

THE
SEIBELS
LAW FIRM, P.A.

38 BROAD STREET, SUITE 200
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

August 12, 2016

Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

RECEIVED

AUG 16 2016

80 SUPREME COURT

RE: State of South Carolina v. Venancio Diaz Perez
Appellate Case No.: 2015-001576
File No.: 79-915

Dear Mr. Shearouse:

Please find enclosed a courtesy copy of Hampden's Trial, 9 How. St. Tr. 1053 (K.B. 1684), a case cited in Petitioner/Respondent Perez's Principal Brief.

Should you have any questions or require further information, please do not hesitate to contact me.

With kind personal regards I remain

Sincerely yours,

SEIBELS LAW FIRM, P.A.



Jason S. Luck

JSL/elm
Enclosure

cc: Amie L. Clifford (via US Mail) (w/ encl)
Robert M. Dudek (via US Mail) (w/ encl)

A
COMPLETE COLLECTION
OF
State Trials

RECEIVED

AUG 10 2016

80 SUPREME COURT

AND
PROCEEDINGS FOR HIGH TREASON AND OTHER
CRIMES AND MISDEMEANORS

FROM THE
EARLIEST PERIOD TO THE YEAR 1783,
WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY
T. B. HOWELL, Esq. F.R.S. F.S.A.

INCLUDING,
IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE
FOLIO EDITION OF HARGRAVE,
UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED;

TO WHICH IS SUBJOINED
A TABLE OF PARALLEL REFERENCE,
RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN
WHICH REFERENCES ARE MADE TO THE *FOLIO EDITION*.

IN TWENTY-ONE VOLUMES.

VOL. IX.

34—36 CHARLES II.....1682—1684.

L O N D O N :

Printed by T. C. Hansard, Peterborough-Court, Fleet-Street :

FOR LONGMAN, HURST, REES, ORME, AND BROWN; J. M. RICHARDSON;
BLACK, PARBURY, AND ALLEN; BALDWIN, CRADOCK, AND JOY;
E. JEFFERY; J. HATCHARD; R. H. EVANS; J. BOOKER; E. LLOYD;
J. BOOTH; BUDD AND CALKIN; AND T. C. HANSARD.

1816.

pones, he was at the Rebellion, but took the bond tymeouslie, and that the deponent himself and the two Rayes lived on Blackwood's lands since the Rebellion, since they were brought in prisoners in March last, and that Robert Fleyming lived ther lykewayes, and this is the truth as he shall answer to God, depones he cannot write.—*Sic. Sub.*

PERTII, J. P. D.

The Lords ordaines the assyse to inclose, and returne their verdict to-morrow at twelve o'clock.

CURIA JUSTICIARII, S. D. N. Regis tenta in pretorio burgi de Edinburgh, septimo die mensis, Februarii 1683, per nobilem et potentem Comitem Jacobum Comitem de Perth Justiciarium Generalem, Richardum dominum de Maitland, Clericum et honorabiles viros Robertum dominum de Nairn, dominos Jacobum Foulis de Collingtoun, Davidem Balfour, Rogerum Hog de Harcars, et Alexandrum Sexton de Pitmedden, Commissionarios Justiciarii, dict. S. D. N. Regis.

Curia legitime affirmata.

Verdict.

The assyse all in one voyce by mouth of James Murray of Skirline, ther Chancellour,

finds the pannel William Lowrie guiltie of herbouring, and conversing with declared Rebels and fugitives proven by the depositions of the witnesses, and also finds by his judicall submission as to the probation, that he comes in the king's will.—*Sic. Sub.* J. A. MURRAY.

Doom.

After opening and reading of the whilk verdict of assyse, the lords justice generall, justice clerks and commissioners of justiciarie, in respect thereof, be the mouth of James Johnstoun, dempster of court, decerned and adjudged the said William Lowrie, To be taken to the Marcat crose of Edinburgh, upon Wednesday the last of February instant, betwixt two and four o'clock in the afternoon, and there to have his head severed from his body, and his name, memorie and honors to be extinct, and his arms to be riven furth and delate out of the books of armes, sua that his posteritie may never have place, nor be herefter bruik or joyse any honors, offices or dignities within this realm in tyme coming, and to have forfault omitted and tent all and sundrie his lands, heritages, tenements and rents, offices, titles, dignities, tacks, steadings, rouses, possessions goods and gear whatsomever pertaining to him, to our soveraigne lord to remaine perpetualia with his highness in proprietie—Which was pronounced for Doom.

302. The Trial* of JOHN HAMPDEN,† esq. at the King's-Bench, for a High Misdemeanor: 36 CHARLES II. A. D. 1684.

JOHN Hampden, esq. being brought up by Writ of Habeas Corpus, from the Tower of London, on the 26th of November 1683, and there being an Indictment preferred against him for Misdemeanor, 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

* From a pamphlet entitled, "The Trial and Conviction of John Hampden, esq. upon an Indictment of High Misdemeanor, for contriving and practising to disturb the peace of our sovereign lord the king, and stirring up Sedition in this kingdom. Before the right honourable sir George Jeffreys, knight and baronet, lord chief justice of his majesty's Court of King's-bench, and the rest of the reverend judges of that Court, holden at Westminster, the 6th day of February, 1683." "I do appoint Benjamin Tooke to print the Trial of John Hampden, esq. and order, That no other person presume to print the same. GEO. JEFFREYS."

person of a wicked mind, and of an impious, unquiet, and turbulent disposition, and contriving, practising, and falsly, unlawfully, unjustly, maliciously, turbulently, and seditiously intending the peace of our sovereign lord king Charles that now is, and the coun-

+ "Hampden was now the only man of the six that was left. Yet there was nothing but Howard's evidence against him, without so much as any circumstance to support it. So since two witnesses were necessary to treason, whereas one was enough for a misdemeanor, he was indicted of a misdemeanor, though the crime was either treason or nothing. Jeffreys, upon Howard's evidence, charged the jury to bring him in guilty: otherwise, he told them, they would discredit all that had been done before. So they brought him in guilty. And the Court set 40,000*l.* fine on him, the most extravagant fine that had ever been set for a misdemeanor in that Court. It amounted indeed to an imprisonment for life." Burnet's History of his own Times, vol. 1, p. 578. See in this Collection his Trial for Treason, Dec. 30th, 1685. See, too, what Burnet says of him as it is inserted in the Introduction to the Trials for the Rye-House Plot, p. 503, of this volume.

mon 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 35th 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, 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 so-

vereign lord the king, his crown and dignity."

Cl. of Cr. How sayest thou, art thou guilty of this high misdemeanor whereof thou standest indicted, and hast been now arraigned, or not Guilty?—*Mr. Hampden.* Not Guilty.

* The Indictment in Latin is given in *Tre. maine's Pleas of the Crown*, p. 37, thus:

REX versus HAMPDEN.

"Midd. ss. Quod Johannes Hampden nup' de paroch', &c. gen' existen' homo perniciosus seditiosus ac p'son' prave mentis ac non impiis inquiet' et turbulen' disposition' ac machinans practicans et falso illicite et injuste malitiose turbulent' et seditiose intenden' pacem dict' Dom' Regis nunc et communem tranquillitatem hujus Regni Angl' inquietare molestare et p'turbare et quantum in ipso fuit seditioem infra hoc Regn' Angl' suscitare movere et periculo p'curare et gub'nationem dict' Dom' Regis in hoc Reg' Angl' an inferre Quodq; p'd' J. H. ad nequissimas nefandissimas et seditiosas intention' suas p'd' p'implend' et p'ficiend' et ad effectum redigend' ult' die Junii Anno Regni, &c. 35 et diversis al' diebus et vicibus tam antea quam postea Vi et Armis, &c. apud paroch', &c. illicite injuste malitiose et seditiose se assemblavit conveniebat consultabat conspirabat et confederabat cum diversis male disposit' subdit' dict' Dom' Regis jur' pred' ignot' et cum eisdem tractabat de eisdem suis nefandis et seditiosis compassation' imagination' et proposit' pred' exequend' p'implend' et ad effectum redigend'. Et ulterius pred' J. H. ad nequissimas nefandissimas et seditiosas machination' practication' et intention' suas p'implend' et ad effectum redigend' adtunc et ibidem scilicet ult' die Junii Anno Regni, &c. 35 suprad' et diversis al' diebus et vicibus tam antea quam postea apud paroch' pred' in Com' pred' Vi et Armis, &c. falso illicite injuste malitiose et seditiose consultabat consulebat conspirabat et confederabat de insurrection' infra hoc Regn' Angl' habend' et de procuration' et provision' armor' et Hominum armator' preparandor' in diversis locis infra hoc Regn' Angl' ad eandem nefandissimas nequissimas et seditiosas intention' compassation' imagination' et proposita sua pred' perimplend' et p'ficiend' Quodq; p'd' J. H. ad nequissimas nefandissimas et seditiosas intention' suas p'd' p'implend' et p'ficiend' et ad effectum redigend' postea scilicet dicto ult' die Junii Anno, &c. 35 suprad' apud paroch' pred' in Com' pred' Vi et Armis, &c. falso illicite injuste nequissime malitiose et seditiose consultabat agreebat et consentiebat Quod quedam persona jur' p'd' ignot' mitteretur in Scotiam ad invitand' et incitand' diversos male disposit' subdit' dicti Dom' Regis de Reg' suo Scotie ad veniend' in hoc Regn' Angl' ad advisand' et consultand' cu' prefat' J. H. et prefat' al' male disposit' subdit' dicti Dom' Regis in hoc Reg' Ang' de auxilio et assistanc' expectand' et supplend' e dicto Regno Scotie ad eas-

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.

Hillary 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 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 vobis 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.

Cl. of Cr. Sir Charles Gerard, jur' Roger Jennings, esq. jur' Henry Hoiges, esq. jur' Joshua Galliard, esq.

Mr. Williams. We challenge him for the defendant.*

L. C. J. (Sir George Jeffries.) What is your cause of Challenge?

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 wherein 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 6th's time against it.

Mr. Wallop. It is, my lord, fol. 156.

L. C. J. But I can cite you three or four

dem nequissimas nefandissimas et seditiosas intentiones et compassation' suas pred' perimpend' faciend' et promovend' in contempt' legum hujus Regn' Angl' manifest' in malum et perniciosum exemplum omnium al' in tali casu delinquen' Ac contra pacem dict' Dom' Regis nunc coron' et dignitat' suas, &c."

* As to this, see Hawkins's Pleas of the Crown, book 2, ch. 43, sect. 33, and also sect. 32. VOL. IX.

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?

Att. Gen. (Sir Robert Sawyer.) 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 it is 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, it is 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 though the judges now-a-days gave strange sort of opinions, and as though 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 knew 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 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 juryman, 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 find in some cases that are in our books, that it is held to be a good cause of challenge, lay it before the Court.

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 juryman, I speak that as my advice, but I would not have it taken for law, nor would I have it broached abroad, that though 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.

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.

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 *oyer dire*.

Att. Gen. My lord, the fact is quite otherwise, and I desire they may make it out.

L. C. J. Truly, I think it is not tantum 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 chal-

lenge 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.

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 statutes, 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.

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 cannot be jurymen. I would have you quit the man by consent, but not as a force put, as though the law were so, for the law, I think, is otherwise.

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.

Just. *Withins*. I would never, for my part, while I live, nor never did, while I was a practiser, stand upon any particular juryman.

Att. Gen. He may be a juryman by law sure.

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

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.

Att. Gen. But for no reason that has been offered.

L. C. J. No no, I do not hear any thing of reason offered for it.

Cl. of Cr. Mr. Galliard, you may go down.—Thomas Harriot, 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.

Att. Gen. No, we humoured you in one, we will not humour you any more.

Mr. *Williams*. Nay, here is something more clear for us, he is a serjeant at arms attending his majesty.

Just. *Withins*. You know our opinions already, Mr. Williams, unless Mr. Attorney consent, we cannot 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.

Att. *Gen*. Pray prove it, I do not know it for my share.

Mr. *Williams*. Will you ask him the question?

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.

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'—

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.

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'—Nehemiah Arnold, esq. jur'—John Bifeild, esq. jur'. Then the Jury were numbered, and the twelve sworn were these: Sir Charles Gerard, bart. Roger Jennings, Henry Hodges, Thomas Harriott, Thomas Earaby, William Avery, John Sharp, Charles Good, Samuel Rouse, Hugh Squire, Nehemiah Arnold, John Bifeild, esquires.

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 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 complete 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.

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 Russell, Mr. Sidney, my lord of Essex, 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 Russell's, where they did contrive together, and took upon them to be a juncto, 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 juncto, 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 Shaftesbury was a chief governor. 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 Essex. But the party have been so diligent and officious as to fling 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 summoned 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 summoned 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 sought, 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.

Solicitor General. (Mr. Finch.) My lord, we will call our witnesses, and first we begin with the duke of Monmouth.

Att. Gen. Call James duke of Monmouth.

Crier. James duke of Monmouth.

Att. Gen. Call him again.

Crier. James duke of Monmouth.

L. C. J. Was he served with a subpoena?

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 subpoenas with his servants, who promised to deliver them to him.

L. C. J. Prove it.

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 subpoena? In

what places you were to serve him, and who you left it with?

Atterbury. My lord, on Friday last was seven-night, I was commanded by Mr. Attorney-General, to carry a subpoena 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 subpoena 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 calaah, 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 subpoena, 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 subpoena, 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 subpoena 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 subpoena 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?

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 Pallmall, it is either his house or his lodging, but they call it his house. I had a third subpoena given me to the same effect. And when I came there, I asked for the duke, and a woman came to the door, Mrs. Maaly (I think they call her), she seemed to make little answer to what I said. Said I, Pray will you give this subpoena 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 before, I met Mr. Row at Whitehall, and says he to me, Mr. Atterbury, you brought a subpoena to my house a little while ago. Yes, Sir, said I, I did, had you it? Yes, I had the subpoena, 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.]

Att. Gen. Call William lord Howard. [Who was in the court.] Pray swear my lord Howard. [Which was done.]

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 Russell, yourself and others, and when; tell what you know.

Lord Howard. My lord, in January last was twelvemonth, about the midst 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 Russell, 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—

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 juncture 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 elected 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.

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 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 Wood-street.

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 fell 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 fourscore 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 unhandsofly 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 Russell had very unhandsofly 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 will assure you it is 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, it is 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 myself discourse it with the duke. Well, said he, if you will you may. This was upon Tuesday, I think the 3d of October, the 3d 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 Shaftesbury. Says he, I think the man is mad, what does he mean? We did undertake to do this, it is 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 Shaftesbury 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 she

riffs; and now for me to meet with them, I know I shall run out into passion and anger, and therefore it is better omitted. Said I, my lord, I must positively insist upon it. I must have an interview between you, for it is 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; (for 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 Shaftesbury 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 perriwig to his own house, which he thought the safest place, because he would not 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 Russell to go to him. All this while I had not spoken to my lord Russell, 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 Shaftesbury 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 Shaftesbury, 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 Shaftesbury sent a message to him and my lord Russell; but the duke of Monmouth

only told me, that my lord Russell 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 started, 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 Shaftesbury 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.

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 Shaftesbury, 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 Shaftesbury 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 Essex, 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 do 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 Russell 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 Essex was very forward in it. The duke of Monmouth would prepare my lord Russell, 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.

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.

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 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 it is 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.

Att. 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 Monmouth; but I am sure the sum that he named was 20 or 30,000*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.

Att. 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 expressed it, but it may be said we were all consenting and concurring.

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

Lord Howard. No, no, my lord.

Att. 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, though 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 Russell's, which was about this time twelve-month, in February some time.

Att. Gen. How long after the first meeting at Mr. Hampden's was that?

Lord Howard. My lord, I think it was about a fortnight.

Att. 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 Russell's you say it was?

Lord Howard. Yes.

Att. Gen. What resolution did you come to then?

Lord Howard. Then we came to a resolution that somebody 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.

Att. Gen. To whose province was that committed of sending this person into Scotland?

Lord Howard. Colonel Sidney undertook it himself.

Att. Gen. Did the rest consent to it?

Lord Howard. Yes, nobody 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 colonel 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 please to tell the jury so as they may know it.

Lord Howard. Aaron Smith.

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 Russell's, I went to visit col. Sidney at his house, and while I was there in the room, he went to his cabinet, and out of drawers where there were 5 or 600*l.* 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 sat me down at Southampton-street at my own lodging. I went no farther, 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 Russell's where you say you intrusted col. Sidney to send one in 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 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.

Att. 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 witness, then they may examine him if they please. If they will not, call your other witnesses.

Att. Gen. Will you ask him any questions?

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

Att. 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.

Att. 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.

Att. 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?

Atterbury. Yes, I know him very well.

Att. Gen. Had this gentleman a view of Aaron Smith?

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.

Att. Gen. Now, pray give an account what you know of the man you saw.

Sol. Gen. Where is Aaron Smith?

Atterbury. He is in the King's-bench

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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.

Att. Gen. Did Aaron Smith say any thing?

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

Att. 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.

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?

Sheriffe. The last February.

Att. Gen. You say he was at your house last February, pray tell the court where that is?

Sheriffe. At Newcastle.

Att. Gen. Do you keep any inn there?

Sheriffe. Yes.

Att. Gen. What sign?

Sheriffe. The sign of the Black-Spread-Eagle.

Att. Gen. And what did he do there?

Sheriffe. He staid there one night and went away, and returned again in twelve days or thereabouts, and came to my house again.

Att. Gen. Whither did he go from you?

Sheriffe. He went southward as I suppose, I know no farther.

Att. Gen. But when he first came to your house, which way went he?

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 twelvemonth, whither was he bound then, northward or southward?

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.

Sheriffe. Yes, ten or twelve days after he did.

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

Sheriffe. Then he came southwards towards London.

L. C. J. Did you take exact notice of the man?

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 twelvemonth?—*Sheriffe.* Yes, it is.

Att. Gen. What name did he go by at your house?

Sheriffe. He went under the name of Mr. Clerk, but what his surname was I cannot tell.

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

Sheriffe. He had a man with him that staid at our house during the time of his going northward.

Att. Gen. What did he call his name?

Sheriffe. William Langston.

Att. Gen. Did he desire you to furnish him with a guide?

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.

Att. Gen. Whither was he to go?

Sheriffe. Truly I did not know; but he told me he did not know the way into Scotland, and I directed him to a gentleman's house at Jadbrough in the way.

L. C. J. Is that the road to Scotland?

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?

Sheriffe. He named the west of Scotland, I think he named Douglas, but I do not know what place he certainly designed for.

Att. Gen. Then where is Bell?

Bell. Here.

Att. Gen. Had you a view of this man they call Aaron Smith?

Bell. Yes, I had.

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, Shrove-tuesday.

L. C. J. Ay, they call it so in those places, because it is the even of the fast of Ash-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. It is forty miles, my lord.

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

Bell. It is 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.

Att. Gen. What name did he go by?

Bell. He went by the name of Clerk.

Att. Gen. Was there any servant with him?

Bell. There was a man that came with him as a servant there, and was all that 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.

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

Att. Gen. Did you go any by-road to get into Scotland?

Bell. No, it is the road gentlemen usually go to Jadbrough, and so on; because it is something the nearer way to that part of Scotland, as we judge it to be, therefore gentlemen use it.

Att. Gen. Is it an high open road?

Bell. Yes, it is the high open way to that part of the country.

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 Campbell.

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 lord Howard would name those Scotchmen that were to come.

Lord Howard. There was my lord Melvin, sir John Cockram, and one Campbell, one that was of my lord Argyle's name and family; and there was another name, but I cannot remember what that name was.

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?

Att. Gen. Yes, my lord, he has.

L. C. J. Then your lordship may be covered.

Lord Howard. I cannot tell but they may ask me some questions.

Att. Gen. Then you may be uncovered 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 Campbells, and sir John Cockram's being in town. Or any other Scotchman that you know of.

Sir A. Foster. My lord, I did see those gentlemen in the beginning of last summer. Sir John Cockram, and Mr. Monroe and Campbell the son, I did see, but the father I did not, but I do know he was in town, though I saw him not.

Att. Gen. How do you know it?

Sir A. Foster. I had messages from them.

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

Sir A. Foster. Yes.

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

Sir A. Foster. I saw sir George Campbell the son.

Att. Gen. What became of them upon the discovery of the plot?

Sir A. Foster. Sir John Cockram did abscond, and Mr. Monroe was taken into custody.

Att. Gen. What became of the others?

Sir A. Foster. The Campbells were both in custody.

Att. Gen. Did you see any commission they had?

Sir A. Foster. I did see a commission that sir John Cockram had.

Att. Gen. What was it for?

Sir A. Foster. To make a purchase of some plantations beyond sea, I think it was Carolina.

L. C. J. Ay, where my lord Shaftesbury had an interest.

Sir A. Foster. It was some of the West Indies.

Lord Howard. I did omit that passage, my lord—

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 Russell only; and my lord Russell was to write the letter to them, and, I suppose, did.

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

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-Friars, 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

Sergeant having notice of them, had beat up their quarters, and they were endeavouring to escape by water; but they were caught. There was sir Hugh Campbell, and Bayley and sir George Campbell, and some others; I know not the names of them all; truly I cannot tell whether Monroe was not another, but sir Hugh Campbell 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 their 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.

Att. Gen. We have done, my lord, only we desire that a word of record may be read.

Mr. Williams. What record is it, Sir?

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 is a record of the conviction of Mr. Sidney, which ought not to be given in evidence against Mr. Hampden upon this indictment.

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.

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 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 it is 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, it is 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 this evidence, three of the six are dead, my lord Russell, col. Sidney, and the earl of Essex; he himself is the fourth, the defendant 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 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 and 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 lord-

ship sometimes is very particular as to time: he tells you in his relation about my lord Shaftesbury, 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, though he be particular as to many facts and things relating to my lord Shaftesbury, 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 Shaftesbury, 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 hath 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 one of them, met there; nor any other fact or circumstance in the world, to go along with my lord Howard to justify his asseveration, 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 it) because there was a second meeting of all these persons at my lord Russell's, which was so public 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 of Shaftesbury 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 Shaftesbury, 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 Shaftesbury 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 Shaftesbury, 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 farther 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. It is an harsh word and too roundly expressed; you had need to explain yourself; it is 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 asseverations 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 asseverations, 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 Russell, and since the trial of colonel Sidney, my lord Howard has in discourse owned, that my lord Russell 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 Russell was guilty, as all the world knows he did; and afterwards soberly, and publicly, 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 colonel 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 it is 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, it is 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 Bell, 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 Russell'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 Russell writ the letter 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 Russell 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 publicly. 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 publicly with a servant to Newcastle; so publicly 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. It is 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. It is 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. It is 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 abide some time for their healths. Here is a strange kind of imagination, that this contrivance between my lord Howard and my lord Shaftesbury, that was going on before this time, and that was disappointed, and my lord Shaftesbury 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. Ducaa. [Who appearing was sworn.] Now we have him here we must begin with him, my lord. Mr. Ducaa, 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. Ducaa. My lord Howard came once to the house of colonel Sidney, I believe it was about eight 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 aware, 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?

Ducaa. He said, rather than to be a prisoner again he would do any thing.

Mr. Williams. Who to be a prisoner again?

Ducaa. My lord Howard.

Att. Gen. What things were spoken of?

Ducaa. He said he would do any thing.

Mr. Williams. Were you speaking of the conspiracy? Of the plot?

Ducaa. He spoke of the plot, and said he knew nothing of it.

Mr. Williams. What did he say, Sir?

Ducaa. 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?

Ducas. Yes, he would do any thing rather than be a prisoner again.

Att. Gen. Pray, what did he say?

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?

Ducas. I believe it was 8 or 9 days after the imprisonment of colonel Sidney.

Att. Gen. What day of the month, and what month was it?

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 it is 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.

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 Russell 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 yourself. 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 Russell? 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.

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 have defended himself as well as he could, but I cannot tell what way.

Mr. Thompson. Sir, did he barely affirm it, or with asseverations and imprecations?

Mr. Howard. My lord was not put upon his oath before me.

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 myself, 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 subpoena, 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

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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 asseverations 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.

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.

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.

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 yourself so too?

E. 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 it is 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.

Att. Gen. Was this before my lord Howard was taken?

E. 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

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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. It is true, my lord was a man of 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.

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.

Att. Gen. And he would frequently discourse 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.

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, though 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 monstrousest 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.

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 assassination, but it was all of the plot in general.

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.

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.

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 cannot tell, he best knows his own thoughts.

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.

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 laboured 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 assassination.

Att. Gen. My lord Newport, Why do you lift up your hands? You do not 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.

Att. Gen. Ay, and 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 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 lodgings, 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 plucked 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?

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.

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?

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 subpoena, but is so ill of the gout he cannot come.

L. C. J. If that be all, there is no question of it, but that he was subpoenaed.

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 it not be consented to on the other side, that it be proved what a third person that is absent has said for them?

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 it is not evidence, nor fit to be granted what you ask.

Mr. Jones. You know that it is 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 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.

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 mal-administration of the government?

Lord Paget. No, never to me in the least.

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 never 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.

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.

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.

Att. Gen. If he be bail for the defendant, my lord, he cannot be a witness.

Mr. Williams. I appeal to the rule of the court, whether he was not bail upon the Habeas Corpus act only?

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.

Att. Gen. Are not you one of the bail, sir Henry Hobart.

Sir H. 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.

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.

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. Ashhurst, 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 cannot 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.

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 natured.

L. C. J. But you are like to live for your good nature, Mr. Williams.

Mr. Thompson. 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 10 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, (1680.) 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, yourself?

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, (1682,) 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 (1682.)

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 1683.

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 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.

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.

Att. Gen. Did Mr. Mountague go over?

Sir H. Hobart. He did not go then, but since he is gone.

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.

Att. Gen. Was this in March, 1683?

Sir H. Hobart. Yes, he came over in September before. I always observed him to be of a retired temper.

Att. Gen. You say in 1680 he went into France, and 1682 he came over again?

Sir H. Hobart. Yes.

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 do not take myself to be capable of discoursing with him about any such matters.

Att. Gen. Have you heard him at any time complain of the mal-administration of the government?

Sir H. Hobart. No, Sir.

Att. Gen. Have you ever 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

* As to this Examination, see in this Collection Mr. Erskine's observations in the Case of Hardy, A. D. 1794, previously to the third examination of Daniel Stuart; together with the arguments of the other counsel, and the opinion delivered by Lord Chief Justice Eyre, upon the admissibility of the proposed examination of Stuart.

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 cannot tell what reason he had to think so.

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.

Att. Gen. Where was it, in England or France?

Sir H. Hobart. Whilst he lived in Bloomsbury, he says.

Mr. Williams. Call Dr. Needham and Monsieur Justell. [Who appeared. And Monsieur Justell was sworn.] Pray, Sir H. Hobart, will you ask Monsieur Justell, who speaks French too, if he know any thing of Mr. Hampden's resolution to travel with Mr. Mountague into France?

Sir H. Hobart. He says, Yes. He did tell him he was going into France, and he offered to carry some books for him along with him.

Mr. Williams. What company was he to go in, and what time?

Sir H. Hobart. He says, Sir, he cannot be exact to the month when Mr. Hampden spake of going over, but he says it was a great while before this plot came to be discovered.

Mr. Williams. Was it some months before?

Sir H. Hobart. It was a month before it was known, he says.

Mr. Williams. In what company was he to go?

Sir H. Hobart. He said he was to go with Mr. Mountague.

Mr. Conyers. Pray, Sir, will you ask him, was he employed to get any French servants to be with him?

Sir H. Hobart. Yes, he says.

L. C. J. Ay, but what was the question? For there is such a crowd of people before the counsel, that the Court cannot hear Mr. Conyers's question.

Mr. Conyers. My lord, I asked him whether he was employed to get any French servants to be with Mr. Hampden.

Sir H. Hobart. Yes, he says.

L. C. J. Well there is Dr. Needham, what do you ask him?

Then Doctor Needham was sworn.

Mr. Williams. We call Dr. Needham for this purpose, my lord, to prove that these gentlemen that are accused, Mr. Hampden, and my lord of Essex, and the others, had very little esteem, and mean opinion of my lord Howard. And how one, they so little esteemed, should be let into so great a secret, will be very strange to imagine. Dr. Needham, pray, what can you say of any of these gentlemen's opinions of my lord Howard? What opinion had my lord of Essex of him?

L. C. J. Is my lord of Essex now before us? What is that to this case, Mr. Williams? Let my lord of Essex have what opinion he would of him; how does that concern the defendant?

Mr. Williams. I tell you why I offer it, my lord—

L. C. J. But pray, offer what is evidence, and keep to the business before you.

Mr. Williams. 'Falsus in uno, falsus in omnibus.' If we can prove that what he hath said of my lord of Essex is false, he is not to be believed against the defendant.

Att. Gen. Ay, but upon the evidence of my lord Howard, all the rest were convicted.

Mr. Williams. I offer it only upon what is here to day before you, he says, my client, and my lord of Essex were confederate with him upon such a design. Now if my lord of Essex was not there, then he is false in that, and that he was not, we offer this as evidence.

L. C. J. But it is not a proper evidence in this case.

Mr. Williams. It is a sort of evidence—

L. C. J. Ay, it is a sort of evidence, but it is not to be allowed. If you will prove Mr. Hampden's opinion, you may, but you must not for him bring proof of what my lord of Essex, a third person, thought of my lord Howard.

Mr. Williams. I only offer it thus—

L. C. J. Offer what is evidence, man! You are a practiser, and know what is evidence; but you have offered two or three things to day, that I know you do at the same time know is not evidence, and I speak it that it may not be thought we deay you, or your client any thing that is according to the course of law. You that know the law, know it is so as we say. Mr. Attorney has gratified you in waving three or four things already, but nothing will satisfy, unless we break the course of other trials.

Mr. Williams. My lord, what I take not to be evidence I do not offer, and where the Court over-rules me, I have not insisted upon it.

L. C. J. No?

Mr. Williams. No, my lord.

L. C. J. But you would have insisted upon it, if Mr. Attorney would not have been so easy as to consent, and the Court would have let you. Pray keep to the business, and the methods of law; you know the law very well.

Mr. Williams. My lord, I humbly apprehend this may be evidence, and I lay it before you. My lord Howard has proved that my lord of Essex and five more, of which Mr. Hampden was one, met and consulted about such matters. We may, I hope, be admitted to prove, that my lord of Essex was not there; for if we can take off his positive proof, as to any one of the circumstances, we take off from the truth of the fact. If all the persons were not there; then my lord Howard is mistaken in that, and accordingly must not be believed in the rest; therefore, my lord, I press it no otherwise: he hath proved these six persons were there. I offer this as some evidence, That it is unlikely it should be so, because my lord of Essex had so little opinion of my lord Howard, that he would never consult with him about any matter.

L. C. J. Then certainly my lord Howard is to be believed, to all intents and purposes, for here is a record of the conviction of my lord Russell, and of colonel Sidney, and all upon the testimony of this gentleman, my lord Howard; and is not that more to support his credit, than a flying report of a third person's opinion of him. And yet after all we say, it is no evidence against Mr. Hampden, and has been waved by Mr. Attorney.

Mr. Williams. Then I will not press it, my lord.

Just. Withens. It is no evidence, certainly, Mr. Williams.

L. C. J. It seems my lord Essex had such an opinion of my lord Howard's evidence, that he thought fit to cut his own throat, rather than abide the trial.

Mr. Williams. Call Mr. Murray.

L. C. J. Suppose my lord of Essex had said, That he was out of the plot, and Mr. Hampden was in, would that have been good evidence against Mr. Hampden, do you think? Pray mind what is the business before you?

Mr. Williams. Swear Mr. Murray. [Which was done.]

L. C. J. Well, what do you ask this man?

Mr. Williams. My lord, we call him as to what I opened of my lord Howard's opinion of the world to come, and rewards and punishments there.

L. C. J. Mr. Williams, Pray take notice of this: private discourses that people cannot come to make answer unto, because they cannot imagine to have them objected, are a very odd sort of evidence.

Mr. Williams. Therefore I opened it warily and tenderly; my lord, the witness will tell you the story better than I.

L. C. J. I cannot tell what Mr. Williams has said, or I have said in heat of talk or vanity. God knows how often all of us have taken the great name of God in vain: or have said more than becomes us, and talked of things we should not do.

Att. Gen. My lord, how can my lord Howard be prepared to give any answer to this?

L. Howard. My lord, this presses hard upon my reputation, my lord. I profess before God I do not know this fellow, I never saw him in my life before as I know: but a company of impudent fellows take the liberty of saying what they please.

L. C. J. To rake into the whole course of a man's life is very hard.

L. Howard. I would fain have these fellows dare to say this any where else of me.

Mr. Williams. Well, my lord, we will waive it.

L. C. J. They do not think it a fit thing to press it.

L. Howard. But, my lord, it concerns me in my reputation; who is this rascal they bring here? God's life, who is he?

L. C. J. We must be tender of men's reputation, and not let every thing come as evidence when it is not fit to be evidence, to put alders and scandals upon men that they cannot be prepared to wipe off. Is he convicted of any crime? If he is, you say something, shew the record of it.

Just. Withins. Mr. Williams. You know the case adjudged lately in this Court, a person was indicted of forgery, we would not let them give evidence of any other forgeries, but that for which he was indicted, because we would not suffer any raking into men's course of life, to pick up evidence that they cannot be prepared to answer to.

Mr. Williams. We have that respect for my lord's honour too, as not to press it, only we had it in our briefs, and we must go according to our instructions.

L. Howard. I desire to know who that rascal is? What is he? Where does he live? I will make him an example.

L. C. J. Pray compose yourself, my lord, there is nothing of this pressed.

L. Howard. To say I am an atheist, my lord? What can be a greater reflection?

L. C. J. He has not told us any such thing as yet. And we will take care that nothing shall be offered but what is fitting.

L. Howard. I vow to God, my lord, I do not know the man.

L. C. J. My lord, do you think that every thing that a man speaks at the bar for his client, and his fee, is therefore to be believed, because he said it? No, the jury are to take nothing here for evidence to guide them of what the counsel say, but what is approved. They are to judge 'secundum allegata et probata,' that is their duty.

L. Howard. Does that fellow look like a man of that figure, that I should say any thing, or have any conversation with him?

L. C. J. My lord, I don't know what he is. Go on, gentlemen.

Mr. Williams. My lord, we have done with our evidence. If Mr. Attorney will leave it here, we will.

Att. Gen. My lord, we won't mistrust the evidence, nor the court.

Mr. Hampden. My lord, I desire to speak a word myself, if you please.

L. C. J. Ay, in God's name. You, or your counsel, I will hear all you will say, and as long as you will speak, provided you speak within the bounds of decency.

Mr. Williams. My lord, I think it best to leave it to the court: We hope we make it clear that our client is innocent.

L. C. J. Would to God you were innocent, that is the worst wish I wish you, but we will either hear him or you speak, speak as long as you will.

Mr. Wallop. My lord, I desire to make but one observation.

L. C. J. Ay, in God's name make what observations you will, Mr. Wallop, I hindered you from making your observations at first, because I knew it would be desired after the evidence was over.

Att. Gen. Then, my lord, I expect to be heard too. If Mr. Hampden makes a speech, I will reply, or if his counsel do it, I expect the last word, for I will have neither the party, nor the counsel to speak after I have summed up the evidence for the king. Mr. Hampden and his counsel are all one.

Mr. Wallop. I have but one short observation to make.

L. C. J. Go on then, Mr. Wallop, and say what you will.

Mr. Just. Withins. I think it is very fit you should do it of both sides; it is a cause of great concernment.

Mr. Williams. My lord, we will leave it here, I think.

L. C. J. Take your own course, do not say we hinder you of saying what you will for your client.

Att. Gen. Let them do what they will.

L. C. J. I will sit still, make speeches every one of you as long as you will.

Mr. Just. Walcot. It is fit they should speak what they can for the advantage of their client.

Mr. Williams. My lord, we leave it to the court.

L. C. J. Gentlemen of the jury, the evi-

dence has been something long, and the counsel both for the king, and for Mr. Hampden, against whom this indictment has already been found by the grand jury, having left it to the court to sum up all, I shall do it as well as I can: And the question before you, gentlemen, is, whether the defendant be guilty of the offence charged in the indictment, or not guilty, and there having been so long an evidence on the one side, and on the other, it will be fit for me, according to the best of my remembrance, to help your memories, by recollecting what has been said on both sides, which I shall do as near as I can, and if my brethren will please to supply any thing that shall be omitted by me, nay, if the counsel for the king, or for the prisoner, will put us in mind of any thing that has been spoken, and proved either against, or for the party indicted, in God's name let them have liberty to speak it: For it is fit the question should be left before you with all fairness; and according to the best of my observation and memory, thus it stands.

The first thing, Gentlemen, that is considerable to you, is, that there is such an indictment, as has been already opened unto you, that is preferred against Mr. Hampden, that does set forth, that Mr. Hampden is a seditious person, and a man, according to the language of the indictment (which were words of course and form in an indictment of this nature) of an evil disposition, designing to disturb and distract the government, and that he, with several other persons, did conspire to bring in troubles, and perplexities upon the government; and in order to that, that there were some meetings between him and several other persons, and that there was a design to conciliate some persons of another nation to go along with them in their design, particularly some in the kingdom of Scotland. This is the purport in the indictment, to which the defendant has pleaded not guilty.

Gentlemen, the evidence for the king has been of this sort, they did at the beginning, which yet I must tell you by the way, is not any thing of evidence, but the king's counsel would make some overtures to press on their side, as the defendant, and those that are of counsel for Mr. Hampden, have made some little hints to press on their side, that some witnesses the one and the others would have had here, were subpoenaed, but could not be here. It seems by the proof, here was a meeting, as it was between six several persons, and they name them, the duke of Monmouth was one, the lord Howard another, the lord Russell a third, the earl of Essex a fourth, Algernon Sidney a fifth, and Mr. Hampden the sixth. As for my lord of Essex he is gone to his long home, my lord Russell and Mr. Sidney have received sentence, and been executed. So there remains three surviving, and say they that are for the king: We produce my lord Howard, and we have taken care to summon the duke of Monmouth, by leaving subpoenas where it could be thought he was to be met

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with, with promises of his servants to deliver them to him in order to have the duke to be a witness for the king this day. I presume the meaning is, they would infer from that, that they would give an account of the fairness of this proceeding, though it has been a matter that has obtained a sort of belief in the world, as though the duke of Monmouth had denied that there was any such thing as this confederacy and conspiracy: And that has given people occasion to be of very different opinions and persuasions about the matter; but, say they, to shew we are not afraid to have the truth come out; we have done as much as in us lay to get this person hither: Therefore we have left subpoenas at his houses, at his lodging with his servants, and they have promised to take care they should be delivered to him, and he is not come. Against this, on the other side, say they for the defendant, we have taken all the care we could to bring my lord Anglesey, who was to have been a witness for the advantage of the person indicted; but my lord Anglesey is at present afflicted with a fit of the gout, and for that very reason we cannot have him here. And so they shew, that they have been very zealous to get witnesses on their side to vindicate their reputation, but they did not meet with that effect that they desired. These two things, gentlemen, are matters that are used both against him one way, and for him another.

But now to come home to the evidence upon which this matter is to turn, and here you are to consider, that whatsoever has been said or offered by the king's counsel on the one side, or the counsel for the defendant on the other side, (I call him so, for it is but a trespass though a great one) you must not take into your consideration at all any further than as their allegations are supported by the testimony that has been given: and whatsoever the witnesses have said either for or against him, and out of that testimony as near as I can remember I will give you the objections, and their answers, with the observations that have been made, or do naturally arise out of the facts in proof.

My lord Howard, in the first place, gives an account of this matter, and, gentlemen, the times will be wonderful material, and therefore I beg you would take a pen and ink, and mark these material circumstances as you go. For in all matters of fact positively proved, which also have their credit supported by circumstances which do accompany them, the testimonies given of such facts are to be valued according as those circumstances keep touch with, and humour, as I may so say; the fact that they are to evidence the truth of.

My lord Howard does therefore in the first place acquaint you, that about Michaelmas there was a discourse between him and my lord of Shaftesbury, and that was concerning a rising intended to be had, and he tells you how that my lord Shaftesbury was fully resolved upon it; that things at length came to that pass, that he was forced, to go from his

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own house, as he said, being disappointed by the duke of Monmouth and others who had promised to join with him, and was retired to the house of one Watson in or near Woodstreet. But he understanding where he was, my lord Howard went to him, (I think, he says, my lord Shaftesbury sent to him) when he came my lord Shaftesbury told him, that although there had been such a disappointment by those persons he named, yet that did not take off his edge, but he was resolved to go on himself, nay, though his body was infirm, yet he would be set on horseback, though he was lifted up, to appear in the head of a party that he had prepared, and were ready when he would call them. And he began then to reflect upon the disappointment of the duke of Monmouth, and as though the duke of Monmouth had only a prospect to advance himself, and had only an eye upon his own particular interest. That he so managed matters, as if he designed to have the sole disposition of all things whatsoever, and began to be uneasy with the duke of Monmouth. My lord Howard did endeavour to have prevailed with my lord of Shaftesbury for a reconciliation between the duke of Monmouth and him, it being a matter that required so much safety and security, and did desire him that he would have some intercourse with the duke of Monmouth, in order to conciliate a friendship between them, that they might go hand in hand. You find he was under some difficulties about this matter, he was not able to bring the thing about; for after he had spake with the duke of Monmouth, and prevailed with him, my lord of Shaftesbury was peevish, and talked at a distance, and when he had appointed a meeting one time, it was prevented; my lord Shaftesbury went away into Holland, and there died in Holland. This is the substance of what my lord Howard says as to that matter.

But, Gentlemen, this is material, and I will tell you why I think it material; because the counsel for the defendant have made it an objection particularly to my lord Howard's testimony, that my lord Howard is particular as to the day after Michaelmas-day, but he is not so particular when he comes to speak of other times upon which the true question before you depends. For now he speaks more generally as to the meetings at the defendant's, and my lord Russell's, that they were about the middle of January and the beginning of February, and is not particular as to the day. I speak of this because that has been made use of as an objection against my lord Howard's testimony. And I will tell you as near as I can, all the objections that have been made against this testimony after such time as I have settled it, and laid before you what the whole of it amounts to.

Then comes my lord Howard and says, that meeting with the duke of Monmouth some time after this they began to talk together, and they thought that though the business had failed in the managery of my lord of Shaftes-

bury, yet it was fit there should be a reassuming of the business again; but in order to settle matters that things may not go inconsiderately on, it was thought fit that they should resolve themselves into a certain number that were confident one of another, in order to steer and transact these matters the better among themselves. And they must be persons fit to be trusted, and for whom there should be an undertaking among them for their faithfulness and integrity; for all persons are not fit to be trusted, but only such as they agreed upon. The duke of Monmouth he undertook for my lord of Essex and my lord Russell, those were the persons for whom he would engage, as likewise for my lord Salisbury. And then they began to talk of some more, particularly of Mr. Sidney, but he was a cynical man, and a philosopher, and they were first to come to him, and to treat with him in another manner than the rest. He was not to appear as the duke of Monmouth, but to take him in his retirement and privacies, and then they might be the better able to break the matter to him. And he says accordingly there was a time designed on purpose; and at that same time the duke of Monmouth and my lord Howard did go and attack Mr. Sidney; they found him on a private day, and dined with him; and upon that dinner the whole matter was broke up, and put into some method; then was the whole design contrived as to the persons that were to be engaged in this matter; and he says, they agreed upon six. The duke of Monmouth undertook for my lord of Essex, and my lord Russell and colonel Sidney undertook for Mr. Hampden. He speaks of my lord of Salisbury; but my lord of Salisbury was never there among them, and so I put him out of the case, I quit him from being of their number, because there were but six in all, my lord of Essex, and my lord Russell, who were undertaken for by the duke of Monmouth, Mr. Hampden undertaken for by Mr. Sidney, and my lord Howard; for by that time Mr. Hampden was come into the matter upon colonel Sidney's undertaking.

Now we are got, Gentlemen, by these steps till we come about the middle of January; but, says my lord Howard, I cannot positively say, it was this day, or that day of the month; but being about the middle of January, I conjecture it was about the 14th, but he is not positive to the day. He says, accordingly they went to Mr. Hampden's house, which was the place first designed for them to meet in. He says, there accordingly they did all six meet; and that it being Mr. Hampden's house, they thought it most proper for him who was master of the house, who usually bids his guests welcome, to break silence, and to impart the business of the design they met about. He says, accordingly Mr. Hampden, after the first compliments of entertainment, did give an account of the business they were come about, and that it was in order to have a rising. This, he says, was proposed by Mr.

Hampden. He tells you, then they fell into debate about the time when, concerning men, and arms, and money; and likewise concerning the places. He tells you the places wherein the rising was designed to be, were Devonshire, Cheshire, Somersetshire, and other places. That is, as to the circumstance of the place. Then he tells you concerning the time; it was debated, Whether it should be all at one time, or at several times; whether they should only begin here, and the country fall in, or all at once: that likewise they had in consideration the business of money, and that his grace the duke of Monmouth did speak of 30 or 35,000*l.* or some such sum at that time. But then, as was natural for men of deliberation and consideration to consult about, they took into debate that they might not go headlong, to endeavour to conciliate another party to chime in, as he says, along with them, in the business they were going about; and accordingly it was thought fit and proposed, That there should be an endeavour to conciliate a friendship with some persons in Scotland, to fall in with them; and then he tells you who the persons were that were named: some of the names he remembers, and others he has forgot; he speaks particularly of the Campbells, sir John Cockram, and my lord Melvin: and he says, other persons were mentioned; but he cannot remember their names; and my lord Russell knew some of these persons, and the duke of Monmouth knew some others of them, because of his near relation to the earl of Argyle, the person that you know was proscribed for treason in the kingdom of Scotland. He says, that so far the debate of this matter went, that they thought fit a messenger should be provided, a trusty man to be sent into Scotland to treat with these gentlemen about this matter; and my lord Russell I think he says, undertook to write a letter to be carried by this messenger to these Scotch gentlemen.

He says, pursuant to this consultation at Mr. Hampden's, a fortnight after, or thereabouts, which brings it up to the beginning of February, then was the meeting at my lord Russell's house, and there they debated these matters over again, and the whole managery of sending a messenger into Scotland was left to the discretion of colonel Sidney, and he undertook that work, that was his post that he was to manage; and he does say, that he does very well remember, that Aaron Smith was the person proposed then; and though he was unknown to some of the company, yet he was well known to others; and by reason of that knowledge that others had of him, they looked upon him as a person very fit, and every way qualified for it.

So that, Gentlemen, here is proved a consultation in order to the raising of men to infest the government; a discourse concerning money and arms for this end, and the places where, and the time when; and of conciliating a friendship with some discontented persons in Scotland, to join, and chime in with these conspirators in England.

And then there is yet another circumstance very remarkable, because though my lord spake it not at the same time that he delivered his testimony; yet upon the question asked, he gives you a plain account of it; and it has a plain dependance upon what went before. Said they among themselves, It is proper for us, as near as we can, to shut the door against any exceptions about these men's coming to treat with us; but how shall we get them hither without suspicion? We must have some shams or cant, or other, to be a pretence for these people to come into England; and that was agreed to be about some plantation in Carolina.

This, he says, was the result of that meeting; and that when the meeting was broke up, about three or four days afterwards (mind the circumstance of time, gentlemen, for it is very material), colonel Sidney and he met together, they went to colonel Sidney's house, and there he saw him take money out of a till, where there were several hundreds of guineas, or pieces of gold; and as he believes, he says, he took threescore guineas, or some such sum; and told him it was to give to Aaron Smith in order to his journey into Scotland: That he went out with him in his coach, but Mr. Sidney set him down by the way, and he himself went into London, telling him, he went to that purpose, to give Aaron Smith the money. Some time after, about a week, or a fortnight, or ten days after that, he says he met with Mr. Sidney again; and he says, Mr. Sidney gave him an account, that he had heard A. Smith had been at Newcastle, but he had not heard of him since that time, and that is another circumstance in point of time, gentlemen; so that you have here a positive oath made by my lord Howard, that Mr. Hampden was privy, and consenting to all these debates, as to the raising of men, and the levying of money, and about the conciliating a friendship with these men of Scotland, and about sending a messenger into Scotland to that purpose. And if my lord Howard do swear true, no man living can doubt but that Mr. Hampden is guilty of this indictment. The first meeting was at his house, and there he did take notice of what had been formerly done, and proposed the things, breaking the silence, and entering into the debate; which shews that he had been discoursing about it before, and had it in his thoughts before, or else he could not have propounded it as the end of their meeting.

Now this, Gentlemen, here is a positive fact; and as Mr. Williams says true, no man living can give any answer to a positive fact, but by some other things that may be circumstances to oppose that fact. Now he says, there are no circumstances that have been proved, that will give any credibility to what has been deposed, besides the positive oath of my lord Howard. So that, says he, your fact, though it be positively sworn, is not supported by any circumstances of the fact, that may give credibility to it. And he objects,

very materially; for if it be not supported by credible circumstances, then indeed it would be less material; yet I cannot say, it would not be at all material; it is material, and you are to determine, whether you have sufficient evidence given you, to induce you to believe, that my lord Howard is at this time guilty of wilful and malicious perjury, for it is perjury, and that in the highest degree, if it be not true that he says; and God deliver all mankind from being guilty of any such thing. I leave that to your consciences, gentlemen, who are the judges of it.

But, says the king's counsel, here are circumstances that do support our fact, and the credibility of it. For, first, here is the circumstance of Aaron Smith, who was sent into Scotland by Mr. Sidney in pursuance of this design, and this circumstance my lord Howard does subjoin to what he has positively affirmed against the defendant. And this circumstance is a thing that may be helped by other proof; and what is this circumstance? Say they, that Aaron Smith was sent into Scotland; and in order to prove that, they have called one Sheriffe, who is a man that keeps an inn at the post house in Newcastle, from whence colonel Sidney told my lord Howard he had notice of his arrival at Newcastle, but had heard no more of him after that. And this Sheriffe swears directly, I saw that man they call Aaron Smith, when he was shewn to me before the king and the council; and Mr. Auerbury swears he shewed Aaron Smith to him, and then Sheriffe swears, that man you shewed to me was the man I saw at my house at Newcastle, that chimes in with the circumstance of fact that Mr. Sidney heard from him at Newcastle. And then there is the circumstance of time when he saw him there; says he, I saw him the Friday before Shrove-Tuesday, which they in the north call Easter's Even. He came to my house on Thursday night, and went away the next day, Friday; and he went with his guide, the other man, northward, in order to his journey into Scotland, as he himself said. Says he, I remember the time very particularly, it was the Friday before Shrove Tuesday last, this February was twelvemonth: and he went yet further, says he, I did not only see him when he went away, but when he came back again, for he left his man at my house all the time, and he tells you what his name was; for he says, Smith went under the disguised name of one Clerk, and he did then talk of going to the western parts of Scotland, he named Douglas as he thinks, though he is not positive in that, but he is in the person, that was the man. And, says he, I sent for this person, the other fellow, Bell, and he was the guide he had along with him. And upon Bell's examination, What says he? Says he, I remember that man came thither at that time to the other man's house: I take it upon my oath that is the man, and he went by the name of Clerk: he hired me to be his guide; I went out with

him on Friday morning, and I went along with him all that day; but upon Saturday, which was the next day, going northward with him, my horse tired, and failed me: Thereupon I was forced to be left behind, but I overtook him on Sunday night following; I overtook him at such a place, and saw him within six miles of the borders of Scotland. I take it upon my oath, this is the man that was there under the name of Clerk; and at his returning back again I took notice of him, I went up to him, I drank with him, and we had discourse of our journey. He told me at first, he was to go to the west of Scotland, and so he went northward. After that, which was about ten or twelve days, he came back again, and so went southward towards London. This he doth swear directly to be at that time.

Now, Gentlemen, the time is wonderful material in that case, because that very time twelvemonth that they talk of, is the beginning of February. If you look upon your old almanack of the last year (I happened to have one in my pocket, and looked upon it, when the men gave their testimony) and there you will find, that the Monday before Shrove-Tuesday, when he says, he left him within six miles of the borders of Scotland, falls out to be the 19th of February; I will look upon it again, lest I should mistake; 'tis just so, and that humours the time that my lord Howard speaks of, which was about the middle of February; a few days after that, he says the money was given by Mr. Sidney; and then for the time for Aaron Smith to get to Newcastle, there is a fit space of time, for it falls out that the Thursday that he arrived at Newcastle, is the 15th day of February, and so it falls in well with my lord Howard's testimony, and so the Monday that he parted with him at the borders of Scotland was the 19th, which also just humours the time that he speaks of. So that here is a circumstance of fact to confirm his testimony, both as to the sending the messenger, and the circumstance of time. That he is the same man is proved by these two witnesses, who agree in this, that he was there about such a time; and it does likewise humour that other circumstance of place, that Mr. Sidney said he had heard from him from Newcastle, but not since; and then there is the other circumstance which backs and confirms all, There was not only a sending for these persons, but there is notice taken that these Campbells, who were to be assisting in this matter, were to come about the sham, and under the disguise of purchasing plantations in Carolina. About the beginning of June they came to town, the two Campbells, sir John Cockram, and Mr. Monroe. Sir Andrew Foster he tells you he met with some of the men, and they told him, they came about the business of Carolina; and so the cant of Carolina is made good in this circumstance that way; but when the plot brake out, these men skulk, one flies one way, another another; some were taken as they were escaping away by water; others

of them were taken upon the bed at noon-day in Moor-fields: Had the business they came over into England about been a fair, and a lawful, and honest business, why should they hide themselves? Why should any man sneak, and skulk and be ashamed to own an honest and lawful business? But this does humour and touch the thing exactly, as to that circumstance, that Carolina was only a cant for to disguise their coming over. These are the two only circumstances that seem to be pretty strong for them, to prove and support the credibility of what their witness has sworn.

For, Gentlemen, what a wonderful sort of expectation would it be, That we shall never convict a man of high-treason, unless you can bring a man to be a witness that is not concerned? For then all these persons must have been acquitted; for they intrusted none, it seems, but these six; they took care they would keep it amongst themselves. Do you think they called their servants to be witnesses of what they were about? That is a vain and idle imagination. In the Popish plot, what witnesses of it had you there? Were they strangers to the plot? No, you cannot expect any witnesses but such as the nature of the case will bear.

This is the meaning of the evidence that has been given for the king, and it carries a great weight in it. But they have made an objection, which indeed is not remote, but may concern the question very much. Say they, if we prove my lord of Essex was not there, or such a one was not there, would it not discredit the evidence of my lord Howard? Yes, certainly, it would wholly discredit it, and he were not to be believed at all; nay, which is yet nearer to the question, if Mr. Hampden, that had notice all along of the times fixed wherein this transaction was, to wit, about the middle of January and beginning of February. For because they talk of the prints, Mr. Hampden had from them sufficient notice and intimation of the time. If Mr. Hampden, that hath had all this notice, could have proved before you, that he was in France, or any other place at that time, that had been wonderful material. But all the circumstances that are any way significant to support the credit of this matter are very well proved; and so the testimony of my lord Howard is, by these concurrent circumstances of fact, sufficiently supported.

Now, Gentlemen, I must tell you, This being the substance of the evidence for the king; I will now, as near as I can, give you an account of the evidence for the defendant; it was opened by Mr. Williams very ingeniously for the advantage of his client, as every man is bound to say what he can for his client. He made a great many objections against my lord Howard; so if he could but shake the testimony of my lord Howard, then he might easily bring off his client; and if you, upon any thing that has been offered, either in evidence, or by way of observation fairly made from the evidence, do believe my lord

Howard has forsworn himself, you must find Mr. Hampden the defendant, not guilty; but if you believe he has not forsworn himself, you must find him guilty. So all our matter is reduced into a very narrow compass; and therefore I must repeat it again what I said at the beginning, if my memory do not serve me to recollect all right, the counsel for the defendant shall have free liberty to inform the court of what has been omitted.

First, says Mr. Williams, My lord Howard was a man very deep in a conspiracy with my lord Shaftesbury, by his own acknowledgment, endeavouring to conciliate a friendship between the duke of Monmouth and my lord Shaftesbury: and so he had a great hand in the plot; and what he might do on purpose to get himself out of danger from that plot, and procure his pardon, is not known.

It is a very strange thing, that it should be an objection before he had his pardon, that he did it for fear, and to get his pardon; and when he has it, now the objection is, because he has his pardon; and he got it, say they, by this means. It seems, whether he had his pardon or no, it must be an objection against him: Before he had it, he was under the fear of not obtaining it 'till the drudgery of swearing was over; but now he has his pardon, What now? Why he does it on purpose to accuse other people. Why, he says no more now than what he has said before he was pardoned; and if after he is pardoned, when he is under no dread or fear because of his guilt, he says the same things that he did when he might be in fear, how can that be an objection to him? It cannot be thought he does it to save his own life, for that is as safe now by his pardon, as it can any way be; and it is, and must be a great satisfaction to his mind, and will be so to any other reasonable man's mind: And is a plain answer to the objection of his fear, (for it is a captious age we live in, that will make some specious objection or other, though it be not of any great weight.) But how can it be thought a man would come and swear too much, or too far, for fear he should not save himself; or, as they call it, swear himself into a pardon, when he has his pardon? It might be an objection before; but as long as he is under no such terrors now, but stands right, both by the laws of God and man to be heard as a witness, I think it would be hard for any one to come, and say, This man would forswear himself. What should provoke him to come and forswear himself, when he is under no danger as to his own particular? There might be an umbrage, I say, of an objection before he had his pardon, though it was, indeed, no objection before; not a rational weighty one, to set aside his testimony. But nobody knows which way in the world to satisfy the minds of some sort of people.

In the next place, Gentlemen, says Mr. Williams, You are not positive as to the time; you say, it was about the middle of January, or the

beginning of February, and that is too general and wide; but you remember particularly to a day the business between you and my lord of Shaftesbury, That that was the day after Michaelmas-day: How can you be so particular as to the one, and not as particular as to the other?

Why, I will undertake that Mr. Williams, when he made the objection, must needs think of the answer that would be given to it. It is notoriously known, that the pressures these gentlemen thought they lay under, were what my lord of Shaftesbury said, Now they have got the juries into their own power, and no man is safe; they will find me or any man guilty, as they please; why, how came they to get juries into their own hands, but by having the sheriffs as they would have them? Now the sheriffs that are to return juries are, as all men know, that know any thing, sworn the day before Michaelmas-day; therefore he might very well, and had good reason to remember that day; when such a notorious thing happens to fall out at such a notorious time, it is easier for a man to remember that time, than to speak to the particular time of an action, done about the middle of a month, where there is not such a notorious circumstance. Why, I can tell you very well where I was upon the day before Michaelmas-day; upon that day, and the day after; for that very reason, because it was a notorious day about the swearing of sheriffs in London. But if you ask me, where I was the middle of January, or the middle of February, I cannot so well remember that. But there is credit to be given to a man that speaks to a notorious circumstance, and thereby proves the probability of what he says, though he should not be so particular in a thing that admits not of such a notorious circumstance.

Gentlemen, I make the objections as they are stated on the one side, and on the other side; and the answers that naturally flow to prove the matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater credit with you, you are to take notice of.

He does say, in the next place, Here was a discourse of arms and armed men, and a great sum of money spoken of, but there breaks out nothing of this matter 'till July following; but this debate was in January and February before. For that matter, the answer that is given, and it seems to be a plain one, is, That they were to conciliate a correspondence with people that were abroad, and that they could not go on 'till they had effected that, and 'till these people came to join with them, which could not be without some time. And you hear the Cockrams and the Campbells came not to the town 'till June or July; so that it was not probable it should break out 'till then, because it was to be agitated upon their coming here. And so that objection is answered, they did not apprehend any such necessity for ~~pre-~~ engaging in it. For my lord Howard, be-

cause he thought it would be a work of time to settle the correspondence, and get these people to town, went down to his country-house in Essex, and from thence to Bath, for he did apprehend some considerable time must be spent before these people could come; and therefore he thought it convenient to take his retirement in the mean time.

Ay, but it is strange, says Mr. Williams, and he makes that another objection; he would have my lord Howard to draw in this accusation of Mr. Hampden, to procure his pardon, by going further than the other discoverers had gone. It seems, say they, Mr. Hampden was not thought of at first; but because West and Keeling had discovered a plot, my lord Howard to secure himself, must go a step further than they, and (as the defendant's counsel would have it) than the truth; and that is the stress of the objection. But the weight of the proof is quite different; for all men know, in the plot there were several parts. There was the business of Keeling and West, and that was the assassination of the king and the duke; but the duke of Monmouth, my lord Howard, and those other gentlemen, were for the business of the rising, though that might be in order to that other purpose; but they kept not company with those that were engaged in that part of the design. They were the underlings, the scoundrel plotters, that were concerned in the assassination. But these gentlemen looked upon themselves to be privy-counsellors, not to be the executioners; they were to be only advisers, what was to be done after the other business was over; and their consultations were for raising of men for an insurrection, not the business of the assassination of the king, that was not their province. Can it be an objection against my lord Howard, because he gives a testimony West and Keeling could not give? Could they go further than the killing of the king, which was their business: if any man should have asked my lord Howard about that matter, he would have made answer, it was not for that purpose that we met together at Mr. Hampden's and my lord Russell's; no, that was upon a particular business, and to a particular end and purpose.

Then he says too, that though my lord Howard comes here upon his oath, and declares these several matters that he hath deposed; yet he has given a different account of things elsewhere, and he has called several witnesses to that purpose. To whom my lord Howard several times upon his honour, upon his word, with eyes lifted up, and hands elevated to heaven, and many extraordinary protestations, declared that he knew nothing of the plot; and say they, if a man will at one time pawn his honour and his reputation for the truth of a thing, and after that, will come again to swear against all that matter, that is an argument that does sink the credit and reputation of that witness; and thereupon they call you several witnesses, some whereof are persons of great honour and quality. I think they begin first

with Ducas, servant to colonel Sidney, and he tells you, after his master was taken, my lord Howard came thither, and desired he might lie there; and desired the use of some plate and goods of colonel Sidney's; and then asked, what was become of his master? and when Ducas told him what he heard of the plot, that something was talk'd of about the assassination of the king and the duke, my lord Howard lifted up his eyes and his hands to heaven, and declared he knew nothing of it, but he believed colonel Sidney was a very honest man, and knew nothing at all of any such matter; and as for himself, rather than he would be taken or confined again, he would do any thing. This was the evidence they gave as to him. Then they come with Mr. Howard their second witness; for I would take them in order as they were produced, and he gives you an account, that he met with my lord Howard, and my lord Howard told him, he knew nothing at all of any plot, and did believe that colonel Sidney was innocent, and he did believe likewise that my lord Russell was innocent, and for his part he knew nothing of any such thing as a plot; but he says, when he began to talk to him, why did he make such a bustle, and go so often into the city and concern himself about the making of sheriffs? He answered, I do nothing but what is in a legal way; and he justified all that was done to be only in a legal way.

When once people come to believe, that the raising of tumults, and making seditions, stirrings and noises, is a legal way to obtain their ends, as we know it is the tenet and principle of great many people, what will they not do under that pretence, that all they do is according to law? They think it is lawful by the religion they profess, to resist and oppose the government, and the Old Cause is a good cause to this day in some men's opinion, and they can die in it, and thank God for being concerned in it. And there are some people that say, the raising of arms by the king's authority against his person is lawful by the religion they profess, and they call themselves Protestants (how justly you may imagine); and if men will make insurrections to difficult the government, it is rebellion, and no man can justify it, let him pretend conscience, or what he will, it is rank treason, it is not saying I am thus persuaded in my conscience, that will excuse the man; if I steer myself by the dictates of a good and regular conscience, it can never be thought that I shall commit treason, but it is the effect of evil principles.

Was it not under the shape of religion, that that blessed martyr king Charles I, of ever blessed memory, came to the block: Nay, and I have heard of some men in the late times that were engaged on that side, who finding that the king did prevail at the beginning of the war, because he had gentlemen of quality and spirit to appear for him, were at a loss to know which way in the world they should put a spirit in the common people to oppose the king; and some

among them bid them to be sure to put religion to be but the pretence, and that would make them run headlong to what they would have them. Whose opinion that was, is not strange to any that know any thing of the history of those times. So that when once people take it to be the principle of their religion to oppose and resist all that are not of their persuasion, and for religion sake to resist authority, then they think all is lawful they can do to preserve their religion as long as they are wound up to that opinion.

The next witness, Gentlemen, is my lord of Clare, and he gives you an account of his discourse with my lord Howard. And by the way I must observe, what I am very sorry for with all my heart, to hear, that among gentlemen of quality and honour, discourses of the government, and the real-administration of it, as they think, should be only matter of jest fit for their recreation, and laughter, only merry table-talk, as though government, so sacred a thing, were as mean as any trivial concern whatsoever. I am sorry to hear and see, that persons of great honour and quality should esteem it so. And I must be pardoned if I take notice of it: For matters of government, and yielding obedience to superiors, is a matter of religion, it is a serious matter, and every man ought to make conscience of it; to talk of government with reverence, as well as pay duty and obedience to it. And when I find it made a jest, I must be permitted to say that is not so well done, and whoever it is that makes it so, ought very much to be blamed.

My lord of Clare comes and testifies, that my lord Howard told him, he did not believe my lord Russell was guilty of what he was accused of, much less did he believe it of colonel Sidney, and when he began to talk about writings found in Sidney's closet, he said, there can be nothing of his writings found, that can do him or any man else any hurt. This is the substance of what that noble lord has said.

Then there is my lord Paget, and he likewise gives you an account, that he had some discourse with my lord Howard about the plot; and he told him too, that he did not believe any thing of this plot, or that my lord Russell and others accused had any hand in it. But I would observe this one thing upon my lord Paget's testimony, that still my lord Howard was wished joy by every body, and I am glad to see your heels at liberty, and the like. So that there was some jealousy of his being concerned; something or other there was in it. Says my lord Howard, I look upon myself as affronted, that any body should talk so of me. He was concerned that they should suspect him. But something there was at the bottom. Says my lord Paget, I am glad to hear you are out of it. For he began to imagine there must be some fire for all this smoke. That, gentlemen, was the discourse he had with him. But he says, that with my lord Paget there were discourses of his going beyond sea, but he did not go.

Then comes Dr. Burnet, and he tells you, that there were protestations made to him, and he has got the same words as the Frenchman had, that he did it with lifted up eyes and hands, he professed solemnly he was altogether a stranger to any such thing. The doctor says, he had heard there was a plot, and was persuaded of the truth of it, but he was a little shaken by what my lord Howard said to him. But now he is sufficiently satisfied there is a plot, and I am glad he is, for I think it scarce does remain a doubt, with any men that have any value for the religion and government we live under. And I know not how they could be better satisfied, than by the evidence that has been given of it, a main part of which was given by my lord Howard. All this before my lord Howard was taken.

Then comes in one Mr. Gisborne, and he tells you the same story, that a great while ago my lord Howard told him he knew nothing of the plot.

The next to him is Mr. Blake, and he tells you, that after such a time as the plot was discovered, and after my lord Russell was tried, and after my lord Howard had given evidence at the Old Bailey, he shewed him the warrant for his pardon, and Blake telling him that was not sufficient without an actual pardon; he replied, I think in my conscience I shall not have a pardon till the drudgery of swearing is over. But is that any argument? Here is a man under the drudgery of swearing; therefore he did not know any such thing as he swears. It carries thus much along with it, that it was uneasy to him, and there is a kind of a force put upon him to swear, as they say, in order to his pardon.

But now, Gentlemen, that will admit of this answer, and a plain one certainly it is, when a man comes over and over again to tell the world such a story, and gives such an account of himself, it must a little grate upon him, though it be his duty to tell the truth, and though, as Mr. Williams says, he is the best martyr that is a martyr for truth; even so say I on the other side, he is the best penitent that is a penitent for truth, and he is the best witness that is a witness for truth's sake, and he gives the best testimony of his repentance, that by his testimony declares the truth, though it be harsh and uneasy to him; for if I have any ingenuity, and have lived in good credit in the world, it must be a drudgery and irksome thing to call myself a traitor so often in a court of justice. It is true he might have given it a more moderate term, and yet without upon these circumstances, he might have reason to call it in some sense a drudgery. But now, gentlemen, as he did swear it, before he had his pardon from time to time upon all occasions when he was called as a witness: so now the pardon is come, which they would have to be the reason of the continuance of his drudgery, he swears the same thing. He has his pardon under the king's seal, and though it might be thought they would keep him within

the compass of his tether till he had done his evidence; now he has got that he desired, he swears the same thing. And now his pardon does not at all influence his testimony, he is not under any fear, but is as free as any subject the king has, and now he is upon his oath, he gives you the account you have had, and he did say all the same things, before such time as colonel Sidney, and my lord Russell were tried, that he says now.

Then, Gentlemen, you have in the next place witnesses called, several of them to give you an account of the conversation and disposition of Mr. Hampden; for says Mr. Williams, for a man to be guilty of a crime of this nature, there must be some kind of evil disposition to it, and so Mr. Williams would argue and make this inference. You see he is not a man of a turbulent, seditious and fractious spirit and temper, he is a studious person, very retired, that has been beyond sea much, and came not home till such a time. And if there were interlocutions between my lord Howard and my lord Shaftesbury, it was before he came into England, and so he was not concerned in them. He says, that March last he was to go again, he had a mind to return again to France for his health; and what reason have we to imagine he should concern himself in the plot, when he was so studious a man, lived so retired a life, and intended to go abroad so suddenly? And for this you have my lord Paget, Mr. Pelham, sir Henry Hobart, Dr. Lupee, Monsieur Justel, and one Murray.

Mr. Williams. Murray, my lord, we did not examine.

L. C. J. It is true, I beg your pardon. Well then, these others tell you, they have been persons very intimately conversant with him, they never knew he concerned himself with any thing about government, but was of a quiet, peaceable demeanor, and was so far from that which the indictment talks of turbulency and sedition, that they never had any discourse with him about any such thing at all, save what Dr. Lupee says, who it seems lived with him about two years, and kept him company in his studies; and that once having some discourse about the Popish plot, He said he would venture his life, and any thing he had to preserve the king and government against this plot, he did very well, and if he had since declared, he would have ventured his life to have secured the king and government against this plot, I should have been glad to find him of that mind, I pray God you may find him to be so. But from the evidence, even of that Frenchman, it seems there was some jealousy in the world, and that he lay under hard censures as well as other people. For speaking of the plot, the advice given him was this: my lord Grey is gone, and the duke of Monmouth is gone, why won't you go? Why should that advice be given, if there were no suspicion of his being concerned? That he said, I will not go, and so they would make his staying here

to be an instance and proof of his innocence ; why, gentlemen, if that should be so, then there was the same innocency in my lord Russell, and colonel Sidney, and all of them : for all the council of six, every one of them stayed, except the duke of Monmouth, and he indeed did abscond. And the same evidence that made the duke of Monmouth fly, and my lord Essex cut his own throat, convicted my lord Russell and colonel Sidney, and is now brought against the defendant, and has from time to time been given against the rest. We know no reason that they had to stay more than West or Rumsey had to stay and be taken, and yet that is not used by them as an argument of their innocency.

These are the evidences that have been given on the defendant's part ; and I tell you as I go along what answers were given to it on the part of the king. As to what is spoken of his intention to go again into France, if he designed to go, why did he not go before all this mischief broke out ? He came here at Michaelmas, and I may say he came, it may be at an unlucky time, when the city and its neighbourhood was in a distemper, and some men were blown with fears and jealousies. These might animate him, and inspirit him as they did other people, and put them into a ferment ; but you find him attending in town constantly here until the matter was discovered, whatsoever his intentions were, it is much he did not put them into action, it is strange he did not go all this while, it had been much for his advantage that he had never come out of France, or that he had returned thither much sooner.

Against all this that has been urged for the defendant about my lord Howard, I will tell you what is the answer to it ; and truly first I say, I am apt to believe my lord Howard did tell these gentlemen what they here testify ; but was it ever thought, that any man that was guilty of high treason would presently proclaim his own guilt ? Is it reasonable to imagine, my lord Howard would tell Dr. Burnet I am in a plot, and colonel Sidney is in a plot, and Mr. Hampden is in a plot, and make it his common talk ? Nay, it is so far from being an argument of his innocency, that more naturally it may be turned upon them as an argument of his guilt. For if a man had not been concerned in the business at all, but were an honest man, and free from suspicion, what need I talk or concern myself to proclaim my own innocency, not being accused ? Why must I tell colonel Sidney's footman, this man, the other man, that I know nothing of the plot, and neither I nor any other man I am sure is concerned in it ? But that shews there was a dread and apprehension upon him of something that he was conscious of, and that lying within must have some vent, and this over-caution is an intimation that there was something more than ordinary in the matter. We take notice of it as a great evidence against a man that is accused for an highway-man, if

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he comes to such an ale-house or inn, and bids the people take notice I am here at such a time of the day, and that is a circumstance of time that will serve to answer a proof, it may be, that may be brought against him of a robbery done at such a time ; but we always look upon that industry of their's, as a piece of artifice designed to patch up a testimony to evade a proof. So that the argument will turn the other way : and it is more for the advantage of these worthy gentlemen, that it should be turned the other way, for otherwise they would be thought to be persons ill affected to the government ; that is, Dr. Burnet, my lord Paget, my lord Clare, and the rest. And if they have a mind to be thought otherwise, they must let the argument run that way as I say, and in charity we ought to believe the best of all mankind, until we find otherwise by them. We say then in charity, we suppose he thought it not fit to intrust you with his confessions ; for you are all loyal men, I know it is the best answer that can be given, and that which they ought to value themselves upon for their own credit and reputation, and not to make an argument against my lord Howard, or against the credibility of his testimony in the matter.

I do not know, truly, Gentlemen, that I have omitted any one thing that is material, on the one side or on the other, of which there hath been any proof ; but I must only repeat to you this, here is a matter of great concern and consequence ; a matter wherein the peace of the government and the kingdom is concerned in a very high degree ; a matter, that if there were another witness as positive against the defendant as my lord Howard, would amount to no less than high-treason. But as there is but one witness, backed with these circumstances to corroborate his testimony, it is but only a trespass ; but I tell you it treads very nigh upon high-treason, and the tendency of it was to bring us all into confusion ; and what would be the consequence of that, but to lay us open to the same mischiefs that we were under in the times of the late rebellion ? For though men pretend never so fair, and veil it under the names of the security of the government and the Protestant religion ; yet they would have done well to have tarried until they had a legal authority to call them to consult of these high matters that they pretend to secure ; that had been well. What had these gentlemen to do to take upon themselves this power without authority ?

Gentlemen, you have heard the evidence, and you see what it is. And I must say, the late evidences you have had concerning another business of this nature, I wish that might be said to preserve and support the credit of some persons upon whose testimonies lives have been taken away, as has been said, and is evident for the advantage of my lord Howard. I do not find that he has been guilty of perjury, as being concerned in taking oaths one way, and then giving evidence another. I mean,

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first taking oaths of secrecy, and then revealing; not but that notwithstanding all this, they may be believed, and God forbid but they should be believed according to truth. But I say, if objections of this nature are to prevail, we must never expect any great crime to be punished, because we must stay until persons that are strangers to the guilt of the fact come to give evidence of it, which is impossible to be done.

Therefore, Gentlemen, I must resolve it all into one head; you have the case of a gentleman of quality on the one side, and the peace and preservation of the government on the other side. You hear what is proved against him, the evidence given on this behalf, the objections that have been made by the counsel, which all of them, as near as I can remember, I have repeated to you, and I ask your pardon and their's if I have omitted any thing, and I desire to be minded of it. You hear the answers that have been given. And because the counsel were unwilling to give the court trouble, or themselves to make long speeches and observations, therefore I have been necessitated to do it as well as I can.

Upon the whole matter, my lord Howard has thus positively sworn the matter of fact charged in the indictment against the defendant; he has been supported by the witnesses that confirm the circumstances of Smith's going into Scotland, the Scotchmen's being here in June, and the sham and cant of Carolina. All which you have heard, and I make no question observed, and is not contradicted by any thing I hear that carries any probability of an answer. Therefore, gentlemen, I leave it to you, whether upon this evidence you will take it upon your consciences and oaths, that my lord Howard is guilty of wilful and current perjury, then you must find the defendant not guilty; but if you think he has proved the matter fully, and his testimony is supported by those four witnesses, Atterbury, sir Andrew Foster, Sheriffe and Bell, then, gentlemen, you must find the defendant Guilty.

Juryman. My lord, we desire to ask one question. At the meeting at Mr. Hampden's house, I think my lord Howard says they went to dinner.

Just. Holloway. No, it was at col. Sidney's they went to dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at col. Sidney's they dined, not at Mr. Hampden's.

Then the Jury withdrew from the bar, and within half an hour the jury returned, and being called over answered to their names, and gave in their verdict thus.

Cl. of Cr. Are you all agreed of your verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. How say you? Is the defendant guilty of the trespass and misdemeanor whereof he is impeached, or Not Guilty?

Foreman. Guilty.

Which Verdict being recorded, the court rose.

Martis 12 Februarii, An. 1684. B.R.

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

Att. Gen. I pray your judgment against Mr. Hampden, my lord, who was convicted the other day of a great misdemeanor.

L. C. J. Let Mr. Hampden come into the court then. [Which he did.]

Att. Gen. My lord, I need not aggravate the heinousness of the offence; for it appears both by the information, and upon the evidences to be beyond all aggravation, wherefore I shall only pray your judgment for the king, that you would please to set a good fine upon him, and that he find sureties for his good behaviour during his life.

Mr. Williams. May it please your lordship, I am of counsel for Mr. Hampden.

L. C. J. Are the rules out in this cause?

Mr. Williams. Yes, my lord, they are out.

L. C. J. Well then, what say you for Mr. Hampden?

Mr. Williams. Mr. Hampden does attend here according to the condition of his recognizance, and since Mr. Attorney hath prayed your judgment, I shall not stir any thing as to the indictment or the verdict, but all I have to say for him is this, Mr. Hampden is but heir apparent, his father is alive; and so though he has the prospect of a good estate, yet he has but little at present in possession; your lordship knows what Magna Charta says, that there should be a Salvo Contentemento in all fines, and how far that may be an ingredient into your lordship's judgment, I leave to your consideration.

L. C. J. For that matter, I cannot tell what estate his is, I have no knowledge of him, nor of his estate, whether it be great or small; but Mr. Williams knows very well that the crime, in conscience as well as law, in case it had been proved by two witnesses, would not only have wrought a forfeiture of all his estate, but a forfeiture of his life too, and all his reputation, would have bastardized his children, and would have attainted and corrupted his blood. So that there is no sort of imagination but that the crime was high enough of conscience; and certainly deserves, if we can impose it adequate to its desert, a very great punishment. Mr. Hampden nor his counsel cannot deny but that they had a fair and a full hearing, they had the liberty to say and prove all that they could, and you cannot but say, Mr. Attorney was very fair in making several concessions that he might very lawfully and rightfully have insisted upon. So that there can be no exception of that kind. I am sorry that Mr. Hampden, a gentleman of good quality as he is by birth, though he be a person I never saw before he came here the last day of the last term upon his Habeas Corpus, that I know of. I say, I am sorry that one of his quality and

education, a studious person, as it seems, by his own natural inclination, and a learned man, should be so unhappily engaged in a design of this horridly evil nature. But on the one side as well as we must take care of the subject, so on the other we must take care of the government. Here was a design of destroying the king, and subverting the government, and bringing all into confusion. Of this design the defendant is convicted, and we must take care to proportion the punishment, and according to our consciences and oaths, and as we ought to have regard to the offender, so also we are to have regard to the government he has offended.

Just. *Withins*. Mr. Williams, it was amercedments that were spoken of there in Magna Charta.

L. C. J. Ay, it was never meant of fines for great offences.

Then the Judges consulted together.

Just. *Withins*. Mr. Hampden, you know you are convicted of a very great offence, as great an offence as can be I think committed, unless it were high-treason. For the matter of it would have made you guilty, if there had been two witnesses. It was for conspiring to levy war against his majesty, and for conspiring to raise an insurrection and rebellion within the kingdom, a conspiracy, of which some other persons being lawfully convicted, they have suffered death for it. You are a person of an extraordinary good family, and I am sorry one of your family, that has flourished so long, and through so many generations in great honour and reputation, and great prosperity under the monarchy of England, should come to conspire to deprive that king of his government, whose ancestors have protected and defended your family, and to spoil that monarchy that has been the fountain of so much prosperity and honour to it. I am sorry it comes to my turn to pronounce the sentence of the court upon you, Mr. Hampden. I have not any personal knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good education, and the report of a learned and ingenious person, which makes me yet wonder the more that you should engage in such a horrid design as this was. Indeed, Mr. Hampden, I am satisfied no fine can be too great, if any can be great enough for such an offence. We cannot take cognizance what your estate is, it is reported there is a great estate in your family, it has been always represented to be so.

Mr. *Hampden*. I have nothing but for life, and that is but little neither.

Just. *Withins*. I know not what it is truly, Sir. But it was always reported to me to be a very great estate; but whatsoever it is, we are to look after proportioning the punishment as near as we can to the offence. My lord and the court have considered of the matter, and they think fit to give this Judgment upon you.

“ They set the fine of Forty Thousand Pounds upon you, to be paid to the King, and you must be committed till you pay “ it.”

L. C. J. And that you find sureties for your good behaviour during your life.

Att. Gen. I pray he may be committed for his fine.

L. C. J. Let it be so. Mr. Hampden, if you will apply yourself to the king, you may, and there perhaps you may find mercy; we must, according to the duty of our places and oaths, give such judgment as the law requires.

Just. *Withins*. Ay, in God's name. You are in the king's hands, and he may do what he pleases in it.

L. C. J. If a crime of this nature should have a little punishment, it might encourage offenders, and if we were to judge according to some verdicts that have been given here for less offences, where gentlemen have given very much greater damages than this fine amounts to, this would be thought a moderate fine. I am sorry any man should bring himself into these circumstances: The king, as he is the fountain of justice, so he is also of mercy, and you and all the rest of his subjects have cause to bless God that you live under a monarch that is very merciful. No doubt if you give an account of your contrition and sorrow for your great offence, and decently apply yourself to the king, he will think of shewing mercy to you; but justice is our work that are judges; and according to the methods of justice we think we cannot inflict less than we have done.

Mr. *Williams*. My lord, I pray his bail may be discharged.

L. C. J. Ay, his bail is discharged, he being committed.

Mr. *Williams*. And for the high-treason, he is discharged by the Habeas Corpus act.

L. C. J. Yes, he is so, for there is no prosecution.

Then Mr. Hampden was carried by the Marshal away prisoner.