I understand where I am, and have a Respect for the Place; but since your Lordship has given me this Occasion, I must needs say, that that Reproof that was accidentally given me at the Trial of my Lord *Ruffel*, by reason of a weak Memory, made me omit some Particulars I will speak now, which are these, and I think they are material: My Lord, upon the Discourse of this Plot, did further assure me, that it was certainly a Sham, even to his Knowledge: How, my Lord, says I, do you mean a Sham? Why, says he, such an one, Cousin, as is too black for any Minister of publick Employment to have devised, but, says he, it was forged by People in the dark, such as Jesuits and Papists; and, says he, this is my Conscience; says I, my Lord, if you are sure of this Thing, then pray, my Lord, do that honourable Thing that becomes your Quality, that is, give the King Satisfaction as becomes you; pray make an Address under your Hand to the King, whereby you express your Detestation and Abhorrence of this Thing: Says he, I thank you for your Counsel: To what Minister, says he, shall I apply myself? I pitch'd upon my Lord *Hallifax*; and I told him of my Lord's Desire, and I remember my Lord *Howard* named the Duke of *Monmouth*, my Lord of *Bedford*, the Earl of *Clare*, and he said he was sure they would do it; that he was sure of their Innocence, and would be glad of the Occasion: And I went to my Lord *Hallifax*, and told him that my Lord was willing to set it under his Hand, his Detestation of this Plot, and that there was no such thing to his Knowledge. My Lord *Hallifax* very worthily received me; says he, I will introduce it; but my Lord *Ruffel* being taken, this was laid aside, and my Lord gave this Reason. For says he, there will be so many People taken, they will be hinder'd. I must needs add from my Conscience, and from my Heart before God and Man, that if my Lord had spoken before the King, sitting upon his Throne, abating for the Solemnity of the Presence, I could not have more believed him, from that Assurance he had in me. And I am sure from what I have said, if I had the Honour to be of this Gentleman's Jury I would not believe him.

L. C. J. That must not be suffered.

Mr. Att. Gen. You ought to be bound to your good Behaviour for that.

L. C. J. The Jury are bound by their Oaths to go according to their Evidence, they are not to go by Men's Conjectures.

Mr. Howard. May I go, my Lord?

Mr. Att. Gen. My Lord *Howard* desires he may stay, we shall make use of him.

Col. Sidney. My Lord, I spake of a Mortgage that I had of my Lord *Howard*, I don't know whether it is needful to be proved; but it is so.

Lord Howard. I confess it.

Col. Sidney. Then, my Lord, here is the other Point; he is under the Fear, that he dare not but say what he thinks will conduce towards the gaining his Pardon; and that he hath expressed, that he could not have his Pardon, but he must first do this Drudgery of Swearing. I need not say, that his Son should say, That he was sorry his Father could not get his Pardon unless he did swear against some others.

Col. Sidney. Call Mr. Blake. [*Who appeared.*] My Lord, I desire he may be asked, Whether my Lord Howard did not tell him that he could not get his Pardon yet, and he could ascribe it to nothing, but that the Drudgery of Swearing must be over first.

Then my Lord Chief Justice asked the Question.

Mr. Blake. My Lord, I am very sorry I should be called to give a publick Account of a private Conversation, how it comes about I don't know. My Lord sent for me about six Weeks ago, to come and see him. I went, and we talked of News; I told him, I heard no body had their Pardon, but he that first discovered the Plot; he told me, no; but he had his Warrant for it: And, says he, I have their Word and Honour for it; but, says he, I will do nothing in it till I have farther Order; and says he, I hear nothing of it, and I can ascribe it to no other Reason, but I must not have my Pardon till the Drudgery of Swearing is over. These Words my Lord said, I believe my Lord won't deny it.

Then Col. Sidney called Mr. Hunt and Burroughs, but they did not appear.

Col. Sidney. 'Tis a hard Case they don't appear. One of them was to prove that my Lord Howard said he could not have his Pardon till he had done some other Jobs.

L. C. J. I can't help it; If you had come for Assistance from the Court, I would willingly have done what I could.

Then Col. Sidney mentioned the Duke of Buckingham, but he was informed he was not subpoena'd.

Col. Sidney. Call Grace Tracy and Elizabeth Penwick. [*Who appear'd.*] I ask you only, what my Lord Howard said to you at my House concerning the Plot, and my being in it?

Tracy. Sir, he said, that he knew nothing of a Plot he protested, and he was sure Col. Sidney knew nothing of it. And he said, if you knew any thing of it, he must needs know of it, for he knew as much of your Concerns as any one in the World.

Col. Sidney. Did he take God to Witness upon it?

Tracy. Yes.

Col. Sidney. Did he desire my Plate at my House?

Tracy. I can't tell that, he said the Goods might be sent to his House.

Col. Sidney. Penwick, What did my Lord Howard say in your Hearing concerning the pretended Plot, or my Plate carrying away?

Penwick. When he came, he asked for your Honour, and they said your Honour was taken away by a Man to the Tower for the Plot, and then he took God to Witness he knew nothing of it, and believed your Honour did not neither. He said, he was in the Tower two Years ago, and your Honour, he believed, saved his Life.

Col. Sidney. Did he desire the Plate?

Penwick. Yes, and said it should be sent to his House to be secured. He said it was only Malice.

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Mr. Wharton stood up.

Mr. Wharton. 'Tis only this I have to say; That if your Lordship pleases to shew me any of these Sheets of Paper, I will undertake to imitate them in a little time, that you shan't know which is which. 'Tis the easiest Hand that ever I saw in my Life.

Mr. Att. Gen. You did not write these, Mr. Wharton?

Mr. Wharton. No; but I will do this in a very little time, if you please.

L. C. J. Have you any more Witnesses?

Col. Sidney. No, my Lord.

L. C. J. Then apply yourself to the Jury.

Col. Sidney. Then this is that I have to say. Here is a huge Complication of Crimes laid to my Charge: I did not know at first under what Statute they were, now I find 'tis the Statute of 25 Edw. 3. This Statute hath two Branches; one relating to War, the other to the Person of the King. That relating to the Person of the King, makes the conspiring, imagining and compassing his Death, criminal. That concerning War is not, unless it be levied. Now, my Lord, I cannot imagine to which of these they refer my Crime, and I did desire your Lordship to explain it. For to say that a Man did meet to conspire the King's Death, and he that gives you the Account of the Business does not speak one Word of it, seems extravagant; for Conspiracies have ever their Denomination from that Point to which they tend; as a Conspiracy to make false Coin infers Instruments and the like. A Conspiracy to take away a Woman, to kill or rob, are all directed to that End. So conspiring to kill the King, must immediately aim at killing the King. The King hath two Capacities, Natural and Politick, that which is the Politick can't be within the Statute, in that Sense he never dies, and 'tis absurd to say it should be a Fault to kill the King that can't die: So then it must be the natural Sense it must be understood in, which must be done by Sword, by Pistol, or any other way. Now if there be not one Word of this, then that is utterly at an End, tho' the Witness had been good. The next Point is concerning levying of War. Levying of War is made Treason there, so it be proved by Overt-Act; but an Overt-Act of that never was, or can be pretended here. If the War be not levied, 'tis not within the Act, for conspiring to levy War is not in the Act. My Lord, there is no Man that thinks that I would kill the King that knows me, I am not a Man to have such a Design, perhaps I may say I have saved his Life once. So that it must be by Implication, that is, it is first imagined that I intended to raise a War, and then 'tis imagined that War should tend to the Destruction of the King. Now I know that may follow, but that is not natural or necessary, and being not natural or necessary, it can't be so understood by the Law. It That is not, is plain; for many Wars have been made, and the Death of the King has not followed. David made War upon Saul, yet no body will say he sought his Death, he had him under his Power and did not kill him; David made War upon Ishbosheth, yet did not design his Death: And so in England and France Kings have been taken Prisoners, but they did not kill them. King Stephen was taken Prisoner, but they did not kill him. So that 'tis two distinct Things, to make War and to endeavour to kill the King. Now as there is no manner of

Pretence that I should endeavour to kill the King directly, so it can't be by Inference, because 'tis Treason under another Species: I confess I am not fit to argue these Points, I think I ought to have Counsel, but if you won't allow it me, I can't help it; but these Things are impossible to be jumbled up together. Now I say this, if I am not under the first Branch, if not directly, I can't be by Implication; tho' I did make War, I can't be said to conspire the Death of the King, because 'tis a distinct Species of Treason; and my Lork *Coke* says, 'tis the Overthrow of all Justice to confound *Membra dividencia*. Now if the making of War can't be understood to be a conspiring the Death of the King, then I am not guilty of this Indictment; but here, my Lord, is neither conspiring the Death of the King, nor making War, nor conspiring to make War. Besides, I say, 'tis not the best Man's Evidence here would be good in this Case, because the Law requires two. The next Thing is the Business of *Aaron Smith*, which my Lord tells so imperfectly, and so merely conjectural, that there is nothing in it: but his Rhetorick in setting it out. He tells you of a Letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no; so that I think we may lay that aside as the other, as Things nothing in them at all. Then says Mr. *Attorney*, These *Scotch* Gentlemen are come to Town, I profess I never heard the Names of one of them till he named them to me in the *Tower*. I have not sent my self, nor writ a Letter into *Scotland* never since the Year 59, nor do I know one Man in *Scotland* to whom I can write, or from whom I ever received one. I returned into *England* in the Year 77, and since that time have not writ nor received a Letter from *Scotland*. Then some Gentlemen came hither, What is that to me? I never saw one of the *Campbels* in my Life, nor *Monro*; if any one can prove I have had any Communication with them, I will be glad to suffer. Then here are Papers, if any thing is to be made of them, you must produce the whole, for 'tis impossible to make any thing of a part of them. You ask me, what other Passage I would have read, I don't know a Passage in them, I can't tell whether it be good or bad. But if there are any Papers found, 'tis a great doubt whether they were found in my Study or no, or whether they be not counterfeit; but tho' that be admitted, that they were found in my House, the Hand is such, that it shews they have been writ very many Years. Then that which seems to be an Account of the Sections and Chapters, that is but a Scrap, and what if any body had, my Lord, either in my own Hand or another's, found Papers that are not well justifiable, is this Treason? Does this imagine the Death of the King? Does this reach the Life of the King? If any Man can say I ever printed a Sheet in my Life, I will submit to any Punishment. Many others, my Lord, they write, and they write what comes into their Heads. I believe there is a Brother of mine here has forty Quires of Paper written by my Father, and never one Sheet of them was published, but he writ his own Mind to see what he could think of it another time, and blot it out again, may be. And I myself, I believe, have burned more Papers of my own writing than a Horse can carry. So that for these Papers I can't answer for them. There is nothing in it, and what Concatenation

can this have with the other Design that is in itself nothing, with my Lord's select Council selected by no body to pursue the Design of my Lord *Shaftsbury*? And this Council that he pretends to be set up for so great a Business, was to be adjusted with so much Fineness so as to bring Things together, What was this Fineness to do? (taking it for granted, which I don't.) This was nothing (if he was a credible Witness) but a few Men talking at large of what might be or not be, what was like to fall out without any manner of Intention, or doing any thing; they did not so much as enquire, whether there were Men in the Country, Arms, or Ammunition. A War to be made by five or six Men, not knowing one another, not trusting one another. What said Dr. *Coxe* in his Evidence at my Lord *Ruffel's* Trial, of my Lord *Ruffel's* trusting my Lord *Howard*? He might say the same of some others. So that, my Lord, I say, these Papers have no manner of Coherence, no Dependence upon any such Design. You must go upon Conjecture upon Conjecture; and after all, you find nothing but only Papers, never perfect, only Scraps, written many Years ago, and that could not be calculated for the raising of the People. Now, pray what Imagination can be more vain than that? And what Man can be safe, if the King's Counsel may make such (whimsical I won't say, but) groundless Constructions? Mr. *Attorney* says, the Plot was broken to the *Scots*, (God knows we were neither broken nor joined) and that the *Campbels* came to Town about that Time I was taken; and in the meantime my Lord *Howard*, the great Contriver of all this Plot, who was most active, and advised the Business that consisted of so much Fineness, he goes there and agrees of nothing, and then goes into *Essex* upon great important Business, greater than the War of *England* and *Scotland*, to what Purpose? To look after a little pimping Manor, and what then? Why then it must be laid aside, and he must be idle five Weeks at the *Bath*, and there is no enquiring after it. Now, I desire your Lordship to consider, whether there be a Possibility for any Men, that have the Sense of Porters and Grooms, to do such Things as he would put upon us. I would only say this; If Mr. *Attorney* be in the right, there was a Combination with the *Scots*, and then this Paper was writ; for those that say I did it, say I was doing of it then; and by the Notes, there is Work enough for four or five Years, to make out what is mentioned in those Scraps of Paper, and this must be to kill the King. And I say this, my Lord, that under Favour, for all constructive Treasons you are to make none, but to go according to plain Proof, and that these constructive Treasons belong only to Parliament, and by the immediate Proviso in that Act. Now, my Lord, I leave it to your Lordship, to see whether there is in this any thing that you can say is an Overt-Act of Treason mentioned in 25 *Edw.* 3. If it be not plainly under one of the two Branches, that I have endeavoured to kill the King, or levied War, then 'tis matter of Construction, and that belongs to no Court but the Parliament. Then, my Lord, this hath been adjudged already in *Throgmorton's* Case. There are twenty Judgments of Parliament, the Act of 13 *Eliz.* that says—I should have somebody to speak for me, my Lord.

L. C. J. We are of another Opinion.

Mr. Just.

Mr. Just. Withins. If you acknowledge the Matter of Fact, you say well.

Col. Sidney. I say there are several Judgments of Parliament, that do shew whatever is constructive Treason does not belong to any private Court. That of 1 *Mary*, 1 *Edw.* 6. 1 *Eliz.* 5 *Eliz.* 18. another 13 *Car.* shews this. Now, my Lord, I say that the Business concerning the Papers, 'tis only a Similitude of Hands, which is just nothing. In my Lady *Carr's* Case, it was resolved to extend to no criminal Cause; if not to any, then not to the greatest, the most capital. So that I have only this to say, that I think 'tis impossible for the Jury to find this Matter; for the first Point you proved by my Lord *Howard*, that I think is no body, and the last concerning the Papers, is only Imagination from the Similitude of Hands. If I had published it, I must have answered for it; or if the Thing had been whole and mine, I must have answered for it; but for these Scraps never shewed any body, that I think does not at all concern me. And I say, if the Jury should find it (which is impossible they can) I desire to have the Law reserved unto me.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury, the Evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The Crime the Prisoner stands accused for, is compassing and imagining the Death of the King. That which we go about to prove, that compassing and imagining by, is by his meeting and consulting how to raise Arms against the King, and by plain Matter in writing under his own Hand, where he does affirm, it is lawful to take away and destroy the King. Gentlemen, I will begin with the first Part of it, the Meeting and Consultation to raise Arms against the King. The Prisoner, Gentlemen, hath endeavoured to avoid the whole Force of this Evidence, by saying, that this in Point of Law can't affect him, if it were all proved; for this does not amount to a Proof of his compassing and imagining the Death of the King, and he is very long in interpreting the Act of Parliament to you of 25 *Edw.* 3. and dividing of it into several Members or Branches of Treason, and does insist upon it, that tho' this should be an Offence within one Branch of that Statute, yet that is not a Proof of the other, which is the Branch he is proceeding upon, that is the first Clause against the compassing and imagining the Death of the King. And, says he, conspiring to levy War is not so much as one Branch of that Statute, but it must be War actually levied. This is a Matter he is wholly mistaken in, in Point of Law. It hath been adjudged over and over again, That an Act which is in one Branch of that Statute, may be an Overt-Act to prove a Man guilty of another Branch of it. A levying War is an Overt-Act to prove a Man guilty of conspiring the Death of the King. And this was adjudged in the Case of Sir *Henry Vane*, so is meeting and consulting to raise Arms; and Reason does plainly speak it to be so; for they that conspire to raise War against the King, can't be presumed to stop any where, till they have dethroned or murdered the King. Gentlemen, I won't be long in citing Authorities, it hath been settled lately by all the Judges of *England*, in the Case of my Lord *Russel*, who hath suffer'd for this Conspiracy. Therefore that Point of Law will be very plain against the Prisoner. He hath mentioned some other Things, as that there must be

two Witnesses to every particular Fact, and one Witness to one Fact, and another to another, is not sufficient; it hath been very often objected, and as often over-ruled: It was over-ruled solemnly in the Case of my Lord *Stafford*. Therefore if we have one Witness to one Overt-Act, and another to another, they will be two Witnesses in Law to convict this Prisoner. In the first Part of our Evidence, we give you an Account of the general Design of an Insurrection that was to have been, that this was contrived first, when my Lord *Shaftsbury* was in *England*, that after my Lord *Shaftsbury* was gone, the Business did not fall, but they thought fit to revive it again, and that they might carry it on the more steadily, they did contrive a Council among themselves of Six, whereof the Prisoner at the Bar was one. They were the Duke of *Monmouth*, my Lord of *Essex*, my Lord *Howard*, my Lord *Russel*, the Prisoner at the Bar, and Mr. *Hambden*. This Council they contrived to manage this Affair, and to carry on that Design, that seemed to fall by the Death of my Lord of *Shaftsbury*, and they met; this we give you an Account of, first by Witnesses, that gave you an Account in general of it. And tho' they were not privy to it, yet they heard of this Council, and that Colonel *Sidney* was to be one of this Council. This, Gentlemen, if it had stood alone by itself, had been nothing to affect the Prisoner at all. But this will shew you, that it was discoursed among them that were in this Conspiracy. Then my Lord *Howard* gives you an Account, that first the Duke of *Monmouth*, and he and Colonel *Sidney* met, and it was agreed to be necessary to have a Council that should consist of six or seven, and they were to carry it on. That the Duke of *Monmouth* undertook to dispose my Lord *Russel* to it, and Colonel *Sidney* to dispose the Earl of *Essex*, and Mr. *Hambden*; that these Gentlemen did meet accordingly, and the Substance of their Discourse was, taking notice how the Design had fallen upon the Death of my Lord *Shaftsbury*, that it was fit to carry it on before Mens Inclinations were cool, for they found they were ready to it, and had great reason to believe it, because this being a Business communicated to so many, yet for all that it was kept very secret, and no body had made any mention of it, which they looked upon as a certain Argument that Men were ready to engage in it. This encouraged them to go on in this Conspiracy. Then when the Six met at Mr. *Hambden's* House, they debated concerning the Place of Rising, and the Time, the Time they conceived must be suddenly, before Mens Minds were cool, for now they thought they were ready and very much disposed to it; and for Place they had in Debate, whether they should rise first in the Town, or in the Country, or both together. And for the Persons, they thought it absolutely necessary for them to have the united Councils of *Scotland* to join with them, and therefore they did refer this Matter to be better considered of another time, and they met afterwards at my Lord *Russel's* House in *February*, and there they had Discourse to the same Purpose. But there they began to consider with themselves, being they were to destroy this Government, what they should set up in the Room of it, to what Purpose they engaged. For they did very wisely consider, if this be only to serve a Turn, and to make one Man great, this will be a great Hinderance in their Affair, therefore they

they thought it was necessary to engage upon a publick Account, and to resolve all into the Authority of Parliament, which surely they either thought to force the King to call, or otherwise that the People might call a Parliament, if the King refused, and so they to choose their own Heads. But still they were upon this Point, that it was necessary for their Friends in *Scotland* to have their Councils united with them, and in order to that, it was necessary to contrive some Way to send a Messenger into *Scotland*, to bring some Men here to treat and consult about it, and Colonel *Sidney* is the Man that does engage to send this Messenger, and he had a Man very fit for his Turn, that is, *Aaron Smith*, whom he could confide in, and him he undertook to send into *Scotland*. This Messenger was to fetch my Lord *Melvin*, the two *Campbells*, and Sir *John Cockram*; Colonel *Sidney* as he engaged to do this, so afterwards he did shew to my Lord *Howard* Money, which he affirmed was for that Business; he says it was a Sum of about sixty Guineas, and he believes he gave it him, for that Colonel *Sidney* told him, *Aaron Smith* was gone into *Scotland*, that the Pretence was not barefaced to invite them over, to consult of a Rebellion, but to consult about the Business of *Carolina*, being a Plantation for the persecuted Brethren, as they pretended in *Scotland*. Gentlemen, these *Scotchmen* that were thus sent for over, they came accordingly, that is, the two *Campbells*, and Sir *John Cockram*, and the Discourse with Sir *Andrew Foster* was according to this Cant that was agreed on beforehand, concerning a Plantation in *Carolina*. This was that that was pretended for their coming hither; but the true Errand was, the Business of the Insurrection intended. Gentlemen, that they came upon such a Design, is evident from the Circumstances; they came about the Time the Business brake out, and in that Time suspiciously changing their Lodging, they were taken making their Escape, and this at a Time before it was probable to be known abroad that these Men were named as part of the Conspirators. These things do very much verify the Evidence my Lord *Howard* hath given, and there is nothing has been said, does at all invalidate it. The sending of *Aaron Smith* into *Scotland*, and his going, and the coming of these Men, and their endeavouring to make their Escape, are mighty concurrent Evidences with the whole Evidence my Lord *Howard* has given. Now, what Objections are made against this Evidence? Truly none at all. Here are Persons of great Quality have given their Testimony, and they do not impeach my Lord *Howard* in the least; but some do extremely confirm the Truth of my Lord *Howard*. My Lord *Anglesey* gives you an Account of a Discourse at my Lord of *Bedford's*, that my Lord *Howard* came in, and that my Lord *Howard* should there comfort my Lord of *Bedford*, and enlarge in the Commendations of his Son, and say he was confident he knew nothing of the Design, and he must be innocent. Gentlemen, This is the Nature of the most part of the Evidence. My Lord of *Clare*, his Evidence is much the like, that is, his denying that he knew of any Plot. Now here is my Lord *Howard* under a Guilt of High-Treason; for he was one of those Conspirators not yet discovered, nor no Evidence of any Discourse leading to any thing that should give Occasion to him to protest his Innocency: And says he, I know nothing of the Plot. You

would have wondered if he should have been talking in all Places his Knowledge, and declaring himself: His denying of it under the Guilt, when he was not accused, is nothing to his Confession when he comes to be apprehended and taken for it. Here Mr. *Philip Howard* says, he had several Discourses with him about this Business, upon the breaking out of the Plot, and that he adviled him to make an Address, and that this was a Thing that would be very acceptable, and very much for their Vindication; and my Lord *Howard* (he says) thanked him for his very good Advice, and said, he would follow it: And presently after when my Lord *Ruffel* was apprehended, Mr. *Howard* tells him the News, that my Lord *Ruffel* was apprehended; this was sudden to him. And what says he? We are all undone. When my Lord *Ruffel* that was one of this Council, that was a secret Council, and could not be traced but by some of themselves, when He is apprehended, then he falls out into this Expression, *We are all undone*. This is an Argument my Lord *Howard* had Guilt upon him. For, why were they all undone, that my Lord *Ruffel* was apprehended, any more than upon the apprehending the rest? Yes, because my Lord was one of the Six, and now 'twas come to the knowing of that Part of the Conspiracy. It was traced to the Council of Six, which in all likelihood would break the Neck of the Design. Now though he put it off afterwards, saying, *I believe it a Sham Plot*, yet this was but a trivial Put-off. And then, when Colonel *Sidney* is taken, the same Witness Mr. *Howard* tells you, my Lord was very sad and melancholy; for then he had greater Reason to lie under an Apprehension of being detected. Therefore, Gentlemen, this will rather confirm the Truth of the Evidence, than any way impeach it. Then (for I would repeat it all, tho' I think it had no great Weight in it) Dr. *Burnet* says, that after the Plot my Lord *Howard* pretended he knew of no Plot. This is no more than was testified by the other Lords before; and all it Imports, is, that my Lord did not discover himself to Dr. *Burnet*. But I would fain know, if my Lord had told Dr. *Burnet*, had it not argued that he had great Confidence in him, that he thought him a Man fit to be intrusted with such a Secret? And unless the Doctor desires to be thought such a Man, himself must own 'tis no Objection, that my Lord *Howard* did not tell him. *Ducas's* Testimony is no more neither, that he protested he was innocent, and believed Colonel *Sidney* was innocent; and this was before my Lord *Howard* discovered any thing of this Plot. Then Colonel *Sidney* objects, This is by Malice, my Lord *Howard* owes him Money, and seeks to pay his Debts by taking away his Life; and in further Prosecution of this Malice, would have seized upon his Goods. But the Evidence does not receive such Construction, for my Lord *Howard* only offered Colonel *Sidney* the Civility of his House to protect his Plate and Goods. Now, Gentlemen, there were two other Witnesses, my Lord *Paget* and Mr. *Edward Howard*; but they say no more than the rest of them, that he did protest his Innocency, and Mr. *Howard* says, he adviled him to make an Address to the King. This, Gentlemen, I repeat, not that it is material, but for no other Reason, than because Colonel *Sidney* had produced it; and so we are to think, he intended to make some use of it; but
I can't

I can't see any Inference to be drawn from it. There is one Witness more, and that is Mr. *Blake*, to the Credit of my Lord *Howard*, who comes here, and says, that when he discoursed about a Pardon, my Lord should say, That he had a Warrant for his Pardon, but that he had not yet pass'd it, and could not yet; and he apprehended the Reason was, because the Drudgery of Swearing was not over. But this is but what my Lord *Howard* had conjectured: First, It does not appear, that there is any Promise of Pardon at all to my Lord *Howard*, on any Terms impos'd on him. In the next place, Whatever Expectation he has of a Pardon, he can't reasonably hope for it without making a clear Discovery of all he knows: For to stifle the Evidence he has given, is not a way to deserve a Pardon of his Prince. Therefore, Gentlemen, whatever Expressions were us'd, tho' he called it the Drudgery of Swearing, however unwilling he is to come to it, and tho' he gives it very many hard Names, and might think it very harsh to come and own himself to be one of the Conspirators, it might be irksome, and very irksome; yet none of them tell you, that my Lord *Howard* should say, that what he had said was not true. Now he has come and given his Evidence, and you have heard all these Objections against it, and not one of them touch it in the least.

I come in the next place to the other Part of the Evidence, the Papers found in Colonel *Sidney's* House. And in the first place he objects, They can't affect him; for, says he, there is no Proof they were found in my House, no Proof they were written by me; for Comparison of Hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpose; they are an Answer to a Polemical Discourse, wherewith he entertained himself privately in his Study. Why, you have observed, I know, that Sir *Philip Lloyd* in the first place swears, that by Warrant from the Secretary he searched his House, and he found the Papers lying upon Colonel *Sidney's* Table in his Study, when he came in there; and there is no Ground nor Colour for you to suspect otherwise than that they were there, and he found them there. For the Surmise of the Prisoner at the Bar, that they might be laid there, 'tis so foreign and without Ground, that by and by you will think there is nothing at all in it. In the next place, we prove Col. *Sidney's* Hand, and that by as much Proof as the Thing is capable of; such a Proof as in all Cases hath been allowed; and that is, for Men to come that know and are acquainted with the Hand-writing, and swear they know his Hand-writing, and they believe this to be his Hand. You have heard from Mr. *Sheppard*, a Man that us'd to transact Business for him, pay Money for him; and Mr. *Cook* and Mr. *Cary*, Men of known Credit in the City of *London*, that have had the like Dealings with Col. *Sidney*, and they swear this is his Hand-writing, as they verily believe. So that, Gentlemen, this Proof to you of Col. *Sidney's* Hand-writing does verify Sir *Philip Lloyd*, that these Papers must be found there, if Col. *Sidney* writ them; and then this being found that they were writ by him, the next Thing will be, How far this will be an Evidence to prove his Compassing and Imagining the Death of the King. Compassing and Imagining the Death of the King is the Act of the Mind, and is Treason whilst it remains secret in the Heart, tho' no such Treason can be punish'd, because there is no way to prove

it; but when once there is an Overt-Act; that is, any thing that does manifest and declare such Intention, then the Law takes hold of it, and punishes it as High-Treason.

Now after this Evidence, I think no Man will doubt, whether it was in the Heart of the Prisoner at the Bar to destroy the King. But first he objects, that this is a Part of a Book, and unless you take the whole, nothing can be made of it: As it is in wresting of Texts of Scripture, says he, you may as well say, that *David* says, there is no God, because *David* hath said, *The fool hath said in his heart, there is no God*. But, Gentlemen, the Application won't hold; for you see a long Discourse hath been read to you, a continued Thread of Argument; 'tis not one Proposition, but an whole Series of Argument: These are the Positions, 'That the King derives all his Power from the People; That 'tis originally in the People, and that the Measure of Subjection must be adjudged by the Parliament; and if the King does fall from doing his Duty, he must expect the People will exact it.' And this he has laid down as no way prejudicial to him; for, says he, the King may refuse the Crown, if he does not like it upon these Terms. But, says he, if he does accept it, he must expect the Performance will be exacted, or Revenge taken by those he hath betray'd. Then next, he sets up an Objection, and then argues against it: Ay, but shall the People be Judge in their own Cause? And thus he answers it, It must be so; for is not the King a Judge in his own Cause? How can any Man else be tried, or convicted of any Offence, if the King may not be Judge in his own Cause? For to adjudge by a Man's self, or by his Deputy, is the same Thing; and so a Crime against the King can't be punished. And then he takes notice of it as a very absurd Position, 'That the King shall judge in his own Cause, and not the People.' That would be to say, The Servant entertained by the Master shall judge the Master, but the Master shall not judge the Servant. Gentlemen, after this sort of Argument he comes to this settled Position, 'We may therefore, says he, change or take away Kings, (without breaking any Yoke, or that is made a Yoke;) the Injury is therefore in imposing the Yoke, and there can be none at all in breaking of it.' But he goes on in his Book, and that is by way of Answer to an Objection, That if there be no Injury, yet there may be Inconvenience, if the headless Multitude should shake off the Yoke. But, says he, I would fain know how the Multitude comes to be headless; and there he gives you many Instances in Story, and from foreign Nations he comes home to the *English*, and tells you how all Rebellions in later Ages have been headed; and tells you the Parliament is the Head, or the Nobility and Gentry that compose it; and when the King fails in his Duty, the People may call it. The Multitude therefore is never headless, but they either find or create an Head, so that here is a plain and avowed Principle of Rebellion established upon the strongest Reason he has to back it. Gentlemen, This, with the other Evidence that has been given, will be sufficient to prove his compassing the Death of the King. You see the Affirmations he makes; when Kings do break their Trust they may be called to Account by the People. This is the Doctrine he broaches and argues for: He says in his Book in another Part, that the Calling and Dissolving of Parliaments is

not in the King's Power. Gentlemen, you all know how many Parliaments the King hath Called and Dissolved; if it be not in his Power, he hath done that that was not in his Power, and so contrary to his Trust. Gentlemen, at the Entrance into this Conspiracy, they were under an Apprehension that their Liberties were invaded, as you heard in the Evidence from my Lord *Howard*, that they were just making the Insurrection upon that tumultuous Opposition of electing of Sheriffs in *London*. They enter into a Consultation to raise Arms against the King; and it is proved by my Lord *Howard*, that the Prisoner at the Bar was one. Gentlemen, Words spoken upon a Supposition will be High-Treason, as was held in King *James's* Time, in the Case of *Collins* in *Roll's Reports*, *The King being excommunicate may be deposed and murdered*, without affirming he was excommunicated; and this was enough to convict him of High-Treason. Now according to that Case, to say the King having broken his Trust may be deposed by his People, would be High-Treason, but here he does as good as affirm the King had broke his Trust. When every one sees the King hath dissolved Parliaments; this reduces it to an Affirmation. And tho' this Book be not brought to that Council to be perused, and there debated, yet it will be another, and more than two Witnesses against the Prisoner: For I would ask any Man, suppose a Man was in a Room, and there were two Men, and he talks with both apart, and he comes to one and endeavours to persuade him that it is lawful to rise in Arms against the King, if so be he break his Trust; and he should go to another Man, and tell him the King hath broken his Trust, and we must seek some way to redress ourselves, and persuade the People to rise; these two Witnesses do so tack this Treason together, that they will be two Witnesses to prove him Guilty of High-Treason. And you have heard one Witness prove it positively to you, That he consulted to rise in Arms against the King, and here is his own Book says, it is lawful for a Man to rise in Arms against the King, if he break his Trust, and in effect he hath said, the King hath broken his Trust: Therefore this will be a sufficient Demonstration what the Imagination of the Heart of this Man was, that it was nothing but the Destruction of the King and the Government, and indeed of all Governments. There can be no such Thing as Government if the People shall be Judge in the Case: For what so uncertain as the heady and giddy Multitude? Gentlemen, I think this will be a sufficient Evidence of his consulting the Death of the King. You have here the Prisoner at the Bar that is very deep in it. Indeed some Men may by Passion be transported into such an Offence, and tho' the Offence be never the less, whatever the Motives are, yet in some it is less dangerous; for those that venture upon Passion to raise Commotions and Rebellion, are not always so much upon their Guard, but that they may make some false Steps to entrap themselves. But this Gentleman proceeds upon a surer Foundation, it is his Reason, it is his Principle, it is the Guide of all his Actions, it is that by which he leads and directs the steady Course of his Life. A Man convinced of these Principles, and that walks accordingly, what won't he do to accomplish his Designs? How wary will he be in all his Actions? Still reasoning with himself, which Way to bring it most securely about. Gentlemen,

This is the more dangerous Conspiracy in this Man, by how much the more it is rooted in him; and how deep it is, you hear, when a Man shall write as his Principle, that it is lawful for to depose Kings, they breaking their Trust, and that the Revolt of the whole Nation cannot be called Rebellion. It will be a very sad Case when People act this according to their Consciences, and do all this for the Good of the People, as they would have it thought; but this is the Principle of this Man. Gentlemen, we think we have plainly made it out to you, and proved it sufficiently, that it was the Imagination of his Heart to destroy the King, and made sufficient Proof of High-Treason.

Col. Sidney. Give me leave, my Lord, to say a very few Words. I desire *Mr. Solicitor* would not think it his Duty to take away Men's Lives any how: First, We have had a long Story—

L. C. J. Nay, Mr. Sidney, we must not have vying and revying, I asked you before what you had to say; the Course of Evidence is, after the King's Counsel have concluded, we never admit the Prisoner to say any thing.

Col. Sidney. My Lord, it was a wise Man said, There never could be too much Delay in the Life of a Man: I know the King's Counsel may conclude, if they please. *Mr. Solicitor*, I would not have him think that it is enough by one way or another to bring a Man to Death: My Lord, this Matter of *Sir Henry Vane* is utterly misrepresented.——

L. C. J. I must tell you, Gentlemen of the Jury, that what the Prisoner says, that is not proved, and what the King's Counsel have said, of which there is no Proof to make it out, must not be taken into any Consideration.

Col. Sidney. Then, my Lord, here is a Place or two in old *Hale's* [turning over my Lord *Hale's* Book] for the Overt-Act of one Treason, not being an Overt-Act of another, your Lordship knows *Coke* and *Hales* were both against it. [He reads.] Compassing by bare Words is not an Overt-Act, conspiring to levy War is no Overt-Act.

Mr. Sol. Gen. I desire but one Word more for my own sake as well as the Prisoner's, and that is, that if I have said any thing that is not Law, or misrepeated, or misapplied the Evidence which hath been given, I do make it my humble Request to your Lordship to rectify those Mistakes as well in Point of Fact as Point of Law; for God forbid the Prisoner should suffer by any Mistake.

L. C. J. Gentlemen, the Evidence has been long, and it is a Cause of great Concernment, and it is far from the Thoughts of the King, or from the Thoughts, or Desire of any of his Judges here to be instrumental to take away the Life of any Man, that by Law his Life ought not to be taken away. For I had rather many guilty Men should escape, than one innocent Man suffer. The Question is, Whether upon all the Evidence you have heard against the Prisoner, and the Evidence on his Behalf, there is Evidence sufficient to convict the Prisoner of the High-Treason he stands charged with. And as you must not be moved by the Denial of the Prisoner further than as it is backed with Proof; so you are not to be inveigled by any Insinuations made against the Prisoner at the Bar, further or otherwise than as the Proof is made out to you. But it is usual, and it is a Duty incumbent on the King's Counsel, to urge against all such Criminals, whatsoever they observe

observe in the Evidence against them, and likewise to endeavour to give Answers to the Objections that are made on their Behalf. And, therefore, since we have been kept so long in this Cause, it won't be amiss for me (and my Brothers, as they shall think fit,) to help your Memory in the Fact, and discharge that Duty that is incumbent upon the Court as to the Points of Law. This Indictment is for High-Treason, and is grounded upon the Statute of 25 *Edw. 3.* By which Statute, the Compassing and Imagining the Death of the King, and declaring the same by an Overt-Act is made High-Treason. The Reason of that Law was, because at Common-Law there was great Doubt what was Treason; wherefore to reduce that high Crime to a Certainty was that Law made, that those that were guilty might know what to expect. And there are several Acts of Parliament made between the Time of *Edward 3.* and that of *1 M.* but by that Statute all Treasons that are not enumerated by After-Acts of Parliament remain as they were declared by that Statute of 25 *Edw. 3.* And so are Challenges and other Matters, insisted upon by the Prisoner, left as they were at the Time of that Act: I am also to tell you that in point of Law, it is not only the Opinion of us here, but the Opinion of them that sat before us, and the Opinion of all the Judges of *England*, and within the Memory of many of you, that tho' there be two Witnesses required to prove a Man guilty of High-Treason; yet it is not necessary there should be two Witnesses to the same Thing at one Time. But if two Witnesses prove two several Facts, that have a Tendency to the same Treason, they are two Witnesses sufficient to convict any Man of High-Treason. In the Case of my Lord *Stafford* in Parliament, all the Judges assisting, it is notoriously known, that one Witness to a Conspiracy in *England*, and another to a Conspiracy in *France*, were held two Witnesses sufficient to convict him of High-Treason. In the next Place, I am to tell you, that tho' some Judges have been of Opinion that Words of themselves were not an Overt-Act; but my Lord *Hales*, nor my Lord *Coke*, nor any other of the Sages of the Law, ever questioned but that a Letter would be an Overt-Act, sufficient to prove a Man guilty of High-Treason; for *scribere est agere*. Mr. *Sidney* says, the King is a politick Person; but you must destroy him in his Natural Capacity, or it is not Treason; but I must tell you, if any Man compass to imprison the King, it is High-Treason; so was the Case of my Lord *Cobham*. And my Lord *Coke*, when he says, If a Man do attempt to make the King do any thing by Force and Compulsion, otherwise than he ought to do, that it is High-Treason within that Act of 25 *Eliz. 3.* But if it were an Indictment only for the levying of War, there must be an actual War levied; but this is an Indictment for Compassing the Death of the King; and the other Treason, mentioned in that Act of Parliament for the levying War, may be given in Evidence to prove the Conspiracy of the King's Death: For 'tis rightly told you by the King's Counsel, that the Imagination of a Man's Heart is not to be discerned; but if I declare such my Imagination by an Overt-Act, which Overt-Act does naturally evince, that the King must be deposed, destroy'd, imprison'd, or the like, it will be sufficient Evidence of Treason within that Act. In the next Place, having told you what the Law is, for, Gentlemen, 'tis our Duty upon our Oaths,

to declare the Law to you, and you are bound to receive our Declaration of the Law, and upon this Declaration, to inquire whether there be a Fact, sufficiently proved, to find the Prisoner guilty of the High-Treason of which he stands indicted: And for that I must tell you, whatever happens to be hear-say from others, it is not to be applied immediately to the Prisoner; but however those Matters that are remote at first may serve for this Purpose, to prove there was generally a Conspiracy to destroy the King and Government: And for that Matter, you all remember it was the constant Rule and Method observed about the Popish Plot, first to produce the Evidence of the Plot in general: This was done in that famous Case of my Lord *Stafford* in Parliament. Gentlemen, I am also to tell you, this alone does not at all affect the Prisoner at the Bar, but is made use of as a Circumstance to support the Credibility of the Witnesses; and is thus far applicable to the Business before you, that 'tis plain, by Persons that don't touch the Prisoner at the Bar, (and I am sorry any Man makes a Doubt of it at this time of day) that there was a Conspiracy to kill the King; for after so full a Proof in this Place, and in others, and the Execution and Confession of several of the Offenders, I am surprized to observe that the Prisoner at the Bar, and some others present, seem not to believe it.

But, Gentlemen, you hear the first Witness; I speak of *West*: He tells you he had the Honour to be acquainted with Mr. *Sidney*, and that he had Discourse with *Walcot*, a Person Convicted and Executed for this horrid Conspiracy. Why, says he, he told me at my Chamber, That they were not the only Persons concerned, but that there were other Persons of great Quality that had their Meetings for the carrying on the Business in other Places. And *Ferguson*, that was the Ring-leader in this Conspiracy, told him there was a Design of a general Insurrection; it was once laid down, but it is now taken up again. There are other Counsellors of great Importance; and he names among the rest, the Prisoner at the Bar. Mr. *West* goes a little further, and he tells you this: Says he, He did not only tell me so, but that there was a Design to conciliate a Correspondence with some Persons in *Scotland*, and they were to do it under the Cant of having Business in *Carolina*. There is Mr. *Keeling*, he tells you too, There was a Design for a general and publick Insurrection; That he was present with the *Goodenoughs*, one and 'other, and that they had taken upon them to divide, and did divide the City into such and such Districts: And what was the Business? It was, that there might be a general Insurrection; might be an Insurrection, not only to Destroy the King and the Duke, but to Destroy all the King's Loyal Subjects; and in taking away their Lives, to take away the Life of Monarchy itself, and to subvert the Religion Established by Law. Then comes in Col. *Rumsey*, and he gives you an Account that he had heard of such things in Mr. *West's* Chamber; and tells you he had received such Intelligence. And all these give you an Account, that there was such a Design to kill the King: And this is the Substance of the general Evidence produced to prove the Conspiracy. Then to make this Matter come home to the Prisoner at the Bar, first my Lord *Howard* gives you an Account, and does directly swear, That about the middle or latter end of

January last, he happened to meet with Colonel *Sidney*, the Prisoner at the Bar, and the Duke of *Monmouth* (they were the Persons first began to have Discourse about this Matter) and how they met with a Disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that Persons of Quality were mentioned, who were to have an immediate Care in the carrying on of the Business, and that it should not be divulged to too many; accordingly there was my Lord *Russel*, my Lord of *Essex*, my Lord of *Salisbury*, and Mr. *Hambden* named. He tells you, the Prisoner at the Bar undertook for my Lord of *Essex*, and Mr. *Hambden*, and he tells you, the Duke of *Monmouth* undertook for my Lord *Russel*, and the rest; and that this was the Result of one Meeting: He goes yet further, That pursuant to this it was communicated to those Persons so to be engaged, and the Place and Time was appointed; the Place, Mr. *Hambden's* House; but is not so positive to the Time, but only to the Place and Persons. He says, all these Persons met, and he gives you an Account, That Mr. *Hambden* (because it was necessary for some Person to break silence) gave some short Account of the Design of their Meeting, and made some Reflexions upon the Mischiefs that attended the Government, and what Apprehensions many People had upon the late Choice of Sheriffs, and that there had been a Male-Administration of Publick Justice; That it was fit some means should be used to redress these Grievances. He can't tell you positively, what this Man, or that Man, said there; but says, that all did unanimously consent to what was then debated about an Insurrection; and in order to it, they discoursed about the Time, when it should be, and that they thought fit it should be done suddenly, while Mens Minds were wound up to that height, as they then were; and as the first Witness tells you, There was a Consideration, whether it should be at one Place, or at several Places together: He says, then it was taken into Consideration, that this could not be carried on, but there must be Arms and Ammunition provided. The next Step is, about a necessary Concern, the Concern of Money, and therefore our Law calls Money, *The Sinews of War*. My Lord *Howard* tells you, That the Duke of *Monmouth* proposed 25 or 30000*l.* That my Lord *Grey* was to advance 10000*l.* out of his own Estate; but then they thought to make their Party more strong by the Assistance of a Discontented People in *Scotland*, my Lord of *Argyle*, and Sir *John Cockram*, and several other People there to join with them. That pursuant to this, they all after met at my Lord *Russel's*, and the same Debate is re-assumed, and among the rest, this particular thing of conciliating a Friendship with the *Scotch*; the *Campbels*, my Lord of *Argyle*, and my Lord *Melvin* were particularly mention'd. That Colonel *Sidney* took upon himself to find out a Messenger, but it was my Lord *Russel's* Part to write the Letter; One of the Messengers named to convey the same, was *Aaron Smith*, he was known, says my Lord *Howard*, to some of us; and then we all agreed, that *Aaron Smith* was the most proper Man: Upon this they brake up that very Time. Afterwards comes my Lord *Howard* to Col. *Sidney* at some distance of time, and he comes to him, and shews him threescore Guineas, and told him he was going into the

City, and that they were to be given to *Aaron Smith*. He tells you after this, That he had some other Discourse about a Fortnight or three Weeks after, with Col. *Sidney*; and that Colonel *Sidney* did take notice, that he had sent him, and that he had an Account of him, as far as *Newcastle*. So that 'tis very plain, That it was not sudden and rash Thoughts, it is a little more than, according to the Language we meet with in some Pamphlets of late, more than Heats and Stirs. Gentlemen, Then I must tell you here are Circumstances proved in pursuance of this Design, for Sir *Andrew Foster* informs you, how that Sir *John Cockram* and the *Campbels*, and one *Monro*, as I take it, came to Town, and that he had Discourse with some of them about their Business of coming out of *Scotland*; and he says, they pretended it was about some Business of some Trade to *Carolina*, which does still corroborate the Evidence. He tells you likewise, that there being a Noise of Discovering the Plot, they began to hide; Sir *John Cockram* began to hide, and sculk from place to place; they come first with that Cant in their Mouths, about *Carolina*; the Messenger *Atterbury* tells you, When they came to take these Men, how they shuffled from place to place. So, Gentlemen, I must tell you, That if in case there be but one Witness to prove a direct Treason, and another Witness to a Circumstance that contributes to that Treason, that will make two Witnesses to prove the Treason: Because I would explain my Mind, Not long ago all the Judges of *England* were commanded to meet together, and one that is the Senior of the King's Counsel was pleased to put this Case. If I buy a Knife of *J. S.* to kill the King, and it be proved by one Witness I bought a Knife for this purpose, and another comes and proves, I bought such a Knife of *J. S.* they are two Witnesses sufficient to prove a Man guilty of High-Treason; and so it was held by all the Judges of *England* then present, in the Presence of all the King's Counsel. And therefore Mr. *Sidney* is mightily mistaken in the Law: For in case of any Treason (except the Treason at the Bar) or in Treason for Clipping and Coining, one Witness is sufficient at this Day. Now, Gentlemen, supposing all this should not be sufficient, here is a Libel, and it is a most Traiterous and Seditious Libel. If you believe, that that was Colonel *Sidney's* Book, writ by him, no Man can doubt but it is a sufficient Evidence, that he is guilty of Compassing and Imagining the Death of the King; and let us consider, what Proof can be greater, than what has been given of it. Mr. *Sheppard*, an intimate Acquaintance of his, that has seen him write, he looks upon the Hand, and says, He is extremely acquainted with the Hand, and says he, I believe in my Conscience, this Book is Colonel *Sidney's* Hand. Gentlemen, Do you expect Mr. *Sidney* would call a Witness to be by to see him write that Book?

In the next Place, you have two Tradesmen, *Coke* and *Cary*, and they tell you, one had seen him write once, the other had seen his Hand-writing, and they both believe it his Hand-writing; and they have good Reason, for they have paid several Sums of Money, upon Notes which they took, as well as this, to be his Hand-writing. Gentlemen, Besides that, give me leave to tell you, here is another thing, that makes it more plain. This very Book is found in Col. *Sidney's* House, on the Table in his Study, where

where he used to write, by a Gentleman, against whom Colonel *Sidney* can't make the least Objection; and that there was that Fairness offered by the Gentleman, *Pray, Colonel, put your Seal upon it, that you may see, that no Injury be done you;* but Mr. *Sidney* would not do it. Therefore he seals them with his own Seal, and carries them to *Whitehall*, where they were broken open, and swears that those Papers were found in his Closet, whereof this was one. Another thing which I must take notice of to you in this Case, is, to mind you, how this Book contains all the Malice, and Revenge, and Treason, that Mankind can be guilty of: It fixes the sole Power in the Parliament and the People; so that he carries on the Design still, for their Debates at their Meetings were to that purpose. And such Doctrines as these suit with their Debates; for there, a general Insurrection was designed, and that was discoursed of in this Book, and encouraged: They must not give it an ill Name: It must not be called a Rebellion, it being the general Act of the People. The King, it says, is responsible to them, the King is but their Trustee; That he had betrayed his Trust, he had misgoverned, and now he is to give it up, that they may be all Kings themselves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know the Misfortune of the late unhappy Rebellion, and the bringing the late blessed King to the Scaffold was first begun by such kind of Principles: They cried, He had betrayed the Trust that was delegated to him from the People. Gentlemen, in the next Place, because he is afraid their Power alone won't do it, he endeavours to Poison Mens Judgments; and the way he makes use of, he colours it with Religion, and quotes Scripture for it too: and you know how far that went in the late Times; How we were for binding our King in Chains, and our Nobles in Fetters of Iron. Gentlemen, this is likewise made use of by him to stir up the People to Rebellion. Gentlemen, if in case the Prisoner did design the Deposing the King, the removing the King, and if in order thereunto he be guilty of Conspiring to Levy War; or as to the Letter writ by my Lord *Russel*, if he was privy to it, these will be Evidences against him. So that 'tis not upon two, but 'tis upon greater Evidence than 22, if you believe this Book was writ by him. Next I must tell you, Gentlemen, upon, I think, a less Testimony an Indictment was preferred against the late Lord *Russel*, and he was thereupon Convicted and Executed; of which they have brought the Record. These are the Evidences for the King.

For the Prisoner, he hath made several Objections; As that there was no War levied: For that, Gentlemen, at the beginning of the Cause I told you what I took the Law to be, and I take it to be so very plainly. But, Gentlemen, as to the Credibility of my Lord *Howard*, he offers you several Circumstances. First, he offers you a Noble Lord, my Lord *Anglesey*, who says, that he attended my Lord of *Bedford*, upon the Misfortune of the Imprisonment of his Son, after he had done, my Lord *Howard* came to second that Part of a Christian's Office, which he had performed, and told him, he had a very good Son, and he knew no harm of him; and as to the Plot, he knew nothing of it. Another No-

ble Lord, my Lord *Clare*, tells you, That he had some Discourse with my Lord *Howard*, and he said, that if he were accused, he thought they would but tell Noses, and his Business was done. Then Mr. *Philip Howard*, he tells you, how he was not so intimate with him as others but he often came to his Brother's; and that he should say, he knew nothing of a Plot, nor did he believe any; but at the same time, he said he believed there was a sham Plot; and then he pressed him about the Business of the Address; but that now my Lord of *Essex* was out of Town, and so it went off. Another Thing Mr. *Sidney* took notice of, says he, 'tis an Act of Revenge in my Lord *Howard*, for he owes him a Debt, that he does (besides by his Allegation) does not appear.

Col. Sidney. My Lord, he hath confessed it.

L. C. J. Admit it; yet in case Colonel *Sidney* should be Convicted of this Treason, the Debt accrues to the King, and he cannot be a Farthing the better for it. But how does it look like Revenge? I find my Lord *Howard*, when he speaks of Colonel *Sidney*, says he was more beholden to him than any body, and was more sorry for him; so says my Lord *Clare*. Gentlemen, You have it likewise offered, that he came to Colonel *Sidney's* House, and there he was desirous to have the Plate and Goods removed to his House, and that he would assist them with his Coach and Coachman to carry them thither; and did affirm, that he knew nothing of the Plot; and did not believe Colonel *Sidney* knew any thing: And this is likewise proved by a couple of Maid-Servants, as well as the *Frenchman*. You have likewise something to the same purpose said by my Lord *Paget*, and this is offered to take off the Credibility of my Lord *Howard*. Do you believe, because my Lord *Howard* did not tell them, I am in a Conspiracy to kill the King, therefore he knew nothing of it? He knew these Persons were Men of Honour and would not be concerned in any such thing. But do you think because a Man goes about and denies his being in a Plot, therefore he was not in it? Nay, it seems so far from being an Evidence of his Innocence, that it is an Evidence of his Guilt. What should provoke a Man to discourse after this manner, if he had not apprehensions of Guilt within himself? This is the Testimony offered against my Lord *Howard* in disparagement of his Evidence. Ay, but farther 'tis objected, he is in Expectation of a Pardon: And he did say, he thought he should not have the King's Pardon till such time as the drudgery of swearing was over. Why, Gentlemen, I take notice, before this discourse happened, he swore the same thing at my Lord *Russel's* Trial. And I must tell you, though it is the Duty of every Man to discover all Treasons; yet I tell you for a Man to come and Swear himself over and over guilty, in the Face of a Court of Justice, may seem irksome and provoke a Man to give it such an Epithet. 'Tis therefore for his Credit, that he is an unwilling Witness: But, Gentlemen, consider, if these things should have been allowed to take away the Credibility of a Witness what would have become of the Testimonies that have been given of late Days? What would become of the Evidence of all those that have been so profligate in their Lives? Would you have the King's Counsel to call none but Men that were not concerned in this Plot,

to prove that they were Plotting? Ay, but Gentlemen, it is further objected, This Hand looks like an old Hand, and it may not be the Prisoner's Hand, but be Counterfeited; and for that, there is a Gentleman, who tells you what a dextrous Man he is. He says, he believes he could Counterfeit any Hand in Half an Hour; 'tis an ugly temptation, but I hope he hath more Honour than to make use of that Art, he so much glories in. But what time could there be for the Counterfeiting of this Book? Can you imagine that Sir *Philip Lloyd* through the Bag Sealed up did it? Or who else, can you imagine, should, or, does the Prisoner pretend, did write this Book? So that as on one Side, God forbid, but we should be careful of Mens Lives, so on the other Side, God forbid, that Flourishes and Varnish should come to endanger the Life of the King, and the Destruction of the Government. But, Gentlemen, We are not to anticipate you in Point of Fact, I have, according to my Memory, recapitulated the Matters given in Evidence. It remains purely in you now, whether you do believe upon the whole Matter, that the Prisoner is guilty of the High-Treason whereof he is Indicted.

Mr. Just. Withins. Gentlemen, 'Tis fit you should have our Opinions; in all the Points of Law we concur with my Lord Chief Justice: Says Colonel *Sidney*, here is a mighty Conspiracy, but there is nothing comes of it, who must we thank for that? None but the Almighty Providence: One of themselves was troubled in Conscience, and comes and discovers it; had not *Keeling* discovered it, God knows whether we might have been alive at this Day.

Then the Jury withdrew, and in about half an Hour's time returned, and brought the Prisoner in, Guilty.

And then the Lieutenant of the Tower took away his Prisoner.

Monday Nov. 26, 1683. *Algernon Sidney*, Esq; was brought up to the Bar of the Court of *King's-Bench*, to receive his Sentence.

L. C. J. Mr. Attorney, will you move any thing?

Mr. Att. Gen. My Lord, the Prisoner at the Bar is convicted of High-Treason, I demand Judgment against him.

Cl. of Crown. *Algernon Sidney*, Hold up thy Hand. [*Which he did.*] Thou hast been Indicted of High-Treason, and thereupon arraigned, and thereunto pleaded not Guilty, and for thy Trial put thy self upon God and the Country, which Country has found thee Guilty, what canst thou say for thy self, why Judgment of Death should not be given against thee, and Execution awarded according to Law?

Col. Sidney. My Lord, I humbly conceive, I have had no Trial, I was to be tried by my Country, I do not find my Country in the Jury that did try me, there were some of them that were not Freeholders, I think, my Lord, there is neither Law nor President of any Man that has been tried by a Jury, upon an Indictment laid in a County, that were not Freeholders. So I do humbly conceive, That I have had no Trial at all, and if I have had no Trial, there can be no Judgment.

L. C. J. Mr *Sidney*, You had the Opinion of the Court in that Matter. before: We were unanimous in it, for it was the Opinion of all the

Judges of *England*, in the Case* next preceeding yours, though that was a Case relating to Corporations, but they were of Opinion, That by the Statute of *Queen Mary*, the Trial of Treason was put as it was at Common Law, and that there was no such Challenge at Common Law.

Col. Sidney. Under favour, my Lord, I presume in such a Case as this, of Life, and for what I know concerns every Man in *England*, you will give me a Day and Counsel to argue it.

L. C. J. 'Tis not in the Power of the Court to do it.

Col. Sidney. My Lord, I desire the Indictment against me may be read.

L. C. J. To what purpose?

Col. Sidney. I have somewhat to say to it.

L. C. J. Well, read the indictment.

Then the Clerk of the Crown read the Indictment.

Col. Sidney. Pray Sir, will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Col. Sidney. My Lord, there is one thing then that makes this absolutely void, it deprives the King of his Title, which is Treason by Law, *Defensor Fidei*. There is no such thing there, if I heard right.

L. C. J. In that you would deprive the King of his Life, that is in very full I think.

Col. Sidney. If no body would deprive the King no more than I, he would be in no danger. Under favour these are Things not to be over-ruled in Point of Life so easily.

L. C. J. Mr. *Sidney*, We very well understand our Duty, we don't need to be told by you what our Duty is, we tell you nothing but what is Law; and if you make Objections that are immaterial, we must over-rule them. Don't think that we over-rule in your Case that we would not over-rule in all Mens Cases in your Condition. The Treason is sufficiently laid.

Col. Sidney. My Lord, I conceive this too, that those Words, that are said to be written in the Paper, that there is nothing of Treason in them; Besides, that there was nothing at all proved of them, only by similitude of hands, which upon the Case I alledge to your Lordship was not to be admitted in a Criminal Case. Now 'tis easy to call a thing *Proditorie*; but yet let the nature of the things be examined, I put my self upon it, that there is no Treason in it.

L. C. J. There is not a Line in the Book scarce but what is Treason.

Mr. Just. Withins. I believe you don't believe it Treason.

L. C. J. That is the worst part of your Case; When Men are riveted in Opinion, that Kings may be deposed, that they are accountable to their People, that a general Insurrection is no Rebellion, and justify it, 'tis high time, upon my Word, to call them to Account.

Col. Sidney. My Lord, the other Day I had a Book, wherein I had King *James's* Speech, upon which all that is there, is grounded in his own Speech to the Parliament in 1603, and there is nothing in these Papers, which is called a Book, though it never appeared, for if it were true, it was only Papers found in a private Man's Study, never shewed to any body; and Mr. Attorney takes this to bring it to a Crime,

in

in order to some other Counsel, and this was to come out such a time, when the Insurrection brake out. My Lord, There is one Person I did not know where to find then, but every Body knows where to find now, that is the Duke of *Monmouth* if there had been any thing in Consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in Prosecution of those Designs of his: And if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were Tried for this Fact: We must not send for the Duke of *Monmouth*.

Col. Sidney. I humbly think I ought, and desire to be heard upon it.

L. C. J. Upon what?

Col. Sidney. If you will call it a Trial —

L. C. J. I do. The Law calls it so.

Mr. Just. Withins. We must not hear such Discourses, after you have been Tried here, and the Jury have given their Verdict; as if you had not Justice done you.

Mr. Just. Holloway. I think it was a very fair Trial.

Col. Sidney. My Lord, I desire, that you would hear my Reasons; why I should be brought to a new Trial.

L. C. J. That can't be.

Col. Sidney. Be the Trial what it will?

Cl. of r. Crier, make an O yes.

Col. Sidney. Can't I be heard, my Lord?

L. C. J. Yes, If you will speak that which is proper; 'tis a strange thing You seem to appeal as if you had some great Hardship upon you. I am sure, I can as well appeal as you. I am sure you had all the Favour shewed you, that ever any Prisoner had. The Court heard you with Patience, when you spake what was proper; but if you begin to Arraign the Justice of the Nation, it concerns the Justice of the Nation to prevent you: We are bound by our Consciences and our Oaths to see Right done to you; and though we are Judges upon Earth, we are accountable to the Judge of Heaven and Earth; and we act according to our Consciences, though we don't act according to your Opinion.

Col. Sidney. My Lord, I say. In the first place I was brought to *Westminster* by *Habeas Corpus*, the 7th of this Month, granted the Day before I was to be Arraigned, when yet no Bill was exhibited against me; and my Prosecutors could not know it would be found, unless they had a Correspondence with the Grand Jury, which under Favour ought not to have been had.

L. C. J. We know nothing of it: You had as good tell us of some body's Ghost, as you did at the Trial.

Col. Sidney. I told you of two infamous Persons that had acted my Lord *Russel's* Ghost.

L. C. J. Go on, if you have any thing else.

Col. Sidney. I prayed a Copy of the Indictment, making my Objections against it, and putting in a special Plea, which the Law, I humbly conceive, allowed me: The help of Counsel to frame it was denied.

L. C. J. For the Copy of the Indictment, it was denied in the Case you cited. This Favour shewed you to-day was denied at any time to *Sir Henry Vane*, that is, to have the Indictment read in *Latin*. Don't say on the other Side, we

refused your Plea. I told you, have a care of putting it in. If the Plea was such as Mr. Attorney did demur to it: I told you, you were answerable for the Consequences of it.

Mr. Just. Withins. We told you, you might put it in, but you must put it in at your Peril.

Col. Sidney. My Lord, I would have put it in.

L. C. J. I did advertise you: If you put in a Plea, upon you Peril be it. I told you, We are bound by Law to give you that fair Advertisement of the great Danger you would fall under, if it were not a good Plea.

Col. Sidney. My Lord, my Plea was that could never hurt me.

L. C. J. We do not know that.

Col. Sidney. I desire, my Lord, this, that it may be considered, That, being brought here to my Trial, I did desire a Copy of my Indictment, upon the Statute of 46 *Edw. 3.* which does allow it to all Men in all Cases.

L. C. J. I tell you the Law is otherwise, and told you so then, and tell you so now.

Col. Sidney. Your Lordship did not tell me, That was not a Law.

L. C. J. Unless there be a Law particular for *Col. Sidney*. If you have any more to say —

Col. Sidney. I am probably informed, and, if your Lordship will give me time, shall be able to prove it, That the Jury was not summoned, as it ought to be; My Lord, if this Jury was not summoned by the Bailiff, according to the ordinary way, but they were agreed upon by the Under-Sheriffs, *Graham* and *Burton*, I desire to know whether that be a good Jury.

L. C. J. We can take notice of nothing, but what is upon the Record: Here is a Return by the Sheriff; if there had been any indirect means used with the Sheriff, or any else, you should have mentioned it before they were sworn.

Col. Sidney. Is there any thing in the World more irregular than that?

L. C. J. I know nothing of it. That time is past.

Col. Sidney. Now, my Lord, all Men are admitted on the Jury.

L. C. J. Why, You did not like Gentlemen, and now you don't like those that you had. In plain *English*, if any Jury had found you Guilty it had been the same thing. It had been a good Summons, if they had acquitted you.

Col. Sidney. When the Jury thus composed, was sworn, four Witnesses, of whom three were under the Terror of Death for Treasons, were produc'd against me. And they confessed themselves guilty of Crimes of which I had no Knowledge, and told Stories by hear-say. And your Lordship did promise in summing up the Evidence, that the Jury should be informed what did reach me, and what not, and I don't remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as possibly I could be.

Col. Sidney. My Lord *Howard* being the only Witness, that said any thing against me, Papers, which were said to be found in my House, were produced as another Witness, and no other Testimony given concerning them, but that the Hand was like unto mine. No Man can say, I read them, or shewed them to any Man. None knew when they were written; The Ink shewed they

they had been done many, and perhaps 20 or 30 Years. Yea, some Passages were read out of them, without examining what went before and after, when I desired the whole might be read, it was refused, unless I specified the Passage, which I could not do, knowing not one Word in them. When I alledged, that in Criminal Cases Similitude of Hands could not be taken for Evidence, proposed my Points of Law concerning Constructive Treason, &c. And I did conceive that no Court under the Parliament could be Judges of it, and did desire the Statute, which did so enact it, might be read, it could not be obtained: And I cited many Judgments in Parliament.

L. C. J. Mr. Sidney, If you arraign the Justice of the Nation so, as tho' we had denied you the Methods of Justice, I must tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our Duty. What Points of Law do you mean?

Col. Sidney. That of Constructive Treason, my Lord.

L. C. J. We do not go upon Constructive Treason, 'tis plain Treason within 25 *Edw.* 3.

Col. Sidney. Is Writing an Act?

L. C. J. Yes, 'tis *agere*.

Proclamation made for Silence.

Mr. Bamfield. Sir, I pray you to hear me one Word as *Amicus Curia*, I humbly suppose that your Lordship will not give Judgment if there be a material Defect in the Indictment, as the Clerk did read it, he left out *Defensor fidei*, which is part of the Stile of His Majesty.

L. C. J. We have heard of it already, we thank you for your Friendship, and are satisfied. Mr. Sidney, there remains nothing for the Court, but to discharge their Duty, in pronouncing that Judgment the Law requires to be pronounced against all Persons Convicted of High-Treason; and I must tell you, that tho' you seem to arraign the Justice of the Court, and the Proceeding

Col. Sidney. I must appeal to God and the World, I am not heard.

L. C. J. Appeal to whom you will. I could wish with all my Heart, instead of Appealing to the World, as tho' you had received something extreme hard in your Case, that you would appeal to the Great God of Heaven, and consider the Guilt you have contracted by the great Offence you have committed. I wish with all my Heart, you would consider your Condition, but if your own Ingenuity will not provoke you, nothing, I can say, will prevail with you to do it; if the King's General Pardon, in which you had so great a share of the King's Mercy, will not, I could wish, that, as a Gentleman and as a Christian, you would consider, under what particular Obligations you lie to that Gracious King, that hath done so much for you. I should have thought it would have wrought in you such a Temper of Mind, as to have turned the rest of your Life into a generous Acknowledgment of his Bounty and Mercy, and not into a State of constant Combining and Writing, not only to destroy Him, but to subvert the Government; and I am sorry to see you so earnest in the Justification of the Book, in which there is scarce a Line, but what contains the rankest Treason, such as Deposing the King:

It not only encourages, but justifies all Rebellion. Mr. Sidney, you are a Gentleman of Quality, and need no Counsel from me: If I could give you any, my Charity to your Immortal Soul would provoke me to it. I pray God season this Affliction to you. There remains nothing with the Court, but to pronounce that Judgment that is expected, and the Law requires, and therefore the Judgment of the Court is,

That you be carried hence to the Place from whence you came, and from thence you shall be drawn upon an Hurdle to the Place of Execution, where you shall be banged by the Neck, and, being alive, cut down, your Privy-Members shall be cut off, and burned before your Face, your Head severed from your Body, and your Body divided into four Quarters, and they to be disposed at the Pleasure of the King. And the God of infinite Mercy have Mercy upon your Soul.

Col. Sidney. Then, O God! O God! I beseech thee to sanctify these Sufferings unto me, and impute not my Blood to the Country, nor the City, thro' which I am to be drawn; Let no Inquisition be made for it, but if any, and the shedding of Blood that is innocent, must be revenged, Let the Weight of it fall only upon those, that maliciously persecute me for Righteousness sake.

L. C. J. I pray God work in you a Temper fit to go unto the other World, for I see you are not fit for this.

Col. Sidney. My Lord, feel my Pulse, [*holding out his Hand*] and see if I am disordered, I bless God, I never was in better Temper than I am now.

Then the Lieutenant of the Tower carried back his Prisoner.

The Prisoner afterwards presented a Petition to the King, which see in *State-Trials*, Vol. VIII. p. 453.

The Execution of Algernon Sidney, Esq; on Friday December 7, 1683.

ON the 7th of *December* (his Majesty having been pleased to remit * all the Sentence but Beheading) he was brought to a Scaffold erected for that purpose on *Tower-Hill*, where, having deliver'd the following Paper to the Sheriff, his Head was sever'd from his Body.

Men, Brethren, and Fathers; Friends, Countrymen, and Strangers,

It may be expected that I should now say some great Matters unto you; but the Rigour of the Season, and the Infirmities of my Age, increased by a close Imprisonment of above five Months, do not permit me.

Moreover, we live in an Age that maketh Truth pass for Treason: I dare not say any thing contrary unto it, and the Ears of those that are about me will probably be found too tender to hear it. My Trial and Condemnation do sufficiently evidence this.

West, Rumsey and Keeling, who were brought to prove the Plot, said no more of me, than that they knew me not; and some others equally unknown unto me, had used my Name, and that of some others, to give a little Reputation unto their Designs.

* This was because of his Family, he being Brother to the Earl of Leicester.

Designs. The Lord *Howard* is too infamous by his Life, and the many Perjuries not to be denied, or rather sworn by himself, to deserve Mention; and being a single Witness would be of no Value, tho' he had been of unblemish'd Credit, or had not seen and confessed that the Crimes committed by him would be pardon'd only for committing more; and even the Pardon promised could not be obtain'd till the Drudgery of Swearing was over.

This being laid aside, the whole Matter is reduced to the Papers said to be found in my Closet by the King's Officers, without any other Proof of their being written by me, than what is taken from Suppositions upon the Similitude of an Hand that is easily counterfeited, and which hath been lately declared in the *Lady Car's* Case to be no lawful Evidence in criminal Causes.

But if I had been seen to write them, the Matter would not be much alter'd. They plainly appear to relate unto a large Treatise written long since, in Answer to *Filmer's* Book, which, by all intelligent Men, is thought to be grounded upon wicked Principles, equally pernicious unto Magistrates and People.

If he might publish unto the World his Opinion, that all Men are born under a Necessity derived from the Laws of God and Nature, to submit unto an absolute Kingly Government, which could be restrained by no Law or Oath; and that he that hath the Power, whether he came unto it by Creation, Election, Inheritance, Usurpation, or any other way, had the Right; and none must oppose his Will, but the Persons and Estates of his Subjects must be indispensibly subject unto it; I know not why I might not have published my Opinion to the contrary, without the Breach of any Law I have yet known.

I might as freely as he publickly have declared my Thoughts, and the Reasons upon which they were grounded; and I am persuaded to believe, that God had left Nations unto the Liberty of setting up such Governments as best pleased themselves.

That Magistrates were set up for the Good of Nations, not Nations for the Honour or Glory of Magistrates.

That the Right and Power of Magistrates in every Country, was that which the Laws of that Country made it to be.

That those Laws were to be observed, and the Oaths taken by them, having the Force of a Contract between Magistrates and People, could not be violated without Danger of dissolving the whole Fabrick.

That Usurpation could give no Right, and the most dangerous of all Enemies unto Kings were they, who, raising their Power to an exorbitant Height, allowed unto Usurpers all the Rights belonging unto it.

That such Usurpations being seldom compass'd without the Slaughter of the reigning Person, or Family, the worst of all Villanies was thereby rewarded with the most glorious Privileges.

That if such Doctrines were received, they would stir up Men to the Destruction of Princes with more Violence, than all the Passions that have hitherto raged in the Hearts of the most unruly.

That none could be safe, if such a Reward were proposed unto any that could destroy them.

That few would be so gentle as to spare even

the best, if by their Destruction a wild Usurper could become God's Anointed; and by the most execrable Wickedness invest himself with that divine Character.

This is the Scope of the whole Treatise; the Writer gives such Reasons as at present did occur unto him, to prove it. This seems to agree with the Doctrines of the most revered Authors of all Times, Nations and Religions. The best and wisest of Kings have ever acknowledged it. The present King of *France* hath declared that Kings have that happy want of Power, that they can do nothing contrary to the Laws of their Country, and grounds his Quarrel with the King of *Spain*, *Anno* 1667, upon that Principle. King *James*, in his Speech to the Parliament, *An.* 1603, doth in the highest degree assert it: the Scripture seems to declare it. If nevertheless the Writer was mistaken, he might have been refuted by Law, Reason, and Scripture; and no Man, for such Matters, was ever otherwise punished, than by being made to see his Error; and it hath not (as I think) been ever known that they had been referr'd to the Judgment of a Jury, composed of Men utterly unable to comprehend them.

But there was little of this in my Case; the Extravagance of my Prosecutors goes higher: The above-mention'd Treatise was never finish'd, nor could be in many Years, and most probably would never have been. So much as is of it was written long since, never reviewed nor shewn unto any Man; and the fiftieth part of it was produced, and not the tenth of that offered to be read. That which was never known unto those who are said to have conspired with me, was said to be intended to stir up the People in Prosecution of the Designs of those Conspirators.

When nothing of particular Application unto Time, Place, or Person, could be found in it (as hath ever been done by those who endeavour'd to raise Insurrections) all was supplied by *Immuendo's*.

Whatsoever is said of the Expulsion of *Tarquin*; the Insurrection against *Nero*; the Slaughter of *Caligula*, or *Domitian*; the Translation of the Crown of *France* from *Merovens's* Race unto *Pepin*; and from his Descendants unto *Hugh Capet*, and the like, applied by *Immuendo* unto the King.

They have not considered, that if such Acts of State be not good, there is not a King in the World that has any Title to the Crown he bears; nor can have any, unless he could deduce his Pedigree from the eldest Son of *Noah*, and shew that the Succession had still continued in the eldest of the eldest Line, and been so deduced to him.

Every one may see what Advantage this would be to all the Kings of the World, and whether, that failing, it were not better for them to acknowledge they had received their Crowns by the Consent of willing Nations; or to have no better Title unto them than Usurpation and Violence, which, by the same ways, may be taken from them.

But I was not long since told that I must die, or the Plot must die.

Lest the Means of destroying the best Protestants in *England* should fail, the Bench must be filled with such as had been Blemishes to the Bar.

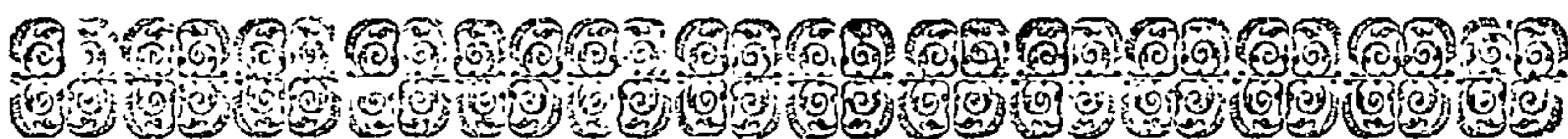
None but such as these would have advised with the King's Counsel of the Means of bringing a Man to Death, suffer'd a Jury to be pack'd by the King's Solicitors and the under Sheriff, admit

admit of Jurymen who were not Freeholders, receive such Evidence as is above-mention'd, refuse a Copy of an Indictment, or to suffer the Statute of 46 *Edw.* III. to be read, that doth expressly enact, it should in no Case be denied unto any Man, upon any Occasion whatsoever, over-rule the most important Points of Law without hearing. And whereas the Statute 25 *Edw.* 3. upon which they said I should be tried, doth reserve unto the Parliament all Constructions to be made in Points of Treason, they could assume unto themselves not only a Power to make Constructions, but such Constructions as neither agree with Law, Reason, or common Sense.

By these Means I am brought to this Place. The Lord forgive these Practices, and avert the Evils that threaten the Nation from them. The

Lord sanctify these my Sufferings unto me; and though I fall as a Sacrifice unto Idols, suffer not Idolatry to be established in this Land. Bless thy People and save them. Defend thy own Cause and defend those that defend it. Stir up such as are faint, direct those that are willing, confirm those that waver, give Wisdom and Integrity unto All. Order all Things so as may most redound unto thine own Glory. Grant that I may die glorifying thee for all thy Mercies, and that at the last thou hast permitted me to be singled out as a Witness of thy Truth; and even by the Confession of my Opposers, for that *Old Cause* in which I was from my Youth engag'd, and for which thou hast often and wonderfully declared thy self.

His Attainder was reversed in Parliament, the first of *Will.* and *Mary.* See *State Trials*, Vol. viii. p. 517.



CXXIII. *The Trial of JOHN HAMPDEN †, Esq; at the King's-Bench for an High Misdemeanour, Feb. 6, 1683. Hill. 36 Car. II.*

H *Obn Hampden, Esq;* being brought up by Writ of *Habeas Corpus*, from the Tower of London on the 28th of November, and there being an Indictment preferred against him for Misdemeanour, His Majesty's Attorney-General prayed, that he might be Arraigned upon it, which was done in this Manner.

Cl. of Cr. John Hampden, You stand here Indicted by the Name of John Hampden, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Gent. for that you being a pernicious and seditious Man, and a Person of a wicked Mind, and of an impious, unquiet, and turbulent Disposition, and contriving, practising, and falsely, unlawfully, unjustly, maliciously, turbulently, and seditiously intending the Peace of our Sovereign Lord King Charles that now is, and the common Tranquillity of this Kingdom of England to disquiet, molest, and disturb, and, as much as in you lay, Sedition within this Kingdom of England, to incite, stir up, and procure, and the Government of our said Lord the King in this Kingdom of England into Danger to bring: And that you the said John Hampden, your most impious, wicked, and seditious Intentions aforesaid to fulfil and perfect, and bring to effect the last Day of June, in the Five and thirtieth Year of the Reign of our said Sovereign Lord the King that now is; and divers other Days and Times as well before as after, with Force, and Arms, &c. At the Parish of St. Giles in the Fields, in the County of Middlesex, unlawfully, unjustly, maliciously, and seditiously did assemble yourself, meet, consult, conspire, and confederate with divers evil-disposed Subjects of our said Lord the King to the Jurors unknown, and with the said Persons did treat concerning your said most wicked and seditious Compassings, Imaginations, and Purposes aforesaid, to be executed, fulfilled, and brought to effect; and further that you the said John Hampden, your most wicked, impious, and seditious Contrivances, Practices and Intentions aforesaid to fulfil, perfect, and reduce to effect, then and there, viz. the last Day of June in the 35th Year aforesaid, and divers other Days and Times, as well before as after, at the Parish aforesaid,

in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, maliciously, and seditiously did consult, consent, conspire and confederate of an Insurrection within this Kingdom of England to be made, and of procuring and providing Arms and armed Men to be prepared in divers Places within this Kingdom of England your same most wicked, impious and seditious Intentions and Compassings aforesaid to fulfil and perfect: And that you the said John Hampden, your most wicked, impious, and seditious Intentions aforesaid to fulfil and perfect, and bring to effect afterwards, viz. the last Day of June, in the 35th Year aforesaid, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, and seditiously did consult, agree, and consent that a certain Person to the Jurors aforesaid unknown, should be sent into Scotland to invite and incite divers evil-disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England to advise and consult with you the said John Hampden, and others the aforesaid evil-disposed Subjects of our said Lord the King in this Kingdom of England concerning Aid and Assistance to be expected and supplied out of the said Kingdom of Scotland, your said most wicked, impious, and seditious Intentions and Compassings aforesaid to fulfil, effect, and promote, in manifest Contempt of the Laws of this Kingdom of England, to the evil and most pernicious Example of all others in the like Case offending, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

Cl. of Cr. How say'st thou, Art thou Guilty of this High Misdemeanour whereof thou standest indicted, and hast been now arraigned, or not Guilty?

Mr. Hampden. Not Guilty.

Upon which Plea Issue was joined between His Majesty's Attorney-General, on behalf of the King and Defendant, and Bail was then taken for the Defendant's Appearance the next Term.

H *Illary Term 35 and 36 Car. 2di Reg.* In the Beginning of the Term, Sir Thomas Jenner, Knight, His Majesty's Serjeant at Law, and Recorder

order of the City of *London*, moved for a Trial at the Bar, in the Case between the King and Mr. *Hampden*, which was by the Court appointed to be on *Wednesday* the 6th of *February* in the same Term, when the Court proceeded to the Trial as follows.

Cl. of Cr. Call the Defendant *John Hampden*.

Mr. Williams. He appears.

Cl. of Cr. *Gardez votres Challenges.* Call Sir *Charles Gerard*.

Crier. You shall well and truly try the Issue between our Sovereign Lord the King and *John Hampden, Gent.* and a true Verdict give according to your Evidence. So help you God.

Sir *Charles Gerard, Jur'*

Cl. of Cr.

Roger Jennings, Esq; Jur.

Henry Hodges, Esq; Jur'

Joshua Galliard, Esq;

Mr. Williams. We challenge him for the Defendant.

L. C. J. What is your Cause of Challenge?

Sir *George Jeffries.*

Mr. Williams. If your Lordship please to let him go through the Pannel, we will shew Cause if there be not enough left without him.

L. C. J. No, shew your Cause now, it being against the King.

Mr. Williams. He has an Employment under the King, he has an Office in the Forest, and that we say is our Cause of Challenge.

L. C. J. What then if he have?

Mr. Williams. My Lord, we suppose then he is not an indifferent Person to try this Cause.

L. C. J. Ay, let me hear that now proved and defended by any Gentleman of the long Robe, that that is a good Cause of Challenge. Shew me what Law there is for it.

Mr. Williams. To be of the King's Robe, or Pay, or Salary, is an Exception in any Case where in the King is concerned.

L. C. J. Shew me any Law for that if you can, *Mr. Williams,* I know you are a Lawyer.

Mr. Wallop. It is the Opinion of my Lord *Coke* in his *Institutes*, that it is a good Cause of Challenge.

L. C. J. But there is the Opinion of all the Judges in *Henry the Sixth's* Time against it.

Mr. Wallop. It is, my Lord, *fel. 156.*

L. C. J. But I can cite you three or four Books, and you have them all together in *Roll's* Abridgment, *Title Challenge*, where he sets down four Books one after another, that it is no Cause of Challenge, even to be the King's Tenant, and there is a great deal of Reason for it. For if that were a good Cause of Challenge, mark the Consequence, then all Persons that hold Lands in *England* hold them mediately or immediately of the King, and so the King could have no Freeholders to be Jurymen in his Cause.

Mr. Williams. This is a more special Cause of Challenge than that.

L. C. J. What can be greater than that of being the King's Tenant?

Mr. Att. Gen. Especially when all the Land of *England* was held of the Crown, as originally it was.

Mr. Trevor. My Lord in 2d *Rolls* 646. *Tit. Trials*, There is the express Opinion of my Lord *Rolls*, that to be of the Livery, or a menial Servant of the Crown, is a good Cause of Challenge.

L. C. J. And look you but in the first Case in the first Part of the Abridgment, *Title Challenges*,

where he mentions three or four Books to the same Purpose, and 'tis quite otherwise.

Mr. Williams. My Lord, in that of first *Rolls*; he only cites some Books, but the other is his own Opinion.

L. C. J. Well, make out your Fact if you have a mind to it; but it is well known, that neither *Mr. Serjeant Rolls*, nor my Lord *Coke*, when he delivered that Opinion, are to be reckoned such Authorities in Crown-matters.

Mr. Williams. We will ask him, my Lord, if you please, I suppose he will not deny it.

L. C. J. No, make out your Fact if you will have any Benefit by it, 'tis only a Challenge to the Favour which ought not to be in the King's Case. I am very glad that we are now to debate this Matter with Men of the Robe, because we have had a strange sort of Notions and Reflections spread abroad of late, as tho' the Judges now-a-days gave strange sort of Opinions, and as tho' Persons that had been Blemishes at the Bar, were preferred to do strange Things when they came upon the Bench; but truly I wonder to hear that it should be a Doubt, when at the same Time that which we gave as our Opinion about one particular Challenge, that is as to Freeholders, it was the Judgment of all the Judges, that that was no Challenge, and all the Counsel that were concerned in that Case know it was the Opinion of all the Judges. But now if we meet with Lawyers, I shall be glad to have the Matter fairly argued and debated, and pray shew me what Law or Reason is for it.

Mr. Wallop. Certainly, my Lord, there is a great Difference betwixt the general Allegiance of all Men, and so of a general Tenure, and the Dependence of any particular Person who is a menial Servant and receives Wages of the King.

L. C. J. I would desire to know of you, *Mr. Wallop*, which is the greater Challenge, to say such a one is a Tenant, or such a one is immediate Servant to *J. S.*

Mr. Wallop. There is a great Difference, my Lord, I think, between an immediate Tenant, and the general Tenure of all Subjects.

L. C. J. But certainly the Law is thus, if he were an immediate or a mediate Tenant to any but the King, if his Lord were Party to the Suit, it would be a good Challenge, but the being Tenant to the King is no good Challenge in the King's Case.

Mr. Williams. My Lord, I take it, the Act of Parliament that takes away the Court of Wards and Liveries hath altered the Law as to that Matter of Tenure; for now we hold in Socage, and that other Tenure is destroyed that was between the King and his Subjects.

L. C. J. But pray how comes it to be a Challenge now that was not one before? Does that Act of Parliament make it a good Cause of Challenge? If it does, shew it. I tell you the old Books are against it.

Mr. Williams. I speak, my Lord, to the Tenure, that that is nothing at all now to be objected, because all is now in Socage.

L. C. J. I would not have *Mr. Attorney* insist upon a Jurymen, but yet withal I would not have it gone away with as Law, that it is a good Cause of Challenge.

Mr. Wallop. My Lord, we finding in some Cases that are in our Books, that it is held to be a good Cause of Challenge, lay it before the Court.

Mr. Att. Gen. How many hundred Errors do you

find in my Lord *Coke*, notwithstanding all his Learning?

L. C. J. I say, if I was Mr. Attorney, I would not contest for any particular Man to be a Jurymen, I speak that as my Advice, but I would not have it taken for Law, nor would I have it broached abroad, that tho' the Judges now were of one Opinion, yet the Law truly was of another.

Mr. Jones. If all that receive Salary, or Wages from the King, are not to be Jurymen in the King's Causes, then all the Deputy Lieutenants and Militia Officers, which generally are the most substantially Freeholders, are excluded from being Jurymen.

Mr. Just. Withins. Who will say so, Mr. Jones? No Lawyer in *England* surely will say so.

Mr. Williams. Offices where there is no Profit, will not be the same Exception.

Mr. Att. Gen. But he is no menial Servant of the King's.

Mr. Williams. What is he then?

Mr. Wallop. We hear that he is Keeper of one of the King's Forests, and has a Fee for it.

Mr. Williams. Well, we will ask him upon a *voyer dire*.

Mr. Att. Gen. My Lord, the Fact is quite otherwise, and I desire they may make it out.

L. C. J. Truly, I think 'tis not *tanti* to insist upon any particular Man, but I find we are in an Age that is so full of Cavils, that if we act but according to the Precedents that went before us, we are thought to act as Originals, and to make new Laws, when we only follow the Rules that we have received from our Predecessors. And I say there was no such Challenge at Common Law, that ever I read of in any of our Books, nor is it any Challenge by the best Authorities extant.

Mr. Jones. I desire them to shew me any such Precedent, that any Man was challenged by one that was tried at the Suit of the King, for a Challenge to the Favour, but we must do unprecedented Things, or else there will be no satisfying of some Men.

Mr. Att. Gen. I would fain know, what one Opinion in a straggling Book is against the Current of all our Law?

Mr. Williams. Which do you call a straggling Book, Mr. Attorney? My Lord *Coke's Institutes*, or my Lord *Roll's Abridgement*?

L. C. J. I say the better Opinion of the Books is on the other Side, and the greater Number too.

Mr. Att. Gen. First of all, I do know of my own Knowledge, he is no menial Servant.

L. C. J. Mr. Attorney, I do debate it for Learning sake, truly I know not the Man, nor whether he be the King's Servant, or not, but I speak against allowing the Challenge, that if he be set aside, it may not be taken as a Precedent, and so pass for Law that the King's Servants can't be Jurymen. I would have you quit the Man by Consent, but not as a Force-put, as tho' the Law were so, for the Law, I think, is otherwise.

Mr. Att. Gen. He is none, my Lord, they mistake.

L. C. J. Nay, I know nothing of the Man, I tell you only what I think.

Mr. Wallop. He receives Wages, or a Fee from the King for his Office.

Mr. Just. Withins. I would never, for my part, while I live, nor never did, while I was a Practiser, stand upon any particular Jurymen.

Mr. Att. Gen. He may be a Jurymen by Law sure.

L. C. J. There is no doubt of it, Mr. Attorney.

Mr. Att. Gen. My Lord, if your Lordships have given your Opinion, I desire he may stand by.

L. C. J. Well, Mr. Attorney waves him, let him stand by.

Mr. Att. Gen. But for no Reason that has been offered.

L. C. J. No, no, I don't hear any thing of Reason offered for it.

Cl. of Cr. Mr. Galliard, you may go down.

Thomas Harriott, Esq; Jur'

Thomas Earsby, Esq; Jur'

William Avery, Esq; Jur'

John Sharp, Esq; Jur'

Richard Shoreditch.

Mr. Williams. We challenge him for the Defendant.

L. C. J. What is your Cause of Challenge?

Mr. Williams. There is the same Exception to him.

L. C. J. If Mr. Attorney will consent, with all my Heart.

Mr. Att. Gen. No, we humour'd you in one, we won't humour you any more.

Mr. Williams. Nay, here is something more clear for us, he is a Serjeant at Arms attending his Majesty.

Mr. Just. Withins. You know our Opinions already, Mr. Williams, unless Mr. Attorney consent, we can't do it.

Mr. Williams. We only acquaint Mr. Attorney with it, we must submit to your Rule, he is certainly Serjeant at Arms, he came in the Place of *Dereham* that let my Lord *Grey* escape.

Mr. Att. Gen. Pray prove it, I don't know it for my Share.

Mr. Williams. Will you ask him the Question?

Mr. Att. Gen. Pray prove it. Are we to gratify your Client? Pray let him better instruct his Counsel.

L. C. J. If Mr. Attorney consent not, then he must be sworn.

Mr. Att. Gen. If there be enough without him that do appear, let him stand by.

Cl. of Cr. Stand down, Mr. *Shoreditch*.

Charles Good, Esq; Jur'

Mr. Att. Gen. That it may appear how fair Things were carried, they would not strike out one of these Men when they came before the Prothonotary, as they might have done.

Mr. Just. Withins. Truly that was not well done, to trouble the Court when you might make your Exceptions there.

Mr. Williams. We did not know it then, now we do, we offer it to the Court.

Cl. of Cr.

Samuel Rouse, Esq; Jur'

Hugh Squire, Esq; Jur'

Nebemias Arnold, Esq; Jur'

John Bifeild, Esq; Jur'

Then the Jury were number'd, and the Twelve sworn were these.

Sir Charles Gerard, Bar.	} Jur'	{ John Sharp, Esq;
Roger Jennings, Esq;		{ Charles Good, Esq;
Henry Hodges, Esq;		{ Samuel Rouse, Esq;
Thomas Harriott, Esq;		{ Hugh Squire, Esq;
Thomas Earsby, Esq;		{ Neb. Arnold, Esq;
William Avery, Esq;		{ John Bifeild, Esq;

Cl. of Cr. Gentlemen of the Jury, You that are sworn, hearken to your Charge. The Defendant *John Hampden* stands indicted by the Name of *John*

John Hampden, of the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, Gent. (*Prout* in the Indictment, *mutatis mutandis*) — To this Indictment he has pleaded not Guilty, and for his Trial puts himself upon the Country, and the King's Attorney General likewise, which Country you are; your Charge is to enquire whether the Defendant be guilty of the great Misdemeanour whereof he stands indicted, or not guilty; if you find him guilty, you are to say so; and if you find him not guilty, you are to say so, and no more; and hear your Evidence.

Then Proclamation was made for Evidence in usual Form.

Mr. Holloway. May it please your Lordship, and Gentlemen, you that are sworn, I am of Counsel for the King upon this Indictment. Gentlemen, the Indictment sets forth, that the Defendant being a seditious, malicious, evil-disposed Person, and seditiously and maliciously intending to disturb the Peace of the Kingdom, the last Day of *June*, in the 35th Year of his now Majesty's Reign, and divers other Days and Times, at the Parish of *St. Giles in the Fields*, in your County, did unlawfully assemble, and confederate himself with divers evil-disposed Persons, Subjects of our Lord the King, and then and there, with those other Persons did falsly, maliciously, and seditiously consult and conspire to make an Insurrection in the Kingdom of *England*, and to provide Arms and armed Men in divers Places of the said Kingdom. And the better to compleat his evil Intentions, the said last Day of *June*, did consult and agree to send certain Persons, to the Jurors unknown, into *Scotland*, to invite several evil-disposed Persons there to join in this Conspiracy. This is the Substance of the Charge, and to this he says, he is not guilty; if we prove him so, we do not question but you will find it.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of this Jury, *Mr. Hampden* stands indicted of an high Misdemeanour, for conspiring with several others, to raise Rebellion within the Kingdom, and to crave the Assistance of the Brotherhood of *Scotland*. Upon the Face of the Indictment, Gentlemen, it appears to be a very high Crime, and the Matter of this indeed has been formerly in Examination in other Trials, and yet the Party, you may observe, do not acquiesce in those Trials, but think the Persons accused lay under very great Hardships, and that to a very great Degree, as not having the Advantage of Counsel, nor to have their Witnesses examined upon Oath; and therefore, Gentlemen, the King is pleased to go less in this Case than in the others, That this Gentleman, who is now before the Court, may clear his Innocence, if he has any Witnesses to do it. And if there be any Advantage that the having of Counsel can contribute to his Cause he has that allowed him too.

The Course of our Evidence, Gentlemen, will be this.

We shall prove to you that *Mr. Hampden*, with five other Persons, (I shall name them) the Duke of *Monmouth*, my Lord *Ruffel*, *Mr. Sidney*, my Lord of *Effex*, and my Lord *Howard*, they met several times, (the Particulars we shall give you an Account of) one was at *Mr. Hampden's* House, another was at my Lord *Ruffel's*, where they did contrive together, and took upon them to be a Junctio, or a Council of Six, collected out of the wisest Men of the Kingdom, to consider how they

might better the Affairs of the Nation, and how they might make a Stir: For they thought there was no way possible otherwise of doing it, but by their joint Councils to carry on a Rising. And that they might do it the better, they resolved to crave the Assistance of *Scotland*. Gentlemen, we shall give you an Account of their Consults and Debates, and shall shew you, that at length they came to a Resolution, that the Rising was to be carried on jointly in *London*, and the several Parts of the Kingdom, in several Countries at once. Then they came to think, and consider whether it were not best to send into *Scotland*, to draw them in too. And thereupon it was agreed by this Junctio, that they would send thither, and the Management of it was committed to *Mr. Sidney*, to send some fit Person into *Scotland*, to treat with the Male-Contents there; and the better to carry on this joint Design, some of them were to come up to *London*. And they were to have a Pretence to treat about going to *Carolina*, and the purchasing some Shares in the Plantation there, of which my Lord *Shaftsbury* was a chief Governour. We shall prove to you, Gentlemen, besides all that I have opened, that the Person to whom that Trust was committed, *Mr. Sidney*, according to the Duty that he had taken upon him, does employ one *Aaron Smith*, which all that know him, do know him to be a fit Engine for such Counsellors, and a fit Instrument for such a Conspiracy. We shall prove he actually was in *Scotland*, and that he went into *Scotland* upon this Errand. And then we shall prove that those Gentlemen that were sent to, and were the Persons named in their Consults to be treated with, came here soon after to Town, and as soon as ever this Plot was discovered, they fled and absconded themselves. Gentlemen, if we shall prove all this Matter to you, I think it will be without any Question clear, that this Gentleman is notoriously guilty of this High Misdemeanour. And indeed, if you observe it, one of the Persons has given Judgment against himself, the Earl of *Effex*. But the Party have been so diligent and officious as to sling that upon the Government; but that Matter we shall have before the Court in Judgment to-morrow. For two of the others they have received the Judgment of the Law; for two more of them the King has been pleased to take them into his Mercy; the one is my Lord *Howard*, who is summon'd to appear here to day; the other is the Duke of *Monmouth*, who has confessed all this Matter, and has taken his Pardon, and we have summon'd him also to be here this Day; that the World, if they will have their Eyes opened (I mean the discontented World) may see there is nothing fought, but the Peace and Quieting of the Kingdom.

Gentlemen, if we prove all this Matter to you, I shall be glad to hear the Defence of the Counsel, and the Defence made by Witnesses upon Oath.

Mr. Sol. Gen. My Lord, we will call our Witnesses, and first we begin with the Duke of *Monmouth*. *Mr. Finch.*

Mr. Att. Gen. Call *James* Duke of *Monmouth*. *Crier.* *James*, Duke of *Monmouth*.

Mr. Att. Gen. Call him again.

Crier. *James* Duke of *Monmouth*.

L. C. J. Was he served with a *Subpœna*?

Mr. Att. Gen. My Lord, we will prove we have served him in all Places where he was like to be

met with; that we left *Subpœna's* with his Servants, who promised to deliver them to him.

L. C. J. Prove it.

Mr. Att. Gen. Where is *Mr. Atterbury*? Swear him. [*Which was done.*] Pray will you give the Court an Account, whether you did serve the Duke of *Monmouth* with any *Subpœna*? In what Places you were to serve him, and who you left it with?

Mr. Atterbury. My Lord, on *Friday* last was *Seven-night*, I was commanded by *Mr. Attorney-General*, to carry a *Subpœna* to serve upon the Duke of *Monmouth*, and to go to his House at *Moor-Park*, where it was generally discoursed he was. I did go and take a *Subpœna* from *Mr. Burton*, by *Mr. Attorney's* Order, and went to the Duke's House at *Moor-Park*. When I came there, the outward Gate was locked, and I went to an House where the Keys are kept, and having got the Keys, I went down to the House, and I saw there one of his Servants fothering of Cattle; and coming up to him, I asked him if the Duke of *Monmouth* was in the House. He told me, he could not well tell, whether he was or not, but he thought he was gone to *London*, for he saw the Calash, and five or six Horsemen with it, and they said in the House, that it was the Duke that was gone to *London*. I asked if there were any Servants that were nearer to his Grace in the House, that I might speak with; they said, Yes, there was the House-keeper or Steward, one *Mr. Rawkins*, that attended upon the Duke. I desired to speak with him, and he came out to me; I asked him if the Duke was there? He seemed to be unwilling to give me an Answer. I asked him the second Time; but he did not say he was, or he was not. I told him then, I had a *Subpœna*, which I brought with me by *Mr. Attorney General's* Order, to serve upon his Grace, which was to require him to attend here this Day, to testify his Knowledge, in a Case between the King and *Mr. Hampden*. He told me, Sir, said he, give me your *Subpœna*, and I will take care the Duke shall have it. He took it of me, and I came back to *London* presently. As soon as I came to Town, I had a second *Subpœna* given me to serve upon his Grace, with which I went to the Duke's House at the *Cockpit*. When I came there, I spake with the Porter, I think his Name is *Johnson* (but the Porter he is, and I remember him a Servant there many Years.) I asked him, if the Duke were there? He told me he did not lodge there. I told him I had a *Subpœna* to serve upon his Grace to appear as this Day, the same as I said at *Moor-Park*. Says he, *Mr. Atterbury*, I will take care the Duke have it to Night, or to morrow Morning early.

L. C. J. When was this?

Mr. Atterbury. It was of the same Day, *Friday* was *seven-night* last. I was told afterwards by one that I met with, that the Duke did lodge at *Mr. Row's* House, who is a Servant to the Duke, one of his Gentlemen. He lives in the *Pall-Mall*, 'tis either his House or his Lodging, but they call it his House. I had a third *Subpœna* given me to the same Effect. And when I came there, I asked for the Duke, and a Woman came to the Door, *Mrs. Manley* (I think they call her) she seemed to make little Answer to what I said. Said I, Pray will you give this *Subpœna* to the Duke, or to *Mr. Row* to give it the Duke. She took it of me, and said, she would give it *Mr. Row* certainly to give to the Duke. And Yesterday, or the Day be-

fore, I met *Mr. Row* at *Whitehall*, and says he to me, *Mr. Atterbury*, you brought a *Subpœna* to my House a little while ago. Yes, Sir, said I, I did, had you it? Yes I had the *Subpœna*, says he. Then says I, I hope you gave the Duke it? To that he made me no Answer, but nodded his Head, and smiled, and went away,

L. C. J. Now call his Grace again.

Crier. *James Duke of Monmouth.*

[*But he did not appear.*]

Mr. Att. Gen. Call *William Lord Howard*. [*Who was in the Court.*] Pray swear my Lord *Howard*. [*Which was done.*]

Mr. Att. Gen. My Lord *Howard*, Pray will you be pleased to give the Court and the Jury an Account what you know of any Meeting by the Gentleman that is now accused, and the Duke of *Monmouth*, my Lord *Ruffel*, yourself and others, and when; Tell what you know.

Lord Howard. My Lord, in *January* last was *Twelve-month*, about the middle of *January* I was called out by *Colonel Sidney*, being then in my Lodgings in *Southampton-street*, and carried by him to *Mr. Hampden's* House, I do not know what they call the Street, but the same Side of the Way with the fine House that is in *Bloomsbury*—

Mr. Jones. By my Lord *Montague's* House that now is, you mean?

Lord Howard. Yes, of the same side of the way. When I came there, there was my Lord *Ruffel*, and the Duke of *Monmouth*, *Colonel Sidney* and I went together, *Mr. Hampden* was then in the Room where they were. Afterwards came in my Lord of *Essex*, this made up Six. When they were there, we fell into Discourses—

Mr. Att. Gen. Pray, my Lord, before you come to tell the particular Discourses, give an Account how, and upon what Grounds you came to have this Junctio of Six?

L. C. J. If you please, my Lord, Pray give an Account of the Preliminary Passages.

Lord Howard. My Lord, after the Disappointment given to an Undertaking that was begun by my Lord *Shaftsbury*, which was in *October* or *November* before, in *November* he died. After that, truly I cannot say, but that *Colonel Sidney* and myself might be, and were the two first that did give the Rise to it. For being in Discourse, we said it was absolutely necessary that there should be some Council erected to give some Steadiness to the Motions—

L. C. J. My Lord, I would not willingly interrupt you. But you seem to speak of a Disappointment given to an Undertaking by my Lord *Shaftsbury*. Pray what was that Undertaking?

Lord Howard. Your Lordship has heard of that before, and know it very well.

L. C. J. Though we know it, the Jury do not. They have not heard it Judicially at least.

Lord Howard. Because it has been in the printed Books, every body I suppose knows it.

L. C. J. But that they cannot judicially take notice of.

Lord Howard. That is something a long History, my Lord.

L. C. J. Though it be, we must hear it.

Mr. Att. Gen. Pray make it as short as you can, my Lord.

Lord Howard. So much as I can give account of is this. It was about the Day after *Michael's* Day that I came to my own House having been before in *Essex*, and that I think was *Saturday*.

The

The *Monday* following Captain *Walcot* came to me and dined with me, and after Dinner told me, my Lord of *Shaftsbury* had left his House, and had betaken himself to a private Lodging, and had hid himself from the rest of his Friends; but had a great Kindness for me, (which Kindness truly I wish he had spared) and desired to see me, I took time to consider of it; but I bid him go back to my Lord *Shaftsbury*, and tell him, if he had any thing of an extraordinary Nature to acquaint me with, I would come and assist him all I could. He came the next Day again, and shewed me to my Lord *Shaftsbury*'s Lodging: He lodged then at one *Watson*'s House, a Citizen, I know not what Street they call it; but it was in a little Street down by *Woodstreet*. And when I came to him, I found my Lord *Shaftsbury* very much differing from what he used to be, which was more cautious; and presently he tell to tell me, that he was forced to withdraw himself from his own House, for fear of being attacked again by Sham-Charges and Plots, and false Evidence, as he had before: For now he said, He saw they had the Possession of all Juries, by having those Sheriffs which were imposed upon the City, as he said, and he could not think his own Life or any Man's Life safe; for to be accused was sufficient to bring his Life into very great Danger, and for that Reason he had withdrawn himself to that private Retirement; and being there he was resolved to make some speedy Push, for recovering of the Liberties of *England*, that there was Preparation made in the City of several Thousands of Men, that were all in readiness to rise, and that for his Part, he was resolved to be set on Horseback; for get on Horseback he could not; and that there were great numbers that were ready, when he did but hold up his Finger, to be drawn together at any time: That divers had been drawn out of the Country to join with them by insensible Parties of Horse, I think he named about Fourcore or an Hundred. Which since I found were to be headed by Colonel *Rumsey*, upon the Day of making and declaring the Sheriffs; but finding there was nothing done, he withdrew himself and his Man thither; but there was such a general Preparation in the City; that if some Lords did not unhandfomly desert them they should be in readiness for Action quickly. I asked him who he meant. He told me, the Duke of *Monmouth* and my Lord *Russel* had very unhandfomly deserted him; for they had promised and undertaken to be in readiness with Men out of several Countries in which they had an Interest, he named *Somersetshire*, *Devonshire*, and *Cheshire*, I think, and that my Lord *Grey* should be disposed of into *Essex* to do the same there, and if they had held on this Resolution, it had been such a sure Game, that it could not have failed: But says he, they are started, and say they cannot be in a readiness to do it. My Lord, I very much wonder that those Persons you named should engage in any Design, and fail of performing what they promised! Says he, I'll assure you 'tis so. And so he proceeded to speak several sharp Things of the Duke of *Monmouth*, upon the account of his Ambition, that he thought to have all under his Command: Which was a secret lurking Ambition in him, that he said, he always suspected the Duke to be guilty of. And now he found his Suspicions true. That unless he might command all, he would do nothing. But for his part, since he found the Matter so,

he was resolved to go on alone, rather than fail in his Design. Said I, my Lord, I should be very forward to concur with you in any thing; but I wonder your Lordship should step into an Action of such Danger, thus divided from those that are most likely to assist you in it. I cannot help it, said he, I have left my House, and must go on. My Lord, said I, pray give me leave to go to the Duke of *Monmouth*, and expostulate the Matter with him, and I will come and give you an Account again. Says he, 'tis to no purpose, I dare say. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promise you this, I will not tell him I came from you, but as from my self discourse it with the Duke. Well, said he, if you will you may. This was upon *Tuesday*, I think the 3^d of *October*, the 3^d or 4th. So I went to the Duke of *Monmouth* the next Day, which was *Wednesday*, and finding him not at home at his House in *Soho*, and being told he was at *Moor-Park*, I took an occasion to go to *Moor-Park*, and I came there a little after Dinner, and took him aside, and told him all this that I now have spoken about my Lord *Shaftsbury*. Says he, I think the Man is Mad, what does he mean? We did undertake to do this, 'tis true; but not by that time he speaks of, and things are not ready, I know not what his own Fears make him do, but he does act so preposterously that he will undo us all. Said I, my Lord, all that I shall desire is, that there may be an Interview betwixt you, and discourse the thing with one another, or else it may be a thing of very fatal Consequence for him to step into an Action of this Danger and Concern while you are thus divided. With all my Heart, says the Duke, I would have nothing more, I desire to speak with him. This made me recoil back again to my Lord of *Shaftsbury* the next Day, and I told him all this, and desired he would give a Meeting; says he, I see they are false then to say they did not engage; they were engaged, and that against this time too, the Confirmation and Swearing of the Sheriffs; and now for me to meet with them, I know I shall run out into Passion and Anger, and therefore 'tis better omitted. Said I, my Lord, I must positively insist upon it. I must have an interview between you, for 'tis a Madness for you to go on thus divided in so great a Business. I could not prevail, he would not; but he told me if I would I might go to them from him, and let them know I had been with him; (or before I pretended to have it from a third Hand, and not from my Lord himself,) and if they would be in a readiness with what they promised from the Country, he would ask nothing from the City, he would take that Place upon himself, if they would perform their Engagement for other Parts; but he resolved to go on. So I went to the Duke of *Monmouth* again, and told him, what he said, That I could not by any means get him to an Interview. Says the Duke, he is a strange Man, I know not what to do with him, we will all be in a readiness as soon as we can; but it is impossible to do it so soon. I went to my Lord of *Shaftsbury* again on the *Saturday*, and did then positively engage him that he would give a Meeting to me, and the Duke of *Monmouth*, and some others: And we appointed Time and Place; he appointed to come out in a Parson's Habit, and a black Periwig to his own House, which he thought the safest Place, because he would not discover

discover his Lodging to any of them, for fear it should come to be known. With these Instructions I came to the Duke of *Monmouth* to prepare about it, and proffered him to be ready the next Day at Evening with my Lord *Ruffel* to go to him. All this while I had not spoken to my Lord *Ruffel*, but only to the Duke of *Monmouth*. And the next Day when I came from Church to my own House, there met me a Message from Colonel *Rumsey*, who I understood by my Servants had been there, and left his Name, with this Message, that he came to tell me, the Gentleman that was to meet could not meet. This was so confused a Matter, that I was impatient till I knew the meaning of it. I took my Coach and went directly to the Duke of *Monmouth's* again, and he told me, Colonel *Rumsey* had been with him, and told him, my Lord of *Shaftsbury* was apprehensive there were a great many *Tories* about his House, and he feared being discovered, and therefore had removed his Lodging, and so could not meet; but we should hear from him in two or three Days. So that was the last time that I saw my Lord of *Shaftsbury*, or indeed, in a direct Line, did hear from him; collaterally by *Walcot* I did afterwards hear; but by this means we were at a loss. After this the Duke of *Monmouth* did tell me (for he did not own to me that he saw him, but indeed swore to me that he did not see him; but I find since he did.) That he would do what he could to prevent an untimely, dangerous Undertaking. But after this it seems they had a Meeting at Mr. *Sheppard's* House, where my Lord *Shaftsbury* sent a Message to him and my Lord *Ruffel*; but the Duke of *Monmouth* only told me, that my Lord *Ruffel* had met with him, and seen him; but he never owned that he had met him himself or seen him. About four or five Days after, Captain *Walcot* came to me, and told me, such a Day was set for the Rising. Upon which being startled, I had nothing to do, but recoil back to the Duke of *Monmouth*, and endeavour to stop any rash Proceedings, and it was stopped as I thought, and so it continued for two or three Days, and at that time, which was in *October*, there was a Rumour up and down whispered, as if something would be attempted; but what it was we did not know, but thus it went on for two or three Days, and then it meeting with a Disappointment upon the Consultation at Mr. *Sheppard's*, my Lord *Shaftsbury* took up his Resolution to be gone, and went away to *Holland*, and died in *Holland*. This is the Substance of that Account which I can give of those former Transactions.

Mr. Att. Gen. Now give an Account of what was subsequent to this.

Lord Howard. This was in *November*. After this there being frequent Conferences between Colonel *Sidney* and me; for Colonel *Sidney* by the way knew nothing of all this, and I was cautioned by my Lord *Shaftsbury*, that I should not tell my Friend *Sidney* any thing of it, and asking him the reason why I should not. Says he, I can't well tell; but you will wonder when I tell you, that his own Friend Major *Wildman* has barred him and would not let him know it. The Gentleman is now dead; but I will assure you he did know nothing of this for a Month after; for he was gone into the Country; but after my Lord *Shaftsbury* was dead, I told him the History of all these Transactions, which he was before a Stranger to.

After this, when I had acquainted him with what had been intended in *London*, and what Preparations had been made, and how what was intended had been suppressed, and in what Posture Affairs then stood. We then took up a Resolution to form a Council, that might for the time to come give such Directions as might regulate the Motions of this Affair. Thereupon we began to think of the Persons who they should be. He undertook to speak to my Lord of *Effex*, and Mr. *Hampden*, and I was to bring the Duke of *Monmouth* to a right Understanding with him in it. So I went to the Duke of *Monmouth*, and told him Colonel *Sidney* did present his Service to him, and would willingly wait on him, but that he thought it would do him hurt, because he was a Person of such Note, and thereupon so obnoxious that it might prejudice him to have him seen to come to him; and therefore if his Grace would please to appoint any third Place, he should be very glad to kiss his Hand. Says the Duke, I do not know any where truly to appoint. Why then, said I, I will tell you a Place: Let us e'en go to his House (having before prepared Colonel *Sidney* for it) and take him by Surprise and dine with him, and then there will be the less Suspicion; But, said I, you must not expect to be treated as the Duke of *Monmouth*, because he does not expect you; but take him as a Philosopher, and dine with him as he uses to dine at his own Table. Says the Duke of *Monmouth*, I care not for Entertainment; I will go with you: And there at that time did the Duke of *Monmouth* undertake to bring in my Lord *Ruffel* and my Lord of *Salisbury*. This was the only Discourse preparatory to it that ever I knew of. Within a Fortnight or three Weeks after, nay, I think it was less than Ten Days after, Colonel *Sidney* came to me, and told me, my Lord of *Effex* was very forward in it. The Duke of *Monmouth* would prepare my Lord *Ruffel*, and my Lord *Salisbury*; and he himself did not doubt, but Mr. *Hampden* was very willing to be in it too; and they had appointed a Meeting at Mr. *Hampden's* House, and he would carry me thither to the House; and this was the first Meeting that I knew of; and there we met all Six.

Mr. Att. Gen. About what time was that?

Lord Howard. It was about the middle of *January*; and truly I think I could reduce it to a certain Day or two by the Persons where I lodged.

Mr. Att. Gen. What was debated there?

Lord Howard. When we came there every one discoursed what he would. There was a Discourse of the Time and Places where to rise; but among other Things it was resolved as a Principal Point, that there should be a Preparation made for the Design, by a Treaty with those of *Scotland*, and an Understanding settled with *Argyle*, and a Messenger sent to my Lord *Argyle*, and others. And before this was done, we could not be ripe for any Resolution: But this must be speedily done.

L. C. J. Pray, my Lord, give me your Favour, I would not interrupt you; but to make Things clear as we go, I desire to ask you, when you came first to Mr. *Hampden's* House, who spake first, when you were all met together?

Lord Howard. Every body discoursed what they pleased.

L. C. J. But who gave an Account of the Reason

son of the Meeting? Will you please to recollect, and tell what you know, who began the Discourse?

Lord Howard. Something introductive to it was said by Mr. *Hampden*, we being at his House, as 'tis natural to conceive for any Gentleman at whose House People are met, to say, Pray let us sit down and talk of our Business. Something leading and introductive was said by him.

L. C. J. Pray, my Lord, as near as you can remember, will you give an Account what was the thing he began to discourse of? Did he seem to take any Notice, or have any Knowledge of your Meeting, and other Things before?

Lord Howard. It was a general Hint and Intimation to us of the Ends of our Meeting, that we were there come to consult and advise one with another, how to put Things into a better Method and Posture than formerly: And he desired that we would sit down and discourse of these Things. My Lord, I would not charge myself with Particulars positively.

Mr. At. Gen. Upon what Questions did you debate and consult, my Lord?

Lord Howard. Those were started severally. Some would speak of the Time when it should be, whether it were not convenient now, or when. Others offered something concerning the Places whether it should be begun in the City or in the Country, or both together. Others took it into Consideration, what Persons were to be prepared in the several Countries to be assisting in it, that were probable to carry it on. And then some discoursed concerning the raising of Money, and then what Sum should be raised, and I think that was started by the Duke of *Moumouth*; but I am sure the Sum that he named was 20 or 30000 *l.* The last Thing that was talked of, but which was concluded to be the Thing principally to be taken care of, was the settling such a Concurrence and Correspondence with *Scotland*, that they might chime in at the same time, that so we might give as many Diversions both from home and abroad as could be at one and the same time.

Mr. At. Gen. My Lord *Howard*, Did Mr. *Hampden* discourse of this Matter?

Lord Howard. I cannot speak to the Discourse of any one in particular; for I cannot say it was put to the Vote as we formerly express'd it, but it may be said we were all consenting and concurring.

L. C. J. Did any of you dissent from the Raising?

Lord Howard. No, no, my Lord.

Mr. At. Gen. Did any of you oppose it at all?

Lord Howard. No, no, That was discoursed of as a thing resolved.

L. C. J. I ask you this Question, my Lord *Howard*, Was there any sort of Complaint made of the Government, that it was uneasy and that occasioned you to enter into these Debates?

Lord Howard. There was, I cannot say a Complaint, because there was no Person to complain to; but it was spoken of as a Matter of great Grievance, that such a Force and Violence should be put upon the City in their Election of Officers, and the tendency of that as to all Juries, tho' I cannot distinctly remember the particular things.

L. C. J. You say you were talking of a Messenger to be sent into *Scotland* to my Lord of *Argyle*, and others to chime in with you in this Matter, as you say, pray did you come to any Resolution about that, and what did you resolve upon?

Lord Howard. That there should be one only at that time. And afterwards it was the matter of the Debate at the next Meeting, which was that

Meeting at my Lord *Ruffel's* which was about this time twelve-month in *February* some time.

Mr. At. Gen. How long after the first Meeting at Mr. *Hampden's* was that?

Lord Howard. My Lord, I think it was about a Fortnight.

Mr. At. Gen. Who was there?

Lord Howard. The same Persons that met before. But then there was little spoken of but the Business of *Scotland*.

L. C. J. Was Mr. *Hampden* there at the second Meeting?

Lord Howard. He was there.

L. C. J. At my Lord *Ruffel's* you say it was?

Lord Howard. Yes.

Mr. At. Gen. What Resolution did you come to then?

Lord Howard. Then we came to a Resolution that some body should be sent, and we began to discourse who was fit, and Colonel *Sidney* he propounded *Aaron Smith*, to some of the Company he was known, to others not; but those that did know him did approve of him as a fit Person.

Mr. At. Gen. To whose Province was that committed of sending this Person into *Scotland*?

Lord Howard. Col. *Sidney* undertook it himself.

Mr. At. Gen. Did the rest consent to it?

Lord Howard. Yes, No body did oppose it, but left it to him.

L. C. J. Did you name the Person then that was to go?

Lord Howard. He was not so named as to be with any solemnity approved or disproved; but it was left to Col. *Sidney* to manage it, and he naming *Smith* as a fit Person, (he told us that by the by not to put it to the Question for our Approbation) and some of us knew the Person, others did not. I was one that did know him, and did think him a very fit Man to send.

L. C. J. Pray, my Lord, who was the Person? Be pleased to tell the Jury so as they may know it.

Lord Howard. *Aaron Smith*.

Mr. Just. Withins. Had you any discourse with Col. *Sidney*, my Lord, afterwards that he was sent?

Lord Howard. Yes, my Lord.

L. C. J. Pray give an account of that.

Lord Howard. About three or four Days after this Meeting at my Lord *Ruffel's*, I went to visit Colonel *Sidney* at his House, and while I was there in the Room, he went to his Cabinet, and out of a Drawer where there were five or six hundred Pounds in Gold as I could guess, he took a good many Pieces, I do not know directly how many; but he took out so many as he said were threescore Guineas that he was going to carry to *Aaron Smith*, I went not in my own Coach, and therefore went away with him in his Coach, and he set me down at *Southamptonstreet* at my own Lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your Meeting at my Lord *Ruffel's*, where you say you intrusted Col. *Sidney* to send one into *Scotland*?

Lord Howard. I think it may be less than a Week, four or five Days, that I saw him carry the Money. After this, he said, he had given him this Money, and was gone: And when he was dispatched, in a Week after I was making Inquiries after him, and Col. *Sidney* said, he had not heard of him since he went away; but about a Fortnight or three Weeks Col. *Sidney* said he had

heard

heard of him, that he was at *Newcastle* and staid there; but he wondered he could hear no more of him. I then went into *Essex*, and when I came back from thence, he told me, he was come, but I had never seen him, not to this Day, indeed I had once appointed a Meeting with him at Mr. *West's* Chamber; but something or other happened, we did not meet.

Mr. At. Gen. We have done with my Lord *Howard*; if they will ask him any Questions, they may.

L. C. J. They know their time, when the King's Attorney has done with any Witnesses, then they may examine him if they please. If they will not, call your other Witnesses.

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

Mr. Jones. No, no, by Advice they are to ask him nothing.

Mr. At. Gen. We shall give your Lordship and the Jury an Account in the next place, that we have traced *Aaron Smith* into *Scotland*. And for that we shall call some Witnesses which indeed we did not produce before at any Trial, because we had not then discovered so much. We shall bring you the Person at whose House he lay at *Newcastle*, and the very Messenger that was sent with him to conduct him a By-way into *Scotland*. Call *Sheriffe* and *Bell*.

L. C. J. Look ye, Gentlemen, You that are at the Bar there, you must let the Jury stand by themselves. I see there are a great many others intermingled with them, and you, Gentlemen of the Jury, if any Whisperer talk to you, we expect that you should tell us who they are; for we will suffer no Remarks to be made but what are openly made to the Court, and the Jury, by the Counsel of both sides.

Mr. At. Gen. Swear *Sheriffe* and *Bell*.

[Which was done.

Mr. Williams. What is this Man's Name, Mr. Attorney? Friend, What is your Name?

Witness. My Name is *Sheriffe*.

Mr. At. Gen. Pray give my Lord and the Jury an Account what you know of any Person that lay at your House some time since, and whether you have seen him since? My Lord, this Gentleman did not know *Aaron Smith* before, and therefore I desire Mr. *Atterbury* may be called and examined again. Mr. *Atterbury*, do you know *Aaron Smith*?

Mr. Atterbury. Yes, I know him very well.

Mr. At. Gen. Had this Gentleman a View of *Aaron Smith*?

Mr. Atterbury. Yes, he had. He was brought where *Aaron Smith* was, and this other Person was by before him too, and I was by when they had a View of him.

Mr. At. Gen. Now, pray give an Account what you know of the Man you saw.

Mr. Sol. Gen. Where is *Aaron Smith*?

Mr. Atterbury. He is in the King's-Bench Prison, and he was brought by *Habeas Corpus* to *Whitehall* before the King, where these two Persons were brought likewise, and there this Man, *Sheriffe*, did own that *Aaron Smith* was the Man that was at his House; and the other, *Bell*, owned that he travelled towards *Scotland* with him, and that he was hired to shew him the Way into *Scotland*.

Mr. At. Gen. Did *Aaron Smith* say any thing?

Mr. Atterbury. He would not answer any thing at all, nor say a Word.

Mr. At. Gen. Pray give an Account, Mr. *Sheriffe*, who it was that lay at your House, and when

it was, and what he said was his Business, and by what Name he went.

Mr. Sheriffe. Indeed his Business I did not know; but he was at our House about the middle of *February*, it was thereabouts.

L. C. J. When was it? What *February*?

Mr. Sheriffe. The last *February*.

Mr. At. Gen. You say he was at your House last *February*, pray tell the Court where that is?

Mr. Sheriffe. At *Newcastle*.

Mr. At. Gen. Do you keep any Inn there?

Mr. Sheriffe. Yes.

Mr. At. Gen. What Sign?

Mr. Sheriffe. The Sign of the *Black-Spread-Eagle*.

Mr. At. Gen. And what did he do there?

Mr. Sheriffe. He staid there one Night and went away, and returned again in twelve Days or thereabouts, and came to my House again.

Mr. At. Gen. Whither did he go from you?

Mr. Sheriffe. He went *Southward* as I suppose, I know no farther.

Mr. At. Gen. But when he first came to your House, which way went he?

Mr. Sheriffe. He went *Northward* towards *Scotland*, as he himself said, and desired to have one to shew him the way: And I sent for this Man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he first came to your House about the middle of *February* was twelve-month, whither was he bound then, *Northward* or *Southward*?

Mr. Sheriffe. He was going to *Scotland*, that is *Northward*.

L. C. J. And you say, after he came back again, and lay another Night at your House.

Mr. Sheriffe. Yes, ten or twelve Days after he did.

L. C. J. And which way went he then?

Mr. Sheriffe. Then he came *Southwards* towards *London*.

L. C. J. Did you take exact Notice of the Man?

Mr. Sheriffe. Yes, I saw him before his Majesty and the Council.

L. C. J. And upon your Oath, that same Man you saw there was the same Man that lodged at your House in *February* was twelve-month?

Mr. Sheriffe. Yes, it is.

Mr. At. Gen. What Name did he go by at your House?

Mr. Sheriffe. He went under the Name of Mr. *Clerk*, but what his Surname was I can't tell.

L. C. J. Had he a Servant with him?

Mr. Sheriffe. He had a Man with him that staid at our House during the Time of his going *Northward*.

Mr. At. Gen. What did he call his Name?

Mr. Sheriffe. *William Langston*.

Mr. At. Gen. Did he desire you to furnish him with a Guide?

Mr. Sheriffe. He told me his Servant did not know the Way, and his Horse was a little lamish, and desired me to get a Guide for him. For after he had dined at our House, it happened to be a rainy Day, and he could not go farther that Night, and therefore desired me to get him a Man that knew that Country, and I sent for this same Man, and he hired him; and he went along with him next Morning, my Lord.

Mr. At. Gen. Whither was he to go?

Mr. Sheriffe. Truly I did not know; but he told me he did not know the Way into *Scotland*, and

and I directed him to a Gentleman's House at *Jadbrough* in the way.

L. C. J. Is that the Road to *Scotland*?

Mr. Sheriffe. Yes, the High Road to one Part of *Scotland*.

L. C. J. Did he tell you to what Part or Place of *Scotland* he was to go?

Mr. Sheriffe. He named the West of *Scotland*, I think he named *Douglas*, but I do not know what Place certainly he designed for.

Mr. Att. Gen. Then where is *Bell*?

Bell. Here.

Mr. Att. Gen. Had you a view of this Man they call *Aaron Smith*?

Bell. Yes, I had.

Mr. Att. Gen. Give an Account, whether you saw him in the North, and when, and where.

Bell. This Man, *Mr. Sheriffe*, sent for me. I live at *Newcastle*, and there I keep Hackney-Horses to serve any Gentlemen, or be a Guide to them as there is occasion; and *Mr. Sheriffe* sent for me, and when I came, he told me the Gentleman wanted a Guide into *Scotland*. We immediately agreed, it was upon *Thursday* Night before that we call *Easter-Eve*.

L. C. J. When was it, say you?

Bell. It was the *Thursday* before *Easter-Even*, so they call it with us, that is, *Sbrove-Tuesday*.

L. C. J. Ay, they call it so in those Places, because 'tis the Even of the Fast of *Asb-Wednesday*, the Beginning of *Lent* — Well, go on.

Bell. We went away on *Friday* the next Morning on our Journey towards *Jadbrough*, and the second Day, which was *Saturday*, in the Afternoon, my Horse tired, whereupon he left me with my Horse, and took the Man's Man of the House where he left me, to guide him, for my Horse would not ride up with him, being tired, and he resolving to go on, and he bid me follow him on the *Sunday* Morning to *Jadbrough* Town, which I did, and we staid there all *Sunday*. And on *Monday* Morning I saw him take Horse, and another Man that was his Guide, and away they went, as I think, he said towards *Douglas* he was going. And he paid me, and I returned again from him to *Newcastle*, and left him.

L. C. J. Pray, how far was this; you say you went with him to *Jadbrough*, how far distant is that from *Newcastle*?

Bell. To *Jadbrough*, my Lord?

L. C. J. Yes.

Bell. 'Tis forty Miles, my Lord.

L. C. J. How near *Scotland* is it?

Bell. 'Tis within some six Miles of the *English* Border.

L. C. J. Did you see him at any time after that?

Bell. I saw him at his coming back again; being at *Sheriffe's* House, his Wife asked me, if I would go up and see the Gentleman that I went with towards *Scotland*: So I went up, and he made me eat and drink at the Table with him.

Mr. Att. Gen. What Name did he go by?

Bell. He went by the Name of *Clerk*.

Mr. Att. Gen. Was there any Servant with him?

Bell. There was a Man that came with him as a Servant there, and was all the time at *Newcastle*, that he was gone towards *Scotland*, 'till he came back again.

L. C. J. *Mr. Attorney*, Did this Man see *Smith* at the time the other saw him?

Bell. Yes, I did.

L. C. J. And is that the Man that went by the Name of *Clerk* at *Newcastle*, and that you went with towards *Scotland*?

Bell. Yes, it is.

Mr. Atterbury. And when they charged him with it, *Aaron Smith* did not deny it.

Mr. Att. Gen. Did you go any By-road to get into *Scotland*?

Bell. No, 'tis the Road Gentlemen usually go to *Jadbrough*, and so on; because 'tis something the nearer Way to that Part of *Scotland*, as we judge it to be, therefore Gentlemen use it.

Mr. Att. Gen. Is it an high open Road?

Bell. Yes, 'tis the high open Way to that Part of the Country.

Mr. Att. Gen. My Lord *Howard*, Pray, were the Names of any of the *Scotchmen* mentioned at your Meeting that were to be sent for?

Lord Howard. Yes; there was my Lord *Melvin*, Sir *John Cockram*, and one *Campbel*.

Mr. Att. Gen. Now, my Lord, we will give you an Account, That as *Smith* went into *Scotland*, so these Persons soon after came into *England*.

Juryman. My Lord, we desire that my L. *Howard* would name those *Scotchmen* that were to come.

Lord Howard. There was my Lord *Melvin*, Sir *John Cockram*, and one *Campbel*, one that was of my Lord *Argyle's* Name and Family; and there was another Name, but I can't remember what that Name was.

Mr. Att. Gen. We shall give you an Account, my Lord, that they came immediately after this to Town; and at the breaking out of the Plot they absconded.

L. C. J. *Mr. Attorney*, Has my Lord *Howard* his Pardon?

Mr. Att. Gen. Yes, my Lord, he has.

L. C. J. Then your Lordship may be cover'd.

Lord Howard. I can't tell but they may ask me some Questions.

Mr. Att. Gen. Then you may be uncover'd when they ask them, in the mean time your Lordship may be covered, Swear Sir *Andrew Foster*. [Which was done.] Pray, Sir, will you tell my Lord and the Jury what you know about the *Campbels*, and Sir *John Cockram's* being in Town. Or any other *Scotchmen* that you know of.

Sir Andrew Foster. My Lord, I did see those Gentlemen in the Beginning of last Summer. Sir *John Cockram*, and *Mr. Monroe*, and *Campbel* the Son, I did see, but the Father I did not, but I do know he was in Town, tho' I saw him not.

Mr. Att. Gen. How do you know it?

Sir Andrew Foster. I had Messages from them.

L. C. J. Sir *Andrew*, you say, you saw Sir *John Cockram* and *Monroe*.

Sir Andrew Foster. Yes.

L. C. J. Did you see any body else?

Sir Andr. Foster. I saw Sir *George Campbel* the Son.

Mr. Att. Gen. What became of them upon the Discovery of the Plot?

Sir Andrew Foster. Sir *John Cockram* did abscond, and *Mr. Monroe* was taken into Custody.

Mr. Att. Gen. What became of the others?

Sir Andrew Foster. The *Campbels* were both in Custody.

Mr. A. Gen. Did you see any Commission they had?

Sir Andrew Foster. I did see a Commission that Sir *John Cockram* had.

Mr. Att. Gen. What was it for?

Sir Andrew Foster. To make a Purchase of some Plantations beyond Sea, I think it was *Carolina*.

L. C. J. Ay, where my Lord *Shaftsbury* had an Interest.

Sir Andr. Foster. It was some of the *West-Indies*.

L. Howard. I did omit that Passage, my Lord—

Mr. Att. Gen. Pray, was it discoursed then, what should be the Blind for these Gentlemen that were notorious Dissenters, that they should come to Town from *Scotland* about?

Lord Howard. It was to carry on a Plantation in *Carolina*. The *Scotch* Gentlemen were personally known to my Lord *Ruffel* only; and my Lord *Ruffel* was to write the Letter to them, and, I suppose, did.

Mr. Att. Gen. *Mr. Atterbury*, What do you know of these *Scotchmen* coming to Town; and what became of them afterwards?

Mr. Atterbury. My Lord, about the Beginning of *July*, 4th, 5th or 6th, or thereabouts, I had some Information, That there were some *Scotch* Gentlemen that had been shifting up and down, and at that Time were about *Black-Friers*, lodged there secretly. I immediately went with the King's Proclamation, and some Warrants that I had to apprehend some Traitors that were fled: And when I came, I found that *Mr. Common Serjeant* having notice of them, had beat up their Quarters, and they were endeavouring to escape by Water; but there they were caught. There was *Sir Hugh Campbel*, and *Bayley*, and *Sir George Campbel*, and some others, I know not the Names of them all; truly I can't tell whether *Monroe* was not another, but *Sir Hugh Campbel* I had in my Custody, and *Bayley* was immediately committed to the *Gatehouse*; and the rest of the Gentlemen I afterwards took in a cunning Hole by *Moor-Fields*, in a back House. And when I came there, I found them lying on the Bed in the Middle of the Day; and had them Prisoners in my Custody two or three Months; and then they were all sent out of my Hands into *Scotland*, Prisoners. Six of them there were, my Lord, that I saw.

Mr. Att. Gen. We have done, my Lord, only we desire that a Word of a Record may be read.

Mr. Williams. What Record is it, Sir?

Mr. Att. Gen. Of Colonel *Sidney's* Attainder.

Mr. Williams. My Lord, we shall desire your Judgment, whether that Record ought to be read against *Mr. Hampden*; I perceive by *Mr. Attorney*, that 'tis a Record of the Conviction of *Mr. Sidney*, which ought not to be given in Evidence against *Mr. Hampden* upon this Indictment.

Mr. Att. Gen. We make use of it, to shew how upon former Trials, upon this Evidence, Verdicts have gone.

Mr. Williams. We are in your Judgment, my Lord, if by Law it may be given in Evidence against *Mr. Hampden*, who is neither Party nor privy to it, nor indicted for the same Offence.

Mr. Att. Gen. Let it alone then.

L. C. J. Well, *Mr. Attorney* does not press it. What say you to it, Gentlemen, for the Defendant?

Mr. Williams. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for *Mr. Hampden* the Defendant upon this Indictment here before you. This Indictment is a severe Indictment: It is a very high Crime of which my Client is accused. How far the Evidence tends to reach it, you have heard; and I shall, with the Patience of the Court, particularly observe it to you. But I shall first speak to the Indictment itself: It says, that *Mr. Hampden* being a Person of a turbulent Disposition, and seditiously intending to disturb and disquiet the King's Peace, and to stir Sedition, and to bring the Government into Danger, did conspire, &c. As to this Matter, Gentlemen, there is no manner of Proof of what the Indictment charges, as to the Disposition of the

Person accused; nor that he had any other Design, than what my Lord *Howard* hath now sworn. Then it says further, that *Mr. Hampden* did consult and conspire with divers Persons to execute these Purposes; and particularly for the making and raising of an Insurrection in the Kingdom. This is laid as the particular Fact; And for this purpose he did further conspire with several Persons to provide Arms and armed Men: And for their fulfilling of this, he did further consult with several Persons, that some Persons should be sent into *Scotland* to stir up the King's Subjects in *Scotland*, to a Concurrence and Conjunction with some People in *England*, about this his evil Design. How far this Indictment is proved upon the Defendant, Gentlemen, is the Question before you. He has pleaded Not Guilty, and hopes to satisfy you he is not. Gentlemen, as to what Evidence has been given you so far as 'tis Positive and Affirmative, I mean the Testimony of my Lord *Howard*, in that Part, it is impossible for us that are of Counsel for the Defendant directly to contradict him with Proof, or to give a direct positive Proof in answer to it: I say, 'tis impossible for us to contradict him, who gives such a positive Evidence of Fact. By the Evidence of my Lord *Howard* he tells us there were six Persons in this Council, as he is pleased to call them. By his Evidence, three of the six are dead, my Lord *Ruffel*, Col. *Sidney*, and the Earl of *Essex*; He himself is the Fourth, the Defendant is the Fifth, who cannot give Evidence for himself; and the Duke of *Monmouth*, who is the Sixth, being away, there is not any Person in being, that should contradict my Lord *Howard's* Affirmative in this Part of his Evidence but the Duke of *Monmouth*, whom we cannot have here, since it appears by the Evidence, *Mr. Attorney-General* could not prevail to have him at this Trial; therefore Proof of that Nature cannot be reasonably expected from my Client to acquit himself by a positive Contradiction of what my Lord *Howard* has sworn. Then in this Case we must, as in all Cases where a Person does swear directly against a Defendant, endeavour to satisfy and persuade your Lordship and the Jury, upon Circumstances arising out of this Fact, and further Circumstances attending the Fact, and by probable Arguments and reasonable Inductions out of the Evidence, that this Gentleman, the Defendant, is not guilty of what he is charged with.

In the first Place, we shall observe upon the Testimony of my Lord *Howard*, that as to some Things he is very positive and particular: He has an incomparable Memory, and speaks particularly to Persons, particularly to Places, particularly to Times. But, Gentlemen, as to that which is the principal Part of his Evidence, and which most affects the Defendant, and wherein it concerns us to contradict or disprove him, he is wanting as to that Circumstance of Time. He that is so exact in his Memory as to other Circumstances, is not positive, nor any thing like positive, as to the Times of the Meeting. For they would imagine, that the first Meeting the Defendant was concerned in, was at his own House. He describes the House and the Place very exactly, but as for the Time, he only says it was about the middle of *January*: He carries other Things in his Memory positively; and whether it might not be expected in a Case so remarkable as this, and which so nearly and highly concerned himself, that he should be as particular in the Time, as he is in other Things, you may rationally judge. His Lordship

ship sometimes is very particular as to Time: He tells you in his Relation about my Lord *Shaftsbury*, that his going to him was on the *Saturday* after *Michaelmas-Day*; and then he pursues it to the second and third of *October*. He is positive to many several Days; upon which I would observe, that he being particular to a Day, as to other Things, may well be expected to be ready (if it be true) to be as particular as to the Time of this Meeting: But therein he is to seek; he is doubtful as to that. And you must give us leave, Gentlemen, to make this Observation, that since he will not be particular to that Time, we do apprehend that he gives himself a little Loose that we may not meet with him to contradict him in that Circumstance: For if he should be positive therein, as he is in the other Matters that concern not the Defendant, we might perhaps by clear pregnant Circumstances contradict, if not disprove his Lordship, that it is not probable (if possible) it should be true what he affirms. But, Gentlemen, we must answer it as well as we can; and since he is so cautious, we must meet him by Arguments in another way. Another Thing we should observe upon my Lord's Evidence, is this; that my Lord, tho' he be particular as to many Facts and Things relating to my Lord *Shaftsbury*, where he names other particular Persons, I think *Col. Rumsey* and *Walcot*, and names the particular Discourses, particularly instancing in them, between him and my Lord of *Shaftsbury*, between him and *Walcot*, and between him and other Persons; yet he has not made use of any one Circumstance of Fact in this Case of the Defendant's now before you, that does justify what he has said, save only that of *Aaron Smith*; not any one Circumstance of Fact. So that there is no more than the bare Saying of what my Lord *Howard* is pleased to deliver, no more than his Oath, nay, no more than his Observation and Inference of much of what passed in the Company of several Persons, without any concurring Circumstances in Fact to justify or confirm his Testimony. It might have been an easy Matter, if all that my Lord *Howard* says was true, that there was such a Meeting at Mr. *Hampden's* House by such and such Persons, to prove that such Persons, or some of them met there. But that there should be no Person to prove, that these Gentlemen, or any of them, were there; nor any other Fact or Circumstance in the World, to go along with my Lord *Howard* to justify his Assertion, is very wonderful, and may well make it doubtful that it should not be true: And the rather, Gentlemen, (if it be true, as my Lord *Howard* would have us) because there was a second Meeting of all these Persons at my Lord *Russel's*, which was so publick and open a Place, and yet no Man to concur or go along with my Lord *Howard* in any one thing; no particular Fact assigned to justify his Testimony as to this Meeting, is strange, if it be true.

So then, Gentlemen, there is no more than what my Lord *Howard* has sworn, without any one Circumstance to back it, to prove the Defendant guilty. My Lord, taking this upon the main of my Lord *Howard's* Evidence, it will be pretty hard too upon the Nature of the Fact, that he is pleased to prove against this Gentleman, to make an Answer to it: And truly, I think as hard for you to believe it. Gentlemen, he would imagine, that there should be Men raised, Men armed, a Discourse of Money, and this done as

he would have it, about the middle of *January*; and yet nothing at all done, though there appears no manner of Discovery of this very Contrivance, till about *July*. Neither is there any thing done in order to the raising of Men, the arming of Men, or the levying of Money all this while. So that there is no one Fact of any kind whatsoever, that goes along with what my Lord *Howard* has said.

My Lord, and Gentlemen, another Thing we would desire to observe, is this, and here we shall begin with what we have to say, as to our own Arguments and Circumstances, that we have to take off from the Testimony of my Lord *Howard* in this Case: In the first Place, it appears by the Evidence of my Lord *Howard*, that he was very deep in a Conspiracy against the Government, and to make a Disturbance in the Kingdom long before this, that he now speaks of against the Defendant, that is plain enough, for he tells you, that my Lord *Shaftsbury*, and He at *Michaelmas*, were contriving of Projects to overturn the Government, and raise a Rebellion. It appears plainly by his Evidence, that my Lord *Shaftsbury*, when he left his House, was resolved upon it, and my Lord *Howard* was very solicitous to carry on the same Design; nay, he was so active in it, that he tells you, that he did create Messages between my Lord of *Shaftsbury*, and the Duke of *Monmouth*, and would needs go by a false Insinuation of his own, to draw in the Duke of *Monmouth*, by telling his Grace, his Information he had from *Walcot*, and not saying he came from my Lord *Shaftsbury*, with whom he says he had been discoursing; but he would put it under some sort of Disguise, the better to prevail. So that it appears my Lord was very criminal, and guilty, in this Case. Why then, Gentlemen, my Lord being so highly criminal, and there being a Discovery of this Conspiracy by *Keeling* and *Rumsey*, and *West*, having made a more manifest Discovery, and this happening in *July*; Then it was high Time my Lord *Howard* might conceive for him to secure himself, and save one, he being thus Guilty, as he declares: It is but reasonable to conjecture, he then began to place his Security in a Pardon; and that there were no other Means to save his Life, and that the way to it, must be by some further Discovery of a Conspiracy against his Majesty and the Government: And having since obtained a Pardon, it is agreeable, that whatsoever my Lord *Howard* has done in this Case, he has done for his own sake, to purchase his own Pardon for a Treason he was so deep in, and to out-do all the Witnesses that went before him, by fresh Testimony against the Defendant and others: This might incline him to go an Inch or two, or more, beyond the Discovery of *Keeling*, *West*, and *Rumsey*; to have but said the same Thing that was proved by three or four Witnesses before him, might not perhaps have availed him: May not the indifferent believe it in this Case, to be the Interest and Security of my Lord *Howard*, by these Means to merit his Pardon? May it not be believable, that what he hath said, he hath said only for his own sake, and that he has, by exposing this Gentleman, and the Blood of others, procured himself a Pardon?

L. C. J. What do you mean by that, Mr. *Williams*?

Mr. Williams. By being a Witness against the Defendant and others, he has procured his own Pardon.

L. C. J. That is a little harsh Expression—

Mr. Williams. My Lord, I explain myself thus—

L. C. J. 'Tis an harsh Word and too roundly expressed; you had need to explain yourself; 'tis a little too rank, as though the King's Pardon were to be procured by Blood.

Mr. Williams. My Lord, I intend nothing of hardship or amiss, but to speak according to my Instructions, and to make the best Observations I can, out of the Evidence of my Client: I will express myself as well as I can, that my Lord *Howard* being a Witness against Men in a Case of this high Nature; and there being other Witnesses before, and besides himself to the Discovery of the late Conspiracy against the Government, it concerned him to give an home Evidence in the Case, or else he could not have any Expectation of his Pardon: For if he had done no more than what others had done before him, when there were three Witnesses besides, and they had got the Start in the Discovery, his Discovery had been in vain; and therefore he was concerned perhaps to strain, that he might make such a Discovery as might answer his End; and this will arise naturally, I suppose, out of what has happened in this Case: For it seems, though it was something long before he got his Pardon, now he has it. My Lord, another Thing is this, How far my Lord *Howard* will be credited in this Matter, we shall leave his Credit to you, Gentlemen, upon what we shall prove. For we shall make it out by Persons of great Honour, and Persons of great Integrity, that upon Discourse concerning this Conspiracy, my Lord *Howard* did declare, that he knew of no Persons that were guilty of having any Hand in it; he declared it upon his Honour, he declared it upon his Religion, and he used all the Affeversions that were possible for a Man to offer to make himself believed.

My Lord, it may be objected, as it has been sometimes, that that was to out-face the Conspiracy, and so stop the Prosecution of what he knew himself to be guilty of: But however, thus far we may make use of it for the Defendant, that if my Lord *Howard* would in the Face of Heaven, pawn his Honour, his Trust, his Conscience, and his Religion, to assert that which was not true, and under all those Vows and Engagements affirm an Untruth; a Man that would deal so, and speak an Untruth with that Solemnity, I think, is not a Person of the same Credit, as a Person of certain known Truth and Veracity. For if a Man will say one Thing one Time, and that with solemn Vows and Affeversions, and swear another Thing quite the contrary another Time, he does not stand so fair for Credit, I think, as he that always maintains, and avows the Truth. So far we may make use of it very safely, I think, as to my Lord's Credit.

My Lord, another Matter that we have to urge, is, that since the Trial of my Lord *Ruffel*, and since the Trial of Colonel *Sidney*, my Lord *Howard* has in Discourse owned, that my Lord *Ruffel* died innocent. If that be true, it will have a great Weight sure with you, Gentlemen, to discredit my Lord's Testimony: For then he hath contradicted what he hath sworn. For if my Lord swore, that my Lord *Ruffel* was Guilty, as all the World knows he did; and afterwards Soberly, and Publickly, shall have said he died Innocent, he has contradicted his own Evidence, and his own Oath; and sure is not to be believed as to what he swears now against the Defendant. My Lord, it did not rest there; but since the Trial of Co-

lonel *Sidney*, it will be proved by Witnesses; that my Lord *Howard* did declare that Colonel *Sidney* had hard Measure. This will be proved by Witnesses; and 'tis rather to be presumed, he meant hard Measure as to his own Testimony, which he was best knowing of, than of any thing else as to his Trial. Now, how this Person of great Honour can solve this, and how it can stand with his Oath, and his Honour; I will leave it to you, Gentlemen, to judge of it. My Lord, I have another Matter to say, that with me seems to have very great Weight: My Lord *Howard*, upon some Occasions has said, being in Discourse with a very great Intimate of his, and the Man being speaking of the World to come, speaking of Eternity, speaking of the Immortality of the Soul, speaking of the Rewards and Punishments of another Life; my Lord *Howard* should say to him, *How long wilt thou persist in this Folly? How long wilt thou be so foolishly prevailed upon, as to believe the World was ever made, or will ever have an End?* My Lord, if a Person be of that Opinion, (and a Man's Judgment in such Things will discover itself in his Words) how far the Testimony of a Man of that Persuasion shall influence a Jury when he stands single, when there is no fact to justify him, in Point of probable Circumstance, will be easily observable, and I must leave it to the Gentlemen of the Jury to consider.

My Lord, we have another Saying of my Lord *Howard's*, which we shall give you an Account of in the Proofs, and that was in relation to his Pardon. Being free in Discourse, as my Lord is a Man very liberal that way, and his Friend enquiring whether he had his Pardon: *No*, says he, *nor I cannot have it, till the Drudgery of Swearing be over.* Truly 'tis a very odd Thing, that a Man should call that Drudgery, that is his Duty. To testify the Truth, is as much the Duty of every honest Man, as any thing else. Men have died for the Truth, and we look upon those as Martyrs, and the best of Martyrs that die for the Truth. Now, that this noble Lord, or that any Man should call this a Drudgery, which is so manifest a Duty, by giving a true Testimony to preserve the King's Life, and support the Government against the Contrivance and Conspiracies of evil Men, is but an odd Insinuation, and truly I think is rather to be taken in this Sense, as to my Lord, that he did strain a little to make his Discovery the more profitable to him; and so did say more (so far I may safely go) than any one else did say. And my Lord, This is that that I would observe upon the first part of the Evidence.

As for that Part that concerns *Aaron Smith*, the Evidence given by *Sheriffe* and *B.!!*, I submit that to your Lordship, how far that can any way affect Mr. *Hampden* the Defendant. It is introduced to fortify the Testimony of my Lord *Howard*, and it is introduced by himself thus: That at their Meeting at Mr. *Hampden's* House, there was a Discourse of some Assistance to be had from *Scotland*; but says he, at the second Meeting at my Lord *Ruffel's*, then it came to a further Discourse, and Colonel *Sidney* did undertake to name a Person to send thither; and a Person was named; he does not say Mr. *Hampden* was concerned in it, or that Mr. *Hampden* named the Man, or any thing particular as to Mr. *Hampden*, more than that he was in the Company. Mr. *Hampden* had no Hand in the Undertaking, or sending him into *Scotland*; that was altogether the Part of Mr. *Sidney*, save this, that he says my Lord *Ruffel* writ the Letter that

that was to go by him. It does not appear Mr. *Hampden* was at all concerned in it, but only was there.

L. C. J. And consented to it.

Mr. Williams. I would not strain any thing, my Lord, further than the Evidence is.

L. C. J. Nor do not misrepeat it neither.

Mr. Williams. I design not any such Thing, my Lord.

L. C. J. But you do though; for he swears it, every one of them consented.

Mr. Williams. By Silence it must be then. For he does not say, that he said any thing. He swears only Colonel *Sidney* undertook to manage it, to send a Person; and my Lord *Ruffel* to write the Letter.

L. C. J. And all the rest consented to it.

Mr. Williams. What is meant by Consent, when nothing was said, I must leave to the Jury. I must agree, the Lord *Howard* did swear, that my Client was in their Company, but how far he did, or did not consent, does not at all appear, and how far this will charge my Client, I must leave to you, Gentlemen. But the Proof, as to this Matter, stands thus; that *Aaron Smith* was at *Newcastle* in *February* last, that he went publickly. Now, my Lord *Howard* says, that he went to agitate a Confederacy between the Malecontents of *Scotland*, and those in *England*. Now it is strange, that a Man that was to agitate such a Concern, should go publickly with a Servant to *Newcastle*; so publickly as to be known again; and of his own accord tell them he was going to such a Place in *Scotland*. And be it so in Fact, will any Man apply this to any thing was done before? (as my Lord *Howard* says about a Consultation to join in Rebellion.) Will any Man think, that he should talk at that kind of Rate, if that were his Employment, and tell whither he were going? But I rely upon this, in Point of Evidence. 'Tis not proved yet, that *Aaron Smith* was in *Scotland*. That he came within six Miles of the Borders of *Scotland*, is proved; but it is not proved he was in *Scotland*, or did agitate any Conspiracy there; or did any thing more than go within six Miles of the Borders of *Scotland*. But then they would press it further, and they say, that there were some *Scotch* Gentlemen, that in the Summer came here into *England*, and that they hid themselves when the Plot was discovered. It does not appear my Client had any Conversation with these *Scotch* Gentlemen, or any of them, or was ever in their Company. 'Tis a very remote Inference to bring any thing of this to affect my Client in this high Charge.

My Lord, we shall add one Thing more to disprove that Part of the Indictment, that lays the Imputation of Turbulency and Sedition to the Charge of Mr. *Hampden*; and which also will shew the Improbability of his being concerned in any thing of this Nature. We shall prove him to be a Person of a sober Conversation, of a retired Life, and studious Disposition; and as an Evidence for the Defendant, we shall prove, that he in *October* 1680, left *England* for his Health's sake, and went into *France* for the Recovery of his Health. He continued there till about *Michaelmas* was Twelve-month, then he returned. 'Tis true, he continued in *England* from *Michaelmas* to the Time they speak of; but we shall make it plain, that in *February*, my Client, and my Lord *Montague* had adjusted Matters between themselves, to go the Beginning of Summer again into *France*, there to continue and a-

bide some Time for their Healths. Here is a strange kind of Imagination, that this Contrivance between my Lord *Howard* and my Lord *Shaftsbury*, that was going on before this Time, and that was disappointed, and my Lord *Shaftsbury* went away, and afterwards died in *Holland*, was taken up by my Client, and those other Persons, when my Client, as we shall prove, never intended to stay in *England*. My Lord, he was a Parliament-man in both the last Parliaments, but appeared in neither of them, being all the while in *France*, for the Recovery of his Health. We shall prove him to be one studiously inclined, that he lived a retired Life, and kept very little or no Company; and you will hear from Persons of very great Honour and Quality, that he is, as to his Person, and as to his Opinion; and then we shall submit it to you, Gentlemen of the Jury, whether you can believe him guilty of this he is charged with, which is your Issue. You are to try, whether he be Guilty, or Not Guilty of the Crime charged in the Indictment.

Mr. Wallop. My Lord, and Gentlemen of the Jury, I desire to make one Observation, before we call our Witnesses.

L. C. J. Pray do not take up our Time altogether in Speeches, but go on to your Evidence.

Mr. Wallop. I desire to observe but one Thing, my Lord.

L. C. J. Make your Observations at last, but spend not our Time in Speeches. I know you will expect to be heard at last, and so you shall, whatever you will say.

Mr. Williams. Call the Earl of *Anglesey*, the Lord of *Clare*, and Lord *Paget*, Mr. *Ducas*. [*Who appearing was sworn.*] Now we have him here we must begin with him, my Lord. Mr. *Ducas*, pray what did you hear my Lord *Howard* say at any time concerning this Conspiracy, and who were concerned in it, and who were not?

Mr. Ducas. My Lord *Howard* came once to the House of Colonel *Sidney*, I believe it was about 8 Days after the Imprisonment of Colonel *Sidney*; and when he was in the House, I asked him, What is the Matter, my Lord? He did answer me he was told there was a Plot against the King and the Duke, and one general Insurrection to be made, and that Colonel *Sidney* sent a Man into *Scotland*, to which thing my Lord *Howard* swore, laying his Hand on his Breast, saying, *God knows all Things, and God knows I know nothing of that; and I am sure if Colonel Sidney had known any thing, he would tell me*; and I said, what is the Matter, my Lord? Are you afraid? And he made Answer to me, *No honest Man is safe in his own House, I pray you lend me a Bed to lie in*. And he asked me about the Goods of Colonel *Sidney*, because of the Plot and such Things, and he desired to have them removed to his House; and he said, rather than go to the *Tower* he would do any thing.

Mr. Williams. Speak again to the Jury that did not hear you, what said my Lord *Howard* to you?

Mr. Ducas. He said, rather than to be a Prisoner again he would do any thing.

Mr. Williams. Who to be a Prisoner again?

Mr. Ducas. My Lord *Howard*.

Mr. Att. Gen. What Things were spoken of?

Mr. Ducas. He said he would do any thing.

Mr. Williams. Were you speaking of the Conspiracy? Of the Plot?

Mr. Ducas. He spake of the Plot, and said he knew nothing of it.

Mr. Williams. What did he say, Sir?

Mr. Ducas. He said to me and swore, he knew nothing of it, and called God to witness.

Mr. Williams. Pray, did he then say he would do any thing rather than go to the *Tower*, when you were talking of the Plot and Conspiracy?

Mr. Ducas. Yes, he would do any thing rather than be a Prisoner again.

Mr. Att. Gen. Pray, what did he say?

Mr. Ducas. He raised up his Hands on high, and said, he knew nothing of the Plot, or of the Insurrection, or that Colonel *Sidney* had sent any Man into *Scotland*.

Mr. Williams. When was this?

Mr. Ducas. I believe it was 8 or 9 Days after the Imprisonment of Colonel *Sidney*.

Mr. Att. Gen. What Day of the Month, and what Month was it?

Mr. Ducas. He was Imprisoned about the End of *June*.

Lord Howard. My Lord, it would be necessary that I should make an Answer to this, and I know not whether I should make a particular Answer to every one; for here is a whole Set of Witnesses, I see.

L. C. J. No, let them alone. You must not interrupt them, they must go on with their Evidence; and when 'tis a fit Time for you to answer them, the Counsel for the King will call you.

Mr. Williams. Pray swear *Mr. Howard*. [*Which was done.*] Pray, Sir, will you please to acquaint my Lord and the Jury what you know, of what my Lord *Howard* has said of the Plot, and who were concerned in it?

Mr. Howard. My Lord, what I have said is in the Paper of *Mr. Sidney's* Trial, and truly I can say no more than what I said there.

Mr. Williams. Pray speak out, Sir, and tell it again to this Jury.

Mr. Howard. I was told I spake it very loud then.

L. C. J. Pray, Sir, speak as you please, we don't direct you in what Key you shall speak; speak in what Key you will.

Mr. Howard. Then if you will have me speak it, I will speak it as loud again. My Lord, is *Mr. Hampden* here?

L. C. J. Yes, there he is.

Mr. Howard. In the first Place I do not know *Mr. Hampden*, My Lord, I cannot promise to speak the very Words that I spake the last time: I cannot make them so fit as one Tally fits another.

Mr. Att. Gen. Consider, Sir, you were not Sworn then, you are Sworn now, that is the Difference, and therefore pray consider of it.

Mr. Howard. My Lord, As near as I can, I will repeat the same Words again, I had little Acquaintance with my Lord *Howard*; but meeting him often at my Brother's House (and being he was extraordinary pleasant Company, I must needs say that he was so, and a Man of great Wit) and I coming from *Whitehall*, he asked me what News of the Plot? I told him there were some People that were in the Proclamation, or would be, and I named their Names. Says he, I know none of them except *Rumbold*, I think; and by chance I met him passing through the *Old-Exchange*, and he saluted me very kindly. After this my Lord *Ruffel* was taken, and when my Lord *Howard* heard that, says he, then we are all undone. And I very much fear it is a Sham Plot, since they have seized upon my Lord, and I

doubt he is a lost Man. After that, I think, as near as I can remember—The next Thing was this—— If you look upon the Book, you will see what I said there.

L. C. J. We are not to look upon the Book, Man. You must give your Evidence your self. *Mr. Howard*, I hope you do not Swear by Book? Let the Truth come out in God's Name, whatever it be.

Mr. Williams. Ay, my Lord, we desire to have Truth come out.

L. C. J. Ay, whether it be of the one Side, or the other, God forbid but Truth should be spoken. *Mr. Howard*, go on.

Mr. Howard. Then, my Lord, Colonel *Sidney* was taken, and, says my Lord, I am extremely troubled for Colonel *Sidney*, for he is my very good Friend; said I, why are not you concerned for my Lord *Ruffel*? He is of your Blood, says he, he is a Man without Exceptions. There is no Man of such Honour as he, but I am concerned for Colonel *Sidney*, as that particular Man that has obliged me above all the World, but I never heard my Lord *Howard* name *Mr. Hampden* in all my Life.

Lord Howard. I'll give you Reason for it, my Lord, if you please, why I said so.

L. C. J. My Lord, this is Evidence for the Defendant. If the King's Counsel will call you afterwards to make Answer to any of these things, then is your time to speak. We will not let them interrupt you when you come to speak, nor must you interrupt them now. We are bound to hear both Sides, and so by the Grace of God we will do.

Lord Howard. My Lord, I desire both he and his Brother may stay in Court, for I have something to say to them.

Mr. Williams. Pray, what did you hear my Lord *Howard* say concerning the Plot?

Mr. Howard. He did deny it positively, and said, they acted nothing but what was Legal, and he said it 500 times over.

Mr. Williams. Did he deny it?

Mr. Howard. Yes, he did.

L. C. J. But when he said they acted nothing but legally, what did he mean? Was this Plot legal?

Mr. Howard. I had former Discourses with my Lord *Howard* at other times, and I asked him; My Lord, what tends all this to? Your going up into the City and making these Meetings? Says he, we intended nothing but what is legal. There is not one Man in the Company, that I know of, intends any thing else.

Mr. Williams. What was my Lord's Opinion of the Plot in *June* or *July*, or *August*?

Mr. Howard. He said he knew nothing of it, nor could he believe there was any such thing. When those Persons were named that were to kill the King, *Lord bless me*, said he, *can there be such a thing in Nature? That any Men should be so wicked. But that there is one Man of Honour or Estate, or Conscience, that ever had any such Thought, it can never enter into my Head, I can never believe it.*

Mr. Williams. When was this?

Mr. Howard. When *Rumbold* and those other People were put into the Proclamation.

Mr. Att. Gen. *Mr. Howard*, Then I will ask you your Opinion, whether, in your Judgment, every Man that was in the Plot could not have said so much?

Mr. Howard. I suppose every Man in the Plot would

would have defended himself as well as he could, but I cannot tell what way.

Mr. Thompson. Sir, Did he barely affirm it, or with Affeuerations and Imprecations?

Mr. Howard. My Lord was not put upon his Oath before me.

Mr. Att. Gen. *Mr. Howard,* Don't you believe a great many that were concerned in this Plot would deny it?

Mr. Howard. I am to give my Opinion only for my self, not for other People.

L. C. J. Have you done with him?

Mr. Williams. Yes, my Lord.

L. C. J. Then go over, Sir.

Mr. Howard. My Lord, I am troubled with Fumes, and cannot well endure a Crowd, therefore I desire I may have leave to be gone.

L. C. J. You may go, if you please.

Mr. Williams. Call *Mr. Edward Howard.* [*But he did not appear.*] Then swear my Lord of *Clare* and my Lord *Paget.* [*Which was done.*]

L. C. J. Well, What do you ask my Lord of *Clare*?

Mr. Williams. My Lord of *Clare,* Will your Lordship please to acquaint the Court and the Jury, what you heard my Lord *Howard* say concerning the late Conspiracy?

Earl of Clare. My Lord, Some Indisposition I have had of late, together with the great Rigour of the Season, has confined me to my House these six Weeks, so that I should not come here but upon this Summons of a *Subpœna,* which I thought I ought not to refuse. I suppose I need not repeat much of what was said at *Col. Sidney's* Trial.

L. C. J. My Lord, You must give what Evidence you have to give now.

Mr. Williams. My Lord, The Gentlemen of this Jury have not heard it, therefore you must say it all over again to them.

Earl of Clare. Sometime after *Mr. Sidney* was taken, my Lord *Howard* came to see me, and complaining of the Times, said, That all things were very sad and dangerous, and if ever he was questioned again, he would not Plead, but desire them only to count Noses, for the quickest Dispatch he thought was best: I replied sure his Lordship was in jest. He said, No, he was in earnest, for he was confident if he came to Trial, they would have his Life, let him appear never so Innocent. I said, I hoped not so, it was only his Lordship's Fear, and because of that, I thought it might be presumed he would venture much, rather than be tried. And discoursing of the late Primate of *Armagh's* Prophecy; he said, for his part, he thought the Persecution was already begun, and he did believe it would be very sharp, but withal, he hoped it would be but short; and then he began to wish himself beyond Sea till the Troubles were over; and in compliance with his Lordship I did wish so too. But as to *Sidney,* He did with great Affeuerations very much assert his Innocency. He said, he thought he was not guilty of any of the things laid to his Charge; and spoke with large Encomiums in his Praise, as he had Obligation to do, and seemed to bemoan his Misfortunes; which I said I had then reason to believe he was real in, for I believe never any Man was more engaged to another than he to *Colonel Sidney.* I told him there was a Discourse of some Writings of *Mr. Sidney's* that were taken; he said he was confident they would make nothing of any Writing of his; I told him, I supposed he meant, legally they could not do it. This was

the most he said; as to *Mr. Hampden,* he mentioned nothing that I know of.

Mr. Williams. Did he seem to declare any Opinion about the Plot or Conspiracy in general, that there was any such thing or not?

Earl of Clare. I do not remember it.

Mr. Att. Gen. My Lord of *Clare,* Did you never hear my Lord *Howard* before this complain of the Government, that it was amiss, and was to be rectified?

Earl of Clare. Yes, he often did complain. Every body knows my Lord's way of Discourse.

Lord Howard. Pray, will you ask him, if my Lord of *Clare* used to fall out with me upon those Discourses.

Earl of Clare. My Lord was always good Company.

Mr. Att. Gen. You mean *à propos,* my Lord.

Earl of Clare. I understand what you mean by *à propos,* you are a learned Man, I know.

Mr. Sol. Gen. My Lord of *Clare,* if I apprehend your Lordship aright, my Lord *Howard* was discoursing of the Primate of *Armagh's* Prophecy, and said he thought the Persecution was already begun, and would be sharp, though he hoped it would be short, and he wished himself beyond Sea till the Troubles were over, and your Lordship wished your self so too?

Earl of Clare. No; I said in compliance with his Lordship, since he wished himself beyond Sea till the Troubles were over, I wished he were there too?

L. C. J. But I perceive all these Discourses concerning the Government are reckoned but Jests and Matter of Laughter, but 'tis a very rank way of jesting, I assure you.

Mr. Williams. My Lord, We call our Witnesses seriously, they are the King's Counsel that jest.

Mr. Att. Gen. Was this before my Lord *Howard* was taken?

Earl of Clare. Yes, but after *Mr. Sidney* was taken.

L. C. J. Well, who do you call next?

Mr. Williams. My Lord *Paget,* Pray what have you heard my Lord *Howard* say concerning the Plot, and when?

Lord Paget. My Lord sits there, and I believe he may remember it was about the 7th of *July,* the *Saturday* before my Lord went into the Country, to the best of my Memory, which was, I take it, the 9th of *July,* upon *Saturday* the 7th at Night my Lord came to see me; I told him I was glad to see him Abroad, and not concerned in the Disorders that were then so general; my Lord told me he had been wished Joy by several, and he took it ill, because it looked as if he were guilty. 'Tis true, my Lord was a Man of a great Finesse and Readiness in Discourse, and came easily into all Company, my Lord said that was true, but he had so carefully behaved himself, but he was sure they could not touch him with any thing, nor did he know any thing of any body else that he could charge them withal.

Mr. Williams. When was this, my Lord?

Lord Paget. This was the 7th of *July.*

Mr. Att. Gen. Pray, good my Lord, Why did you joy my Lord *Howard*? Had you any Reason to mistrust my Lord?

Lord Paget. No other Reason than because I knew he was a Man of great Freedom in Discourse, and might be concerned upon that Account.

Mr. Att. Gen. And he would frequently discourse

course against the Government, I suppose?

Lord Paget. No, I never heard my Lord discourse against the Government in my Life.

Mr. Williams. Swear *Dr. Burnet.* [*Which was done.*] Pray will you, Doctor, acquaint the Court, what you have heard my Lord *Howard* say concerning the late Plot, and when?

Dr. Burnet. My Lord *Howard* came to see me the Day after the Discourse of the Plot broke out, *Thursday* I think it was, on *Wednesday* it began to be talked of. The thing was little understood then, but in general a Plot was discovered, and my Lord, with a great many Protestations, lifting up his Hands and Eyes to Heaven, protested he knew of none, and believed there was none, and spake of the whole thing as a Contrivance.

Mr. Williams. This was the Day after the Discovery broke out?

Dr. Burnet. Yes, the Day after that I first heard of it.

Mr. Williams. Had you any other Discourse with my Lord about it?

Dr. Burnet. I had not seen my Lord before of some Months. And then he spake a great deal to me. He told me he had been in *Essex*, and after that he went to the *Bath*, and went so early and came away before the Company came, because he would avoid all Danger. And he expressed great Apprehensions of Fear of Sham-Plots, and spake of False Witnesses and former Designs of that Nature. The Truth of it was, one had possessed me with a Belief of the Thing, it being then but a secret, but he strove to dispossess me of that Belief, and his whole Discourse ran upon that for an whole Hour, and expressed, as I said, great Fear of some Sham-Contrivance, and spake much of False Witnesses, wishing that he were beyond Sea.

L. C. J. What, he spake as if there were like to be great Heats and Stirs, I suppose?

Dr. Burnet. No, the Talk was about the Discovery, which he said he believed was a Contrivance.

Mr. Williams. Did my Lord *Howard* use to come to you sometimes?

Dr. Burnet. Yes, he used to come frequently to see me.

Mr. Att. Gen. *Dr. Burnet,* Pray let me ask you one Question, you speak of solemn Declarations and Protestations made by my Lord *Howard*, what gave the occasion to such a Solemnity?

Dr. Burnet. I will tell you the occasion truly, tho' it was never asked me before. It was thus: I being possessed with the Belief of the thing by one that assured me it was true, and would soon appear to be so, I argued upon that Belief to convince my Lord *Howard*, that it was true, and he argued a great deal to dispossess me of that Belief. And I said, if there be any such thing, I pray God forgive them that are concerned, but certainly it is one of the monstrouslest ill things that ever was done; for hereby they have done all that could be done to ruin the Protestant Religion. He was smoking a Pipe of *Tobacco*, and he laid down his Pipe, and lifted up his Hands and Eyes to Heaven, and protested to me, he neither knew of any such thing, nor believed it, but it was all a Contrivance.

Mr. Att. Gen. By his Discourse, you possibly might understand what he meant; did he mean being privy to the Murder of the King, or the Raising of Rebellion?

Dr. Burnet. There was not a Word then of the

Affassination, but it was all of the Plot in general.

Mr. Sol. Gen. Did he make no distinction?

Dr. Burnet. We talked of nothing but Plot in general. For the Particulars were not then known. It was only about the general Notion of a Plot.

Mr. Att. Gen. Pray, What was the reason you had to believe it?

Dr. Burnet. There was a Gentleman from *Whitehall* that came to see me, and he did assure me it was true, as being one that had it from a Privy Counsellor. This was on the *Wednesday*, when the Council sat long about it; and nothing of Particulars was then let out, but only a Discourse in general of such a thing, and he said it would be found to be a certain Truth.

Mr. Att. Gen. But, Doctor, did not you a little wonder at the Carriage of my Lord *Howard*? That a Man that was not accused, that you heard of, should make such solemn Protestations?

Dr. Burnet. My Lord, he said just in this manner as I have told you, when I said, *Pray God forgive them, if any have been concerned in such a thing*, he laid down his Pipe, and lift up his Hands and Eyes. Whether he thought I suspected him, or no, I can't tell, he best knows his own Thoughts.

Mr. Att. Gen. Did he say a Word of *Mr. Hampden*?

Dr. Burnet. No, there was not any particular Person named.

Mr. Recorder. Doctor, he would not make you his Confessor.

Dr. Burnet. His whole Hour's Discourse was to dispossess me of the Opinion and Belief I had entertained of the Plot.

Mr. Just. Holloway. This was about *July*, you say?

Dr. Burnet. I cannot remember the very Day of the Month, I believe it was the latter end of *June*, but I am sure it was before any body was committed, that we heard of.

Mr. Recorder. *Dr. Burnet,* you say you did believe there was a Plot then?

Dr. Burnet. Yes, I did so, and he labour'd to dispossess me of that Belief.

Mr. Recorder. Pray do you believe it now?

Mr. Williams. What a Question is that, *Mr. Serjeant*?

Dr. Burnet. I make no Doubt of it, Sir, as to the Affassination.

Mr. Att. Gen. My Lord *Newport*, Why do you lift up your Hands? You don't do well; for it is a very proper Question.

L. C. J. Well, call your next Witness, Gentlemen.

Mr. Thompson. Swear *Mr. Gisborne.*

[*Which was done.*]

Mr. Williams. Pray, Sir, will you acquaint the Court and the Jury, what you have heard my Lord *Howard* say about the late Conspiracy?

Mr. Gisborne. My Lord only said he knew nothing of the Plot; that is all I can say.

Mr. Williams. When was this?

Mr. Gisborne. The *Saturday* before he was taken into Custody; then it was that your Honour did say so, my Lord.

Mr. Att. Gen. Ay, and a 100 more, I believe, would say so, that might be concerned in it for all that.

Mr. Williams. Swear *Mr. Blake.* [*Which was done.*] Pray acquaint my Lord and the Jury, what Discourse you had with my Lord *Howard* about

about his Pardon, and what he said to you?

Mr. Blake. My Lord, about the Month of *October* last my Lord *Howard* sent to me to know how I did, and desired me to come and make him a Visit. The next Day I went and waited upon my Lord at his Lodging at *Whitehall*, and after the Compliments passed, my Lord began a Discourse of the Plot, and I told him, That I heard none of the Witnesses had their Pardons, but only *Keeling*, the first Discoverer. My Lord told me no, but he had a Warrant for his Pardon, and with that he pluck'd it out and shewed it me, and I read it. And then I told him I thought it was of no Avail, without he had his Pardon actually under his Seal; he said no, but he had their Word and Honour: But, said he, when I first received the Warrant, they said I should not meddle in it, till I heard from them again, which I have not yet; and I ascribe it to no other Reason but only this, That I must not have it till the Drudgery of Swearing is over.

Mr. Williams. When was this?

Mr. Blake. In *October* last some time. So I then took my Leave of my Lord, and my Lord desired me to come and see him at Night about six o' Clock in the Evening, for he had a great many come to him, but then he should be at Leisure, and had many Things to say to me.

Mr. Att. Gen. At that Time did my Lord express himself as discontented, and that it was irksome to him to be brought as a Witness?

Mr. Blake. He only said those Words that I have told you, and looked up and turned up his Eyes towards Heaven when he said so.

Mr. Williams. Pray, where is *Mr. Benjamin Mercer*? Swear him. [Who was sworn.]

L. C. J. What do you ask him?

Mr. Williams. We bring him to prove that my Lord *Anglesey* was served with a *Subpœna*, but is so ill of the Gout he can't come.

L. C. J. If that be all, there is no Question of it, but that he was *subpœna'd*.

Mr. Williams. If your Lordship please, we will prove in what Condition my Lord *Anglesey* is, and then we hope your Lordship will give us Leave to prove what my Lord has said concerning my Lord *Howard's* Discourses with him.

L. C. J. No certainly, *Mr. Williams*, and I am sure you ask it not as expecting it should be granted.

Mr. Williams. I lay it before your Lordship and the Court.

L. C. J. Ay, You lay it before us, but you are a Lawyer, do you yourself think fit it should be done?

Mr. Williams. My Lord, I must submit it to you.

L. C. J. Come, Will you consent that what the Duke of *Monmouth* has said, shall be given in Evidence, and then I presume the King's Counsel will consent to your Request?

Mr. Williams. I consent? Here is my Client, my Lord, in Court, I can consent to nothing.

L. C. J. But if so be there be leave given on one side to tell what another Person has said, why should not it be consented to on the other side, that it be proved what a third Person that is absent has said for them?

Mr. Recorder. Ay, Will you consent that we prove what the Duke of *Monmouth* has said?

Mr. Williams. We don't know what the Duke of *Monmouth* has said.

L. C. J. But you do know 'tis not Evidence, nor fit to be granted what you ask.

Mr. Jones. You know that 'tis not for your purpose what he has said.

Mr. Williams. My Lord, We must go according to our Instructions.

L. C. J. But you know the Law, why should you offer any such thing? Your offering it will make the *Lay gens* that know not the Law think that the Court puts Hardships upon People, in denying things which you that understand the Law know can't be granted.

Mr. Williams. I do not press it, my Lord, but leave it with you.

L. C. J. Why do you spend our time in urging things that are nothing to the purpose, and cannot be allowed?

Mr. Williams. Now, my Lord, We will go on to another part of our Defence, and that is, to call Witnesses to the Reputation of *Mr. Hampden*, and his Behaviour, to satisfy you, that he cannot be such a Person as the Indictment says, and as he must be if it be true what this Gentleman, my Lord *Howard*, has sworn.

Mr. Thompson. We will first examine my Lord *Paget*. [Who stood up.]

Mr. Williams. My Lord, We ask you to that Question. Have you known this Gentleman *Mr. Hampden*, and what sort of a Man is he?

Lord Paget. I have good reason to know him. I have known him a great while, and have always believed him an honest and a prudent Man, a Man of Honour and Virtue, and Integrity, my Lord; and I have had no Reason to have other Opinion of him. I know he has been always, ever since he came abroad into the World, a Man that hath loved his Study, and Books, and a contemplative Life. And therefore I should not be apt to believe, That he could apply himself to a Thing so contrary to his own Nature, and to that Way that he delighted in, and had always hitherto applied himself unto, I mean to engage in a Design of so much Malice and Wickedness.

Mr. Williams. My Lord, You have had a long Conversation with the Knowledge of *Mr. Hampden*, you say. What say you as to his Disposition; because this Indictment says he is a Person of a turbulent, factious, seditious Spirit?

Lord Paget. I have always known him a quiet peaceable Man, not meddling in Business, very friendly, free from all Turbulency, not of much Acquaintance, nor desirous to make much.

Mr. Att. Gen. Pray, my Lord *Paget*, upon the same Oath you have taken, have you not at any Time heard him express Dissatisfaction as to the Male-administration of the Government?

Lord Paget. No, never to me in the least.

Mr. Att. Gen. Not at the Time of the last *Westminster* Parliament?

Lord Paget. No, I never heard him then, nor at any time else.

Mr. Williams. *Mr. Hampden* was then in *France*, and not in that Parliament, though he was a Member. Where is *Mr. Pelham*?

L. C. J. Here he is. He sits down here. [Pointing to the Table.] What would you ask him?

[He was sworn.]

Mr. Williams. Sir, will you please to acquaint the Court, what Acquaintance you have had with *Mr. Hampden*, and how long? And what you know of him?

L. C. J. You hear the Question, Sir, how long have you been acquainted with *Mr. Hampden*?

Mr. Pelham. I have been acquainted with *Mr. Hampden* about five or six Years living near him,

and all that I could observe from him was, that he was a Man much addicted to his Studies, kept much at home, and I never observed that he had much Acquaintance; but as to the Business before you, I know nothing of it, nor ever heard him speak any thing relating to it.

Mr. Williams. As to his Spirit and Disposition, is he a turbulent Man?

Mr. Pelham. No, I never found him any thing like it. We never talked together of Matters of that Nature.

Mr. Att. Gen. Were you ever in his Company at any time when he discoursed about Government?

Mr. Pelham. No, I was never with him at any time when he discoursed of any such thing.

Mr. Williams. Sir Henry Hobart.

Mr. Att. Gen. My Lord, we oppose his being a Witness. He is one of his Bail.

Mr. Williams. That was upon the *Habeas Corpus* Act, not upon this Indictment.

Mr. Att. Gen. If he be Bail for the Defendant, my Lord, he cannot be a Witness.

Mr. Williams. I appeal to the Rule of Court, whether he was not Bail upon the *Habeas Corpus* Act only?

Mr. Att. Gen. Appeal where you will, the Bail cannot be a Witness.

Mr. Williams. We moved for an *Habeas Corpus* the Beginning of last Term upon the late Act for *Habeas Corpus's*. And then at the last Day of the Term upon *Habeas Corpus* he was brought up thither, and was bailed upon that Writ.

Mr. Att. Gen. Are not you one of the Bail, Sir Henry Hobart?

Sir Henry Hobart. I was one of his Bail, I think it was for his Appearance.

L. C. J. If he be one of his Bail that he shall appear in this Court the first Day of this Term, and so from Day to Day, till he shall be discharged, and remains under that Recognizance, then in any Case against him he cannot be a Witness for him.

Mr. Att. Gen. But they mistake the Matter, he was then charged with this Indictment: He then pleaded to it, and was bailed to answer the Indictment; and surely in that Case he can never be a Witness.

L. C. J. That is certainly very true, and you know the Law so well, *Mr. Williams*, that I wonder you will insist of it; in every ordinary Case, it is every Day's Practice to deny the Bail to be Witnesses.

Mr. Att. Gen. Here is the Person principal, will they render him in Custody?

L. C. J. Ay, what say you, will you render him in Custody? Then we will discharge the Bail.

Mr. Williams. My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Answer my Question, Will you render him in Custody?

Mr. Williams. We will change the Bail, my Lord, and find some other sufficient Person to stand in Sir Henry Hobart's Place, rather than lose our Witness.

L. C. J. With all my Heart.

Mr. Williams. Here is Mr. *Asbburst*, my Lord, a Gentleman of very good Value.

L. C. J. But you must render him first, and change the whole Bail. They must enter into new Recognizances.

Mr. Williams. I can't tell whether we can do that so very well, because the others, I am afraid,

are not all here. He is a mighty material Witness, I am sure.

Mr. Att. Gen. My Lord, *Mr. Williams* says he is a material Witness, let him be sworn, I am so fair, I'll consent to it: Let us hear what he can say. [Which was done.]

Mr. Williams. We thank you, Mr. Attorney. I am afraid you won't live long, you are so good-natur'd.

L. C. J. But you are like to live for your Good-nature, *Mr. Williams*.

Mr. Thom, son. Sir Henry Hobart, How long have you been acquainted with this Gentleman, *Mr. Hampden*?

Sir H. Hobart. I have known him any time these ten Years.

Mr. Williams. How has he been, Sir, as to his Disposition and Spirit? Did you ever find him to be of a turbulent Temper?

Sir H. Hobart. Very far from it always.

Mr. Williams. Have you had any intimate Conversation with him?

Sir H. Hobart. I have known him all along, I say, these ten Years, but of late I have had more Converse with him some few Years in Travel.

Mr. Williams. Had you much Conversation, Sir?

Sir H. Hobart. I was with him continually at Paris, and abroad.

Mr. Williams. What say you as to his Loyalty and Principles? Was he a factious, seditious Person?

Sir H. Hobart. Sir, he always expressed a great Esteem for the Government, and great Respect and Duty to the King.

Mr. Williams. Pray, Sir, when went *Mr. Hampden* abroad to go into France?

Sir H. Hobart. He went into France for his Health about November, (80.) I think it was.

Mr. Williams. How long did he continue abroad, Sir Henry?

Sir H. Hobart. I found him in Paris the May after.

Mr. Williams. How long did you tarry there, Sir, your self?

Sir H. Hobart. I went from Paris in June, and came back again to Paris about October or November, the same Year, and I found him in France still.

Mr. Williams. And when do you take it he returned into England.

Sir H. Hobart. I was with him till he came over, which was about September, (82.) I think.

Mr. Thompson. What do you know, Sir, of his Intentions to go again beyond Sea?

Sir H. Hobart. When, Sir, do you mean?

Mr. Thompson. Since that time he came over, you say in September, (82.)

Sir H. Hobart. He told me of it often, I think it was about March, more particularly once at his own House.

Mr. Thompson. What March, Sir?

Sir H. Hobart. March (83.)

Mr. Thompson. That is last March.

Sir H. Hobart. Yes, last March, he talked of it several times, particularly once I went about some Business of my own, and then he discoursed a great deal of his going over with my Lord *Mountague* that now is; for he told me his Health was not yet established, for he came over out of an hot Country in Autumn, and had been all the Winter in this colder Country, and the Air he found had impaired his Health again. And it was not

not only what he told me, but I had a Letter from a Friend of mine in *France*, to whom I had sent to desire him to come over; but he writ me Word, no; Mr. *Hampden* was coming over again, and he would not come back again yet.

Mr. Att. Gen. Did he tell you when he intended to go over, Sir *Henry*?

Sir H. Hobart. As soon as Mr. *Mountague*, my Lord *Mountague* that now is, could get ready, who was to carry his Lady over with him.

Mr. Williams. Sir, do you know of any Preparation made by Mr. *Hampden* for it?

Sir H. Hobart. He had resolved to take his Lady with him, because Mr. *Mountague's* Lady went, and so I believe did prepare accordingly.

Mr. Att. Gen. Did Mr. *Mountague* go over?

Sir H. Hobart. He did not go then, but since he is gone.

Mr. Att. Gen. Were you in *France* then at this Time?

Sir H. Hobart. This was in *England*, at his own House.

Mr. Williams. Pray, Sir, what is his Disposition?

Sir H. Hobart. He was always inclined to a studious Life, and kept very little Company.

Mr. Att. Gen. Was this in *March*, 83?

Sir H. Hobart. Yes, he came over in *September* before. I always observed him to be of a retired Temper.

Mr. Att. Gen. You say in 1680, he went into *France*, and (82) he came over again?

Sir H. Hobart. Yes.

Mr. Att. Gen. Pray, Sir *Henry*, since you conversed so much with him, have you heard him since the last Parliament at *Westminster*, or at any time have you been by when he hath discoursed his Opinion about Government?

Sir H. Hobart. Truly, Sir, I don't take myself to be capable of discoursing with him about any such Matters.

Mr. Att. Gen. Have you heard him at any time complain of the Male-Administration of the Government?

Sir H. Hobart. No, Sir.

Mr. Att. Gen. Have you never heard any such Thing from him?

Sir H. Hobart. No, never.

Mr. Williams. Swear Dr. *Lupee* — My Lord, we must desire an Interpreter, for the Doctor speaks *French* only.

L. C. J. Swear an Interpreter.

Mr. Williams. Dr. *Burnet*, or if he be gone, call Sir *Henry Hobart* again. We must beg the Favour of you Sir *Henry*, to be an Interpreter, you understand the *French* Tongue very well.

Sir H. Hobart. I will do it with all my Heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Doctor was sworn, and the Oath repeated to him by Sir Henry Hobart in French.

Crier. You shall well and truly interpret between the Court and the Witness, and the Witness and the Court, according to the best of your Skill and Knowledge: So help you God.

Mr. Thompson. Sir *Henry*, will you please to repeat what Questions we shall ask, and what Answers he makes?

Sir H. Hobart. Yes, Sir, as well as I can, I will.

Mr. Williams. Pray, Sir, ask the Doctor this Question, If he be acquainted with Mr. *Hampden*?

Sir H. Hobart. Yes, he says very well. He lived near two Years with him.

Mr. Thompson. How long is it since?

Sir H. Hobart. Four Years since, he says.

Mr. Williams. Pray, in that time, What was his Disposition? Was he a seditious and turbulent Man? Or was he a studious retired Man, or what?

Sir H. Hobart. He says the two Years he lived with Mr. *Hampden*, he kept him Company in his Studies, and all that time he found he had no other Inclinations but for Study and Knowledge, and his Inclinations were very virtuous. He always observed in his Discourse a great Submission and Respect that he had for the Laws of his Nation, and his Prince, and to that Degree he was a faithful Subject to the King, that once he told him, in discoursing with him of the late Popish Plot, that he was ready to sacrifice his Life and Fortune for the King's Service.

Mr. Thompson. Ask him what Discourse he had with him of the Plot since it brake out.

L. C. J. Will that be any Evidence do you think, Mr. *Thompson*? Will Mr. *Hampden's* Declaration be any Evidence, he being a Person accused? Do you think he would tell the Doctor, or any body else that he was guilty, when he was like to be questioned? That would have been a wise Business indeed. You say he was a very studious Man, and a learned Man, truly if he had done that, he had bestowed his Time in Learning to very good Purpose.

Mr. Williams. My Lord, That that we would ask him is this; This Person, the Doctor, being discoursing with Mr. *Hampden* upon the Discovery of the late Conspiracy, and of the dangerousness of the time, he would have advised Mr. *Hampden* to have gone; no, he said, he would not, for he was an innocent Man, and would not stir.

L. C. J. Well, ask him what you will, but his Declaration of his own Innocence cannot be taken for Evidence.

Sir H. Hobart. He says, since this Plot was discovered, he was going one Day to visit Mr. *Hampden*, and going through *Long-Acre*, he met a *French* Minister, a *Savoyard* Minister — But, my Lord, he speaks so fast, and goes on with so much at a time, that I cannot remember it all.

Mr. Williams. Well, what said that Minister to him?

Sir H. Hobart. He says this Minister asked him if Mr. *Hampden* was not concerned in the Plot, and upon that he went and told him what the Minister had said to him — He says, he told Mr. *Hampden*, that the Duke of *Monmouth*, and my Lord *Grey* were hid — He says, upon that Mr. *Hampden* said to him, I will never fly, nor conceal myself, for my Conscience reproaches me in nothing.

L. C. J. Ask him why does he think the *French* Minister, the *Savoyard* as he calls him, should ask whether Mr. *Hampden* were in the Plot?

Sir H. Hobart. He says, Mr. *Hampden* said he would rather die innocent than fly with the imputation of Guilt upon him.

L. C. J. But ask him the Question I put, why should that *Savoyard* Parson say so? What reason had he to think Mr. *Hampden* was in the Plot?

Sir H. Hobart. He says the Minister did ask him, but he can't tell what Reason he had to think so.

Mr. Att. Gen. Pray, Sir *Henry*, ask him this Question; how long ago it was since he left him?

Sir H. Hobart. Four Years, he says.