

be said to be done traitorously. A Trial doth follow Imprisonment as naturally and necessarily as the Shadow doth the Body. If any Man shall desire and be instrumental in bringing him to a Trial which might acquit, rather than condemn him, and so humbly pray Proceedings according to Justice, this will have, I hope, a better Name than Treason. I am much beholden to his Majesty, and this Honourable Parliament for the penning of the *Act of Indempnity*, which, I hope, my Lord, you will give me leave to take notice of.

Court. *Open as much as you will of it.*

Cook. My Lords, the Words that I would make use of are in the Beginning; Treason, Murder, and other Felonies that are spoken of, they are said to be counselled, commanded, acted or done; in the Preamble, which is as the Key to open the Mind and Meaning of the Law-makers, it is said that all Persons shall be pardoned for all, excepting such as shall be named, and in such manner as they shall be excepted; and then it comes, Provided that this Act shall not extend to pardon such and such Persons, and by Name I am one; and it is said, all which Persons, for their execrable Treason, in sentencing to Death, or signing the Instrument for the horrid Murder, or being instrumental in taking away the precious Life of our late Sovereign Lord, *Charles the First*, of Glorious Memory, are left to be proceeded against as Traitors to his late Majesty, according to the Laws of *England*, and are out of the said Act wholly excepted and foreprized. There is not any thing offered against me upon the two first great Words, which are Sentencing and Signing; that which I have to do to endeavour to clear myself is this, being instrumental in taking away the Life of his said Majesty, first, I humbly offer this to the Jury's Consideration, That where the Parliament doth begin to fix the treasonable Part, there, I hope, and no otherwise, this Honourable Court will fix it: If it had been the Intention that Counsellors, Advisers, and such as spoke their minds sometimes in the Business, (you know that was epidemical) many Words were spoken which cannot be justified; whether naturally it would not have followed, that all such Persons, for their Counselling, Advising, or being instrumental, are left to be proceeded against as Traitors, I hope you will take that into Consideration; concerning the Words, or being instrumental, observe it is not said, or being any otherways instrumental; but sentencing, signing, or being instrumental; if therefore the Word Instrumental be not of a general comprehensive nature, then all this Evidence which hath been given in against me, being before the sentencing and signing, will fall to the Ground; that this is the legal, genuine and grammatical Sense, and cannot be any otherways than as particular, as if it were the Sentencer, Signer, and Executioner; which if it had been so, nothing of the Evidence would have reach'd me. My Argument is this, such a Use is to be made of an Act of Parliament, that no Word may be frustrate and insignificant; but if this Interpretation shall be put upon it, sentencing, signing, or being any way instrumental, then the Words Sentencing and Signing need not have been. If Instrumental will carry the Words Sentencing and Signing, then these Words will carry no Force at all; especially, my Lord, when there is no need of any Retrospect at all; if it be so, I know not how far it may look back; there is no necessity of putting any comprehensive Generality upon this Word Instrumental, but that the plain natural Sense will be this, that those that did sentence and sign, and those that were instrumental in taking away his Life, that is, those that

did abet and comfort that Person unknown, or justify, or countenance him, which is after the Sentencing, and not before, in the legal Sense. Next, I conceive, that a Counsellor cannot be said to do any thing *vi & armis*.

It is said, that by Force and Arms I did abet, &c. it is rhetorical to say that Words may be as Swords, but legal it is not, unless there be something *vi & armis*; in the grammatical Sense, instrumental in taking away the King's Life, it is not said instrumental in order to take away the King's Life, or instrumental in advising to take away the King's Life, but instrumental in taking away the King's Life. My Lord, the next thing is, that there cannot be any Thing to be said to be done by me, first not *falso*, because in that sense it must have the Operation of Mendacity; that there must be a Lie told in it; I did nothing but what I was required to do, to set down such and such Words; I did not invent nor contrive them, I heard nothing of it till the 10th Day of *January*. My Lord, for *malitiose*, that I did not any thing maliciously, I hope it will appear in this; what I then spoke it was for my Fee; it may be called *avaritia*, but not *malitia*; for the Law will imply a Malice, when there is no other express Ground or Reason why the Thing was done, but here was an express Ground to speak for my Fee, I hope the Jury will take that into Consideration. Then, secondly, I was not Judicial in the Case, I was not Magisterial as any Officer, but Ministerial. As touching examining of Witnesses, it is a great Mistake, the Court had power to give an Oath; I might be there, but I had no power to give an Oath; but whether I might ask any Question, I do not remember, but that I should give an Oath, that is a Falsity; then, my Lord, for *Proditorie*, I hope there is nothing at all that appears to the Jury; so that there was no Malice nor traitorous Intention in the Thing. There are some Matters of Law which I desire your Lordships will give me leave to speak to, and that your Lordships will be of Counsel with me. I would offer something concerning his Majesty's gracious Declaration from *Breda* to the Parliament; (I was then in *Ireland*) I did put in a Petition to the Honourable Commissioners before any Exception was, that I might have the Benefit of that Declaration; I did lay hold of it: My Lords, there are two Things in that Declaration that I would offer. His Majesty saith, that for the restoring of the King's Peers and People of the Kingdom to their just Rights and Liberties, he will grant a free and general Pardon to all, excepting such as shall be by Parliament excepted; and within three or four Lines after it is said, a Free Parliament; though I do not in the least question the Legality of this Parliament, yet, my Lords, to this particular purpose, whether the Parliament that was to except ought not to be a Parliament that was to be called according to his Majesty's Writ, according to the Laws of the Kingdom, I humbly conceive it will bear that; though his Majesty is pleased to confirm this, yet it is not such a Parliament that was to except; that I offer to your Lordships. My Lords, that that I would humbly make bold to put for myself, because it is the Privilege of one in my Condition, is this; There is, my Lords, many Lords, the Earl of *Essex*, the Earl of *Southampton*, and others, that were adjudged in the 44 of *Eliz. 3. Institutes*. They did traitorously and maliciously conspire to take her Majesty Prisoner, and to remove her Counsellors from her, which were found guilty, and suffered accordingly; the Reason is, That because thereby if it had been done, they had despoiled her Majesty of

of her Regal Government; and the Case is Instant in *Philip*, who was a Nominative King, that it was not Treason to have attempted any Thing against him. My Lords, his Majesty being a Prisoner without any Hand of mine, I giving Advice according to what was dictated to me to bring him to that Trial, whereby he might have been Acquitted, and so set at Liberty, I hope that will not be said as Instrumental.

My Lords, I humbly shall offer but Two Words, 1. To the Honourable Court, then to the Jury. The Words 25 of *E. 3.* and so the Exposition of the Learned Judges have been from time to time, that there shall be no Semblable Treasons made by Presumptions or Strains of Wit, but those Treasons specified there: It is said if a Husband do kill his Wife, or a Wife kill her Husband, a Master should kill his Servant, or the Servant should kill his Master, that that shall be petty Treason; a Child did kill his Father, though that was looked upon as a great Sin, yet the Judges did not presume that to be Treason, because it was not in the very Words; this being an extraordinary Case, to write a Thing after another doth not appear that there was a Malicious Heart in him that did write. There hath been the Act of Parliament that doth call these Courts Tyrannical and Unlawful Courts; but, my Lords, a Tyrannical and Unlawful Court is a Court *de facto*, though not *de jure*; if a Court be not a Just and Lawful Court, it cannot be said but that it is a Court: We say a Thief is a True Man, though Morally he is not so; this was a Court, Officers attending on them; some said they had Authority; and therefore for one to come and act within his Sphere, not to act out of that, nor do any thing but what he had a Pr. script Form appointed him, I hope that will not be found to be within the Letter of the Law. I have been told, (how true I cannot tell) that there have been some Votes in the Honourable Parliament, that those that did only counsel or advise, those that were not to be looked upon as Traitors; I have been told so, that those that did only speak as Council for their Fee, who were not the Contrivers of it, the Parliament did not intend they should be left to be proceeded against.

Court. That Letter that was sent from the Commons to the King at *Breda*, they speak first of the Violation that was put upon the Parliament, and of the base horrid and Murder of his late Majesty. It is said that the Parliament (I conceive they meant of the remaining Part) they were not guilty, but some few ambitious, bloody, guilty Persons, who contrived the same, and others mis-led by them.

Cook. The other Matter of Law is this: I say that I do hope that though that Order, which I was about to produce concerning my acting, that if it may not in a Legal Sense any way be said to be an Act of the Parliament and Commons, yet it may be said to be such an Order to bear out those that did Act according to it, because there was an Authority *de facto*, otherwise it were not lawful for any Man to exercise his Profession during their a Power. I hope Counsellors might then exercise such Profession, as well as others. My Lord, though I should suffer my self in this Case, I should be loth the Honourable Profession of the Law should. I think I was in my Sphere, acting as a Counsellor. Now, Gentlemen of the Jury, that which I have to say to you is an Evidence concerning Matter of Life, it must be so clear that every one that hears it may understand it. It is called an Evidence, because it is evident; it is one Reason why Prisoners for their Lives are not

allowed Council for Matter of Fact, because the Evidence is, and ought to be, so clear and plain that every one should be satisfied, both Jury and Standers by; and it is a proper Word to say the Prisoner is convicted, that is as much as, his Mouth is stopped; and therefore I say, truly as I hope I may speak it to you without Offence, as *Jeremy* in another Case when some of the People would have had them put him to Death, *As for me, behold I am in your Hand, do with me as seemeth good and meet unto you*, *Jer. xxvi. ver. 14, 15.* saith he, *But know ye for certain, that if ye put me to Death, ye shall surely bring innocent Blood upon yourselves.* I hope you will not willingly be guilty of any such Thing; I must leave it to your Consciences, whether you believe that I had an Hand in the King's Death, when I did write but only that which others did dictate unto me, and when I spoke only for my Fee; and this I would be bold to say, though the Argument is not so directly confessed, that Humane Justice, (I do first say as this my Principle and Opinion is,) that as every Man ought to pay his moral Debts, so all political Debts; there is a Debt due to Humane Justice, so political, if the Lord should have suffered me to have been Drunk, and killed a Man, for which I ought to have died, instead of speaking for my self, I would have rather intreated the Jury to have found me Guilty; I think these Things ought to be answered, political Debts. When I was in *Ireland*, and had Opportunity of going away, if I thought I had been Guilty I might have done it; my Name is put into His Majesty's Proclamation. It is true, I was a Prisoner Three or Four Months before, so that I could not render my self, to what End should that Proclamation mention my Name? It was said I obscured my self, but I did not. Humane Justice doth never punish so much for Expiation as for Prevention; the Judgments of the Learned *Aquinas*, *Grotius*, and *Armenius*, and many others, that if a Man doth kill a Man, commit any Thing worthy of Death, though he doth repent never so much, yet that others may be deterred from committing such Acts, the Magistrate is bound to put him to Death. But where there is not such a Thing, there it is different; though it is said the Land is defiled, that is, where there is Danger that the like may be committed again; now all Things are settled, there is no Danger at all; now there can never come such a Case as this again; I say, my Lord, what I acted I did as a Counsellor, I had no malicious Intention in it. *Mr. Nutley* bare Testimony so far, that I told him *there was not Intention of putting his Majesty to Death*; I only did say, that *I desired them to do Justice*; and I hope what was done was their Act, not mine, and so I leave my self to your Lordships.

Court. Silence Commanded.

Mr. Solicitor General. My Lords, this Gentleman who is the Prisoner at the Bar requires such an Evidence of the Fact as may be evident, he saith so evident as may be as clear as the Sun; I think that Evidence is not to seek; but if he must never be convicted till he be so far convinced as to be speechless, I believe we may stay long enough; nevertheless if he be willing (as he saith he is) to pay his Debts to political Justice, we shall quickly give him the total Sum. That which he hath said hath been like a *Lawyer*, the best that his Case will bear, but withal, it is a great Aggravation to his Crime, that he that knew the Law so well, should so much transgress it. He began, *Words do not make Treason*;

son; he mistakes, his Charge is not for Words, Gentlemen, his Charge is for *Compassing and Imagining the Death of the King*, and the Evidence of that Charge is meeting in that Assembly, and the Part that he bore in that Assembly. And yet, my Lords, he will be much mistaken too, (under Favour, and with Submission to your Lordships Judgments, and those that hear him,) if they think that in all Cases it is a general Rule that Words are no Treason; for when a Man shall proceed to declare the Imagination of his Heart, as to exhort and persuade Men to effect that wicked thing, the *killing of the King*, certainly there cannot be a greater Overt-Act than these Words, nor a clearer Evidence of such an Imagination, for *out of the abundance of the Heart the Mouth speaks*. My Lord, to say that the demanding of Justice is not Treason, though Injustice do follow, is a very weak Gloss upon a wicked Action. The Subject Matter was a Charge of *High-Treason against the King*, the Conclusion of the Charge was a *Protestation*, by which he saved to himself a Liberty to put in a new Charge, if that was not sufficient; upon the whole he desires, that the King *as a Traitor*, may be brought to Justice. Judge ye now, Gentlemen, upon the Nature of this Demand, whether this were such a Demand of Justice as might end in Acquittal; whether he that presses that this Charge may be taken *pro Confesso*, did mean that when the Court had recorded it they should Acquit him when they had done? My Lords, to say there are Four Actors in this Case, the Witness or Accuser, the Judge, the Jury and the Executioner, and that he is none of them, and therefore in this Case he cannot be a Traitor; still, my Lord, that is to beg the Question; for if he be one of them that did Assemble in the Place, and were any Instrument of that Assembly, he hath thereby given an Evidence of an Overt-act of his wicked Heart; and when all is done this poor Gloss amounts but to this, *I am none of those Four Ranks, that is, there were others worse than my self, and therefore I am none at all*. My Lord, the Thing that he hath mainly insisted upon is the *Act of Indempnity*; my Lord, he doth observe that his Name is excepted in that Act; that he doth hope that it is so Penn'd, as by the Favour of the Parliament it may reach his Case; and he hath argued very much upon it, and he speaks as if he did believe it himself. But surely there is no colour for that Interpretation, that he should step out of this Proviso, by the very *Act of Indempnity*, that was made on purpose to bring him in by Name; the Words are, *Provided that this Act, nor any Thing therein contained, shall extend to Pardon, or give any Benefit to John Cook, &c.* "all which Persons, for
 ' their execrable Treasons in Sentencing to Death,
 ' or Signing the Instrument for the Horrid Mur-
 ' der, or being Instrumental in taking away the
 ' Precious Life of our late Sovereign Lord King
 ' Charles the First, of Glorious Memory, are left
 ' to be proceeded against as Traitors, &c.' First, my Lord, this general and clear Answer, I conceive, is to be given, that the Prisoner at the Bar being by Name excepted out of the *Act of Indempnity*, by the *Proviso* mentioned in it, although the subsequent Lines that follow be the Reasons why the Parliament do except, yet if it be within the very Words of the Exception, whether he be in the Reasons that moved them

to that Exception, is not material; if he could distinguish that he was not Instrumental in that Sense, to which he labours to restrain this *Proviso*, he can but say this, the Parliament was mistaken in their Reason, but not in their Conclusion; but he is directly within the Exception, and the Reason of it too, for the Word Instrumental goes as far as far can be, and he is properly and literally in the strict Notion of the Word, an Instrument of the Death of the King: The King could never have been brought to Death, if not to the Bar; never had been Sentenced, if he had not been Impeached; that Impeachment could never have been taken *pro Confesso*, nor the Impeachment itself delivered, if he had not delivered the one, and pressed the other: He that brought the Axe from the *Tower* was not more Instrumental than he: And besides, a Lawyer, as he of great Understanding, and of good Parts, he knows very well there are no Accessaries in Treason, but he that Acts any Part in so wicked a Conspiracy, let him begin at what End he will, he stands responsible for the utmost Consequence of it; and in effect the very penning of this *Proviso* is an express Judgment of Parliament, that he was Instrumental; but that is not to be pressed.

The next Thing he doth insist upon is the Declaration of his Majesty, that he sent from *Breda*, which he saith he laid hold upon; here lies the Weight of his Answer, The King writes his Letter to the Parliament now sitting, that he doth purpose, for the quieting of the Hearts of Men that may be in doubt, to pardon all Persons all Crimes of what Nature soever, either against himself or Royal Father, excepting those which shall be by Act of Parliament excepted; and, my Lord, he doth say, and modestly presses, that he doth conceive the Meaning of that is to pardon all Persons what Crimes soever they have committed, except such as by a Free Parliament shall be excepted; a Legal Parliament, called by the Writ of the King, which this Parliament is not. To that I give these Answers; First, my Lord, I do say that this Letter of our Gracious Sovereign from *Breda* in itself undoubtedly is no Pardon in Law for Treason, that cannot be without the Broad-Seal. Next, a Pardon under the Great-Seal in such a Form of Words as this is would not be a Pardon for Treason, for that must not be pardoned by Implication, but by positive Words; so in the Case of Sir *Walter Raleigh*, a Commission directed to Our Well-beloved Subject would not pardon the Treason of which he was Condemned. In the next place, this Letter at the most is but a Pardon in Honour, which must always be taken according to the Meaning; and that the King's Honour may be for ever Sacred, I say this Letter doth no Way help the Prisoner at the Bar.

First, it is plain by the very Superscription of this Letter in which the Declaration was inclosed, that it is directed to the Speaker of our House of Commons in Parliament Assembled; which cannot possibly be expounded of any other Parliament than that which was then Sitting, to whose Speaker it was written.

Secondly, The Letter it self says, We have left it to you to provide for Security and Indempnity; and again, If there be a Crying Sin for which the Nation may be involved in Infamy, we cannot doubt but you will be as solicitous to vindicate

vindicate it as we can be. And then in this very Letter encloseth that Declaration, upon the Penning of which the Prisoner so much relies: Now lay all together, and it is clear the Parliament, meant by the Declaration, must be the same Parliament which was meant by the Letter; and that was this very Parliament whom the King intended to trust, both with Indempnity, and with the Vindication of his Father's Death, and to be the Dispensers both of Mercy and Justice in this particular. Another Thing is this, This very Parliament, as the Prisoner observes, they did go to the King according to his Gracious Letter, and in the Behalf of all the Good People of *England*, they did lay hold of the King's Mercy in his Letter and Declaration, and prayed that this Claim by their Speaker, in Behalf of all the rest of the Commons of *England*, might be Effectual to all purposes, and for all Persons other than those that should be by themselves afterward excepted, according to their Requests; His Majesty accepts their Petition, and makes Proclamation, that his Pardon should extend to all but such as they should except: What can be more clear and evident, than that this is the Parliament which the King did mean to be the very Parliament to which the Letter should have Reference till the Act of Oblivion was passed? Again: The late Transactions of these Twelve Years past had involved so many Persons, that we could scarce find a Man but he had need of Mercy; nay, this very Parliament to which this Letter was written had need of Indempnity; and is it probable in the Nature of the Thing, or can it be understood by any Man, that the King writing to this Parliament, and offering them Pardon and Indempnity, should mean such a Pardon and Indempnity as a future Parliament, to be called by his own Writ, should be willing to afford them? Whose Hearts would have been satisfied with so contingent a Security?

My Lords, upon the whole matter, by what the King hath said in this Letter, and by what the Parliament hath done in pursuance thereof, and by what the King hath proclaimed, it is to my Understanding as clear as the Noon-day, that the Honour of the King is not concern'd at all in the Exemption of the Prisoner at the Bar; and for the Cases of my Lord of *Essex* and *Southampton*, which he hath cited, they make against him; they were condemned because they endeavoured to imprison the Queen, and to remove her Counsellors, of which very Fact the Prisoner is in Law Guilty too; and then the Case of King *Philip*, the Husband of Queen *Mary*, makes nothing for him neither, unless he will speak out, and tell us plainly, that because by a former Violence the King was made a Prisoner, he became but like a Titular King, as King *Philip*.

In the next place he saith, my Case is out of the Law, I acted as a Counsellor in my own Particular for my Fee; it was *Avaritia*, but not *Malitia*, nor *Falso*, *Malitiose*, or *Proditorie*: But he must know, that no Man hath, or can have, a Lawful Calling to pursue the Life of his King; and the Law implies Malice; for *Malitiose* and *Proditorie* are not only Words of Course, but of Truth too, in this Case, else it were as much as to say, that no Council can be guilty of High-Treason, than which nothing can be more absurd: My Lord, for that which he said last, (for

I must omit some Things, and give him leave to take the Advantage of it,) to stand upon it, that the place was a Court, such a one it was that he was not answerable for the Constitution of it; if it were not in a Legal Sense, it was such an Order as might bear him out, that is, with Modesty and good Manners to justify High-Treason; it is not with such Insolency as some others before him did it, but it amounts to that, That an Order of a few Persons that first made themselves a *Parliament*, and then made a Court of Justice, had Officers, and met together, and perfected so great a Treason; I say, that this Order to bear him out is impossible. He that is a Lawyer, he must account to the Laws for what he hath done; if the Authority were not lawful, he cannot but know that this which he calls the *Parliament* was so far from a Legal Authority, that it was one part of the Treason that he did assist such an Assembly.

Gentlemen of the Jury, This is your own Case, here is a Charge that is exhibited by the Prisoner at the Bar, as he saith, in the Name of all the People of *England*. Look on it, for you are some of them if you own it; then it may be true what he hath said; but I hope you meet here to tell this Nation, and all the World, that the People of *England* had no Hand in that Charge; do but consider how that this Prisoner at the Bar had hunted the Life of the King, how he did fish out and examine Evidence, whether the King set up his Standard at *Nottingham*, was at such a place, and such a place; to what End is all this, but with Design of Blood? Were these Things to be produced against the King, and then Judgment to be demanded that he may be saved? Is it not plainly proved to you by Witnesses, how he did exhibit the Charge, press it, aggravate it, desired it might be taken *pro Confesso*, was afflicted with the Delays, how angry he was when he was interrupted? Is it not proved to you, that he was at first against the Thing, and said, *It was a base Business?* When he was engaged in it said, that he was *a Servant of the People of this Kingdom?* What doth he do at last, when the Thing had gone far? He speaks that which is the only Truth which I have heard yet from him, *He must die, and Monarchy then must perish with him;* from which Event, Good Lord deliver us.

Sir Edward Turner. My Lord, the Substance of the Defence that the Prisoner hath made at the Bar, with much Skill and Cunning, may be referred to Two Heads. The First to the Statute of the 23th of *Edward* the 3d, the Second to the late Act of Oblivion: For the First, my Lord, he saith, that his Fact is not comprized within that Statute; saith he, I did never Conspire or Imagine the Death of the King; nor did believe that would be a Consequent of their Actings. It was expressly proved that himself did say that the King must Die, and Monarchy with him; but, Gentlemen, though he had said true, that it had not been proved, or that he did not believe that would be a Consequent, yet; my Lord, I must tell you, that every Step of this Tragedy was Treason; the Summoning themselves, that was Treason; every Proceeding upon that was Treason; the Summoning of their Meetings in the *Painted Chamber*, Coming into *Westminster-Hall*, every Person as Instrumental, those that came to Act the least Part in that Tragedy,

Tragedy, were every one Guilty of Treason; what, saith he, I acted as a Counsellor for my Fee: It was that Fee that *Judas* had, the 30 Pieces of Silver, that made him hang himself. He goes further, and tells you, there must be no Semblable Treasons, this is clear; the Conspiring and Imagining the Death of the King, that's the Treason that is mentioned in the Act; Treason by the Common Law; though this be not named the killing of the King; yet all these Proceedings are Demonstrations to you there was a Secret Imagination to kill him. Then to the Act of *Oblivion*, his Argument is, That because the Act saith, that if they had Sentenced, Signed, or been Instrumental in the Death of the King, that they should be excepted; but it is not said, or otherwise instrumental; that this therefore should refer to subsequent, not precedent Acts, that's a strange Exposition; take it Grammatically, it hath the most large Construction, Instrumental, more large than if they had said or otherwise, for it doth comprehend every Thing: There having been so full an Answer already, I will be short; I will not meddle with his Civil Debts, but with his Political; if a Man kill another, though he do repent, the Magistrate must do Justice *in Terrorem*. Though he doth repent, (I hope in God he doth so,) the Magistrates, your Lordships, must do Justice *in Terrorem*, I desire that Justice may be done upon that Man. He said it was no Treason to demand Justice against the King, because he did but demand it; I hope he will think it no Unkindness in me to desire Judgment against him, because it is Just.

Mr. *Wadham Windham*. As I understand the Prisoner at the Bar, the chief Argument which he shelters himself under was his Profession, which gives a Blast to all of us of the Long Robe; I will not mince his Arguments; saith he, here was a Court, I was appointed Solicitor; and saith he, for Men to practise before those that have not a proper Judicature, it is not Felony, Murther, or Treason, (I would not willingly mince his Argument,) and that I was appointed, and the Words dictated to me; and a Counsellor carrying himself within the Compaſs of his Profession is not Answerable; but if he will exceed his Bounds, his Profession is so far from sheltering him, that, as it has been opened, it is very much an Aggravation; it is the Duty of a Counsellor to give Council; if a Man shall come to me and ask Counsel, and I shall Counsel him to kill a Man, am not I accessory to that Murder? Words by his Argument, will not amount to Treason; if the Fact follows, I am as Guilty as if I did the Fact; in point of Treason, it is all one as if I had done that very Act. If Mr. *Cook* did advise that Act, or was Instrumental, he is as much a Traitor as the Man in the Frock that did the Execution; for his Profession, truly, my Lord, I do not think that a Counsellor is always bound to know the Patent of him that sits as Judge, that will not be his Case; here was no ordinary Warrant of Law to carry on Justice: *Grotius* saith, in Case of Necessity for carrying on Justice, there may be many things allowed: I pray where did Mr. *Cook* read of such a Court as a High-Court of Justice? There was never such a High-Court of Justice read of in the Law; then as this was a Mock-Court, so under good Favour it was a

Mock Jurisdiction. Was there any Law under Heaven to put the King to Death? Is it not out of the Compaſs of all Courts whatsoever to do it? And under good Favour, my Lord, this is but to shelter a Man's self under Colour of Justice to do the most Execrable Treason in the World; I have no more to say to you.

Lord Chief Baron. I would repeat the Evidence and your Answer to you, if you have any thing New speak to it.

Cook. This is New; it was said by one, that if there had been no Charge there had been no Sentence given in the Case; I say that the Indictment or Charge is no part of the Trial by the Statute of *Magna Charta*: The Peers of the Land shall be Tried by Peers, but are Indicted by the Country; I conceive by what they have said they do make me causal of the King's Death. It is said in the Indictment there was a Power; I say this, I did not assume any Power; it cannot be said, if Counsel be come in to an unlawful Power, that he takes the Power, but stands with Respect at the Bar. At Assizes Judgment passes, the Clerk of the Assizes he is not Instrumental in taking away Life. For that which Mr. *Starkey* should say, that I should say *The King must die and Monarchy with him*, I humbly beg that the Jury would take Notice of what Mr. *Nutley* said, that I told him there was no Intention of taking away the King's Life; and besides, it is but a single Witness. I hope there must be Two Witnesses in Point of Law to Convict a Man of High-Treason.

Lord Chief Baron. Mr. *Cook*, you said right but even now, that if there was any Thing in Matter of Law which the Court knows of, which may be of Advantage to you, they are of Council to you, and so they ought to be.

Cook. I thank your Lordships.

Lord Chief Baron. I shall repeat the whole Evidence, and begin with that first; (we are upon our Oaths;) the Witnesses that are against you, I took Notice of them; you have had a great deal of Liberty, which you have made use of civilly; but, Sir, for the Fact, I think it is a great deal more full than as you have answered. First, The First Witness produced against you was Mr. *Nutley*, (I shall speak only the Material parts that concern your Charge,) he swears expressly that he saw *Price* a Scrivener writing a Charge in the *Court of Wards*, that he saw his Charge in your Hands; he saw afterwards, when the King of Blessed Memory was brought as a Prisoner, that there you delivered the Charge in; there is more than Words; you delivered that Charge in, that alone is an Overt-Act; then if there were nothing else in that Case, that a Man in a Paper should call the King Traitor, Tyrant, Murtherer, and Implacable Enemy, as there the Words are, and he deliver this Paper, and this be read, if this be not an Overt-Act of Imagining and Compassing the King's Death, I do not know what an Overt-Act is; and he gives further Evidence; if I mistake, take free Liberty to interrupt me.

Cook. Sir, they were not my Words, but their Words that Commanded me.

Lord Chief Baron. This I say, that this very Thing alone, such a Paper approved by you, delivering this Paper to an Assembly, and requiring it may be read, this is an Overt-Act to prove the Imagination of your Heart for the Death of the King; the Reason is, if the King should be a

Tyrant,

Tyrant, a Traitor, &c. it stirs up Hatred in the People, and the Consequences of that Hatred is the Death of the Prince. The next Thing that Mr. Nutley said was this, he said that you demanded positively Judgment against him, against the Blessed King, then Prisoner at the Bar. I remember you said that you did demand Judgment, but that you did not demand Judgment against the King; take it so whether you did, or not, (though you shall find in some other Witnesses that I shall repeat, that you said Judgment against the King; the Consequence will be the same; who could you demand Judgment against but the King? He was the Prisoner: Because he did demand a further Hearing by the *Parliament*, you urged that his Charge might be taken *pro Confesso*, then it must needs be Judgment against the King; it is effectivly and implicly the same. He went further, and that was, that being your Friend and Acquaintance, and acknowledging your Parts as a Lawyer, (which truly I do very much know my self, and do know this Gentleman to be a Man of very great Parts in his Profession,) he had familiar Acquaintance with you; he told you what a base Business it was, and you did yourself acknowledge it; said the Prisoner to Mr. Nutley himself, it is a base Business, but they put it upon me. He did discourse further to him of the Oaths of Allegiance and Supremacy, which he knew very well, no Man better; this, Gentlemen, he very ingenuously confessed it, saying, I confess it is so, they put me upon it, I cannot avoid it; but then excuses it, I am the Servant of the People: Afterwards he pressed the King to answer positively, whether Guilty or Not Guilty; the pressing of the King to answer, what was it in Effect but to hasten Judgment? And that was to hasten his Death; so that this is the Substance of Mr. Nutley's Testimony, that he pressed Judgment; Judgment was demanded by the Prisoner now at the Bar; it is not only demanded, but pressed, and all the Current of the Witnesses at several Days are to this purpose. It is true (that I may repeat the whole for you, and against you,) that this Gentleman, the Prisoner at the Bar, when Mr. Nutley did urge this to him, said, he hoped they did not intend to take away the King's Life; I verily believe they do not intend to take away the King's Life; I hope they do not. But, Mr. Cook, it is no Excuse to say you hope, or you believe, they will not, &c. How far it may be in such a Crime something in Extenuation *in Foro Cæli*, but not *in Foro Civili*; you opened it yourself, that if a Man should go about to take the King Prisoner, it is Treason; the Law adjudg'd that to be Treason; when you knew they would condemn him as a Tyrant, Murtherer, &c. you must easily believe what would follow such a Condemnation, truly Death; that is no Colour of Excuse *in Foro Civili*. Farrington swears to the same Purpose, that he saw you having a Parchment in your Hands, delivering it in and prayed it might be read as a Charge of the People; you did not speak, I deliver this in, from those that deliver'd it to me; that was not in the Paper, that you said of yourself; my Brethren will tell you all this is an apparent Point of the Imagination of your Heart; at that Time he swears the same Thing, that you did desire it might be taken *pro Confesso*. Mr. Bodurdo is the Third, he swears the same Thing too, that you

exhibited a Charge of High-Treason against the Prisoner then at the Bar, and tells you the Substance of it; he saith that all but the First Day you demanded Judgment for not pleading to the Charge; he adds, that you complained of the Delays; I am sure that was not dictated to you; that could not be thought that you should desire Judgment for the Prisoner: It is very true which you say for yourself in that, that you did not demand it first, till it was demanded by the Court; Mr. Bodurdo tells you, and so it was granted the First Day, that Bradshaw only said it, but afterwards that you always demanded it: The next was Mr. Herne, he swears the same Words again, that you did in the Name of the Commons Assembled in Parliament, and the People of *England*, exhibit a Charge, &c. These are your own Words; if you did exhibit a Charge against the King, to exhibit a Charge of High-Treason the very Thing followed; if it were so, there was Death, so certainly there cannot be a greater Expression of the Imagination of a Man's Heart than that is: It is true, you asked then a Question, and that was, whether that that you concluded was not that you desired them to proceed according to Justice? It is true, the Words of the Charge are so; but before you come to Conclusion you Charge him as a Traitor, Tyrant, &c. *Communis Hostis*; after you had given that Charge you demanded Justice; those that spit in his Face they demanded Justice; every one knew what belonged to that Justice: Then Baker, he swears positively that you did exhibit the Charge in this Manner; he said this, that you said, you had exhibited a Charge of High-Treason, &c. and that the King sought Delays; there is your insisting upon it; he says further that you said these Words, that you did desire Judgment should be given against him, and not so much you, as the Blood that had been shed that cried for Judgment; truly whether that was a Judgment that you intended for Acquittal, that must be left to the Jury. You asked (because I will repeat it in order as my Memory will give me leave) whether there was any other Words in the Charge than was in the Proclamation? Mr. Cook, Whether there was any other Words, or no, that differed in the Proclamation; as it was a great Sin and foul Fact in the Proclamation, so it was as foul in the Charge. Master Master-son swears the same too, he heard you say the Second Day you had delivered a Charge (the Day before) against the King; and that he had delayed his Answer, you desired he might plead Guilty, or Not Guilty; the last Day, that you did in the Names of the Commons Assembled in Parliament, and the People of *England*, demand Judgment against the King; and then another swears those Words, Judgment against the Prisoner at the Bar, which was the King. Burden swears you Examined him as a Witness against the King, in what Place he was with the King; it seems he was in the King's Army; he swears you gave him an Oath; (it is Testimony fit to be believed;) but however, if you did not give the Oath, by what you say yourself you may be by, and asked him the Question. Master Starkey, he tells you, that during the Trial, and before the Sentence, that you, being an Old Acquaintance of his in *Grays-Imm*, and speaking with him, he spake like a Friend to you, *I hear you are up to the Ears in this Business*; and whereas you talk of

*the People, there is a Thousand for One against it ; that you should tell him again, You will see strange Things, but you must wait upon God ; these Words of waiting upon God are Words of that Nature, People do use them now-a-days when they would do some horrid Impiety, which hath been the Sin of too many ; it is but a Canting Language, that is the best Term I can give it : You told him then He must Die, this was before the Sentence ; (that is to be observed, Gentlemen of the Jury ;) you say you did not know of the Sentence, you said He must Die, and Monarchy with him. You must here know that some of those Persons that fate upon him said, the King was a Gracious and Wise King ; and as Mr. Cook did say, and they were the best Words they spoke, and I think he thinks so in his Conscience ; but in Conclusion He must Die, and Monarchy must Die with him ; others said, they did not hate King Charles, but they hated Monarchy and Government, but Monarchy was the Thing that they would Behead. I think I have done with that Evidence that was given against you ; the Indictment itself was read, the Overt-Acts was the Meeting, Propounding, and Consulting about it. It appears he was in the Chamber about the Charge, that he did propound it, he delivered the Charge, and it appears withal, that he demanded Judgment, he desired the King might answer, or that it might be taken *pro Confesso*. These are Overt-Acts to declare the Imagination of his Heart. The Answer of Mr. Cook I will repeat it as clearly as I can, because nothing shall go to the extenuating of the Fact but it shall be spoken. Mr. Cook, in your Answer, your Defence that you make, you set forth the Heads of this Indictment, and you set them forth very truly ; the Heads are the Aggravations of the Indictment, the Indictment was the Compassing and Imagining the Death of the King ; it said it was upon these Grounds, that you did Propound, Abet, and Consult the Death of the King ; that you with others did assume Power and Authority to kill the King, and that thereupon a Person unknown in a Frock did accordingly kill the King. You say to the first Part, if it did not appear that you did advise the Death of the King that you were not Guilty : For that, Sir, as I told you before, taking them either complexly or singly, if any of the Particulars reached to one of these Acts, it was enough, but it reaches to all : You required Judgment against the King as a Traitor, and that with a Reason, and certainly Death must follow : You say you were appointed to give your Advice ; you had a Proclamation first for Trial of the King ; you had the Order of January 10, whereby you were appointed to give your Advice ; if it were so it will be no Excuse at all ; the Proclamation gives you no Warrant at all ; he that obeys so wicked a Proclamation it will not save him ; it appears you were privy to this before the Proclamation ; if you were not at all, when such a thing as this is, such a Proclamation and Act, and such a manner of Trial, as I believe, though you have read very much, you never heard of such a Thing in our Law, or Foreign Nations, that you thereupon should take upon you to be of Council against the King, it Aggravates the Fact : Other Men may be Impudent and Ignorant, but you that were a Learned Lawyer, your being of Council doth aggravate the Thing. You say,*

Secondly, By Law Words will not amount to Treason ; for that, I would not have that go for Law by no means, though it be not your Case ; for you are not Indicted for Words, but Words are Treason, and Indictments are often for it ; but the Difference is this, the Indictment is not for Words, but Compassing and Imagining the Death of the King ; Words are Evidence of the Compassing and Imagining the King's Death ; it is the greatest Evidence of the Imagination of the Heart ; Words do not make a Treason, that is, if it be by Inference or Consequence, but reductively ; but if it be immediately, I shall say to a Man, Go kill the King, by that which is an absolute, immediate, necessary Consequence, to say this is no Treason, I would not have that go for Law ; your Case is not for Words, but for delivering a Charge, the Ground that you speak of ; Words may make a Heretick, but not a Traitor ; it was a witty Saying, but you have no sufficient Authority for it ; these are Words put in Writing ; we all know if a Man put his Words in Writing, if a Man speak Treasonable Words, and put them in Writing, they have been several Times adjudged Treason ; and so in my Lord Coke's ; *Institutes*, the Case of *Williams* of the *Temple* ; there was a Book of Treason in his own Study of his making, and he was indicted for it ; Words put in Writing is an express Evidence of the Imagination of the Heart ; you say it was dictated to you, but when Words are written in a Charge, and your Name to it, (which I had almost forgotten,) that's more than Words ; the Witnesses swear the Likeness of your Hand ; they do but swear the Likeness of your Hand ; no Man can swear more, unless he was present and saw it ; but you owned the Charge, and there your Name is ; that besides the Two Witnesses there is your own Actions to prove it. When Two Witnesses shall swear it is like your Hand, and you own that Charge, I must leave it to the Jury : You say you did this after Command, the Words were dictated to you ; the Words were *conceptis Verbis*, appointed and ordered by the Court, but the pressing was yours ; he stands upon Delays, let it be taken *pro Confesso*, demanding Judgment ; these were your Words ; another Man may dictate a Thing, but you are not forced to speak it ; you urged it, owned it ; you demanded not in the Name of the Court, but in the Name of all the People of *England* ; you say further, that your demanding Justice is not within the Statute ; as I said before, what can be the Effect of demanding Justice, but that the King should die upon those Premises ? You say farther, that it was in behoof of the King, as you would urge it ; to do the King a Courtesie, in asking the King might have Justice ; but you did not name what Justice it was ; but you did him a Courtesie ; truly the King was but a little beholden to you for that Request ; all the World knows what that demanding of Justice was, it was to have the King's Head cut off ; you went as far as you could ; it ended with you when you demanded Justice ; that is as far as you could you cut off the Head. St. Paul, when the Witnesses laid down the Cloaths at his Feet, he said, I killed *Stephen* the Martyr. You say further, that in all Tragedies the Accuser or Witness, the Jury, the Judge, and Executioner, are the only Persons ; and you are none of these ; you are only of Council ; if

Justice

Justice was not done, what was it to you? You said you did not assume a Power, there was only Eloquence required in the Council; it hath been truly said, that this is a great Aggravation to be of Council against the King; you said his Majesty was then a Prisoner and accused; Council cannot be heard against the King; you undertake to be Council against the King in his own Person, and in the highest Crime; if the Council at the Bar in behalf of his Client should speak Treason, he went beyond his Sphere; but you did not only speak (but acted,) Treason; you said you used not a disrespectful Word to the King; truly for that you hear what the Witnesses have said; you pressed upon him; you called it a Delay; you termed him not the King, but the Prisoner at the Bar, at every Word; you say you did not assume an Authority, it is an Assumption of Authority, if you countenance or allow of their Authority; you say you do not remember you demanded Judgment against the King; that is fully proved against you; you yourself asked the Question; whether you did say against the King he did not remember; but others positively, that you demanded Judgment against the King and Prisoner at the Bar; you said that before Sentence there was not an Intention to put the King to Death, to that Mr. Starkey swears that you expressly said, the King must die, and Monarchy with him, and this before the Sentence: Whereas you say this is but one Witness, that there is to be in Treason Two Witnesses; but that there should be Two Witnesses to every Particular that is an Evidence of the Fact, that is not Law; if to one Particular that is an Evidence there be one Witness, another to another, here are Two Witnesses within the Meaning of the Statute; Two Witnesses to the Indictment, Compassing and Imagining the Death of the King; being accompanied with other Circumstances, this One Witness, if you believe him, is as good as Twenty Witnesses, because other Overt-Acts are expressly proved by several Witnesses. You say next, for the drawing of the Charge, in right Reason, it ought to be counted for the Service of the King: First you do acknowledge, and truly very ingenuously, that in the Time of Peace to bring him to the Bar, not being a Prisoner, is Treason, (you say it,) according to the Law, and that you delivered the Charge for the accelerating of the Trial; and that it was not done by you traitorously; you say the King was a Prisoner before; and you say what Hands he was in, in the Hands of Men of Power and Violence; it had been your Duty to have delayed it, not accelerated it, that there might have been some Means of Prevention of that Bloody Act that followed; if you knew that to be Treason to make him a Prisoner, Subjects do not use to make Kings Prisoners, but Death follows. You urge in the next Place the Act of Indemnity, and that you are not excepted; for that, you have made as much of it as the Matter will bear; yet you must consider, First, as a Rule in Law, that where they are General Words, when they come to be explained by the Particulars, you shall not include them within the General: Mark the very Words, they are these, *Provided that this Act, nor any Thing therein contained, shall extend to Pardon, Discharge, or give any other Benefits whatsoever unto such and such, (among whom you are named,) nor any of them, nor*

*those Two Persons, or either of them, who being disguised by Frocks and Vizards, did appear upon the Scaffold erected before White-hall, upon the Thirtieth of January 1648. All which Persons, [these are the Words.] First, It shall not extend to you; then it comes, All which Persons, for their execrable Treason in sentencing to Death, or signing the Instrument for the horrid Murder, or being Instrumental in taking away the Precious Life of our late Sovereign Lord CHARLES the First of Glorious Memory, are left to be proceeded against as Traitors to His late Majesty, according to the Laws of England, and are out of this present Act wholly excepted and foreprized. First, as I told you before, and as it was very well said by Master Solicitor, admitting the Reason had been mistaken, and that you had not been comprehended in the Reason, you are excepted out of the Body, Provided it shall not extend, &c. Many times Laws do make Recitals, which in themselves are sometimes false in point of Fact; that which is the Law is Positive Words, the other Words are for the Reason; excepting all which, that is, Master Cook, which Person is excepted, not for Doing of it, but for his execrable Crimes in being instrumental. It is clear without that, if it were not so; we say when a Sentence is, or such a one, or such a one, the Third Or makes all disjunctive: Here are Three Ors, first in Sentencing to Death, or signing the Instrument, then comes this, or being Instrumental in taking away the Precious Life of our late Sovereign, &c. this Or doth clearly exclude the other Two; or Instrumental not only in point of Death, but farther, being either a Sentencer, Signer, or being Instrumental in taking away the King's Life; that is, being any way Instrumental. Truly, whether it be not Instrumental to exhibit a Charge against him, or complain of his Delays, to ask Justice against him in the Name of the People, to do all this, and desire that the Charge might be taken *pro Confesso*, if this be not Instrumental, I know nothing else but Sentencing and Signing: Some signed the Sentence, some the Instrument for Death: The next Degree of being Instrumental, the highest Degree of that, is to Accuse him, to deliver in the Charge against him in the Name of the People; do it again and again, be angry at the Delays. The next Thing is this, that you did not do this *falso* or *malitiose*, but for your Fee; and that though there might be *avaritia*, there was not *malitia* in it; it was done by your Profession, you were not Magisterial in it; you thought the Consequences that did follow, would not follow. If a Man does but intend to beat a Man, and he die upon it, you know in Law it is all one: You must understand there is a Malice in the Law; if a Man beat One in the Streets, and kill him, though not maliciously in him, yet it is so in Law. That you desire to have the Benefit of the King's Declaration; that you did put in your Petition proving the same; that you were a Prisoner before; that the Commons in behalf of themselves and the People of *England*, they craved the Benefit of it, which was granted, excepting such as should be by Parliament excepted; and that the King should mention a Free Parliament; for this, it hath been fully answered to you, and clearly, by Mr. Solicitor, that you are not at all concerned in the King's Declaration at *Breda*. For First, it is nothing in*

Law, it binds in Honour; and we have given the same Directions Yesterday upon the like Occasion, that is, that the King's Declaration binds him in Honour and in Conscience, but it does not bind him in Point of Law, unless there were a Pardon granted by the Broad Seal; the Thing is cleared to you what Parliament the King meant by it; they were sitting at that Time, had acknowledged their Duty and Allegiance to their King; they went *ad ultimum potentie* for a Free and Absolute Parliament, whilst the King was absent, though the King was away; yet notwithstanding the King declared whom he meant; he directed one of those Declarations to Our Speaker of the House of Commons, and another to the Speaker of our Peers: in this Case it was *loquendum ut vulgus*; it was owned by him as having the Name of a Parliament; it was done with great Wisdom and Prudence and so as it could be no otherwise; that they were Loyal Subjects, acting in the King's Absence; he consenting to it; the King owning that Authority; so he was obliged in Honour no further than his own Meaning and Words; but there is another Clause in the Act which excludes all these Persons. The next Thing is this, you say the Statute of 25 *Edward 2*, and it is very true, you say if it be any Semblable Treason, we were not to judge upon that, unless they were the Treasons in the Act; and it is most true; now you would urge but this, that this is but a Semblable Treason; but you are Indicted for the Compassing and Imagining the Death of the King: If these Acts did not tend to the Compassing and Imagining the King's Death, I know not what does; I am satisfied you are convicted in your Conscience. The next Thing (for you have said as much as any Man can in such a Cause, it is Pity you have not a better,) you say, though it was a Tyrannical Court, as it is called, but such a Court it was, and there were Officers you say, it had *figuram judicii*; that aggravates the act to you, to your Profession. There is a difference between a standing Court, and that which is but named to be a Court; this was but One of a Day or two's growth before, and you know by whom; by some that pretended to be only the Commons; your Knowledge can tell you that there was never an Act made by the Commons assembled in Parliament alone; and you may find it in my Lord *Coke*, that an Act by the Lords and Commons alone was naught, as appeared by the Records; Sir *James Ormond* was Attainted of Treason; the Act was a private Act, by the King and Commons alone, the Lords were forgot; when the Judges came to try it, it was void; and another in *Henry* the 6th's Time; you know this was no Court at all; you know by a Printed Authority, that where a settled Court, a true Court is, if that Court meddle with that which is not in their Cognizance, it is purely void; the Minister that obeys them is punishable; if it be Treasonable Matter, it is Treason; if Murder, it is Murder: So in the Case of *Marshallsea*, and in the *Common Pleas*, if a Man shall begin an Appeal of Death which is of a Criminal Nature, and ought to be in the *King's-Bench*, if they proceed in it, it is void, if this Court should condemn the Party convicted, and he be executed, it is Murder in the Executioner; the Court had no Power over such Things. You speak of a Court: First it was

not a Court: Secondly, no Court whatsoever could have any Power over a King in a coercive Way, as to his Person. The last Thing that you have said for your self is this, that admitting there was nothing to be construed of an Act or an Order, yet there was a difference; it was an Act *de facto*, that you urged rightly upon the Statute of 11 *Hen. 7*. which was denied to some, God forbid it should be denied you; if a Man serve the King in the War, he shall not be punished, let the Fact be what it will. King *Henry* the 7th took Care for him that was King *de facto*, that his Subjects might be encouraged to follow him, to preserve him, whatever the Event of the King was: Mr. *Cook*, you say, to have the Equity of that Act, that here was an Authority *de facto*; these Persons had gotten the Supreme Power, and therefore what you did under them you do desire the Equity of that Act; for that, clearly the Intent and Meaning of that Act is against you; it was to preserve the King *de facto*, how much more to preserve the King *de jure*; he was owned by these Men, and you, as King; you Charged him as King, and he was Sentenced as King. That that King *Henry* the 7th did was to take Care of the King *de facto* against the King *de jure*; it was for a King and Kingly Government, it was not for an Antimonarchical Government; you proceeded against your own King, and as your King, called him in your Charge *Charles Stuart* King of *England*. I think there is no Colour you should have any Benefit of the Letter, or of the Equity of the Act. They had not all the Authority at that Time, they were a few of the People that did it, they had some Part of the Army with them; the Lords were not dissolved then when they had adjourned some Time, they did sit afterwards, so that all the Particulars you alledge are against you. The last Thing was this, you say, that it having pleased God to restore the King, Judgment should be given for Example for Terror to others, that this could not be drawn into Example again; why? Because by the Blessing of God Peace was restored; no Probability that if your Life was spared, that it would be drawn again into Example; this is the weakest Thing you have urged; you must know the Reason: There are Two Things, there is the Punishment, and Example; Punishment goes to the Prisoner, but Example to the Documents of all others; God knows what such Things may be in After-Ages, if there should be Impunity for them; it would rather make Men Impudent and Confident afterwards. If you have any more to say I will hear you, if not I must conclude to the Jury: You hear the Evidence is clear for Compassing and Imagining the Death of the King; you have heard what he has said, and what he hath done; he was within, and examined Witnesses against the King, that he was by at the drawing of the Charge where it was drawn; you hear he exhibited this Charge in the Name of the Commons Assembled in Parliament, and the good People of *England*, and what this Charge is; it is High-Treason, and other High-Misdemeanours; you find that he does complain of Delays, does again and again speak of this Charge, desire it may be taken *pro Confesso*; in the close of all, it was not so much he as Innocent Blood that demanded Justice; this was more than was dictated to him. You have heard
the

the Witnesses; he was perswaded to forbear; acknowledged the King to be a Gracious and Wise King; the Oaths alledged against him, and you have heard his Excuse; I have nothing more to say; I shall be very willing to hear you further; I have not absolutely directed the Jury.

Cook. I do humbly acknowledge your Patience in hearing me, and that your Lordships have truly and justly stated both Proofs and my Answer. If your Lordships are pleased to lay aside these Acts, or Orders, or Authority, whereby I did at that Time truly conscientiously act, and did think that it would bear me out, if you lay aside that, and look upon it as so many Men got together without Authority, and as well those that were Instrumental, though not Sentencers or Signers, and that Clause in the Act, I confess I humbly make bold to say I have not received Satisfaction in my Judgment, those very Words of *not so much I as the Innocent Blood cries for Justice* were dictated to me; there was nothing at all left to me, because his Majesty did not plead; there was no Trial; that which I did was according to the best, though it may be according to the weakest, Part of my Judgment: I have no New Matter.

Lord Chief Baron. You have said no New Matter, unless it be worse than before, for now you warrant that Authority.

Cook. Do not mistake me, (my Lord,) I mean so far as to excuse me in the Point of High-Treason.

Lord Chief Baron. We delivered our Opinions as to that formerly; we were of Opinion, that the acting by Colour of that pretended Authority was so far from any Extenuation, that it was an Aggravation of the Thing; the meeting by that Authority was Treason, and in them that acted under them, and approving of it, the making of that traitorous pretended Act, making the Proclamation, sitting upon it, they were all so many Treasons; that was the Reason why that was urged against you, assuming upon you the Power, that was, you approving of their Power by acting under them, so that there is nothing more to be said.

Gentlemen of the Jury. You have heard the Indictment was for Compassing and Imagining the Death of the King; you have heard the several Overt-Acts repeated, and whether these are Guilty of Treason to deliver in a Charge against the King, such a One as that was in these Words, as against a Traitor, Tyrant, Murderer, and Implacable Enemy to the Commonwealth; in these very Words to desire Judgment against the Prisoner (then the King) at the Bar, angry at Delays, to desire that the Charge might be taken *pro Confesso*, to have it expressly, again and again to demand Judgment, if these be not Overt-Acts of Compassing and Imagining the Death of the King, and that which hath been said by the Witnesses, it must be left to you: I think you need not go from the Bar. *Jury went together. Silence is Commanded.*

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall speak for you?

Jury. The Foreman.

Clerk. *John Cook,* Hold up thy Hand. Look upon the Prisoner at the Bar, how say you, is he Guilty of the Treason in Manner and Form as he stands Indicted? Or not Guilty?

Fore-man. Guilty.

Clerk. Look to him, Keeper.

Clerk. What Goods and Chattels?

Jury. None that we know of.

The Trial of HUGH PETERS, the same 13th of October.

Clerk of the Crown. Set *Hugh Peters* to the Bar: which was done accordingly.

Clerk. *Hugh Peters,* Hold up thy Hand; thou standest Indicted, &c. If you will challenge any of the Jury you must challenge them when they come to the Book, before they are Sworn.

Lord Chief Baron. *Mr. Peters,* you may challenge to the Number of 35 peremptorily, but beyond that you cannot, without good Cause shewn; and you may have Pen, Ink, and Paper.

Peters. My Lord, I shall challenge none.

Jury Sworn 12, *Sir Jer. Whitcb,* *James Hally,* *Christ. Abdy,* *Nich. Rainton,* *Rich. Cheney,* *Jo. Smith,* *Rich. Abol,* *G. Terry,* *Char. Fickern,* *Jo. Nichol,* *Fran. Dorrington,* *Anthony Hall.*

Clerk. *Hugh Peters,* Hold up thy Hand. Look on the Prisoner you that are Sworn, &c.

Sir Edward Turner to the Jury. You have often heard repeated to you that the Substantial Part of the Charge is the Compassing and Imagining the Death of the King, and all the rest will be but Evidence to prove that Imagination against the Prisoner at the Bar, whom we will prove to be a Principal Actor in this sad Tragedy, and next to him whom God hath taken away, and reserved to his own Judgment; and we shall endeavour to prove, that he was a Chief Conspirator with *Cromwell* at several Times, and in several Places; and that it was designed by them: We shall prove that he was the Principal Person to procure the Soldiery to cry out, Justice, Justice, or assist or desire those for the taking away the Life of the King. He did make use of his Profession, wherein he should have been the Minister of Peace, to make himself a Trumpeter of War, of Treason and Sedition, in the Kingdom: He preached many Sermons to the Soldiery, in direct Terms for taking away the King, comparing the King to *Barabbas*: He was Instrumental when the Proclamation for the High-Court of Justice (as they called it) was proclaimed, directing where it should be proclaimed, and in what Place. When the King was brought upon the Stage, that Mock work, he was the Person that stirred up the Soldiery below to cry for Justice; we shall shew you as he preached at several Times upon several Occasions, still he was in the Pulpit to promote this Business; the next Day after he was brought to Trial he commends it; you shall hear all out of the Mouth of the Prisoner, therefore I say no more; call the Witnesses.

Dr. William Young Sworn.

Council. Tell my Lords and Jury what the Prisoner at the Bar has declared to you concerning the Contrivance of bringing the King to Trial.

Dr. Young. My Lords and Gentlemen of the Jury, it was near about (and that the Prisoner may remember) the Month of *July 1648*, since we came first acquainted, when he went over to *Ireland*; it was about the Siege of *Pembroke Castle*;

Castle; but afterwards in the Year 1649 we renewed our Acquaintance; he went over into *Ireland* with that Usurper, the late Protector, as he was called, after the Town of *Wexford* was taken; coming over he fell sick of the Flux, and said he received it by Infection, praying over Captain *Horton*: Coming into *Milford*, that Captain sends a Summons to me to come on Board, that was to fetch this Prisoner at the Bar, who was sick. I found him there grovelling upon the Deck, and sick he was indeed; with much Difficulty we got him on Shore; within a very few Days (to the best of my Remembrance Five Days) I perfected his Cure: We became very familiar; I observed in him that he had some secret Thoughts that I could not well discover, neither well understand; whereupon I thought it might tend to my Security that I should so much sympathize with him, to get within him to know his Intentions. After some Weeks, (for he continued with me ten Weeks, or near thereabouts, some few Days rather over than under,) we grew so familiar, that at last I found he began to enlarge his Heart to me. Many times I should hear him rail most insufferably against the Blood Royal, not only against our Martyred King, but against his Offspring; still as we continued our Acquaintance, he became more and more open to me; so we would sit up discoursing (till about Twelve or One of the Clock at Night very often) about these unhappy Wars late in *England*. At last, my Lord, I found him that he began to tell me how he came into *England*, and upon what Account he came out of *New-England*. I shall desire that in regard his Discourses were various, that I may deliver them orderly; they were delivered to me within the Compass of ten Weeks; but the Days and Weeks I cannot remember. First, he told me (discoursing of *New-England* and the Clergy there, and much of the Clergy here in *England*, and of the Business here of Reformation,) he told me, that for the driving on of this Interest of this Reformation, he was employed out of *New-England* for the stirring up of this War, and driving of it on; this I shall my Lord speak to in the first place, and that upon the Oath I have taken: And, Secondly, he was pleased at another time to acquaint me, and that by way of Compliment, complaining then against the Parliament, saying, that some time after he was come into *England* he was sent over into *Ireland* by the Parliament to receive further Instructions to drive on the Design, to extirpate Monarchy; saith he, I did dispend a great deal of my own Money, yet never had that Satisfaction from them which they promised me, that was, they promised 2 or 3000*l.* for my Journey, and yet they have given me no more but only a small Pittance of Land out of my Lord of *Worcester's* Estate in *Worcestershire*. I have seen his Letters directed to his Kinsman here in *London*, as I take it his Name was *Parker*, advising him for the settling of this Land, and selling it. Thirdly, my Lord, I have observed, that by way of Viliification of the Monarchical Government, I have found him jocundarily scoffing at it, and would ordinarily quibble in this Manner, saying this Commonwealth will never be at Peace till 150 be put down. I asked him what this 150 was, he told me Three *l.*, and afterwards interpreted the meaning to be the Lords, the Le-

vites, and the Lawyers, with that said I, we shall be like *Switzers*, *Tinkers* and *Traitors*. Now, my Lord, we are come to the last Particular; we discoursing thus frequently, and withal he was then a Colonel, and had a Commission under that Usurper *Oliver*, and brought over his Commission for Raising of Soldiers to foment that War in *Ireland*; that it was so I appeal to the Dictates of his own Conscience, and whether he did not press me very importunately to accept of a Commission of Major, or a Captain; he did Issue forth Two Commissions under his own Hand, one of them to bring over from *Devonshire* Two Foot Companies unto *Cork*. My Lord, because we were Militarily affected, amongst the Discourses of our unhappy Wars, I know not how it came from him, it being near Eleven Years since, and I have had many Sufferings incumbent on me, so that I may fail in some particulars, but in general thus it was: We were discoursing concerning our Martyr'd King, as then we call'd him, and of his Imprisonment in *Holmeby-House*, which I wondered at; thus we discours'd; he told me the Story how they had used him at *Holmeby*; and at last came up to this, when he was taken away from *Holmeby-House*, the Parliament had then a Design to have secured *Oliver Cromwell*, and my self, being then in *London*; saith he, we having Intelligence of it, escaped out of *London*, and rode hard for it, and as we rode to *Ware* we made a Halt, and advised how we should settle this Kingdom in Peace, and dispose of the King; the Result was this, They should bring him to Justice, Try him for his Life, and cut off his Head: Whether this was the Expression of *Cromwell* I cannot tell; but to the utmost of my Remembrance, and I am mistaken if it was not the Advice of Mr. *Peters* to *Cromwell*; and I believe it, because his former Relations of his Instructions out of *Ireland* did tend to that effect.

Mr. *Sol. Gen.* I will ask you this Question; we will not press you particularly upon your Memory, whether *Cromwell* or *Peters* said the Words? Do you remember he confessed to you they were agreed upon that Matter?

Young. They did consult and agree upon it.

Peters. My Lord, I desire to speak a Word, [his Voice being low he was brought to the Second Bar,] I am the Bolder to speak to your Lordships at this Time a Word, and it is high Time to satisfy my Conscience; if these Things were true there is enough said to destroy me; I desire leave to tell you what Offence I take at the Witness, thus, my Lord. This Gentleman I do know——

Council. What say you to him?

Peters. That which I have to say is this, that in his Story he hath told that which is not true; but I will not find fault with him, because he was my Host, I will not reflect and recriminate; I shall give your Lordships in Simplicity as much Satisfaction myself as any Witness; this I say to the Man that speaks, and this is certain, I did spend some time at this Gentleman's House, he is called there Dr. *Young*; and my Trouble at this Discourse is this, I do not know, my Lord, that I found a more violent Man for the Parliament than himself; so far he undertook to be a Spy on one Side; this I find to be so, he will not deny it; he was very fierce in that Way; I think Words of such a Man ought to be little attended to. The Second is this,

this, this Gentleman is not a competent Witness, and that upon a Twofold Ground. First, because I know he is under a very great Temptation and Trouble in this very Thing, and it is upon this Account he was put out of his Living in the Country, and here he came to me to help him in again, and was very highly offended because I did not do it. Secondly, it is not that I would invalidate his Witness, but give me leave to tell you, it is his way to snare and catch at every Man, which is the Complaint of the People in his own Country. I know that same which is spoken is false; I speak it in the presence of God, I profess, I never had any near Converse with O. C. about such Things; I speak this to the Jury, that they would have a care of the Witness; I was in Sickness then; those that have known me do know likewise that I have much Weakness in my Head when I am Sick, and to take Words that are spoken in a Sick Condition, he ought not to do it; for the Words themselves I do here profess against them, for the Generality of them; and that he hath been free in my Judgment in any Communication this Way than I have been; it is marvellous, here I profess the Things Untruths, I call God and Angels to witness they are not true. I will give you an Account of my whole Condition by and by, if I may be heard.

Court. You shall be heard at large; that which you have been heard now is concerning the Competency or Incompetency of the Witness: the Incompetency against him is this, that when you came thither none more violent for the Parliament than himself, and that he was a great Spy, and you say it was usual with him to take such Courses: these are but Words; if you have any Witnesses we will hear them; the Man may be traduced and slandered, and so all Witnesses may be taken away.

Mr. Peters, if you take this Course God knows when this Business will end; if you have a mind take Pen, Ink, and Paper, and take Notes of the Witnesses, and make Exceptions to them one after another; but interrupting one, and so another, we shall never have done.

Young. I do recollect my self of some other Conferences between us; as to my being malicious, I know he never did me any Wrong, and therefore I cannot be malicious; and as for my Reputation, having resided Two Years in London, I can have Certificates both from my Country, and some of this City, to vindicate me in that particular: But, my Lord, that which I would inform your Lordship is this, he told me he took Duke Hamilton a Prisoner himself in his own Chamber, seized on his Goods, and took his George and Blue Ribbon off his Shoulder, and the George he shewed me.

Wybert Gunter Sworn.

Council. Mr. Gunter, what can you say concerning a Meeting and Consultation at the Star in Coleman-street?

Gunter. My Lord, I was a Servant at the Star in Coleman-street, with one Mr. Hildesley; that House was a House where Oliver Cromwell and several of that Party did use to meet in Consultation; they had several Meetings; I do remember very well one among the rest, in particular that Mr. Peters was there; he came in the Afternoon about Four a Clock, and was there till Ten or Eleven at Night; I being but a Drawer could not hear much of their Discourse;

but the Subject was tending towards the King after he was a Prisoner, for they called him by the Name of Charles Stuart: I heard not much of the Discourse; they were writing, but what I know not; but I guessed it to be something drawn up against the King; I perceived that Mr. Peters was privy to it, and pleasant in the Company.

Court. How old were you at that Time?

Gunter. I am now Thirty Years the last Bartholomew-Day, and this was in 1648.

Court. How long before the King was put to Death?

Gunter. A good while; it was suddenly, as I remember, Three Days before Oliver Cromwell went out of Town.

Peters. I was never there but once with Mr. Nathaniel Fines.

Council. Was Cromwell there?

Gunter. Yes.

Council. Was Mr. Peters there any oftner than once?

Gunter. I know not, but once I am certain of it; this is the Gentleman; for then he wore a great Sword.

Peters. I never wore a great Sword in my Life.

Mr. Starkey Sworn.

Starkey. My Lords, in the Month of December, before the King died, in the beginning of that Month, and so towards the 12th of January following, the Head-Quarters of the Army were at Windsor, and Mr. Ireton, that is dead, (who was a General Officer of the Army) was quartered in my Father's House there, and by reason of his long Residence there, being about Two Months, I knew him very well. My Lords, this Gentleman Mr. Peters, he likewise quartered in another place in that Town, and Cromwell himself was quartered at one Mr. Baker's that lay low in the Town; so that in truth my Father's House being near the Castle, and there being in it a large Room, and in respect that Mr. Ireton was quartered there, usually the Council of War sat there. My Lords, I was then in the House constantly: Besides this Council of War, which did commonly sit there, I did observe that Cromwell, Ireton, and this Gentleman Mr. Peters, and one Colonel Rich, and a Fifth Person, whose Name I have forgot, did usually meet and consult together, and would sit up till Two or Three a Clock in the Morning very privately together; this was their usual Course when their Council of War sat; Mr. Ireton came in to Supper, but went out again; there were Guards upon them: After this Time it happened that I was often in Mr. Ireton's Company, where Mr. Peters coming to him, was very often at Meals there, but especially at Nights.

Mr. Ireton being civil in Carriage, would usually entertain Discourses with Mr. Peters, likewise would favour me sometimes with Discourse; and in that Discourse I did many Times take occasion to assert the Laws in point of the King; and discoursing about the King as being a Capital Instrument in the late Inconveniences, as they called it, in the Times of the War, Mr. Ireton would discourse this ordinarily; I was bold to tell them that the Person of the King was *solutus legibus*; this Gentleman, the Prisoner at the Bar, told me it was an unequal

qual Law. I did observe Mr. *Peters* did bend his Discourse, not by way of Argument only, but in point of Resolution of Judgment, fully against the Person and Government of the King. I remember some of his Expressions were these, That he was a *Tyrant*, that he was a *Fool*; that he was *not fit to be a King*, or bear that *Office*; I have heard him say, that for the Office it self, (in those very Words which shortly after came into print,) that it was a *Dangerous, Chargeable, and Useless Office*. My Lords, the constant Discourse of this Gentleman at that Time was such as he did believe would never be called into Question, so it was not a thing that a Man was necessitated to observe by an Accident, but it was their whole Discourse. I will put you in mind of a particular Passage: When the News came to *Windsor* that the King was in Prison at the *Ile of Wight*, my Father, (whose House that was) was very much troubled at it; and being an ancient Man, was not able to controul his Passions with Reason, told my Mother that they (meaning Mr. *Ireton*, &c.) should have no Entertainment there, and took the Key of the Cellar and put it in his Pocket; his Passions being lessened, Mr. *Ireton*, his Wife, and another Officer being at Supper, and afterwards my Father said Grace, and, as he usually did, tho' they were there, he said that Usual and Honest Expression, praying for the King in these Usual Words, *God save the King, Prince, and Realm*; sometimes they did laugh at it, but never did reflect upon him; but this Night he made this Expression, *God save the King's most Excellent Majesty, and preserve him out of the Hands of all his Enemies*. *Peters*, who was then at the Table, turns about to him, and said, *Old Gentleman, your Idol will not stand long*; I do conceive he meant it of the King. For a matter of Two Months of the constant Residence and being of the Army there, I did observe that in the General Council there, and in this private Cabal, (after the Business was broke out, and when the King was taken Prisoner, and carried to *Windsor*) Mr. *Peters* was the constant Man; and when the Business broke out, I looked upon it in reason that *Cromwell*, *Ireton*, and this Gentleman at the Bar, and *Rich*, and that other Gentleman, whose Name I have forgot, that they were the Persons that did the Business. My Lords, Mr. *Peters* he continued at *Windsor*; I remember very well that after the Body of the Army, the General, and the Officers of the Army, were gone to *London*, he continued in *Windsor*: I remember a Passage of one *Bacon*, who was a Secretary; Mr. *Peters* being in Discourse of the King, Mr. *Bacon* took great Distaste at Mr. *Peters* for some Affront put upon the King; Mr. *Peters* falls upon him, and rails at him, and was ready to beat him; we understood it so, because he did tell him of his affronting the King.

Council. Mr. *Peters*, if you have any thing to ask this Witness you may.

Peters. I have many Things to ask him. Did I ever lye there?

Starkey. No.

Peters. Did you see me there at Three a Clock in the Morning?

Starkey. I have seen you go up at Ten a Clock at Night to Mr. *Ireton's* Chamber, and sometimes I understood you did not go away till Four a Clock in the Morning; I went to Bed it's true, but I understood it so.

Thomas Walkeley Sworn.

Council. Give your Testimony what Consultation you have had with the Prisoner at the Bar.

Walkeley. I came out of *Essex* in at *Aldgate*; just as I came in a Proclamation was read for Trial of his late Majesty; I went down the next Day to the *Painted Chamber* at *Westminster*, where I saw *Oliver Cromwell*, *John Goodwin*, and *Peters*, and others; *John Goodwin* sat in the middle of the Table, and he made a long Speech or Prayer, I know not whether, but Mr. *Peters* stood there: After *John Goodwin* had done his Prayer, it was desired that Strangers might avoid the Room; then came up *Cook*, and *Dorilaus*, and *Humphryes*, and *Ask*, and *Dendy*, and several others, and stood by *Bradshaw* at the upper End of the Table; but *Cromwell* stood up and told them it was not necessary that the People should go out; but that was over-ruled; and so I went out and staid their Rising, and saw this Gentleman Mr. *Peters* come out with them. After that, when the King was brought to Town a Prisoner, the Lord *Carew*, a very honourable Person, meeting with me, saith he, *Walkeley*, if you will ever see your Old Master, go now, or else it may be you will never see him. Where is he, my Lord, said I? Saith he, he is coming on this Side *Brainford*. I went to the farther end of *St. James's* Corner, and there I met some of the Army coming, and then I saw his Majesty in his Coach with Six Horses, and *Peters*, like Bishop *Almoner*, riding before the King triumphing; then, after that, in *St. James's* Park, I saw *Peters* marshalling the Soldiers, and I was forced to go about. My Lord, this is all I can say concerning that. I remember one thing further of him; I heard him in *Westminster-Hall* say, within a Year or Two after the Army was raised, *If we can keep up our Army but Seven Years longer, we need not care for the King and all his Posterity*.

Mr. Proctor Sworn.

Proct. I having occasion to go from *London* to *Windsor* the Day that the King was brought from thence a Prisoner, a little on this Side *Brainford* I saw great Troops of Horse; I did conceive what the Cause was, having heard the King was to be brought up to his Trial; after I had passed some number of Horses, at last I espied the Prisoner at the Bar immediately before the King's Coach, singly riding before the Coach-Horses, and the King sitting alone in the Coach. My Lord, I did put off my Hat, and he was Graciously pleased to put off his Hat; the Troopers seeing this, they threw me into the Ditch, Horse and all, where I staid till they passed by, and was glad I escaped so.

Hardwick Sworn.

Council. When the Proclamation was read in *Westminster-Hall* for Trial of the King, did you see Mr. *Peters* there?

Hardwick. I was in the Hall when that ugly Proclamation was proclaimed, where I saw *Dendy*, *King*, and that Gentleman, the Prisoner at the Bar, in the Hall; after the Proclamation was proclaimed, the Prisoner at the Bar came out into the *Palace-Yard*, and told them, *Gentlemen*, saith he, (a great many Officers and Soldiers being there) *all this is worth nothing, unless you proclaim it in Cheapside, and at the Old Exchange*.

Council.

Council. Explain yourself, what Proclamation do you mean?

Hardwick. The Proclamation for the High-Court of Justice.

Holland Simpson Sworn.

Council. What do you know concerning the Prisoner at the Bar?

Simpson. I do know Mr. *Peters* very well, I have known him these 11 or 12 Years: When the High-Court of Justice was sitting, both in the Court and *Painted Chamber* I saw this Gentleman in Consultation there, and at several other Places, at Sir *Will. Brereton's*, and other-where.

Council. Did you see him at the Trial?

Simpson. I saw him, but not as a Judge. There was one Day in the Hall Colonel *Stubbards*, who was Adjutant-General, (he was a very busie Man,) and Colonel *Astel*; Mr. *Peters* going down the Stairs, comes to him, and bids *Stubbards* to command the Soldiers to cry out *Justice, Justice, against the Traitor at the Bar.*

Council. Who did he mean?

Simpson. The King was at the Bar at the same Time; whereupon, my Lord, the Soldiers did cry out upon the same; and as the King was taken away to Sir *Robert Cotton's*, some of them spit in the King's Face, but he took his Handkerchief, wiped it off, and smiled.

Peters. I do not know this Gentleman, did he ever see me?

Simpson. Yes, divers Times in the *Painted-Chamber*, at Sir *William Brereton's*, at the *Deanery*, in Consultation with *Bradshaw*, and you were admitted, and no Man else, as I know, unless Sir *Will. Brereton*, who came along with you.

Thomas Richardson Sworn.

Richardson. My Lords, the First Day that this Court of Justice (as they called it) did adjourn, I went up into the Court, and I saw the Prisoner at the Bar with some more standing in the Court, and I came and stood close by him, and some with him, whom I did not know; I heard him commend *Bradshaw*, the Carriage of him in the Trial of the King, and another *Cook's* Carriage; to be short, Mr. *Peters* holding up his Hands, said, *This is a most Glorious Beginning of the Work*

Sir Jeremy Whichcot Sworn.

Whichcot. My Lords, I have by Accident, not by Choice, been several Times in Mr. *Peters's* Company; truly I have heard him speak very scurrilously of the King; amongst the rest he was making some kind of Narration of *Cromwell* making an Escape, and that he was intended to be surpriz'd; *That if he had not presently gone away he had been clapt up in the Tower, and declared a Traitor; he said there was a Meeting of the Officers of the Army, where he us'd this Expression, And there we did resolve to set aside the King.* My Lord, after this (it was at another Time) he was speaking of that which they called the High-Court of Justice, and I do very well remember this was his Expression of it, *I cannot but look upon this Court with a great Reverence, for it doth resemble in some measure the Trial that shall be at the End of the World by the Saints.* This is all that I perfectly remember; it was a great while ago; I cannot speak more punctually; I have seldom heard him speak of the King, but of the Tyrant. I remember one Time

he was saying he would have Preached before the King, but, said he, *the poor Wretch would not hear me.*

Richard Nunnely Sworn.

Coun. Was *Peters* upon the Scaffold at the Time of Execution, or before?

Nun. On that unhappy Day, 30th of Jan. 1648, this *Hugh Peters* came an Hour before the King came to *Whitehall*; I came with a Warrant of 40 or 50000*l.* to *Oliver Cromwell*, being Door-keeper to the Committee of the Army; *Nunnely*, says *Oliver Cromwell*, will you go to *Whitehall*? Surely you will see the Beheading of the King; and he let me into *Whitehall*; coming into the Boarded Gallery I met *Hugh Peters*, and he was in the Gallery; and then I got with *Hugh Peters* into the *Banqueting-House*; being there, *Hugh Peters* met one *Tench* of *Houndsditch*, that was a Joiner; meeting him; he speaks to him, and whispers in his Ear, and told him somewhat, I do not know what it was; but *Tench* presently went and knocked four Staples upon the Scaffold; I meeting *Tench* again, What art thou doing, said I? What, will you turn Hangman? Says he, This Day will be a Happy Day, said I, Pray God send it be not a bloody Day; upon that *Hugh Peters* went upon the Scaffold just an Hour before the King came, and then he went off again. I watched at the Window when the King's Head was cut off, and afterwards I saw the Vizards going into a Chamber there; about an Hour afterwards (I staying there at the Door) there comes *Hugh Peters* in his Black Cloak and Broad Hat out of that Chamber (as I take it) with the Hangman; I am sure I did see him go along with the Hangman to take Water; this is all I can remember, it being many Years since.

Peters. I humbly beg I may be heard in this Case; I have here a Witness, and I desire he may be examined; it is noised I was upon the Scaffold, I here call God to witness I was not out of my Chamber that Day; I was Sick that Day; I speak in the Presence of the Lord.

Court. If your Witness will stay he shall be heard; there are more Witnesses to the same Thing, and so he may speak to all together.

Dr. Mortimer Sworn.

Mortimer. Me Lar, me ha serd de King, &c.

Court. We cannot understand a Word.

Coun. He is a Frenchman, my Lord.

Court. Pray let there be an Interpreter.

[One Mr. Young was sworn to interpret truly his Evidence.]

But it being afterwards found difficult and troublesome, the Council waived his Evidence, and prayed another Witness might be called.

Dr. Mortimer. Me Lar, me can peak Englis—

Coun. No, no, pray sit down, we will examine other Witnesses. Call *Stephen Clough*.

Stephen Clough Sworn.

Coun. What do you know of *Hugh Peters*?

Clough. My Lords and Gentlemen of the Jury, in 1648 I heard of a meeting of the Council of Officers at *Westminster*, I think in the *Painted-Chamber*, and I being willing (my Lord) to hear what their Consultations were, I went thither, and was there as one of them (but I was not one,) amongst the rest *Hugh Peters* was one; when the Room was pretty full the Door was shut. Mr. *Peters* desired to call for a Blessing upon their Business, in his Prayer he uttered these

A a a

Words,

Words, "O Lord, (said he) what a Mercy is it to see this great City fall down before us! And what a Stir is there to bring this Great Man to Trial, without whose Blood he will turn us all into Blood if he Reign again!

Peters. *What Day was this?*

Clough. It was about Three Weeks or a Month before the King died.

Peters. *Where was this?*

Clough. In the Painted Chamber.

Peters. *You have been very Bold.*

Clough. I speak upon my Oath.

Peters. *How long was this ago?*

Clough. In 1648.

Peters. *How many Years since is that?*

Clough. You know yourself sure how many Years since 1648.

Peters. *How long before the King died, do you say?*

Clough. About Three Weeks or a Month before the King was Murdered.

Council. We shall call a Witness to prove, that in December 1648, there was a solemn Fast appointed to seek God in what they were about, and Mr. Peters was appointed to Preach before them.

Mr. Beaver Sworn.

Mr. Beaver's Evidence. My Lord, and you Gentlemen of the Jury, upon a Day that was appointed for a Fast for those that sat then as a Parliament, I went to *Westminster* to find out some Company to dine with me, and having walked about an Hour in *Westminster-Hall*, and finding none of my Friends to dine with me, I went to that Place called *Heaven*, and Dined there; after I had Dined I passed through *St. Margaret's Church-yard* to go Home again, (I lay in the *Strand*;) I perceived all the Church-yard full of Muskets and Pikes upon the Ground, and asked some Soldiers that were there what was the Business? They told me they were guarding the Parliament that were keeping a Fast at *St. Margaret's*; Who Preaches, said I, They told me Mr. Peters is just now gone up into the Pulpit; said I, I must needs have the Curiosity to hear that Man, having heard many Stories of the Manner of his Preaching; (God knows I did not do it out of any manner of Devotion;) I crouded near the Pulpit, and came near the Speaker's Pew; and I saw a great many Members there, whom I knew well: I could not guess what his Text might be, but hearing him talk much of *Barabbas* and our Saviour, and insisting altogether upon that, I guessed his Text was that Passage wherein the Jews did desire the Release of *Barabbas* and crucifying of Christ; and so it proved; the First Thing I heard him say was, *It was a very sad Thing that this should be a Question amongst us, as among the Old Jews, whether our Saviour Jesus Christ must be crucified, or that Barabbas should be released, the Oppressor of the People: O Jesus, saith he, where are we, that that should be a Question amongst us? Says he, And because that you should think, my Lords and Gentlemen, that it is a Question, I tell you it is a Question; I have been in the City, which may very well be compared to Hierusalem in this Conjunction of Time, and I profess those foolish Citizens for a little Trading and Profit they will have Christ crucified, and the great Barabbas at Windsor released,* says he, but I do not much heed what the

Rabble say: I hope, says he, that my Brethren of the Clergy will be wiser, the Lips of the Priests do use to preserve Knowledge; I have been with them too in the Assembly, and having seen and heard what they said, I perceive they are for crucifying of Christ, and releasing of Barabbas; O Jesus, what shall we do now? With such like strange Expressions, and shrugging of his Shoulders in the Pulpit.

Council. How long was this before the King was Murdered?

—It was a few Days before the House of Commons made that thing called An Act for his Trial.

Council. What did he say to the Members?

—I am coming to it; says he, *My Lords, and you Noble Gentlemen of the House of Commons, you are the Sanhedrim, and the great Council of the Nation, therefore you must be sure to do Justice, and it is from you we expect it; you must not only be Inheritors of your Ancestors, but you must do as they did; they have opposed Tyrannical Kings, they have destroyed them; it is you chiefly that we look for Justice from. Do not prefer the great Barabbas, Murderer, Tyrant and Traitor, before these poor Hearts, [pointing to the Red-coats,] and the Army, who are our Saviours: And thus for Two or Three Hours Time that he spent, he nothing but rak'd up all the Reasons, Arguments and Examples he could, to persuade them to bring the King to condign, speedy and capital Punishment.*

Peters. *I do not know you, are you sure you saw me at that Time? Do you know me?*

—Yes, Sir.

Peters. *I did not Preach there at that Time.*

Council. Pray, my Lord, will you call Mr. *Jessop*, who hath the Records of the Parliament, and can produce the Order, whereby you were appointed to carry on the Work of that Fast; there was the Order for his Preaching, and Order for Thanks for his Work.

[Mr. *Jessop* produced the Journal, wherein was the Order following, which was read.

[Clerk reads.] Die Jovis 7 September 1648. Resolved, that there be a Day of Publick Humiliation for this House to seek God in these Times of Difficulty, and that to Morrow be the Day, and kept here in this House. Resolved that Mr. Peters, Mr. Marshal, and Mr. Caryll, be desired to perform the Duty on the Day of Humiliation with the House to Morrow.

Council. That is not it we intend, there was one after that, in December 1648.

[Clerk reads.] 20 December 1648. Ordered, That Mr. Peters be desired to Preach on Friday next, the Day of Publick Humiliation, at *Margaret's Westminster*, in the Place of —

Council. Call Mr. *Chace*. After this the Work went on, and the High-Court of Justice sate; and the First Day they sate was Saturday January 20, in *Westminster-Hall*, the 21st being the Sunday following; I think this Gentleman was at *White-hall*; he will tell you what he preached.

Mr. *Chace* Sworn.

Chace. My Lord, I heard the Prisoner at the Bar preaching before *Oliver Cromwell* and *Bradshaw*, who was called Lord President of the High-Court of Justice, and he took his Text out of the *Psalms* in these Words, *Bind your Kings with Chains, and your Nobles with Fetters of Iron*; that was Part of the Text: But says he

he in his Sermon, *Beloved, it is the last Psalm but one, and the next Psalm hath Six Verses, and Twelve Hallelujahs, Praise ye the Lord, praise God in his Sanctuary, and so on; For what?* says he, *Look into my Text, there is the Reason of it, That Kings were bound in Chains, &c.* He went on with a Story of a Mayor and a Bishop and his Man; *The Bishop's man, saith he, being Drunk, the Mayor laid him by the Heels; the Bishop sends to the Mayor to know by what Authority he Imprisoned his servant; the Mayor's Answer was, there is an Act of Parliament for it, and neither the Bishop nor his Man are excepted out of it; and applied it thus: Here is, saith he, a great Discourse and Talk in the World, What, will ye Cut off the King's Head? the Head of a Protestant Prince and King? Turn to your Bibles and you shall find it there, Who-soever sheds Man's Blood, by Man shall his Blood be shed; (says he) I will even answer them as the Mayor did the Bishop, here is an Act of God, Who-soever sheds Man's Blood, by Man shall his Blood be shed; and I see neither King Charles, nor Prince Charles, nor Prince Rupert, nor Prince Maurice, nor any of that Rabble, excepted out of it. And further he said, This is the Day that I, and many Saints of God besides, have been praying for these many Years.*

Peters. Ask him whether he took Notes.

Chace. No Sir, but it being so Memorable a Sermon I took special Notice of it; I came to my Brother's House in Shoe-Lane, and told him; said I, Brother, I have been at White-Hall, and have heard the most Execrable Business that ever was heard in the World by a Minister of the Gospel, and I told him the Words: I observed that Oliver Cromwell did Laugh at that time when you were preaching.

Tho. Tongue Sworn.

Council. What do you know of the Prisoner's Preaching?

*Tongue. Upon January 21, 1648, I was at White-Hall, where this Gentleman preached, and he preached upon this Text, Psalm cxlix. v. 8. To bind their Kings in Chains, and their Nobles in Links of Iron; in which Text this Peters did much applaud the Soldiers there; he said he hoped to see such another Day following as the Day before, and that Blessed be God (says this Parson Peters) the House, the Lower House, is purged, and the House of Lords themselves they will down suddenly; this is all that I well remember at that Time. Upon the 28th of January, 1648, next Day after Sentence of the King, I heard Peters preach upon this Text in St James's Chappel, Psalm cxlix. 6, 7, 8, 9. Let the high Praises of God be in their Mouth, and a Two-edged Sword in their Hands, to execute Vengeance upon the Heathen, and Punishment upon the People, to bind their Kings with Chains, and their Nobles with Fetters of Iron, to execute upon them the Judgment written, this Honour have all his Saints; praise ye the Lord: And there he did so Saint the Red-coats, and so Reprobate the poor King's Friends! And in the middle of his Sermon he took Occasion to produce a Text, *Isaiah xiv. 18, 19, 20. All the Kings of the Nations, even all of them, lye in Glory, every one in his own House. But thou art cast out of thy Grave like an abominable Branch, and as the Raiment of those that are slain, thrust through with a Sword, that go down to the Stones of the Pit, as a Carcass trodden under Feet; thou shalt not be joined with them in Burial; because**

thou hast destroyed thy Land, and slain thy People, the Seed of Evil-doers shall never be renowned: Says he, This I did intend to insist and preach upon before the poor Wretch, and the poor Wretch would not hear me.

Council. Who did he mean?

Tongue. His Majesty, who was the Day before Condemned; saith he, Look in your lesser Bibles and you shall find the Title is, The Tyrant's Fall.

Council. That that was spoken of the King of Babylon, the Ignominy that was cast upon him, he applies it to the King of England.

Peters. Ask him where it was?

Tongue. It was in St. James's Chappel, Sunday the 28th of January 1648, in the Forenoon.

Reynold Bowdler Sworn.

Bowdler. That which I have now to say is this, I did hear him a few Days before the King was Murthered preach in St. Sepulchre's Church, that he compares the King that was then to Die, to Barrabas a Murderer, and in this manner; saith he, There is a great Company amongst us like the Jews, they cry out, let Christ be crucified, and let Barabbas be released; still comparing the King to Barabbas the Murtherer; these were his Words, with many more to the same Purpose.

William Rider Sworn.

Council. Speak what you know concerning the Prisoner.

Rider, I was at the same time at Church in St. Sepulchre's.

Council. How long was that before the King died?

Rider. It was very near the King's Death.

Council. Was it after the High-Court of Justice sate, as they called it?

*Rider. About that Time it was. My Lord, as soon as ever he had read the Words of his Text, which was, *His shall call his Name Emmanuel*, he presently shook Hands with his Text, and fell (as he was wont) to News, and there he said *The great Inquiry now is to know what should become of the King; Let that alone*, saith he; and presently he falls to it again, and was pleased to style the King *Barabbas*; saith he, *There is a great many of the People had rather Christ should be crucified than Barabbas*; and here he was applauding the Soldiers; and said that *Emmanuel* was written upon the Bridles of their Horses; and he was speaking of the King's Soldiers, saith he, *I have known Eighty Thousand of them, and not one of them a Gracious Person.**

Council. Now we expect the Answer of the Prisoner at the Bar, the Indictment hath been fully proved.

Peters. I desire that Witness may be admitted which I spoke of, his Name is Cornelius Glover.

Council. We have omitted One Evidence; we desire Master Walker may be called.

Mr. Walker Sworn.

Walker. On Sunday after the King was first brought to his Trial, out of Curiosity I went to hear Mr. Peters at White-Hall; after he had made a long Prayer, saith he, I have prayed and preached these Twenty Years, and now I may say with Old Simeon. Lord, now lettest thou thy Servant depart in Peace, for mine Eyes have seen thy Salvation. Afterwards he speaks of the Text, of binding their Kings in Chains. &c. then much reviled the King: But soft there, saith he, I must

not talk so here, I am in the King's Chappel; there is a very remarkable Passage in Amos; Amos went to preach, and Amaziah would not let him, but Amos would preach; the poor Wretch would not bear me, but yet I will preach. Afterwards he speaks of the Mayor of Exeter that committed the Bishop's Servant for being Drunk; saith the Mayor, here is an Act of Parliament for it, and I do not see that the Bishop nor his Man are either of them excepted out of the Act; and, saith he, in Scripture it is said, Whosoever sheddeth Man's Blood, by Man shall his Blood be shed; and I do not find that either King Charles, Prince Charles, Prince Rupert, Prince Maurice, or any of that Rabble are excepted.

Council. Now Mr. Peters you may call your Witnesses.

Cornelius Glover not Sworn.

Lord Chief Baron. Where do you dwell?

Glover. In Paul's Church-yard.

Lord Chief Baron. What is your Quality of Life?

Peters. A Servant of the King's.

Lord Chief Baron. I do not ask you, Mr. Peters.

Glover. I belong to the Post-house.

Peters. Pray bear him speak.

Lord Chief Baron. What would you have him asked?

Peters. Whether I was out of my Chamber that Day the King suffered?

Lord Chief Baron. What say you to that?

Glover. I was come to Mr. Peters a little before that Time, to live with him as his Servant; it fell out that Day he was ill in his Chamber all the Morning; the Soldiers in St. James's House were all gone away; I had a Desire to go see the Meeting, where they were at White-Hall; saith he, Thou seemest to have a great Desire to go and look about thee, it is very sad, but if you will go you may. I did go over the Park.

Council. What Time?

Glover. About Noon.

Council. What Hour?

Glover. I do not know; I did not stay there; the Soldiers and the People filled the Place, and I went back again to the Chamber; I came back again within a matter of an Hour's Time.

Council. Was the King dead before you came back again?

Glover. They said he was not: When I went Home he asked me what was doing? I told him there was a great Croud, I could not come near; I staid there an Hour, and then went out again, and still there was a Croud; and I came back again, and Mr. Peters was in his Chamber then.

Council. Was he in Bed, or up?

Glover. I do not remember.

Council. How Old were you then?

Glover. I am not above 32 or 33.

Council. Was Mr. Peters sick?

Glover. Yes, he was Melancholy sick, as he used to be.

Lord Chief Baron. How long have you been at the Post-house?

Glover. About Five Years.

Lord Chief Baron. Mr. Peters, have you any more to ask him?

Peters. I brought him to testify that I was not out of my Chamber that Day, and that I was sick.

Lord Chief Baron. Did you desire to go, or did he send you?

Glover. I did desire to go, being newly come to London.

Lord Chief Baron. This Gentleman, though not upon Oath, is examined, and it is only to One Particular, nothing at all to the Main Proofs.

Peters. I bring him only to vindicate my self from that Aspersion of my being upon the Scaffold.

Lord Chief Baron. They do not lay the Weight of their Evidence upon that: The King's Council have done with their Evidence, if you have any Thing to say, you have your Liberty.

Peters. May it please your Lordships, I will give you an Account of the Business: I lived Fourteen Years out of England, when I came over I found the Wars begun; I began no War, my Lord, nor have been the Trumpeter; when I came out of the West-Indies, I fled from the War into Ireland, to the Western Part there; and it was after the Rebellion, when some of the Irish had been stirring there, I went and spent my Time there. I was neither at Edge-hill, nor Naseby; but, my Lord, after I came over there was War that the People were engaged in; I was not here in the Beginning of it, but was a Stranger to the Carriage of it. When I came into the Nation I looked after Three Things: One was, that there might be Sound Religion; the Second was, that Learning and Laws might be maintained; the Third, that the Poor might be cared for; and I must confess I have spent most of my Time in these Things, to this End and Purpose: There was a Noise in all Parts of some Miscarriages in Matters of Religion, after it was settled I lived in Ireland; I must profess for my own part, solemnly, that my Carriage hath been upon these Heads. For Religion, I have, through God's Mercies, spoke of the Truths of the Protestant Church, upon this Account I did stay to see what God might do: I was sent over to his Majesty that we might have a little Help in point of Excise and Customs, and Encouragement in Learning. My Lord, this is true, that I being here in the Nation, and being sent over upon the Occasions of the Country, and not upon any Design; but this I say, (I cannot deny it,) that after I came over, and had seen the State of England, in some Measure I did stir, but by strong Importunities, the Ministers of London deeper than I: I am very sorry to hear of my Carriage towards the King; it is my great Trouble; I beg Pardon for my own Folly and Weakness; I thought God had a great Controversy with the Nation, and the Lord was displeased on all Hands; that which some People took to I did take unto; I went into the Army; I saw at the Beginning of it that Corruptions grew among them. I suppose none can say I have gone aside from any Orthodox Truth of the Lord: And now to take off the Scandal upon me, and to the Business, let me beg of your Lordships to consider whatsoever Prejudices or Revenge may take up Men's Hearts, there is a God that knows all; God hath a Regard to the People of England; I look upon this Nation as the Cabinet of the World. That that doth concern the Business is this, my Lord, that after this Time hither I came, and did bear Witness to all the World, that there was amongst us something that was for better, and something worse, for the Nation; I took Advice of some great Persons concerning the Weightiness of it, I had neither Malice nor Mischief in my Heart against the King; upon this I did engage so far, being Invited; I went into the Wars, and there I found

very

very strange and several Kinds of Providences, as this Day hath been seen; I do not deny but that I was Active, but not to stir in a way that was not Honourable. I challenge a great Part of the Nation to manifest my Carriage among them; I shall make it good divers ways; I had so much Respect to his Majesty, particularly at Windsor, that I propounded to his Majesty my Thoughts Three ways to preserve himself from Danger, which were good, as he was pleased to think, though they did not succeed, and the Work died; as for Malice, I had none in me. It is true, there was a Difference amongst us, an Army, and an Army; I never had a Groat or Penny from O. Cromwell since I knew this Place: I profess I have had no Ends for Honour or Gain since I set Foot upon this Shoar; I challenge any Man that belonged to that Party whether they had not the same Respect from me as my own Party; I have not persecuted any with Malice; I will only take off Malice.

Lord Chief Baron. Your Business is Matter of Fact.

Peters. I am unskilful in Law, this that I offer is to show that I had no Malice in me; I was so far from Malice, that I have a Certificate, in wth the reading, from one of the Eminentest Persons in the Nation, to show I had no Malice: It is concerning the Marquis of Worcester, under his Lady's Hand, beginning with these Words, I do here testify that in all the Sufferings of my Husband, Mr. Peters was my great Friend, &c. I have here a Seal, [and then produced it] that the Earl of Norwich, gave me to keep for his sake for saving his Life, which I will keep as long as I live.

Lord Chief Baron. I am not willing at all to interrupt you, or hinder you; that which you speak of doing good Services is not at all to the Point; we do not question you for what good you have done, but for the Evil you have done; I hope there is no Malice in your Heart, nor upon the Court nor Jury, we and they are upon our Oaths; and you hear the Matter alledged against you; pray come to the Matter.

Peters. My Lord, I cannot remember them.

Lord Chief Baron. Then I will remember you: You are charged by this Indictment for Compassing and Imagining the Death of the King, and there is set forth sundry Particulars to prove the Overt-Act, that you with other Persons named in that Indictment, did consult and meet together how to bring about the King's Death. Then you are charged with several Acts of Contriving and Endeavouring the King's Death. Overt-Acts that tend to the Compassing and Imagining the King's Death, or any one of these, to encourage the bringing on the King to his Death, the consulting or meeting together about it, though you did not sit or sentence; yet if you did any Thing tending to that Encouragement, or otherwise Abet it, Comfort, or any wise Aid those Traitorous Persons that did it, in the doing of it you are by Law Guilty of the whole Fact: The proposing and determining the King shall die, though you were not he that actually put him to Death, yet notwithstanding, if you did the other, you are Guilty of all; if you shall speak any Seditious Speeches, be they in the Pulpit, or out of the Pulpit, if you shall utter any Thing that tends to Sedition, these are open Acts, which prove the Imagination of the Heart: though Imagination of the Heart be Treason, yet it cannot be proved but by open

Acts, yet the Imagination it self is Treason. First you did conspire, all the Witnesses go along to prove this. Dr. Young saith, you came over from Ireland to his House, and after Five Days that you were recovered of the Flux, you staid there Ten Weeks; you said your self there was enough, if it were true, to condemn you or any Man: I shall repeat it to you; you told him a Narrative, that you came from New-England, from thence to Ireland, and then you came to Holland, with an Intent to see how you might bring on the Kingdom to be a Commonwealth: Next he saith, you spoke very often against the King by way of Disgrace, against him and his Family, against the King and his Off-spring, this you said very often: Then you spake in Vilification of Monarchical Government, that this Commonwealth would never be at Peace till 150, or Three L's, Lords, Levites, and Lawyers were taken away, at which he replied, then they must be all Switzers, Tinkers or Traitors; he swears you were a Colonel, and had a Commission; that you would have had him accept of a Commission; and that you had Two Companies come from the West; you told him the Parliament had an intent to secure Cromwell and yourself, but that you rid hard for it; and then you confessed you agreed then upon his Death, to bring him to Trial, and to cut off his Head; you did agree together, and he believes it was your Advice to Cromwell; your Answer was this, that he was more violent than yourself; that he took upon him to be a Spy; and that he was no competent Witness, because he was under a Temptation, because you did not help him to his Living, and so conceived it to be Malice; you say he was used to take up such Courses in his own Country; the Matter is not whether you had Malice to the King's Life or Monarchy. For the next, One Gunter, he swears, that he was a Servant to Mr. Hildesley, at the Star in Coleman-street, and this was in 1648, he saith, that many of the Party of Cromwell did use to resort thither, among the rest he saw you, he said he came in to them, and their Discourse was about Charles Stuart, and the Prisoner — and did guess it was about the King; that you were privy to it then; he saith this was Three Days before Oliver Cromwell went out of Town; the Effect of that is urged no further than this, that you were so far of the Cabal, that you were present with those Persons, Cromwell, Ireton, Rich, and others; you said, I was there once with Mr. Nathaniel Fines. Starkey, he saith, that at his Father's House Ireton lay, and was quartered there at Windsor, before and when the King was Prisoner; that you had your Quarters there, and Cromwell too, in that Town: The General Meeting of the Council of War was at his Father's House; that Ireton and his Wife lying there, you came and resorted thither very often; he saith then, that it appeared that after the Council of War had done, many Times Rich, and you, and Cromwell, and Ireton, were there together, sometimes till Two a Clock in the Morning; he saith then, that he did observe there was a Fifth Person, (he did not remember his Name) and you sat up usually till Two or Three in the Morning; you had Guards about you; he saith further, that Ireton being a Domestick, he often discoursed with him, and you came sometimes to be there too; that there be-

ing some Discourse concerning the King, many Times he did assert the Law concerning him, that he was *solutus legibus*, as to his Person; that you should say, that it was an unequal Law, and that you did then discourse fully against the King's Government; you said he was a Tyrant, not fit for that Office; that the Office was useless, chargeable and dangerous; these very Words he observed, which afterwards were Printed when they took away Monarchy. He saith further, that was their full and whole Discourse; he saith that his Father at Supper used to say that usual Grace, *God save the King, Prince, and Realm*; but afterwards that he heard the King was made a Prisoner, that his Father altering the Grace, he said, *God save his most excellent Majesty, and deliver him out of all his Enemies Hands*, you rose up, and said, *Old Gentleman your Idol will not stand long*; that he did observe you often with them; he saith further, when Bacon was coming out, and speaking some Words concerning your frequent Affronting the King, you took up a Staff, and were ready to beat him, and made an Uproar: It appears also of your being privy to *Cromwell's* Actions. The next Witness is *Walkeley*, and he swears this against you, that he was in the *Painted Chamber* the next Day after the Proclamation was made, and there he saw *John Goodwin* and you; and there was an Assembly, and at the Middle of the Table *John Goodwin* was, and made a long Speech or Prayer; that *Cromwell* would have had the People stay there, but it was ordered they should be turned out; at the End he saw you come out with the rest; there it appeared you were in the Consultation; he saith he met the Army at *St. James's*, and there, when they were half past, he saw the King in his Coach, and there he saw Mr. *Peters* like Bishop *Almoner* riding immediately before the King; and at *St. James's Park* he saw you Marshalling the Soldiers, that he was forced thereupon to go about; he saith further, that within a Year or Two after the Army was raised he heard you say these Words, *If we can keep up our Army Seven Years longer we need not care for the King and all his Posterity.*

Peters. My Lord, I must deny abundance of this; the King commanded me to ride before him, that the Bishop of London might come to him.

Lord Chief Baron. But this was Three Weeks after ——— The next Witness against you is one *Proffor*; he saith, that Day (as the other Witness did) he saw you riding just before the King's Coach, and because he did his Duty the Soldiers threw him, Horse and all, into a Ditch. The next Witness is one *Hardwick*, he saith that when the Proclamation was read he saw you in *Westminster-Hall*, and that you said, they had done as good as nothing, unless it was proclaimed in *Cheapside* and at the *Old-Exchange*; this you said to some of the Officers there.

Peters. My Lord, I cannot acknowledge it.

Lord Chief Baron. The next Witness against you is *Simson*, he swears he saw you in Consultation with *Oliver Cromwell*, and take Sir *William Brereton* by the Hand, and come to *Bradshaw's*, and this during the time of the King's Trial; he further saith, that one Day when the King was at his Trial you commanded Colonel *Stubbers* to bid his Soldiers cry out *Justice, Justice*, which they cried, and afterwards some of the Soldiers spit upon the King.

Peters. I do believe that he that swore that cannot say I was there.

Lord Chief Baron. Another Witness is one *Richardson*, who saw you the First Day in the Court; and he said further, that you commended *Bradshaw* and another, to wit *Cook*, for their Carriage in the Trial of the King; that you held up your Hands, and said, This is a most Glorious Beginning of the Work.

Peters. Whereabouts in the Court?

Richardson. In the Body of the Court, called then the *High Court of Justice.*

Peters. My Lord, I do not know that ever I was in the Body of the Court.

Lord Chief Baron. The next Witness is Sir *Jeremy Whitchcot*, he saith he heard you often speak scurrilously of the King; and making a Narrative of *Cromwell's* Escape, you said there was a Meeting, and *there we resolved to set aside the King*; remember what the other Witness said, we agreed, and here we resolved; you said, I cannot but reverence the High-Court of Justice, it doth resemble the Judging of the World at the Last Day by the Saints; so it was the Saints that sat there; I would have preached before the Wretch, but the Poor Wretch would not hear me; you often called him Tyrant; I cannot possibly remember the Place, Things, or Words, that are alledged. Then you have another Witness, *Nunnelley*, he saith he came with a Warrant to *Oliver Cromwell* for some Money, and that he should say, go and see the Beheading of the King at *White-Hall*; he saith there he met with you (though you said you were not there that day) going to the *Banqueting-House*; that you spoke to *Tench*, and whispered in his Ear, and that *Tench* went and knocked Staples on the Scaffold; he meeting *Tench* said, What, are you a Hangman? Saith *Tench*, This Day will be a happy Day; he saith, after all this *Hugh Peters* was upon the Scaffold, and that he went out with the Hangman ———

Peters. I do profess to your Lordships before Angels and Men that I did not stir out of my Chamber that Day.

Lord Chief Baron. The Council doth not put Reliance upon that, because of what your Witness saith, tho' his Evidence is not at all Satisfactory. The next is *Clough*, and he swears this, that he saw you in the *Painted-Chamber* with the Council of Officers, and there you desired them to call on God for a Blessing upon their Business, and there you said, O Lord, what a Mercy it is to see this great City fall down before us! And what a Stir is there to bring this Great Man to Trial, without whose Blood he will turn us all into Blood, if he reign again! And this was about a Month before the King was Murthered.

Lord Chief Baron. You hear it, Mr. *Peters.*

Peters. Some Part I did, but it is impossible for me to bear down many Witnesses; indeed, my Lord, I say this, they are marvellous Uncharitable, and speak many false Things.

Lord Chief Baron. The next is this, the Testimony concerning several Sermons of yours; and let me tell you the Pulpit ought not to be a Place where Men with Impunity may speak any Thing, what they list, of Sedition and Treason.

Peters. I am of the same Judgment myself, my Lord.

Lord Chief Baron. And there was a Solemn Day to seek God, then you preach'd at *St. Margaret's*

Margaret's Church; this was Mr. *Bever*; in he came, and heard you talk much of *Barabbas* and our Saviour; there you fell upon this, speaking of the King, it is a sad thing that it should now be a Question, whether we should crucifie our Saviour Jesus Christ, or that great *Barabbas*, speaking of the King; you called him Traitor, Tyrant, Murtherer of his Subjects, and the like, you went on in a Way of a Story, These Citizens for a little Trading they will have Christ crucified, and the great *Barabbas* at *Windsor* released; and said you, the Clergy, the Assembly, they are all for crucifying Christ, and releasing *Barabbas*; you made that Expression, *O Jesus, what shall we do?* The King was a Prisoner then at *Windsor*; you made your Application to the Parliament that was then present; you told them the People did expect Justice from them; you must not prefer the great Tyrant and Traitor, naming the King, to these poor Hearts, (the *Redcoats* standing by.)

Peters. *I must profess against most of that.*

Lord Chief Baron. There is the same by others. It is further proved by the Order that you were appointed to preach.

Peters. *I do not deny I preached, but not these Things.*

Lord Chief Baron. The next Thing is this, there was one Mr. *Chace*, this was during the Trial, he saith you preached at *White-Hall* upon this Text, *Psalms cxlix, To bind their Kings in Chains, and their Nobles in Fetters of Iron.* You had Two or Three other Verses more; then you made a Discourse of a Mayor and a Bishop's Man, the Bishop's Man being drunk, the Mayor committed him to Prison; the Bishop being angry, asked by what Authority? The Mayor said, there was an Act of Parliament for it; he did not find that either the Bishop or his Man was excepted; you applied that to the King; said you, I will shew you an Act of the Bible, *Who-soever sheds Man's Blood, by Man shall his Blood be shed*; this doth not except the King, Prince, Prince *Rupert*, Prince *Maurice*, or any of that Rabble.

Peters. *It is false.*

Lord Chief Baron. You said further, this is the Day that I and many other Saints of God have prayed for these many Years; and *Oliver Cromwell* laughed at that Time. The next Witness was *Tongue*, he heard you preach, and he swears the same with the former; that you applauded the Soldiers, and that you hoped to see such another Day following as the Day before; and that Blessed be God the House is purged, and the Lords will shortly be pull'd out; and the Twenty Eighth Day of *January*, which was the Day after the King was Sentenced, at *St. James's*, his Chapel, you took for your Text the *cxlix Psalm*, 6, 7, 8, and 9 Verses, whereof these Words were part, *To bind their Kings in Chains, and their Nobles with Fetters of Iron*; there in the middle of that Sermon, having spoken before of the King, you said you did intend to preach before the poor *Wretch* upon the 14th of *Isaiab*, 18, 19, and 20 Verses, speaking of all the Kings of the Nations, *Thou art cast out of thy Grave like an abominable Branch, &c.* he saith further, you said, look upon your lesser Bibles and you will find the Title is, *The Tyrant's Fall*. There is another Witness, that is one *Bowdler*, a few

Days before the King's Death, at *St Sepulchre's*, there you fell upon the old Comparison; all along you compared the King to *Barabbas*; and that a great many would have Christ crucified, and *Barabbas* released; all along comparing the King to *Barabbas*. One more, and that was *Ryder*, he heard this Text, *He shall call his Name Emmanuel*; you fell to speak of News; what shall become of the King? And you said the King was *Barabbas*, and a great many would rather have Christ crucified than *Barabbas*. And then Mr. *Walker* he saith, that after the King was first brought to his Trial he heard you say this, I have prayed and preached this Twenty Years, and now may I say with Old *Simeon*, *Lord, now lettest thou thy Servant depart in Peace, for mine Eyes have seen thy Salvation*: He mentions that you made Use of the other Comparison of the Mayor and the Bishop's Man, and inferred from thence, that the King and Prince, &c. were not excepted out of the Scripture, where it is said, *Who-soever sheds Man's Blood, &c.* You have heard all this witnessed against you, what have you to say for yourself?

Peters. *These are but single Witnesses.*

Lord Chief Baron. The Statute is Two Witnesses for Treason, but not Two to One individual Thing, tho' there are several Witnesses have proved the same Thing about *Barabbas*, and our Saviour, *bind their Kings with Chains, &c.* and of your other Actions there is a whole Jury of Witnesses. Two Witnesses expressly, we agreed upon the King's Death, and we resolved to set the King aside.

Peters. *I do not know the Witnesses.*

Lord Chief Baron. One is Sir *Jeremy Whitchcot*, the other is Doctor *Young*; you shall do well if you have any Thing to invalidate these Witnesses to speak it, else the Jury will be sent together to deliver up their Verdict.

Peters. *My Lord, if I had Time and Opportunity, I could take off many of the Witnesses, but because their Testimony is without Controul I cannot satisfie my self; I have no Skill in the Law, else I might have spoke for my self; I do not know what to say more, unless I had more Time and Counsel.*

Mr. Solicitor General. If the Prisoner can say no more, here is this in it; here are Five Places where he did consult about the King's Death, at *Windsor*, at *Ware*, in *Coleman-street*, in the *Painted Chamber*, and in *Bradshaw's House*; and Four Witnesses to prove this; there are Two Witnesses to his Comparison of the King and *Barabbas*, and Two Witnesses to his Text of binding their Kings in Chains, &c. Proof that he hath been in Action in *New-England*; that he came from it with that Intent, and then went to *Holland*; that he had been in Arms; that he called the Day of his Majesty's Trial a Glorious Day, resembling the Judging of the World by the Saints; he prays for this in the *Painted-Chamber*, preaches for it at *White-Hall*, *St. James's Chapel*, *St. Sepulchre's*; what Man could more contrive the Death of the King than this miserable Priest hath done? The Honour of the Pulpit is to be vindicated; and the Death of this Man will preach better than his Life did; it may be a Means to convert many a miserable Person, whom the Preaching of this Person hath seduced; for many come here and say they did it in the Fear of the Lord; and now you see

who

who taught them; and I hope you will make an Example of this Carnal Prophet.

The Jury went together, and after a little Consultation settled in their Places.

Clerk. Are you agreed in your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. How say you? Is the Prisoner at the Bar Guilty of the Treason whereof he stands Indicted? Or Not Guilty?

Fore-man. Guilty.

Clerk. And so you say all?

Jury. Yes.

Clerk. Look to him, Keeper.

Council. We desire Mr. Cook may be brought to the Bar, and that they may both have their Judgment pronounced.

Clerk. John Cook, Hold up thy Hand; what hast thou to say why the Court should not pronounce Judgment for thee to Die according to Law.

Cook. *I have a few Words, Matter of Law: First, there is no Averment in the Indictment, that John Cook mentioned in the Act of Indemnity, is the same with the John Cook mentioned in the Indictment, and that I am the John Cook mentioned in both.*

Lord Chief Baron. This will not help you in this Case, you have owned, and have pleaded by the Name of John Cook.

Cook. *The Second is this, that the Overt-Acts should be particularly expressed in the Indictment.*

Lord Chief Baron. This cannot be alledged in Arrest of Judgment, the Jury have found you Guilty of Compassing and Imagining the Death of the King by the Statute of 25 Edw. 3. and this cannot help you.

Cook. *I say it was professionately.*

Lord Chief Baron. That hath been over-ruled already; we have delivered our Opinions; the Profession of a Lawyer will not excuse them, or any of them, from Treason, and this hath been over-ruled, and is over-ruled again.

Cook. *I humbly conceive that the remaining part of the House of Commons were to be Judges whether there was a Force or not.*

Lord Chief Baron. This is all past and over-ruled.

Cook. *Then I have no more.*

Clerk. Hugh Peters, Hold up thy Hand; what hast thou to say for thyself why Judgment should not pass against thee to Die according to Law?

Peters. *I will submit myself to God, and if I have spoken any thing against the Gospel of Christ I am heartily sorry.*

Silence commanded.

Lord Chief Baron. You are both Persons of that Ingenuous and Liberal Education as I hope I shall not need to tell you what it is to Die, you have had a great deal of Time to think of it; you could not but think of this Issue of your Doings long ago, and therefore I shall spare my Labour of telling you what it is to Die, and of that Eternity that you are to enter into; only give me leave in a few Words, in relation to both your Professions, to say something to shew the Nature and Heinousness of this Offence, the Murder of the King. If you were not actually guilty of putting the King to Death; nay, ad-

mitting (in Charity) you had no intent to go as far as you did, you are by the Laws of Christ and this Nation, guilty of High-Treason, in that you that are a Lawyer know very well, (and I speak it that you may lay it to your Heart in the Convictions of your Conscience. I must say to you as Joshua said to Achan, my Son, give Glory to God, and confess; and it would become you so to do) you know very well it is the Law of this Nation, that no one House, nor both Houses of Parliament, have any coercive Power over the King, much less to put him to Death; you know, (as you cited very well) that the imprisoning of the King is Treason. You know both of you, this is an undoubted Truth; the Rule of Law is, that the King can do no Wrong; that is the King can do no Wrong in the Estimation of Law; he may do some particular Acts as a private Person, but he can do little Prejudice in his own Person; if he would hurt any it must be by Ministers, in that Case the Law provides a Remedy; if he doth it by Ministers they must answer for it. The King of England is one of those Princes who hath an Imperial Crown; what is that? It is not to do what he will; no, but it is that he shall not be punished in his own Person if he doth that which in itself is unlawful. Now remember this when you took the Oaths of Allegiance and Supremacy; (I presume you both did so;) What was your Oath of Supremacy? It was this, that the King was the only Supreme Governour of these Realms; it goes further, as he was Supreme Governour, so he was the only Supreme Governour, that excludes Co-ordination; you swear farther, that you will to the utmost of your Power defend the King against all Conspiracies and Attempts whatsoever; truly you that were a Lawyer when you had thus sworn, your Fee could be no Excuse against what you had sworn to. We know that the King, in his Politick or Natural Capacity, is not only *salus Populi*, but *salus Reipublicæ*. The Law hath taken Care that the People shall have Justice and Right; the King's Person ought not to be touched; the King himself is pleased to judge by the Law; you see he doth by Law question the Death of his Father; he doth not judge it himself, but the Law judges it. Mr. Peters knows very well he subscribed the 39 Articles of Religion; look upon them that were confirmed in 1552, and upon those Articles that were confirmed in 13 Elizabeth; the King is there acknowledged to have the chief Power in these Nations; the meddling with the King was a Jesuitical Doctrine: This I speak, not that the King should or ought to Govern but by the Fundamental Laws of the Land; they that keep within the Bounds of the Law are happy; you that are a Lawyer know this in point of Law, and you that are a Divine know this in point of Divinity. You both know the Truth of it, and when you have thought upon it, I hope you will reflect upon that horrid Crime, the shedding of Royal Blood. You see he had granted all those Grievances of the People, taken them away, secured them, for the future; and at this very Time, when this horrid Act was done, you see he had granted all at the Desire of the People; he had made those Concessions, such, as (were it not in respect of others more than those that treated themselves) they thought was more than could be expected by the Nation.

on. You that had a Hand in the King's Death it falls upon you, the Guilt of it, because you were some of those Instruments that assisted those Persons that broke the Treaty; prepare yourselves for that Death which you are to die; it is a Debt which we all owe to Nature; if in this Case there is something of Shame comes to you it is that you must take as Part of the Reward of your Sin. The only Work I have now to do is to pronounce the Judgment, and this is the Judgment of the Court, and the Court doth award, that both of you be led back to the Place from whence you came, and from thence shall be drawn upon a Hurdle, &c. and the Lord have Mercy upon your Souls.

Clerk. Crier, make Proclamation.

Clerk. O Yes, &c. All Manner of Persons, &c. and all Jurors and Witnesses, are to appear at this Place to Morrow Morning at Seven of the Clock in the morning, upon Pain of One Hundred Pound a piece. So God bless King Charles, &c.

October 15.

Memorandum, That the Bill of Indictment against William Hewlet, alias Howlet, was found at Hicks's Hall, October 12th instant.

Proclamation of the Court being made:

Clerk of the Crown. Set William Hewlet, alias Howlet, to the Bar: which was done accordingly.

Clerk, William Hewlet, alias Howlet, Hold up thy Hand. Thou standest Indicted of High Treason in the County of Middlesex, by the Name of William Hewlet, alias Howlet, for that thou, &c. How sayest thou, art thou Guilty of the High-Treason whereof thou hast been Indicted, and art now Arraigned? Or Not Guilty?

Hewlet. I am not Guilty, my Lord.

Clerk. How wilt thou be Tried?

Hewlet. By God and the Country.

Clerk. God send thee a good Delivcry. Set him aside.

The Trial of DANIEL AXTELL,
October 15, 1660.

Clerk of the Crown. Set Axtell to the Bar: which was done accordingly.

Clerk. Daniel Axtell, Hold up thy Hand.

Axtell. Pray, my Lord, let me have Pen and Ink.

Lord Chief Baron. Give Mr. Axtell Pen and Ink.

Clerk. Daniel Axtell, these Men that were last called of the Jury are to pass, &c. if you will challenge them, or any of them, you must challenge them when they come to the Book, before they are Sworn.

Lord Chief Baron. Do you know how many you have Liberty to Challenge? Because I would not have you misinform'd, 35 you may Challenge peremptorily, and no more.

Axtell. I thank your Lordship.

Lord Chief Baron. Unless you have any particular Cause; if so, you may challenge more.

VOL. II.

Axtell. I confesse I am wholly ignorant of the Law.

John Kirke, John Smith, Thomas Morris, Ralph Halsell, John Sherecroft, Francis Beale, Robert Cromwell, John Gallyard, John Shelbury, George Rithe were called, and by the Prisoner Challenged.

Thomas Bide, Charles Pitfield, Robert Sheppard, William Dod, Thomas Usman, William Maynerd, George Plucknet, Samuel Harris, John Nicholl of Hendon, Henry Marsh, Thomas Bishop, Thomas Snow, in all Twelve, were admitted, and sworn of the Jury.

Clerk of the Crown. If any Man can inform my Lords the King's Justices, &c.

Clerk. Daniel Axtell, Hold up thy Hand. Look upon the Prisoner you that are sworn, and hearken to your Charge; you shall understand that the Prisoner stands Indicted, &c.

Council. May it please your Lordships, and you Gentlemen that are Sworn of the Jury, the High-Court of Injustice that was Erected for Trial of the late King, it had all the Formalities of a Court to put in Execution that Bloody Act; they had their President, their Council, their Chaplain, and their Guards; some of their Judges have been already Tried, one of their Council, and their Chaplain. Now, my Lord, we come to the Guards, and this Gentleman at the Bar, that is now the Prisoner, he was Commander of that Black Guard, that Cruel and Bloody Guard: The Indictment is, That he did Imagine and Compass the Death of the King; there be several Overt-Acts that are mentioned in the Indictment as Evidences of that Imagination, as the Consultation to bring him to Trial, the actual bringing him to Trial, and the Bloody Execution upon the Scaffold; our Evidence shall be this, that during the Time of the Trial the Prisoner at the Bar did Command the Soldiers in Westminster-Hall, himself did keep the Entrance into the Court; and when Bradshaw did speak to the King, and told him he trifled away Time, and required his Answer to the Charge exhibited in the Name of the Commons of England Assembled in Parliament, and the good People of England, that a Noble Person in the Gallery there cried out, It was a Lye; saying that above half the Commons disowned it; saying where are these good People? It is a Lye; Oliver Cromwell is a Traitor; this Bloody Fellow commanded the Soldiers to Shoot her; he did several times command and encourage the Soldiers to cry out, Justice, Justice; and the Last Day of that horrid Trial, called by them the Day of Judgment, he likewise commanded them to cry out, Execution, Execution; and when some of them would not do it, he had the Valour to Beat them. My Lords, and Gentlemen of the Jury, if we prove any of these Particulars to demonstrate unto you that he was Guilty of Compassing and Imagining the King's Death, it is equal as if we had proved he did actually cut off the King's Head.

Mr. Bodurdoe, Mr. Nutley, Mr. Harrington, Sir Purbeck Temple, Mr. Simpson, Mr. Baker, Mr. Huncks, and Mr. Jeonar, Sworn.

Council. Mr. Simpson, Tell my Lords, and the Jury, who had the Command of the Soldiers during the Trial of the King in Westminster-Hall.

Simpson. My Lords, (as I said before in the Case of Mr. Peters,) Col. *Stubberd* and Col. *Axtell* had the Command of the Soldiers below Stairs, near that which was called the *High-Court of Justice*.

Axtell. I desire to know his Name, my Lord.

Simpson. My Name is *Holland Simpson*.

Council. Did you see him there commanding the Soldiers?

Simpson. There was a kind of Hubbub in the Court; there was a Lady (they said it was the Lady *Fairfax*) who at the exhibiting of the Charge against the King, said to be in the Name of the *Commons and People of England*, she spoke out aloud, and said, it was a Lie, that not half, nor a quarter of the People; *Oliver Cromwell is a Rogue and a Traitor*; they called for a Guard, this Gentleman he was called, and brought up some Musketeers, and commanded his Soldiers to Present and give Fire against the Lady, and commanded her to Unmask.

Axtell. What Lady was it? I desire to know.

Simpson. She went by the Name of the Lady *Fairfax*; I know not whether it was so or no, it was the common Report it was she.

Clerk. Mr. *Huncks*, Pray tell my Lord what you know of the Prisoner at the Bar.

Huncks. My Lord, to say positively any Thing of the Man touching his Command I cannot, but only that Morning the King died he came into the Door of the Room where Colonel *Phayre*, Colonel *Hacker*, *Cromwell*, and myself, were, (*Ireton* and *Harrison*, lying in Bed together in the same Room,) and then he stood at the Door half in and half out; I refused to Sign an Order for Executing the King, as *Cromwell* ordered me, and some little cross Language having passed, saith the Prisoner at the Bar, Colonel *Huncks*, I am ashamed of you, the Ship is now coming into the Harbour, and will you strike Sail before we come to Anchor? This I appeal to yourself; but for crying out, Knock them down, shoot them, I know not who it was; the Officers cried, Justice, and some of the Soldiers, but I profess I know not who it was particularly; but they cried, Justice, and then I fell a trembling, for I was afraid of the King; but these were the Words he used to me, Will you strike Sail, &c?

Axtell. My Lord, I desire to ask him a Question.

Lord Chief Baron. Ask him what you will.

Axtell. If I am not in the right I hope your Lordships will direct me.

Lord Chief Baron. Go on.

Axtell. Colonel *Huncks*, where was it?

Huncks. In a little Room in *White-Hall*, where *Ireton* and *Harrison* lay in Bed together.

Axtell. Do you know whereabouts?

Huncks. I think I can go to the Room again; I appeal to your own Conscience before all this People.

Axtell. By your Favour, Sir, the Room, I perceive, you know not; and truly, Sir, My Lord, if you please to give me Leave, because he appeals to my Conscience, I do appeal to the great God, before whom it may be I shall shortly be Arraigned to give an Account of all my Words, Thoughts and Actions, I do not remember that ever I had any Converse with this Man there, or met him there, or any of that Company there, that Day; he was a Stranger to me, but I wish that you (to save yourself being in the Warrant for Execution) do not make others a Peace-Offer-

ing to save yourself; the Lord that knows my Heart I appeal to him; I appeal to your own Conscience, because you appeal to my Conscience; I never met you, nor saw you there.

Huncks. Have you done? Then give me Leave; you say you do not know me; I appeal to the same God, when *Cromwell* took upon him to have the Crown, have not I said, What have you got by being *Jehu-like*? Lord, strike me Dead here if it be not true.

Axtell. I will not reflect upon him; but because he hath appealed to my Conscience therefore I speak it; it is known Notoriously how *Jehu-like* you were, when you were one of the Chief Guards of his Majesty, One of the Forty Halberteers that did oppose every Person then for the King; had I had Time, and had not been a close Prisoner as I was, there were Witnesses enough.

Council. This after our Evidence is more proper.

Huncks. Spare me not, Colonel *Axtell*.

Lord Chief Baron. Take the Old and Ancient Course, let the Witnesses that are produced for the King be all heard, then give your Answer to all of them together.

Axtell. My Memory is not very good.

Lord Chief Baron. You have Pen, Ink and Paper.

Lord Chief Baron. Mr. *Axtell*, is this all that you desire to speak to Colonel *Huncks*?

Axtell. Yes, my Lord.

Lord Chief Baron. Have you any other Questions?

Council. My Lord, we have a few Words; he objects as if Colonel *Huncks* were under a Danger; he is pardoned.

Axtell. I desire to ask him upon what Account these Words were spoke.

Huncks. My Lord, it was this; *Cromwell* having a Commission, (which I think I heard read here,) Colonel *Hacker* was reading of it, my Lord, *Cromwell* he comes to me, and by vertue of that Commission he would have me to write a Warrant for Executing the King, but I refused to write that Warrant; the Prisoner then standing at the Door, (If God bless me I will search all the Doors at *White-Hall*, but I will find it out,) I not doing it, I said, Why should it be offered to me? Says *Cromwell*, Thou art a peevish Fellow; *Cromwell* fell a writing; as soon as ever he had done that writing, he gave *Hacker* the Pen, what *Hacker* writes I know not; and upon my refusing, this Prisoner at the Bar said, Colonel *Huncks*, I am now ashamed of you, the Ship is now coming into the Harbour, and will you now strike Sail before you cast Anchor?

Council. You observe the Course of this Evidence; there was a Warrant of Commission directed to Three Persons, *Hacker*, *Huncks*, and *Phaire*, for Execution of the King; *Cromwell* demanded of this Gentleman (Colonel *Huncks*) that he should Sign a Warrant by vertue of that other Warrant, and this Gentleman refused it: The Prisoner objects this, that he to save himself doth witness this against the Prisoner; Gentlemen, he did refuse the Thing; have you any Thing to ask Colonel *Huncks*?

Axtell. He says Colonel *Phaire* and *Hacker* were there, I do not doubt but they will be so conscientious to vindicate me from all this Charge.

Lord Chief Baron. If it be any Thing that tends to your Defence that you will be heard afterwards;

terwards; but have you any Questions to ask Colonel Huncks?

Axtell. *No more; I know nothing of it, if I were to Die at this Bar presently.*

Council. Sir Purbeck Temple, Pray tell my Lords and the Jury your Knowledge of the Carriage of this Gentleman touching the Trial of his late Majesty.

Sir Purbeck Temple. My Lord, being present, and engaged by some Persons of Honour, Servants of his late Majesty, to be present when that horrid Murther was acting before this Court of Justice, (as they called it,) I was present at all the Trials of the King, and very near him; I heard the King demand from Bradshaw by what Authority and Commission they proceeded thus strangely to Try him. Then I heard the Lady Fairfax, and one Mrs. Nelson, (my Sister,) after the exhibiting of the Charge in the Name of the Commons Assembled in Parliament, and the good People of this Kingdom, againt Charles Stuart, King of England; I say I heard the Lady cry out from a Gallery over the Court, *Not half the People; it is false; Where are they, or their Consents? Oliver Cromwell is a Traitor.* Upon which I heard the Prisoner at the Bar cry out, *Down with the Whores, shoot them;* which made me take farther Notice of him; seeing him in Westminster-Hall, commanding the Soldiers there, I saw him the most active Person there; and during the Time that the King was urging to be heard, he was then laughing, entertaining his Soldiers, scoffing aloud, whilst some of the Soldiers, by his Suffering, and (I believe) Procurement, did fire Powder in the Palms of their Hands, that they did not only offend his Majesty's Smell, but inforced him to rise up out of his Chair, and with his Hand to turn away the Smoke; and after this he turned about to the People, and smiled upon them, and those Soldiers that so rudely treated him: Then turning himself to Bradshaw, said to him and the Court, *There are some sitting here (fixing his Eyes upon some Persons near Bradshaw) that well knew that if I would have forsented or betrayed the Liberties and Rights of the People I need not have come hither, (or Words to this Effect,) but their Liberties and Rights are dearer and nearer to me than my Three Kingdoms, nay, than my Life itself; therefore I desire you to bear me, and remember that I am your Lawful King, that have done you many Acts of Grace and Favour.*

After which, this Person, Mr. Axtell, Prisoner at the Bar, commanded his Soldiers to cry out *Justice;* which the Soldiers not readily obeying of him, I saw him beat Four or Five of them with his Cane until they cried out, (with himself) *Justice, Justice, Execution, Execution,* which made me turn to a Noble Lord, by whom I then stood, and said, *Pray, my Lord, take Notice, there is not above Four or Five that cry out Justice, Justice.* I heard also of their spitting in the King's Face; and I think no Body's Sufferings have been so like those of our Saviour Christ Jesus, as his Majesty's were. After this, this Person crying *Justice, Justice, Execution, Execution,* a second Time, the Court proceeded to pass a Sentence; the which his Majesty pressed hard against, and said, *Sir, before you pass that ugly Sentence, (which I very well understand you are determined to do,) I desire you to bear me; bear me, bear me;* passionately, and most affectionately expressing it, which they denying the King, and the Noise of *Justice, Ju-*

sice, Execution, Execution, being repeated, they proceeded and read that ugly Sentence of Death: After which his Majesty was immediately hurried away from the Bar into a common Sedan, where he was carried by two common Porters; which Sedan I followed to the middle of King's-Street; where I saw the two Porters in Reverence go bare, till the Soldiers (under the Command of the Prisoner at the Bar) beat them, and would not suffer them to go bare, when they carried him. After this the People cryed out, *What, do you carry the King in a common Sedan, as they carry such as have the Plague? God deliver your Majesty out of such Enemies Hands.* In which Street I was forced to leave the Sight of his Majesty, occasioned by the Injuries and Hurts I received in my Person from the Soldiers under Axtell's Command, they carrying him through the Streets shouting in Triumph. A short Time after I received an importunate Command from a Lady of great Honour, (a Servant of his Majesty's) that I would endeavour to find out where the Body of the Martyr'd King was, and to give her an Account where it then was: Applying my self to White-Hall, after Two or Three-score Intreaties, I was denied; but understanding that Money would do it, I gave the Person then under the Command of Mr. Axtell, that then kept it, half a Piece to shew it me, who in a scoffing Manner took me by the Hand and said, *If thou thinkest there is any Sanctity or Holiness in it, look here;* where I saw the Head of that Blessed Martyr'd King lye in a Coffin with his Body, which smiled as perfectly as if it had been alive; this is the sad Account of the Martyr'd King, and this horrid Prisoner, Mr. Axtell.

Axtell. *My Lord, may I ask that Gentleman some Questions?*

Lord Chief Baron. *Yes, yes.*

Axtell. *My Lord, he seems to say that I bid the Soldiers cry out for Justice; he doth not say at all I was there in Command, but he saith a Lady, by Report the Lady Fairfax, spake some Words, and that I should bid the Soldiers Silence her; truly I desire to know the Certainty of the Place where I stood.*

Sir Purbeck Temple. My Lords, and Gentlemen of the Jury, I saw this Person standing within a Pike or two's Length, as I can guess it, (I remember the Place within a Yard of the Ground in Westminster-Hall,) I do not say this Person fate in the Court as a Principal Officer, that did then hold his Majesty Prisoner at the Bar; I did not say it was a Lady unknown, or reported to be such a one; but I said it was the Lady Fairfax, and my own Sister, Mrs. Nelson, and he cried, *Shoot the Whores.*

Axtell. *He seems now to say I Commanded the Guards; I never was a Guard to his Majesty, or had any thing to do in that Business, but it was wholly committed to a Company of Men I know not of. That Gentleman that spoke I have no Acquaintance with him, I think he did not know me at that Time.*

Lord Chief Baron. *Have you any thing to ask him?*

Sir Purbeck Temple. My Lord, another Passage he puts into my Memory; when I did observe a Thoutand of sad Faces, I saw none laughing but yourself, as if you had been carousing and entertaining the Soldiers. I do not charge you that you Commanded those Halbertcers, but those

Red-coats; you were all in *Red*: I saw you cane those Four or Five Soldiers I mentioned, till they cried *Justice, Justice*, with you; and that with the Powder in the Palms of their Hands they forced the King to rise out of his Chair, which you were much pleased with, and laughed at.

Axtell. *I say before the Lord, before whom I must be judged again for this, I do deny this whole Account.*

Griffith Bodurdoe, Esq; Sworn.

Bodurdoe. My Lords, and you Gentlemen of the Jury, I was at the time of this sad Trial in *Westminster-Hall*.

Axtell. *Your Name, Sir, I beseech you?*

Council. His Name is Mr. Bodurdoe.

Bodurdoe. I say I was all the time of the King's Trial in *Westminster-Hall*; I was in a Gallery that I had out of my House where I then lived, just under and besides the House of Commons, and I do remember I saw this Gentleman there; I do think he was then called Lieutenant Colonel *Axtell*, so far as I remember; truly I have not seen him since, before this Day, nor have had any Reason to have known him, but that I saw him very Active in giving Commands to the Soldiers there: This Gentleman was keeping the Court, letting some in, and putting others out; he seemed to have the Command of it; one Day (whether it was about some Passage, or their President's Speech, I know not) there was a Lad; in the same Gallery where I stood, and some Muttering, *It is a Lye, not half the People*, or Words to this Effect; he the now Prisoner at the Bar standing below in the Court, without the Bar, not far from *Dundy*, with Five or Six Soldiers, upon this Muttering and Disturbance (as he apprehended) to the Court, he called to the Soldiers, saying, *Shoot them, if they speak one Word more*; they did also present the Muzzles of their Muskets up to the Gallery; my Lord, by this we were very hush; after that immediately within half a Quarter of an Hour *Dundy* came to the Gallery from the Court, to know who it was that made that Disturbance; but the Lady was withdrawn into my Chamber, and did not come out afterwards.

Axtell. *Where was this, Sir?*

Lord Chief Baron. What is you desire?

Axtell. *My Lord, where he saw me then?*

Lord Chief Baron. Mr. Bodurdoe, you hear the Question.

Mr. Bodurdoe. There was a Gallery, which I do believe is yet standing, and the Court was just underneath the Gallery, and you were just underneath the Gallery, and Five or Six Soldiers with you.

Richard Young Sworn.

Council. What do you know of the Carriage of the Prisoner at the Time of the Trial?

Young. I was upon a Scaffold, whereby I did see what was done in the Hall; I saw that Lieutenant-Colonel *Axtell* was busy and very active in encouraging the Soldiers to say, *Let us have Justice against the King*.

Axtell. *I desire to ask Mr. Young one Question; others say that the Word was, Cry for Justice, this Gentleman is pleased to make some Addition, Let us have Justice against the King.*

Young. No, not against the King, but I conceived you meant against the King.

Axtell. *I cry you Mercy, you do but conceive so.*

Young. You were upon the Right Hand of the Hall, almost at the Corner of the Pavement; it could not be otherwise applied.

John Jeonar Sworn.

Council. Speak your Knowledge of Col. *Axtell's* Carriage at the High-Court of Justice.

Jeonar. I had the Honour to wait upon the King as a Domestick Servant, to the Time of his Death; that Day, which was the First Day the King was brought to his Trial, I did wait upon him among other Servants; we stood close to the Bar where the King was, some Three or Four of us; Colonel *Axtell* was upon the Right Hand of us commanding the Guard, to keep Things in Order when the Court was to be withdrawn; (the many Circumstances about the Lady *Fairfax* shall be omitted;) the President commanded the Prisoner to be withdrawn; with that Col. *Axtell* steps down before me to draw out his Guard; this I heard him say, *Soldiers, cry for Justice, Justice*; I was the next Man to him; and upon the last Day of the Trial he did come down in the same manner, and bid the Soldiers cry out for *Execution, Execution*.

Axtell. *I do desire a Question may be asked of that Gentleman; I must confess I did not know the Gentleman at that Time, though he said he knew me; he seems to say that at the First Day I encouraged the Soldiers to cry, Justice, Justice, and the Last Day, Execution, Execution; what Place was this in, Sir?*

Jeonar. I tell you the King was brought from *Cotton-House*, through a Guard, that you managed, of Musqueteers, and with a Guard of Partizans; besides, there was myself and others there: When we came up we got as close to the Bar as we could; you were passing up and down from above and below: When the Court was dissolved, you stepped down just before to draw your Guard to make ready, and to cry, *Justice, Justice*, and the Second Time, *Execution, Execution*; you were very near me, and then you cried, *Justice, Justice, Execution, Execution*.

Axtell. *Are you certain? I have heard other Men, I confess, accused for this, some other Officers.*

Jeonar. I did hear you, I do know you by Sight.

Council. You know him now to be the same Person?

Jeonar. Yes.

Samuel Burden Sworn.

Council. Tell my Lord and the Jury what you know of the Carriage of the Prisoner.

Burden. My Lords and Gentlemen, I do believe Col. *Axtell* knows me well enough, I was then under his own Command at *White-Hall*; there were some Cavaliers then in the Regiment; it was my Fortune I came into your Company, I wish I never had: You commanded more besides my self to be a Witness against the King, and Justice Cook took my Examination; you brought me in, you commanded the Guards that Time at *White-Hall*, when the King was upon his Trial.

Axtell. *What more?*

Burden. And you commanded *Elisba Axtell*, with a File of Soldiers, to take a Boat and go down to the Common Hang-man, who liv'd beyond

yond the *Tower*, to Execute the King; he is now *Sheppard's* Serjeant in *Ireland*.

Axtell. My Lord, I desire to ask him a Question; he was pleas'd to say I desired him to be a Witness.

Burden. Yes.

Axtell. Where was it?

Burden. In the Court at *White-Hall*.

Axtell. My Lord, I have seen the Printed List of Witnesses against the King, and in that List you shall find no such Name.

Burden. I have been a Prisoner in *Dublin* by your means.

Axtell. My Lord, I hope you will take Notice of that.

Council. Burden, do you remember any of his Commands to *Web*, to draw up in the *Banqueting House*?

Burd. He commanded *Web* to draw up in the *Banqueting-House*, during the time of Execution, his own Company. I was one of his own Company then.

Council. In order to what?

Burden. For Execution.

Axtell. My Lord, is *Web* here?

Burden. He is in *Dublin*.

Axtell. I wish he were here.

Edward Cook Sworn.

Cook. May it please your Honour, my Lord, the last Day of the Trial of his Majesty I came into *Westminster-Hall*, coming where the Court was, I did see Col. *Axtell*, the Prisoner at the Bar, there with some Musqueteers.

Council. What Day was this?

Cook. The last Day of His Majesty's Trial.

Lord Chief Baron. Go on, Sir.

Cook. Standing there a little while His Majesty came Guarded with some Halberteers, when he came by the Soldiers that stood with Colonel *Axtell*, His Majesty bowed, and afterwards put off his Hat, and went up to the Court; I could not know what *Bradshaw* said to him, I stood below; I heard him say he was brought by the Consent of the Commons and People of England; there stood a Lady above in a Gallery, crying out, it is a Lie, where are the People? or their Consents? Cromwell is a Traitor: Whereupon Colonel *Axtell* standing by, saith he, What Drab is that that disturbs the Court? Come down, or I will fetch you down.

Mr. Nelson Sworn.

Council. Tell my Lords, and Gentlemen of the Jury, touching the Discourse between you and the Prisoner at the Bar, in *Dublin*.

Nelson. My Lords, and Gentlemen of the Jury, upon a Discourse with the Prisoner at the Bar in *Dublin*, Five or Six Years since, upon the Platform in that Castle we discours'd of the late King's having had several Reports; I desired to know of him who it was that Executed the King, thinking he might inform me; he was pleas'd to tell me this, saith he, the Persons that were employ'd in that Service, you know them as well as I do; truly Sir, not I, said I, I saw them in Vizards, but not their Visage, as I know of; yes, saith he, you do know them; it is true, saith he, myself and others were employ'd in that Affair, in order to the Execution; but there were several Persons came and offer'd themselves out of a kind of Zeal, to do the Thing, but we did not think it proper to employ Persons whom we did not know, but we made choice of a

couple of Stout Persons; pray let me hear their Names, said I; saith he, it was *Herulet* and *Walker*; I desired to know their Reward; truly saith he, I do not know whether 30*l.* apiece, or between them; I said it was a small Reward for a Work of that Nature; truly, saith he, that was all.

Axtell. You named one Man, I did not hear the other named.

Nelson. I named *Herulet* and *Walker*; he was one that managed the Execution, he told me so, and it pleas'd you, Sir.

Axtell. He is pleas'd to say that in *Ireland* there was such Conference; was any Body by?

Nelson. No, Sir.

Axtell. Did I Name any Body to you?

Nelson. You named those two Persons.

Axtell. Certainly I must invent them then, for I had no more Knowledge of them than any one here.

Nelson. You told me you were one of them that had the managing of that Affair.

Council. My Lord, we have done with our Evidence; those Particulars that were first opened to you have rendered the Prisoner much a blacker Person than we thought; we leave him to his Defence.

Axtell. May it please your Lordships in the first place, because I am ignorant in the Laws, I desire to know upon what Statute this Indictment is grounded.

Lord Chief Baron. It is grounded upon the Statute of the 25th of *Edward the Third*.

Axtell. My Lords, I must acknowledge my Ignorance of the Laws, being a Thing I never studied, nor have the Knowledge of, but I have heard it is the Duty of your Lordships and the Judges to be of Council for the Prisoner in Things wherein he is ignorant in Matter of Law, to make his just Defence; and therefore, my Lord, the Indictment itself being Matter of Law, if your Lordships please not to grant me Council to speak to Matters of Law, I humbly pray that your Lordships will be pleas'd that for want of Knowledge, Formalities, Punctilios, and Niceties of the Law, I might not undo myself: I have heard by a learned Judge, that though the Judge be of Council to the King, yet by his Oath he is also to be Councillor to the Prisoner, and stands as Mediator between the King and Prisoner; and therefore, my Lord, I shall beg that humble Favour, that wherein I shall fall short to make the best Improvement of my Plea in Matter of Law, that your Lordships will help me, and not take Advantages against me, as to the Niceties, Formalities, and Punctilios of the Law; and, my Lord, this is a Resemblance of that Great Day, where Christ will be Judge, and will judge the Secrets of all Hearts, and of all Words, and of all Persons, and by him all Actions are weigh'd, knows all our Hearts whether there be Malice, or how it stands in the Frame of each Heart before him in this place; and therefore I hope there will be nothing by pre-judging, or any Thing by precluding, to be so Black a Person as is seem'd to be said against me. My Lords, I must shorten the Time, and come to speak as to the Authority.

Lord Chief Baron. As to what, Sir?

Axtell. I speak as to the Authority by which, or under which, I acted; I humbly conceive, my Lord, under Favour, that I am not within the Compass of that Statute of the 25 Ed. 3. for that questionless must intend private Persons, Counselling, Compassing, or Imagining the Death of the King. But you know, my Lords, the War was first stated by

by the Lords and Commons, the Parliament of England, and by Vertue of their Authority was forced to be raised, and they pretended by Law that the Right of the Militia was in them; and your Lordships will remember in several Declarations and Acts that were mutually exchanged between his Majesty and Parliament; and, my Lord, that was the Authority, the Lords and Commons assembled in Parliament raised a Force, and made the Earl of Essex General, and after him the Earl of Manchester, of the Eastern Association, and after that Sir Thomas Fairfax, Lord General of the Forces; by this Authority I acted, and this Authority I humbly conceive to be legal, because this Parliament was called by the King's Writ, chosen by the People, and passed a Bill they should not be Dissolved without their own Consents; that the Parliament was in Being when the Trial was, and a Question whether yet legally Dissolved.

In the Fourth Place, they were not only owned and obeyed at Home, but Abroad, to be the chief Authority of the Nation, and also owned by Foreign States and Kingdoms, who sent Ambassadors to that Purpose; under them did all the Judges of the Land Act, who ought to be the Eye of the Land, and the very Light of the People, to guide them in their right Actions; and I remember the Judges upon Trial, (I have read it of High-Treason,) Judge Thorp, Nichols and Jermin have declared it publickly, that it was a lawful justifiable Thing by the Law of the Land to obey the Parliament of England. My Lord, it further appears as to their Authority over the People of this Nation, Petitioning them as the Supreme and Lawful Authority: And, my Lords, as I have heard it hath been objected, that the Houses of Lords and Commons could make no Act, truly, my Lord, if you will not allow them to be Acts, tho' they intitule them so, call them so, and are obeyed as so, by the Judges, Ministers, and Officers of State, and by all other Persons in the Nation, yet I hope they cannot be denied to be Orders of Parliament; and were they no more but Orders, yet were they sufficient, as I humbly conceive, to bear out such as acted thereby. And, my Lord, the Parliament thus Constituted, and having made their Generals, he, by their Authority, did Constitute and Appoint me to be an Inferior Officer in the Army, serving them in the Quarters of the Parliament, and under and within their Power; and what I have done, my Lord, it hath been done only as a Soldier, deriving
Kelyng. 13. my Power from the General; he had his Power from the Fountain, to wit, the Lords and Commons; and, my Lord, this being done, as hath been said by several, that I was there, and had Command at Westminster-Hall, truly, my Lord, if the Parliament Command the General, and the General the Inferior Officers, I am bound by my Commission, according to the Laws and Customs of War, to be where the Regiment is; I came not thither Voluntarily, but by Command of the General, who had a Commission (as I said before) from the Parliament. I was no Counsellor no Contriver, I was no Parliament Man, none of the Judges, none that Sentenced, Signed, none that had any Hand in the Execution, only that which is charged is, that I was an Officer in the Army; if that be so great a Crime, I conceive I am no more Guilty than the Earl of Essex, Fairfax, or the Lord of Manchester.

Judge Mallet. You are not charged as you were an Officer of the Army.

Axtell. My Lords, That is the main Thing they do insist upon: My Lord, I am no more Guilty than

his Excellency the Lord General Monk, who acted by the same Authority, and all the People in the Three Nations; and my Lord, I do humbly suppose, if the Authority had been only an Authority in Fact, and not Right, yet those that acted under them ought not to be questioned; but if the Authority commanded, whatsoever Offence they committed, especially that that guided me, was no less than the declared Judgment of the Lords and Commons sitting in Parliament; they declared that was their Right, as to the Militia; and having explained several Statutes of Henry the 7th, wherein the King having entered-changed Declarations with the Parliament, the Parliament comes to make an Explanation on that Statute; and, my Lord, it is in Folio 280, wherein they do positively expound it, and declare it as their allowed Judgment. To clear up all Scruples to all that should take up Arms for them, saith the Parliament there, as to the Statute of 11th of Henry the 7th, Chapter the First, which is printed at Large, comes there to explain it in General, and comes here, Folio 281, and gives this Judgment; It is not, say they, agreable to Reason or Conscience. that any one's Duty should be known, if the Judgment of the High-Court of Parliament be not a Rule or Guide to them. In the next Place, this is the next Guidance, Rule, and Judgment of Parliament, upon the Exposition of this Statute, and as they have said in several Places, (was it not too much to take up your Lordship's Time,) they are the proper Judges and Expounders of the Law. The High-Court of Parliament have taken upon them to expound the Law, and said that we Lawyers will give the Meaning of the Text contrary to what they have Expounded the Meaning under their Hands: In the same Declaration his Majesty is pleased to quit that Statute upon which I stand Indicted, the 25th of Edward the Third, where they do, my Lord, expound that very Statute in the Declaration made in 1643, Folio 722. I come to the declared Judgment, wherein they did positively say, that the Persons that do Act under their Authority ought not to be questioned as Persons Guilty, Folio 727, that is the Exposition that the Lords and Commons Assembled in Parliament do make upon the Statute.

Council. My Lord, this is an Argumentation of Discourse in Justification of his Proceedings, we desire to know what he will Answer as to the Plea.

Axtell. My Lords, I have this further to say, that if a House of Commons Assembled in Parliament may be guilty of Treason, (for the Truth is, if I acted Treason, that acted under the Authority of the Lords and Commons in Parliament, and of the Commons in Parliament, then doubtless they must begin the Treason:) If the House of Commons, who are the Collective Body and Representation of the Nation be guilty, all the People of England, who chose them, are guilty too; and then where will there be a Jury to try this? Concerning the Commons alone I have been over-ruled.

Lord Chief Baron. If you have any Thing to say to the Lords and Commons, Answer to your Charge; your Charge is nothing of the Lords and Commons, but what you acted when the House was broke and forced.

Council. You cannot but know that there is nothing charged against you, for which you can so much as pretend an Authority of the Lords and Commons; you know before you could do this horrid Murther, you were the Persons that destroyed

destroyed the Lords and Commons both; indeed you Ravel in a Business, to make People gaze upon you without any Ground.

Axtell. *I am upon my Life, I hope you will hear me patiently.*

Lord Chief Baron. God forbid but we should.

Axtell. *I do desire to assert my Authority; if any Thing was done upon the House of Lords and Commons I do not come here to justify their Actions, I was not concerned in it. My next Plea is this; that if a House of Commons can be charged Guilty of High-Treason as a Community, the distributive Body must needs be Guilty.*

Court. If there should have been 20 or 40 Men come out of the House of Commons, and should Murther a Man, they must Answer for that; it is not the Community that can do such an Act of Treason: These Persons that you call a House of Commons, there was but 26 of them, and these must be the People; this is the State of the Case; and when you have thrust out thrice the Number of those remaining, only those can serve your Turn.

Lord Annesly. Mr. Axtell, I am very sorry to see you in that Place, and it troubles me as much to hear you vent that for an Authority; which you know yourself was no Authority; you would now for your Defence for Life, (and it is Reason you should make as full a Defence for Life as you can,) you would shelter yourself under that Authority, which I am sorry I must say you were one of the greatest Violators of. You cannot forget how near a Close of this Bloody War, by the Mercy of God, this Nation was, when the Army interposed, whose Trade it was to live by War, when they had felt so much of the Sweet of War, they would not suffer the People to enjoy Peace, though the Lords and Representatives in Parliament had agreed to it; a Treaty was begun, Terms of Peace propounded and agreed to; this you cannot forget, and will have no need of Notes or Books to help your Memory: When the People Groaned under the Miseries of War, and Thirsted after Peace, then came up the Army, who were Servants to the Parliament till that Time, taking upon them the Authority; (you cannot forget that yourself was one of the Number that came to offer Accusations against the Majority of the Commons House, calling them Rotten Members;) the House of Lords was not then suffered to sit, they would not join in that Ordinance that was preparing for the Trial of the King; when the Lords had refused, they were no longer fit to be Lords neither; then comes in a new Authority, which we never heard of before; a Remnant of the House of Commons joining with the Army that had driven away the greatest Part of the House of Commons; (for in all Assemblies and Courts the Major Part must determine, or no Determination,) after this Course was taken, then is an Act set on Foot, they take upon them by Votes of their own to be the Parliament of *England*; that the Supreme Power of the Nation is in the Representatives of the People; who were they? Those few only that remained; almost all the Cities, Counties and Boroughs of *England* had none left to represent them, they were driven away by Force; then was this Act of Parliament (such an Act as was never heard of before) set on Foot and passed as an Act by a few of the House of Commons; if

you can plead this for your Defence, this is the Act that you must shelter under. But you know the Lords and Commons had unanimously resolved for Peace, and so agree with the King. If this Act will be any Defence, you may plead it to the full; and this is all you have to say, therefore go upon no foreign Matter.

Axtell. *If it please your Lordship, that worthy Lord that spoke last is pleased to say, that I was one of the Persons that did accuse some of those Members of Parliament; truly, my Lord, I never did come to the Commons Bar but once, presenting a Petition; and for my Hand either in Charging any of the Members, or Secluding any of them, I never had any Hand in that Matter; this is all to that Part. Next, I humbly conceive here I must ground my Bottom, and if I perish, I perish by a Judgment in a Parliament; my Commission that did Authorize me to obey my General, was given me when the Lords and Commons sate in Parliament; I had no other Commission than this: My Lord Fairfax commanded the Army after the King's Death by the like Commission; I did but my Duty in going to my Regiment; the General saith, go to such a Place, stay there; if I refuse, by the Law of War I Die; if I obey, I am in Danger likewise; I say my Commission was given me by the Lords and Commons, and therefore I hope, my Lord, that what I have said and offered in that Particular is not Truthless, but of Weight.*

Court. The Effect of your Commission is only to make you an Officer.

Axtell. *My Commission bears Date the 27th of March 1648, Ten Months before the King's Death; we had no other Commissions, therefore I humbly conceive the Question will be this in Point of Law, and I humbly desire it may be truly and fairly stated by your Lordship, and these Honourable Judges, that whether a Man being guided by the Judgment of the Lords and Commons Assembled in Parliament, and having declared their Judgments and Exposition of that Statute of the 25th of Edward the Third, and Acting only by that Judgment of Parliament, and under their Authority, can be questioned for Treason. That, my Lord, is a Question that I do humbly think is a Point in Law, and that you will please fairly and truly to state it, whether I am within the compass of that Statute whereupon I am Indicted.*

Council. My Lord, we do not charge him with any Thing that he did act under the Colour of his Commission, or with any Thing he did before that, but that which we charge him with are the Acts that he did at the Trial of the King; shew us your Commission from the Lords and Commons Assembled in Parliament, for Trial and Execution of the King, you say something; we do not charge him for any Thing done by Vertue of that Commission, but with those violent Acts that he did in encouraging the Soldiers to cry, *Justice, Justice, Execution, Execution*, and all those other violent Actions of his own malicious Heart against the King. We humbly beseech you he may answer to that which is the Charge against him, and that is, the *Compassing and Imagining the Death of the late King*, and his declaring that by those Overt-Acts that we have proved. My Lords, we desire that the Prisoner at the Bar may remember that he is not Indicted for Levying War against the King; if so, then that, Sir, which you offer, might be given as a Plea, and we should have spoken to it; but you are Indicted for *Compassing and Imagining the*
Death

Death of the King; and that which we have given in Evidence were the subsequent Overt-acts to prove the same.

Axtell. *I hope you will not think it much to give me some more Freedom for my own Defence for Life; My Lord, I must needs say, though there was a Force on the Parliament, I am not to justify it; I was no Lawyer, no States-man, no Counsellor, but a Soldier; and if the General, who had a Commission from the Lords and Commons, and that some Years before and after the King's Death, be not Guilty of Treason, what I did was by Command from my General; and though I am charged with being in Arms in Westminster-Hall, and at such and such a Place, yet it was not a Voluntary Act, for I was bound to obey my General; I do humbly pray that I may have your Lordship's Judgment in this Point; I must say it was from the Sense of their Exposition of the Law, and of the Statutes, and from the Authority, that every one took up Arms for, and served them, and obeyed either the one General, or the other; I say, it was under this very Authority, and this must needs acquit me from all the Guilt that is laid upon me.*

Lord Chief Baron. You put yourself upon the Judgment of the Court upon this which you call a Point in Law. First, It is manifest that there is no Excuse at all for Treason; no Man by his Commission can warrant the doing of an Act which is Treason: You must take notice of the Au-

thority, whether it be good or no; *Kelyn. 13.* your Commission was not to put the King to Death, but on the contrary, to preserve the King's Life. The Lords and Commons, what they did we do not meddle with; the Reason and Ground of what they did was the Preservation of the King's Person, as well as the Maintenance of the Laws and Liberties of this Nation; they made Protestations, Declarations, and Oaths, for the Preservation of the King's Person; and you could not but take notice of those Things: Now whereas you go about to shroud yourself under the Lord Fairfax, he had no such Power, and therefore you can challenge no more than he had; and to what you say concerning the Judgment of the Parliament, there will be a great deal of Difference between a particular Case and a Declaration of Lords and Commons; there is nothing you have said that hath any Thing of Force, and God forbid you should make use of it; but I must tell you, you could not but notoriously know all those Transactions that were in the Army, what the Army had done, that they came up with Swords in their Hands, and turn'd out whom they would; you saw what the Lords and Commons had done, that the Treaty was ready for its Birth; and then you came up with your Myrmidons, with Force and Arms, and excluded the greatest Part of the Members, and then the Lords were laid aside: It is true, the Lords were not wholly dissolved, but they would not suffer them to Sit, nor Act at all, and this was apparent to the Nation. So that this was but a Colour and Pretence of a Parliament, that a few Persons, (for so they were, but an Eighth Part of the House of Commons, should take upon them to act as an House, and of that Eighth Part (which was but Forty Six in the whole) there was but Twenty Six that Voted that Act which you say you obeyed: But you say you obeyed the General; you are not to obey the General in this Case;

for the Facts that you have committed are not charged as Acts of War; you are not charged for bringing the Soldiers in, but for those violent Actions that you were guilty of there; you made the Soldiers cry out, *Justice, Justice, Execution, Execution*; you sent officiously for a Hangman to come down to you; your Commission gave you no Power for this; the Death of the King you know how it was designed; you know the Act for the bringing in of that Commission (as they call'd it) to sit in Justice was after the House of Commons was reduced to a very small Number, and some of those dissenting too; what you did act under that Authority, if you can justify it, in the Name of God lay so; but do not engage the Nation in those Things which they abhorred, and by the Mercy of God are laid asleep.

Mr. Justice Foster. You begin at the wrong End; you ought, as all Men ought to do, first to Answer the Matter of Fact, and not to put in those long dilatory Pleas, till you have answered the Matter of Fact, whether those Things charged on you be true or not; then if you have any thing further say for yourself by Way of Excuse, it will be the Time to speak, and not before.

Axtell. *May it please your Lordships, I humbly conceive I am upon that Method to the first Part of the Witness: they accuse me for commanding my Soldiers in Westminster-Hall, then I must prove my Authority, which I have been about to do, and declared the Judgment of Parliament.*

Lord Chief Baron. The Court have heard you with a great deal of Patience, and that which is not at all to the Business.

Axtell. *I only refer this as to the Authority; (I humbly conceive you will give me Leave to insist upon this, and how far I may improve it for my own Defence;) here is the Commission by which my Lord Fairfax acted, and that after the King's Death, and I acted; by the same Authority he did; I had not been at Westminster-Hall but on the Command of the General.*

Court. Doth that Commission Authorize you to cry *Justice, Justice*? And to look up and down to get Witnesses against the King; Is that in your Commission?

Axtell. *I am to serve and obey all my Superior Officers, that is my Commission; if I do not I die by the Law of War.*

Court. You are to obey them in their Just Commands; all Unjust Commands are Invalid. If our Superiors should command us to undue and irregular Things, (much more if to the committing of Treason) we are in each Case to make Use of our Passive, not Active, Obedience.

Axtell. *Under Favour, it is not proved, that I did either Compass or Imagine the King's Death; that is Matter of Fact.*

Court. Let us try that.

Axtell. *My Lord, I did nothing but as a meer Soldier, I had Authority from the General; I would leave this before your Lordships and the Jury, that what I have done hath been by Authority of the General.*

Lord Hollis. Sir, a Word to you; if you could satisfy the Court that you had received a Commission from the General to do those Things with which you stand charged it were something, then were it proper for you to plead it; and

and the Court to Judge. Pray take this along with you, the General gave you no such Command; what you are charged with in the Indictment is, for *Compassing and Imagining the Death of the King*, and that by such and such Overt-Acts, as making your Soldiers cry out *Justice and Execution*, for being active and forward in sending for the *Executioner*, and such other Acts; prove these are in your Commission, and you say something: I am sure you cannot be ignorant that that very Authority that you now do urge to give Life and Power to your Actions, that you destroyed it, laid it in the Dust, acted contrary to it several Ways; when the Parliament protested against fetching the King from *Holmby*, as they did, when they went on proceeding in the Way of Peace, then came you up to the Bar, (I think you yourself,) and charged some of the Members; first Eleven as Rotten Members, and these Men were forced away; this you know your General had no Commission to do; and this you know was a Violation of that Power that gave your General the Commission. After that, when the Treaty was brought on in the *Isle of Wight*, when there was great hopes of Peace, then you know the King was hurried thence by Force, which the Parliament protested against. After that, when both the House of Commons and Lords came to consider of one Particular that passed, they resolved that it was sufficient Ground to proceed on for the Settlement of Peace; then did you fall upon these Houses, and tear them in Pieces, and throwing out above 200, suffered only about 40 to remain, and they were glad to send for one Member out of Prison to make up a House. That which you say of the Supreme Authority, and that by Virtue of which you did act, it shews that you did not at all go by any Authority, but you followed your own Lusts; and therefore do not sew these Fig-Leaves together, which will stand you in no stead; if you would apply yourself to answer that which you are charged with, it were something.

Axt. *I do desire to have no more Interruptions than is meet in making my own Defence. My Lord, here are many Things by way of Motive urged to the Jury which is not within the Charge, I desire I may have that fair Play, that nothing may be urg'd but what is in the Charge.*

Lord Chief Baron. You give the Occasion, Mr. Axtell, keep to the Matter, and you shall not be interrupted.

Lord Hollis. I shall be very sorry to urge any Thing against you which doth not necessarily follow; for what you say touching your Authority, I shall shew you have no Authority.

Axt. *My Lord, I have the same Commission as the General; what I did was not of mine own Head, I had a Command: As for all that hath been charged against me I shall say this, I was none of the Court, I did not fetch the King from the Isle of Wight, nor advis'd, compassed, or imagined, his Death, or Sentenced him to Death, or Signed the Warrant for his Execution, or Executed him; I am none of them, my Lords; and therefore whoever did make any Breach upon the House of Commons, they were Grandees, Persons of a greater Quality; I was an inferior Officer; I was never at the House Bar, but upon presenting one Petition to the Parliament from the Army. I shall now come to speak to the Evidence which hath been given*

particularly against me; and the First, my Lords, is Mr. Simpson, he saith, I had the Command of the Guards at Westminster-Hall: My Lords, I have told you already, shew me by what Authority I came thither, and that I ought not to refuse; if I had, according to the Laws of War I must have suffered Death; and that is all as to Mr. Simpson, only that a Lady (he knows not who) spake something there.

Lord Chief Baron. He saith he heard you bid the Soldiers give Fire against the Lady.

Axt. *My Lord, I must say, if there was any Lady that did speak, who she was I know no more than the least Child here; but, my Lord, to Silence a Lady I suppose is no Treason; if a Lady will Talk impertinently it is no Treason to bid her hold her Tongue.*

Lord Chief Baron. A Lady was speaking pertinently enough, when she heard *Bradshaw* say to the King, such a Charge is exhibited, a Charge of High-Treason against him in the Name of the Commons Assembled in Parliament, and the good People of England; she said, *That was a Lye, not half, nor a quarter of the People of England; that Oliver Cromwell was a Traitor*; then you took upon you to Command the Soldiers to Fire at her, and accordingly they levelled the Muzzles of their Musquets towards her.

Axt. *My Lord, as to that Particular concerning Oliver Cromwell, or any other Words concerning the Court, I understand them not; but if any Interruption was made, to preserve the Peace, to desire a Woman to hold her Tongue is no Treason. To the next Particular, wherein Colonel Huncks saith, at a Door of a certain Lodging where Ireton and Harrison were in Bed together, he saith that upon his Refusal to Sign the Warrant for Executing the King, I said to him, Colonel Huncks, I am ashamed of you, the Ship is now coming into Harbour, and will you strike Sail before we come to Anchor? Truly, my Lord, I think all that amounts to nothing; if it were so, which I deny it, for to bring the Ship into Harbour, what is that? There is no Person named, Fact named, nor Design named; and I appeal to my Conscience, I remember not the Time, Place, Person, or Words; and I can call for Colonel Phayre and Colonel Hacker, who were there; for I desire Things may appear right, I desire they two Persons may be called for their Evidence in that Point.*

Lord Chief Baron. They both are in the same Condition, Colonel Hacker in the Prison behind you, Colonel Phayre in the Tower; Mr. Axtell, you know the Strength of one Affirmative Witness; I saw such a Man, and heard such a Man say, &c. is more than if Twenty should Witness they stood by, but did not see him, or hear him speak.

Axt. *My Lord, he saith only this, I saw you at the Door going into Ireton's Chamber, and said, Will you strike Sail, &c? Truly, my Lord, he doth not say what, or how, any Thing I meant; there must be according to Sir Edward Coke's 7th Book of his Institutes, that Oracle of the Law, he saith, That Evidence ought to be as clear as the Sun at Noon-day; all that you can say is this, it must be a wide Inference, a large Inference; I conceive there is nothing in these two Witnesses, and if the Two Prisoners were here they would clear me in this.*

Lord Chief Baron. If by the Law you could have had them, you should; but I fear if they could be admitted they would not be to your Advantage.

Axtell. *Then, my Lord, in the next place, Colonel Temple is pleased to say, that the Lady Fairfax saying something against the Court, (which in truth, as I said before, I know not who it was, or what the Words were,) he saith, I bid Fire against them; I did nothing but what I was commanded upon pain of Death, to preserve peace, and in pursuance of that Command from the Superior Officers of the Army, Silence was required, and that was all that was done. I suppose where a Man is commanded to keep Silence, as the Sheriff is required to keep all at peace in a Court, if he restrain a person that will not be quiet, it is not Treason in him, nor in me, in this particular. My Lord, in the next place, Mr. Temple is pleased to say, that I stood upon the pavement laughing, while others sighed; truly, my Lord, I know not whether I saw the Gentleman, or no; certainly Smiling is no Treason, if I did so, though I believe I had as great a Sense that day as many other persons there; this is the Sum of that he saith, only he further adds, that I bid the Soldiers cry for Justice; truly, my Lord,——*

Lord Chief Baron. Because it may be your Notes are short, I will acquaint you there was a little more in it; he said, you bid the Soldiers cry out, *Justice, Justice*; and they coming not very readily to it, you struck some of them, till they with yourself cried out *Justice, Justice*; till they with yourself did it.

Axtell. *My Lord, to that I answer, that in the Hall there was some kind of people did set up a crying some kind of Words, and may be some of the Soldiers might cry so too; I might command them to hold their Tongues, and to say, I'll teach you to cry Justice, and so the Gentleman standing by might believe I was the person that bid them do it: Truly, my Lord, this is all that the Gentleman says, which I humbly conceive is nothing, because he does not say against any person; and therefore, my Lord, I do hold to that Maxim in the law, as Sir Edward Coke holds, (that Man of great parts, of learning and knowledge,) That in matters of Treason, wherein a Man is the highest concerned in his Life and Posterity, there ought not to be construed against him Inferences or Presumptions, or Strains of Wit; there is no more in this, and this is all that I say in this particular. In the next place, Mr. Temple is pleased to say, that after the Court had sentenced his Majesty, he was hurried away in a Sedan; truly, whether he was, or not, I know not; there was a Guard of Halberters, whereof Colonel Huncks was one, and several others, as I have heard; they were select Guards of his Majesty, guarding him from St. James's to other places; how he came to be hurried, I know not, it was not by me; and whereas he says during the whole Trial I was there, truly I think I was there by Command of my General, by Authority of the Lords and Commons.*

Lord Chief Baron. You speak this that the Jury may understand you did it by Command of your General. Do you mean by express Command?

Axtell. *I did not move a Day but by special Command.*

Lord Chief Baron. By whom?

Axtell. *The Lord Fairfax gave his Orders every Morning to his Adjutant-General, or Major-General, and they issued them out to such and such persons as he appoints.*

Lord Chief Baron. Who gave these Orders out?

Axtell. *The Lord Fairfax; we did all under him.*

Lord Chief Baron. You had not the Order immediately from him?

Axtell. *The Major-General had.*

Lord Chief Baron. What Major-General gave you that Order?

Axtell. *There was Cromwell and Ireton.*

Lord Chief Baron. The Lord Fairfax gave you no immediate Commission?

Axtell. *He gave my Superior Officers.*

Lord Chief Baron. How do you know that?

Axtell. *My Lord, because they told me so, it was by his Command.*

Lord Chief Baron. The Question is now understood.

Axtell. *The next person that speaks is Mr. Bourdoo, and he says that I commanded the Soldiers at the King's Trial; and that a Lady that was speaking was commanded Silence, to this purpose; truly, my Lord, this is but the same as before.*

Lord Chief Baron. You said *Shoot too*.

Axtell. *No, (my Lord,) I said not any such Word, or any thing like it; I heard there was an Officer went up and intreated her to be silent; I say, it is the same with the former, it is no Treason to desire one to be silent. My Lord, the next Witness that speaks in Evidence against me is Mr. Young; he says this, I bid the Soldiers cry for Justice; it is very like that person, as well as Mr. Temple, might see me in the Crowd speaking to make the Soldiers quiet, I might repeat the Words that the People said, repeat the Word Justice, or some such Word, as the people's Words.*

Lord Chief Baron. Remember how he repeats them; he saw you active in setting on the Soldiers to cry Justice.

Axtell. *If I have taken them right; one says he heard me say such Words as Justice; and that he saw me strike two or three Soldiers; if in the Tumult such a Word should be started, I hearing of them, I might strike those Soldiers that said Justice, Justice, and might repeat the Words, I'll give you Justice, and so strike them; that is a good Evidence that it might be a Repetition of their Words, and not any of mine own: They both speak as to the Word Justice, but here was not Justice mentioned to any person; I might repeat their own Words, and chastise them for those Words; besides this, (though I do not say the Word was spoken by me) if the Word Justice had been spoken, my Lord, I hope it is no Treason to say, I desire Justice; it is God's great Attribute, it is God's Ordinance, and that can be no Treason. I have read in Law-Books, (though but lately) and I cannot find that the Word Justice should be made Treason; then there is no person to whom that adjunct doth belong. The next Evidence, my Lord, is Captain Jennoar, he saith I commanded a Guard; truly several Regiments took their Turns as they were commanded by the General, and I, as an inferior Officer, was there; but that is no more than what was said before, it was done by the Authority of the General; if I had not done it, I had died by the Law of War: He saith, there was a Cry for Justice; I can say nothing more than I have formerly said; it may be in the Tumult the Soldiers might say so, and I chastising of them, and repeating that in my Chastisement, they might think they were mine own Words.*

Lord Chief Baron. Mr. Axtell, I would help your memory; he swears the last Day you encouraged the Soldiers to cry, *Execution, Execution*.

Axtell.

Axtell. For that Particular I am coming to it, (I thank your Lordship for helping me;) my Lord, for that of Execution, truly I cannot say whether I was there that Day or no; one Day I was commanded to be there with some Companies in Westminster-Hall, but whether I was there any more than that one Time is the Question: Admit I was there that Day, I was never there but when I was commanded; when the Colonel that commanded the Regiment was there, I, as an Inferior Officer, ought to be there: I was there by a Special Order, and not by a Voluntary Act of mine own, and so it cannot be Compassing the Death of the King. For as to the Word Execution, what can be the Sense of this Word? Execution is a single Word; those People that started the Word Justice might put it in the Heads of the Soldiers, which I might strike to command Silence; they likewise might upon the same Account cry out Execution, and so to hinder all Tumults, and Hubbub, and the like, in the Place; I might repeat their Words in correcting of them for it, I might say, I'll Justice you, I'll Execution you: But my Lord, this Word Execution of Justice, it is a Glorious Word: not that there can be an Inference that what they did I should say was Justice, or to approve of any Thing that they did, but only in General Execution of Justice, which, my Lord, relates not to any Person; possibly the rude People might be speaking (as hath been said before) in that Manner, and the Soldiers might take it up, and I might reprove them, and make Use of their own Words by way of Repetition, I will Justice you, I will Execution you.

My Lord, in the next Place I do desire to speak to that of Mr. Burden; he did observe to your Lordships and the Jury, my Country-men, my Brethren, with whom are the Issues of Life and Death, for whose Life they must answer before the Lord as to Righteousness, Judgment, and Equity; I say, my Lord, as to Mr. Burden, he tells you, that for my Sake he was Imprisoned; saith he, I have suffered much by him; and speaks it with much Indignation of Spirit; I have suffered, and been Imprisoned by him, and afterwards he comes to speak his Evidence; how much his Evidence may be of Force I desire, my Lord, the Jury may consider of that; and then he comes and saith, I commanded a Guard at the Banqueting-House in White-Hall. Truly, my Lord, the Lord Fairfax commanded a Regiment to quarter there, and I, as an Inferior Officer, might be there. In the next Place, my Lord, he saith, I sent Elisha Axtell to fetch the Hangman; Truly, my Lord, I wonder this Person is not come from Ireland; (if this were so,) the Authority there would not send that Person with his great Evidence, as well as this Person; he may as well charge any Person with this as me: It is evident, Ireton, Harrison, and Cromwell, they did all amongst themselves; I never was with them, amongst them, received no command from them, nor obeyed them; nor did any Thing but what I had Command for from the General, whom, by the Law, I was bound to obey as a Soldier. I shall only observe one Thing more; this Person being so long a Prisoner, to Extricate himself out of his Imprisonment and Chains, poor Man! he may say more than is true. I wonder he should say I sent for the Executioner; I never knew of any Circumstance touching Consultation about his Death, or took him Prisoner. When they sent to me to be one of his Guard, I never would go; I humbly conceive there is nothing sticks upon me in this, considering the Circumstances, and the Words of the Person that spoke them.

VOL. II.

My Lord, the next Person that speaks against me is Mr. Cook, he saith he heard me say, Thrust that Lady down that made a Disturbance in the Court, or Words to that Purpose; it is probable there might be a Desire of Silence. The next Evidence is Lieutenant Colonel Nelson, he saith, that upon a Discourse—

Lord Chief Baron. I would put you in Remembrance, lest you should forget what Sir Purbeck Temple said, that by Leave of Persons under your Command he saw the Body of the King. It is only a Circumstance.

Axtell. I have heard there were Chirurgions, Physicians, and Halberteers, appointed by whom I know not; they had the Care of such Things, and had the keeping of him; he was locked up by them; no Body could come in but by them; I never had a Key; possibly Colonel Temple might come to me, quartering there, and desire me to speak to some Persons that had the Charge of it to let him in; whether I did or no I cannot remember; but if it were so, I hope it will not amount to Treason. The last Thing given in Evidence against me is by Mr. Nelson, he saith, that upon some Discourse between us, he was asking what Person cut off the King's Head, and that I should say Hewlet, &c. Truly, my Lord, I was never privy; and I appeal to Mr. Rushworth, if he were here, who was Secretary, if ever he saw me in any Council, to advise, or act, or any Thing in that Kind, in relation to the King's Trial, Sentence, or Execution; for me to know the Person that was employed about the Execution it is strange, when (as I said before) they did all within themselves. I had no Knowledge thereof, and meddled not with any Thing but within my own Sphere as a Soldier under my Lord Fairfax, by Authority of Parliament. For naming any Person, truly, my Lord, it would be a wonder to me that I should name any Person to go to do any Person that Wrong and Injury, to say he was the Person; I must invent it, for I knew nothing of it. But by common Fame up and down the City it was said to be another Person, but who it was I cannot say, my Lord; but to all this that hath been said against me, there are but Two Things upon Two Witnesses that are placed upon me; the First, my Lord, here is Two Witnesses for crying Justice, and Execution.

Lord Chief Baron. I think you have more than Two to those Words.

Axtell. Not for both together.

Lord Chief Baron. No, but several for Justice.

Axtell. There is Three to that; I shall only say this to your Lordship, and this Jury, in whose Hand this Life of mine is, and is committed to them, either to acquit or condemn me; and God knows the Hearts of all Men, and my Innocency and Integrity; I shall say nothing to the Witnesses, it is a Day of Temptation; and I desire the Jury, my Countrymen, my Fellow-Citizens, and my Brethren, that they would well consider of it, the Word Execution and Justice; admit I had said them, (which, my Lord, I do not, I must not grant) there being an Uproar of People, there such Words might be used, and possibly Soldiers might take them up from them, and chastising the Soldiers I might repeat the Words I will Justice, I will Execution you.

Lord Chief Baron. The Evidence is, that you beat them because they did not readily cry Justice, Justice.

Axtell. It might be more probable I beat them because they did do it, I might chastise them for doing of it, and repeat it is a Reason for their Chastisement;

ment; and but admitting it was true; which I grant not, yet I hope Justice, and Execution of Justice, as it is so great an Attribute of God, by God's Laws, or Man's Laws, is no where made Treason, but Mercy attends it, and Judgment attends the contrary; I leave it upon the Consciences of the Jury to weigh it carefully, how I should be guilty of Compassing and Imagining the Death of the late King, when nothing is charged against me to be either of Council, Sentencing or Signing, or to be at the Execution; only one Man, as I told you before, he spoke something *Wrathfully*, and that he had suffered much, and therefore he is come over now, and saith I should send for the Executioner, which I never knew of, or had any Hand in sending for; how much Validity that hath, I leave to the Jury; if it were so, it is not Treason; for Words may make a Heretick, not a Traitor; I speak that by way of Preface; I do humbly conceive that these being only noted Words, Execution and Justice, the King not so much as named, or any Thing done to it by me, I say, I conceive it doth not amount to Treason by the Law; and besides, it is against the Law of the Great Judge, the Judge of Judges; all of us that are now, and are to come, shall stand before him to receive our Deserts; I say it is against the Law of God to make me an Offender for a Word; for a Word. I have heard the Judges say, that the Laws of England are goounded upon the Laws of God, and the Laws of England are Laws of Mercy, not of Rigour: My Lord, if a Man shall be destroyed in his Life, in his Posterity, for a Word, (admit the Thing had been so,) I leave upon the Consciences of my Jury, before the Presence of Jesus Christ, and before whom they and I must come to be re-judged again at the Tribunal; and besides it is only Words, and Words uncertain; and Sir Edward Coke saith, he must declare plain Truth in Mutter of Treason; nothing must be taken for Evidence that may be a Presumption or Inference, or Strain of Wit; I hope upon this Consideration that the Word Justice, fixed upon me by Two Witnesses, may be taken up at Second or Third Hand from the People or Soldiers, by chastising them for the Tumult. Then, my Lord, in the next Place, these Words were never put in Writing, and so not Treason; then, my Lord, there was never an Overt-Act done by me; for that Act of Indempnity that His Majesty and both Houses of Parliament passed, wherein they were pleased the very last to except me, I wondered when I came to be excepted of that Number. I do come back to the Place where I left, and that is the Overt-Act. My Lord, I would only bring it in this Place; when I was excepted by the House of Commons, one of the Twenty, I was excepted thus, not extending to Life; I went up and down free at Noon-Day; I did not hide myself; engaging a Person that was one of His Majesty's Servants to do me a Courtesie, he promised me he would do it, and contrary to his Promise, he was pleased to bring the King's Warrant to carry me to the Tower; and after that I came to be excepted with that Black Catalogue of excepted Persons, and to be brought to the Trial of the Law. Now (my Lord) I return to that Overt-Act, as it was but Words uncertain, and they may be Words repeated from the Third or the Fourth Hand, for they were not put in Writing, according to that Act of Indempnity, which I understand the Meaning of to be thus; that for their execrable Treasons in Sentencing, Signing, or otherwise Instrumental, they are excepted out of this Act, and to be tried according to the Laws of this Nation. I understand that to be instrumental, to be Instrumentally the Executioner of the King; I

never had any Hand in that. Upon the whole, this is the Fact that is proved by Two Witnesses; they heard me say, Justice and Execution, which must relate to the Execution of Justice, which by the Law of God is not Treason, especially when there was not the Word King; for a Word, to take away, and destroy so many, my Life, Wife, Children, and many Fatherless that are under the Charge of the Prisoner at the Bar, is very sad; the Words I do not grant, but upon such Probabilities as I have said I might repeat them, I will Justice you, I will Execution you; and then the Words were not written; I say as Sir Edward Coke said, They may make a Heretick, but not a Traitor. The other Part of the Evidence is this, that I was there with Soldiers at Westminster-Hall; I must say, if that be Treason to be guided by the Judgment of Lords and Commons in Parliament, I must say, if that be Treason to take up Arms for a Parliament upon such Grounds and Expositions of the Statute which they have made and published by their own Authority, if I am Guilty under the General, then the Parliament would be Guilty of Treason.

Lord Chief Baron. That you have spoke to— I am loth to interrupt you.

Axtell. I thank your Lordship for informing me, but I was commanded to be there by my General; if I had not gone I must have died; I did only stand there for Preservation of the Peace, in no other Sense; if the General order me to be at such a Rendezvous, I must be there; if I had disobeyed he would have condemned me by the Law of War. The next Thing against me material are these Two Things, that is, that I should send one Elisha Axtell for the Executioner; I must say it is most admirable such Things should be laid to my Charge; I hope your Lordships and the Jury do observe, he told you, he suffered much, and a poor Man, under his Extremities, and Losses, and Sufferings, perhaps might start some unadvised Words, and being now sent over, may ascertain it. But doubtless this Elisha Axtell being in Ireland, if by Command it had been so, would have been sent over; truly I must say, I had no Hand in the Business; it was left wholly to them amongst themselves, and whatever was done, or whatever was said, it was said and done by them; I never was acquainted with any Thing of that Nature. He said he heard I should send Elisha Axtell for an Executioner; if Hear-says may be Treason it will be a heard Lesson; and, my Lord, Sir Edward Coke saith, there must be Two Witnesses, here is but one. It comes from such a Man, my Lord, as the Providence of God—but I will say no more as to that, but pray the Jury will take Notice of it.

Lord Chief Baron. You need not doubt of it, it shall be taken Notice of, this of Burden.

Axtell. Now, my Lord, I have but Two or Three Words more, the Statute of the 25th of Edward the Third, it doth intend private Persons, my Lord, here is my Commission.

Lord Chief Baron. It is owned you had it from your General.

Axtell. My Lord, His Majesty is pleased to say in His Gracious Letter, We do by these Presents declare, That we do grant a Free and General Pardon to all our Subjects, of what Degree or Quality whatsoever, who within Four Days after the publishing hereof shall lay hold upon this our Grace and Favour, excepting only such Persons as shall hereafter be excepted by Parliament; that is, a Parliament called by his own Writ. You know this Parliament—

Lord Chief Baron. Mr. Axtell, I would not interrupt you to that, but this very Objection was made by one of the Prisoners before; this Answer was given, First, the King's Declaration is not a Pardon in point of Law, it must be under the Broad-Seal, but God forbid but it should bind in Honour. You instanced in the Word Parliament, what was meant by the Word Parliament: You must know this, the Exigency of the Times were such, that there were many Noble Persons that took the Advantage to assemble themselves together to reinstate the King; they did that which was just and lawful, according to the Exigency of the Times; this Declaration he sent to the Two Houses, he called them His Two Houses; so that it appears clearly and manifestly they were then sitting, they being accepted by the King; and owned by him, and they did sit in Way of Convention, according as a Parliament, and his Majesty sent his Letter to them; and these are the Persons that have thought fit to except you out of that Act.

Axtell. My Lord, may I speak to that any further?

Lord Chief Baron. If you do, it will be overruled.

Axtell. I submit— with Submission to the Providence of God; I did apply to Sir Harbottle Grimston for the Mercy and Favour of his Majesty, according to his Declaration, and here is Sir Harbottle's own Hand for a Certificate.

Lord Chief Baron. This is allowed you, that you did claim that Benefit within the Time, but you may remember that it was referred to those Two Houses of Parliament, they were to consider who was fit for the Pardon, and you are by them excepted out by Name: Your Question now is no more, but whether Guilty? Or, Not Guilty? And these are but extravagant Discourses that you say otherwise, and rather do you Harm than Good.

Axtell. I hope you will pardon me, my Lord; I hope I have spoken to clear the Point, the Fact charged by your Lordship, and before the Jury; and I hope the Lord will give the Jury a Memory of it, and a right Understanding in what I have said for my own Defence. My Lord, the next Thing I have to offer, is this, to expound that Act of Parliament, that it was the Intention of his Majesty and Parliament that all should be excepted, but those Guilty of Councelling, Signing, or Sentencing. Truly, my Lord, I humbly conceive, I being none of those, am not Guilty of Treason. I shall only speak one Word to my Jury, That they will remember what I have said, that there is but Two Things, Two Witnesses, as to Justice and Execution; that it relates to no Person, but in General; and then I do not own the Things, but possibly they might hear such Words, I taking of them up upon a Rebound, reproved the Soldiers; for the other, that I should send one for the Executioner, (he heard so,) and that I should name who was the Executioner, I would not have that Person, or any other, to suffer for that.

Lord Chief Baron. That is not at all pressed upon you, not as to any Charge.

Axtell. I thank your Lordship. I am very Ignorant.

Lord Chief Baron. Have you done, Sir?

Axtell. I leave the Matter to the Jury, in whose Hands I, and my little Ones, and Family, are left; I only say this to you, remember your Ancestors, remember your Posterity. I never heard it before that

Words were Treason. In Queen Mary's Time Throckmorton was acquitted for Words by the Jury. Gentlemen of the Jury, I leave my Case, my Life, my All, in your Hands.

Lord Chief Baron. Gentlemen of the Jury, there have been several Things offered by the Prisoner at the Bar, so near as my Memory will give me leave in so long a Discourse, I shall repeat all Things which he saith for himself, and which are said against him. There are some Things that he seems to utter as tending to Matter of Law, and something meerly of Fact, proper only for you of the Jury. For Matter of Law, he hath urged several Things for himself; not by Way of Justification of the Fact (I must do him that Right,) but in Excuse of himself; and I hope his Conscience hath so wrought upon him, that he is of Opinion the Fact is a horrid Fact, which was so indeed.

For that which he hath said for himself, First, He doth alledge to have his Commission from the Lord Fairfax, my Lord Fairfax had his Commission from the Two Houses of Parliament, and this Gentleman's was in March, the Beginning of the Year 1648. He saith, what he did was in Obedience to his Superiors, as a Soldier, that he never consulted or advised about any Thing of the Trial or Execution of his Majesty. For this Point, it hath already been spoken to, Gentlemen; for that which hath been spoken to at large heretofore I must repeat it here, that he may know it, That no Person whatsoever, no Community, not the People, either Collectively or Representatively, have any Coercive Power over the King; neither the Lord Fairfax, his General, nor he, nor any other Person, could be executed for this horrid Fact of bringing the King to Trial, no Person, as I said before, nor Community, have any such Power. The Law Books which he hath lately seen, (and truly he hath employed his Time well in that,) the Law-books tell us, that whereas the Two Spencers had broached a damnable and detestable Principle, That the Homage was only due to the King, in respect to his Crown; that if he did not demean himself according to such and such Rules, his Subjects might rule him *per asperitatem*, by Asperity and Sharpness; but this was condemned by Two Acts of Parliament; they both appear in my Lord Coke, in Calvin's Case. I do not go to repeat all the Evidence that might clear this Truth; I say, had there been any such Thing, but it hath been told him there was no such thing in Fact. My Lord Fairfax's Commission was for the Preservation of the King, as well as for the Liberties of the People. The 11th of Richard 2, Robert de Vere, and others, for levying a War, was punished, but this Gentleman was not charged for levying of War. If either of the Houses of Parliament should command such a Thing as tends to the Death of the King, it would be void in itself. Something he let fall of the Parliament not being dissolved. My Masters, for that you have heard some of my Lords declare how, and in what manner, this was an Authority of Parliament, but it was clearly nothing at all; this Gentleman goes by virtue of a Power from the Lord Fairfax. The next Thing he urges in point of Law was this, he comes by Way of Dilemma; saith he, either I must obey my General, or die by the Law of War. He goes further, and urges the Statute of 11 Henry 7. He

He comes further, and saith, in the 25th *Edward 3*, that concerns single Persons, truly it concerns every Man. The Indictment, you see how it is laid, *it is for Imagining and Compassing the Death of the King*. The Overt-Acts in the Indictment, you have heard what they are; there must be more than one Witness for Treason. It is very true; but if one Person prove one Thing, another Person another; if one swear he did cry, *Justice, Justice, Execution, Execution*, and another swear some other Part, Gentlemen, this was here before delivered to you for an Overt-Act. It is any thing that opens and makes it appear to the Jury that he did do the Things for which he is Indicted; I say, any one of these, that they did meet together, and did consult in order to the putting the King to Death. That they did meet in a Traitorous Assembly about the King's Death, I shall say no more; you need not, I think, go from the Bar.

[*The Jury go together, and after a little Consultation among themselves, they returned to their Places.*]

Clerk of the Crown. Gentlemen of the Jury, are you agreed of your Verdict.

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Foreman.

Clerk. *Daniel Axtell.* Hold up thy Hand. Gentlemen, look upon the Prisoner at the Bar: How say you, is he Guilty of High-Treason whereof he stands Indicted and hath been Arraigned? Or not Guilty?

Foreman. Guilty.

Clerk. Look to him, Keeper. What Goods and Chattels.

Jury. None to our Knowledge.

The Trial of Colonel HACKER, on the Fifteenth of October, 1660, at the Sessions-House in the Old-Baily.

Clerk of the Crown. Set Francis Hacker to the Bar. [*Which was done accordingly.*]

Clerk. Francis Hacker, Hold up thy Hand. These Men that were last called are to pass upon you, &c. If you will Challenge all, or any of them, you must Challenge them when they come to the Book before they are sworn.

Lord Chief Baron. You may Challenge 35 peremptorily, but no more.

Hacker. My Lord, I shall Challenge none.

Tho. Bide, Rob. Sheppard, William Dod, Sir Tho. Allein, Sir Hen. Wroth, Tho. Morris, Ralph Halsal, John Galliard, John Nichol, Tho. Usman, Tho. Nicol, Christopher Abdy, in all Twelve. The Jury Called and Sworn.

Clerk of the Crown. Make Proclamation. If any Man can inform my Lords the King's Justices, &c.

Clerk. Francis Hacker, Hold up thy Hand. Look upon the Prisoner, you that are Sworn of this Jury. You shall understand that Francis Hacker, Prisoner at the Bar, stands Indicted, &c.

Mr. Serjeant Keeling. My Lords, and Gentlemen of this Jury, Francis Hacker, the Prisoner at the Bar, stands Indicted, amongst others, for

Compassing and Imagining the Death of the late King Charles the First, of Happy Memory. The Compassing and Imagining is the Treason itself; the other Points, as *Convening, Assembling, Meeting together*, and the actual Villany that followed all these, are but as Evidences of that Imagination. As to this Person at the Bar, our Evidence will be thus; we shall make it appear to you that he was one of the Persons that were upon the Guard, and kept the King a Prisoner, that he might be sure to be brought to that *Mock-Court of Injustice*. Then it will appear to you that this Prisoner at the Bar was highly Trusted by all those Miscreants that thirsted for the King's Blood, by their Bloody Warrant directed to him and others, to take the King's Person into Custody, and to see Execution done. This was the Person that kept him till he brought him to that Fatal Stage. That this Warrant was lately brought from his own House by his own Wife to the House of Lords. And then we shall shew you that this Person set his Hand to the Warrant to the Executioner for Execution. That he did not do it ignorantly nor unwillingly, for he heard the Warrant read. We shall make it appear that he was upon the Scaffold, and had the Ax in his Hand.

Council. Crier, call *Holland Simpson, Colonel Tomlinson, Mr. Nunnely, Mr. Nutley, Hercules Hanks, and Benj. Francis*: who were all Sworn as Witnesses.

Council. Mr. Simpson, speak your Knowledge of the Employment of the Prisoner, touching the Trial and Execution of the King.

Hacker. My Lords, I will confess what I know in this Case, to save your Lordships the Trouble. I confess I was upon the Guard, and had a Warrant to keep the King for his Execution. [*The Warrant being shewn to the Prisoner, he confessed that to be the Warrant.*]

Council. After you had that Warrant brought to you, did you by virtue of that direct another Warrant for Execution of the King? Did you not take the King (then Prisoner) from the Custody of Colonel Tomlinson?

Hacker. No, Sir.

Council. We shall prove it; [*the Warrant was read.*] At the High-Court of Justice for Trial, &c. My Lord, at the time that this Warrant was Signed, the Person of the King was in the Custody of Col. Tomlinson; Did not you take and demand from Col. Tomlinson the Person of the King, as soon as you received that Warrant?

Hacker. No, Sir, I demanded him not.

Council. Col. Tomlinson, tell my Lords the manner of that Business.

Tomlinson. My Lords and Gentlemen of this Jury, I shall, as my Memory enables me, make a faithful Narrative of this Business: I had indeed to do with the Guard that had to do with the Person of the King about St. James's. Being then an Officer of the Army, a Colonel of Horse, when the King came to St. James's, it was observ'd by some, that there was too great an Access of People admitted to the King; and within One Day or Two after, there was a Party of Halberteers appointed, for the stricter observing the Guard; they were commanded by Three Gentlemen, of whom this Prisoner at the Bar was one; the Orders every Day for removing the Person of the King were commonly directed to Four Persons, and those were my Self,
Lt. Col.

Lt. Col. *Cobbet*, Capt. *Merryman*, and one more; but the Guards that still went along were the Halberters. So that every Day when the King did go to *Westminster*, he went to Sir *Robert Cotton's* House, and so far I went with him, and no farther; I never went with him, nor saw him, at that pretended High-Court of Justice. When he used to go to the High-Court of Justice, commonly (every Time indeed) the Serjeant, Serjeant *Dendy* (as I remember his Name was,) he used to come and demand that the King should go to the High-Court of Justice, and Col. *Hacker* did ordinarily go with him, with the Halberters. It was my Custom to stay in the Room till he came back again; these Orders continued during the Time of his Trial. After the Sentence was given, on the Day whereon the Execution was to be done, it was ordered, (which Order may be produced, if significant) that the Guards that were for the Security of the Person of the King should cease, when a Warrant from the High-Court of Justice should be produced: I would not omit any thing that I well remember; and this I remember, that the Night before the Execution, the King called me into his Chamber, and told me several Things; I will take the Occasion to trouble you with a short Discourse of it: He told me of some Legacies he had given; he told me he had prepared something that he would speak the next Day; and in the close of it he desired me that I would not leave him; (for I speak it in Truth,) there were many times several Incivilities offered to him; and tho' I was upon a Duty that was of a harsh and unpleasing Nature to me, and did desire several Times to be released from it, (as I believe is well known to some,) yet I did not admit any Time that any Incivility should be offered to him; People would take Tobacco before him, and keep their Hats on before him, I always check'd them for it; he was pleased to have a Consideration of that Care that I had in that Capacity I then stood. That very Night before his Death he was pleased to give me a Legacy, which was a Gold Tooth-picker and Case that he kept in his Pocket. The next Day, when the Warrant came, the Guard of Halberters went with him through *St. James's Park*, I was present, walking near the King, the Bishop of *London*, (now of *Canterbury*) was with him, and some others. As we were going through the *Park*, he was pleased to Discourse something of what he had been Discoursing before, touching his Burial; he wished that the Duke of *Richmond*, and some others that he should bring, should take Care of it. That Morning, in the *Park*, he told me he had been thinking of what he had said the Night before. He told me he had some Thoughts that his Son might come to Bury him, and desired he might not suddenly be Buried; I gave him Assurance I would communicate his Desire, and so I did: When he came to *White-Hall*, he went into a Room in the Gallery, (I know not the Name,) the Guard stood in the outer Room there. There was a Gentleman that came to me there, and told me he was endeavouring to present a Letter from the Prince to the King, and told me he could not get an Opportunity; I said he should not want an Opportunity, if I could help him; it was Mr. *Henry Seymour*; it was delivered, and the King read it, and he gave several Things in Charge to

Mr. *Seymour*, to acquaint the Prince with, and was pleased to mention to him something of Civility that I had shewn him in his Imprisonment; the Effect and Fruit of it I find, and do most humbly acknowledge before all the World my Thanks to his most Gracious Majesty the King, and to the Lords and Commons. After Mr. *Seymour* was gone from him, (I do not well remember the Time, whether it was Twelve, One, or Two a-Clock,) Col. *Hacker* came in, and there was present with him the Two other Gentlemen that were named in the Warrant, (as I remember,) I am sure Col. *Hacker* (if my Memory fail me not) did produce the Warrant. Myself, and those Gentlemen that were concerned in the former Orders, looked upon this Warrant, by which the Orders which we had were at an End. I must confess I did not, nor none of those did tell him, that the Orders for Security of his Person were at an End; but Col. *Hacker* did go in to him, and after a little while Col. *Hacker* comes to the Door, and the King was coming forth, and he told me that the King desired I should go along with him; and indeed the Night before, when the King told me that he had prepared something to speak, he desired I would not leave him. So Col. *Hacker* led him forth, the Bishop of *London* followed him, and I followed the Bishop of *London*; the Guards were prepared without, and they went on to the Scaffold; when we came to the Scaffold, I went so far as to the Entrance upon it; the King was upon it, and had looked a little while about it, and was thinking to have spoken over, but he turned about to me, and began to direct his Speech to me. I cannot trouble you with what the King said, for I cannot remember it; but that Colonel *Hacker* was there in Prosecution of that Warrant, and upon that Warrant our Orders were at an End, I do averr.

Council. You delivered him upon that Warrant, did you?

Tomlinson. He went and received the King upon that Warrant; it was a Chamber that was known then by the Name of the *Horn-Chamber*, and there the King was in the inner Room; this is the Substance of all.

Council. We will trouble you with One or Two Witnesses more.

Council. Mr. *Tomlinson*, did Mr. *Hacker*, or his Soldiers, take Tobacco to the Offence of the King?

Tomlinson. I do not say that any Tobacco was taken there by Mr. *Hacker*; but the Soldiers would be stepping in, and take Tobacco at his Chamber in *St. James's*; and committed other Incivilities.

Council. We have proved that the Prisoner did demand, and had the Person of the King: Now we will prove to you that himself had the Boldness to make a Warrant in pursuance of the former, for the Execution of the King.

Council. Crier, call Mr. *Huncks*. [*He being Sworn, said.*]

Huncks. My Lords, and Gentlemen of the Jury, that Day the King died, a little before the Hour he died, I was in *Ireton's* Chamber, where *Ireton* and *Harrison* were in Bed together, there was *Cromwell*, Col. *Hacker*, Lieut. Col. *Phayre*, *Astell*, and myself, standing at the Door; this Warrant for the Execution was there produced, and you [*looking upon Mr. Hacker at the Bar,*]

were

were reading of it, but *Cromwell*, addressed himself to me, commanding me, by Virtue of that Warrant, to draw up an Order for the Executioner; I refused it, and upon refusing of it there hapned some cross Passages. *Cromwell* would have no Delay. There was a little Table that stood by the Door, and Pen, Ink, and Paper being there, *Cromwell* stepped and writ, (I conceive he wrote that which he would have had me to write :) As soon as he had done writing, he gives the Pen over to *Hacker*; *Hacker*, he stoops and did write, (I cannot say what he writ,) away goes *Cromwell*, and then *Astell*; we all went out; afterwards they went into another Room.

Council. What followed?

Huncks. Immediately the King came out, and was Murder'd.

Mr. Secretary Morrice. Mr. *Huncks*, you did tell us in the *Tower*, (when we were sent by His Majesty's Council to examine you, and others there,) that Colonel *Hacker* did then Sign that Warrant for nominating and appointing the Execution.

Huncks. My Lord, *Cromwell* comes to me, and bids me write a Warrant for that Purpose; I refusing of it, *Cromwell* writes himself, and *Hacker* writing on the same Paper, what should I conceive but that it was the Warrant? (the King presently after coming to the Scaffold.)

Council. Did *Cromwell* give you no bad Names because you would not write that Order? Did not he say you were a Coward?

Huncks. He said I was a froward peevish Fellow.

Council. Did *Hacker* only write his Name, or give Directions in the drawing up of the Order?

Huncks. I conceive he only writ his Name.

Council. My Lord, we have only that Eye-witness.

Huncks. *Hacker* confessed to the Gentleman Jaylor of the *Tower*, that if he did do it he did it by Order.

* *Mr. Secretary Morrice and the L. Ansley Sworn.*

Council. Mr. Secretary, we desire you would be pleased to tell my Lords what Colonel *Hacker* the Prisoner at the Bar did confess to you, and others touching this Business.

Mr. Secretary. When Colonel *Huncks* (for that Title he now assumes,) was brought over out of *Ireland*, and committed to the *Tower of London*, there was Three of the Council, by Order of the Board, sent to examine him, Sir *Anthony Asbly-Cooper*, Mr. *Annesly*, and myself: In Obedience to that Order we repaired to the *Tower*, and had Col. *Huncks* brought before us; we told him, that he (being one of those which were appointed by Warrant from the Supposititious High-Court of Justice to carry on the Execution of the King, and see it done,) must needs know who was the Executioner: Whereunto he answered, that he, for his Part, did not know who was the Executioner, for the Warrant whereby the Executioner was nominated and appointed was refused to be signed by him, but Colonel *Hacker* signed it, and therefore Colonel *Hacker* must know it. Accordingly upon our Return we made our Report to the Board, and upon this there was an Order

that Col. *Hacker* should be sent for, taken into Custody, and brought before the Lords of the Council: Accordingly he was apprehended, and the same Three Councillors were sent down to examine him. We took him into a private Room, and examined him, and told him, (amongst other Things,) that he being the Man that (as we are informed,) did Sign the Warrant for the nominating and appointing the Executioner, doubtless he must needs know who that was; at first he said he did not Sign this Warrant: I told him I would have him well advised what he said; for if you deny it, it will be proved by such a Man, naming Colonel *Huncks*, and that you will do yourself a great Prejudice if you deny that; saith he, *I do believe I did Sign the Warrant for appointing the Executioner*; this is all I can say.

Lord Annesly. Gentlemen of the Jury, it is very true as you have been told already, that I was amongst those that the Council sent to the *Tower of London*, first to examine Colonel *Huncks*, and Mr. *Cook*, that hath been condemned, *Hulet*, and some other Prisoners. We did examine Colonel *Huncks*, and he did by his Examination acquit himself from Signing that Warrant that he was charged with, being one of the Three appointed to see Execution done; but they appointed another to Sign the Warrant, (Colonel *Huncks* refusing,) and upon his refusing, (as he said,) *Cromwell*, that urged him to it, said he was a cowardly fellow, or something to that Purpose: When we examined him about the Person in the *Frock*, he said he knew nothing of that, but that Colonel *Hacker* Signed that Warrant for Execution; this Examination being reported to the Council, the Lords sent for *Hacker*. I think upon Notice Colonel *Hacker* came; he had been of the Army, and continued till that Time an Officer. When he came thither, the Lords of the Council having Notice of it, commanded the same Persons formerly appointed to go out and examine him; we had him into a little Room belonging to the Clerks of the Council, and examined him to that Point concerning the Man that cut off the King's Head, whether he knew any Thing of it? He did affirm positively he did not know; we told him that he was the Man by Testimony that Signed a Warrant for Execution of the King, and then certainly he must know the Person that he appointed by his Warrant; he said, if I did Sign any Warrant it was by command of the General; that being but Hypothetical, we thought it meet to make it more positive, whereupon we asked him whether he was the Man that Signed the Warrant, Or no? Thereupon, (as I remember, and as the Examination, which was all written with mine own Hand, doth help my Memory,) he did say he did believe he did Sign such a Warrant; thereupon he was asked further, how could it be possible that he could forget the Man, if he Signed the Warrant; he knew who the Man was that was appointed; he said for that, that he did believe the Warrant was read to him, and that therein the Man's Name might be, but he could not now remember his Name; this was the Effect of his Examination and Confession.

* *These were both Commissioners, yet came off from the Bench to give Evidence, but did not go up to the Bench again during that Trial.* Kelyng 12.

Council. Mr. Francis, did you see Colonel Hacker, at the Time of the Execution, upon the Scaffold?

Francis. Yes, I did see him as a Principal Commander there; I was coming out of *Westminster* into *London*, about half an Hour before the King came upon the Scaffold; coming near the Scaffold, as soon as I was engaged in the Throng, (when I had passed about Eight or Ten Yards,) I could not pass backward nor forward; I was enforced to stand there: During that Time I saw the Scaffold, and the Ax, and the Block taken up by divers People; and principally I saw a Man that is not here, he is in Custody, I saw him take it up, and try it with his Thumb, and lay it down; this was *James Berry*, he came off, and came not upon the Scaffold again, unless disguised.

Council. Did you see Hacker there? Did you see him upon the Scaffold when the King came on?

Francis. I did see him, he was there; His Majesty came to the Side of the Scaffold next to *St. James's*; he looked that Way and smiled; after a while the Block and Ax lying down about the middle of the Scaffold, there was a Black Cloth hung about the Rails of the Scaffold.

Council. We have another Evidence, the Prisoner hath confessed enough; but we have proved that he had the King in Custody; he confessed that he believed he did Sign the Warrant, and that he at the Time of Execution was there to manage it. What do you say for yourself?

Hacker. Truly, my Lord, I have no more to say for myself, but that I was a Soldier, and under Command, and what I did was by that Commission you have read.

Lord Chief Baron. Can you deny any Thing that Mr. Secretary and Mr. Annesley have declared?

Hacker. I cannot tell what I might then say, the Gentlemen were very strict with me; truly I have been no Counsellor, no Advijer, nor Abettor of it, but in Obedience to the Command over me I did act. My Desire hath been ever for the Welfare of my Country, and that Civil Power might stand.

Lord Chief Baron. Have you yet resolved who you gave the Warrant for Execution to?

Hacker. No, my Lord, I delivered none.

Lord Chief Baron. But you know who it was directed to?

Hacker. No indeed, my Lord; be pleas'd to ask Col. Huncks whether I read this Warrant or no.

Lord Chief Baron. This is all you have to say for yourself?

Hacker. Yes, my Lord.

Lord Chief Baron. Then, Col. Hacker, for that which you say for yourself, that you did it by Command, you must understand that no Power on Earth could Authorize such a Thing, no Command in such a Case can excuse you. There is a Twofold Obedience, a Passive-Obedience, to suffer rather than do Things unlawful; and an Active Obedience, to do that only which is lawful; and therefore this will not excuse your Obedience to those unlawful Commands. — Gentlemen of the Jury, you see the Prisoner at the Bar stands Indicted for *Compassing* and *Imagining* the Death of the late King; and there are several open Acts set forth in the Indictment, which tend to prove that Matter; one is Assem-

bling and Meeting together, another is Sitting upon the King, another Sentencing, and at last concludes with the Murder of the King, as the Consequence of all. Any Thing that tends to the proving of this Compassing and Imagining his Death in any one of these Particulars, that is an Evidence to you to prove the whole Indictment. This Gentleman was Commander of Halberteers; Col. Tomlinson saith, that though he kept the Guards that were about the King's Person, this Gentleman, with Two other Persons, brought Halberteers, that there might not be such frequent Access as formerly to the King; there is one Act. He commands these Halberteers at that Time, when the Business was in Agitation, before that High-Court, as they called it. You see after the Sentence was given that he was one of the Persons to whom the Warrant for Execution was directed; you see afterwards there was a consulting together, *Cromwell*, *Ireton*, *Harrison*, and *Axtell*, were in the Chamber, when Col. Huncks refused to Sign; the Prisoner signed the Warrant, but knows not the Person to whom it was directed: You see besides Col. Tomlinson's Testimony, who saith further, that when they were discharged, Col. Hacker went in, and the King was brought out presently after to that Fatal Place. Col. Huncks Swears that when the Warrant was offered to him he refused it; that Hacker, the Prisoner at the Bar, signed a Warrant, though he doth not remember the Name of the Person to whom; it appears by Two Witnesses (honourable Persons) he confessed he signed it, but he did not know the Person to whom directed. You see another Witness, *Benjamin Francis*, he saith he saw Hacker upon the Scaffold with the King.

He doth not deny the Fact; you need go no further, it is very plain he had a Hand in this Business, a principal Agent in it; he that brought the King to the Scaffold, he that had the Care in managing that Business, he that signed the Warrant to the Executioner, either he is Guilty of Compassing the Death of the King, or no Man can be said to be Guilty.

The Jury went together, and after some little Consultation returned to their Places.

Clerk of the Crown. Gentlemen of the Jury, are you agreed on your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Foreman.

Clerk. Francis Hacker, Hold up thy Hand. Gentlemen, look upon the Prisoner at the Bar, how say you, is he Guilty of the High-Treason, whereof he stands Indicted, and hath been Arraigned? Or Not Guilty?

Foreman. Guilty.

Clerk. Look to him, Keeper.

Clerk. What Goods and Chattels, &c.

Jury. None that we know of.

The Trial of WILLIAM HULET, on the Fifteenth of October, 1660, at the Sessions House in the Old-Baily.

Clerk of the Crown. Set William Hulet to the Bar, [who was brought accordingly.] William Hulet,

Hulet, alias Houlet, Hold up thy Hand. Those Persons that were last called of the Jury are to pass, &c. if you will Challenge them, or any of them, you must Challenge them when they come to the Book before they be Sworn.

Lord Chief Baron. Understand you have Power to Challenge Five and Thirty Men, and not above; you may Challenge them without Cause shewn. If you have Cause for any other you may Challenge them also. If you will have Pen, Ink, and Paper, you may have them.

Hulet. Truly, my Lord, I cannot write but a very little; I shall not need them. I did not understand my Indictment well, I desire to hear it again.

Lord Chief Baron. You will hear it read again.

Clerk. Sir Thomas Allen, Sir Henry Wroth, Tho. Bide, Robert Sheppard, Thomas Morris, Ralph Halsal, John Gallyard, John Nichol, Thomas Ufman, Christopher Abdy, William Dod, in all Twelve. Jury Called and Sworn.

Clerk of the Crown. William Hulet, alias Houlet, Hold up thy Hand. You Gentlemen that are Sworn, look upon the Prisoner.

Clerk. You shall understand that he stands Indicted of High-Treason, by the Name of William Hulet, alias Houlet, late of Westminster in the County of Middlesex, Gent. for that he as a false Traitor, &c. [here the Indictment was read,] unto which Indictment he hath pleaded Not Guilty, and for his Trial hath put himself upon God and the Country, which Country you are: Now your Charge is to enquire, &c.

Sir Edward Turner. May it please your Lordships, and you Gentlemen that are Sworn of this Jury, we are now entering upon the last Act in this sad Tragedy of the Murder of the late King; there have been before you some of the Judges, the Council, the Chaplain, and the Guard; this Prisoner at the Bar, in the last Place, was one of those, which came with a Frock on his Body, and a Vizer on his Face, to do the Work. The Course of our Evidence will be this; First, we shall prove by Witnesses that saw him, and knew him, that he was thus disguised; he hath confessed that he was upon the Scaffold, that he hath had several Preferments; and I fear it will appear, that it was he, that gave that Fatal Blow; for he hath confessed he had an Hundred Pounds given him for his Service therein; and we doubt not but to pluck off his Vizer by and by. The Indictment is for Compassing and Imagining the Death of his late Majesty of Glorious Memory; if we prove to you any Circumstantial Overt-Act whereby you shall be convinced of this, you are to find him Guilty.

Richard Gittens Sworn.

Council. Mr. Gittens, tell my Lord and the Jury what you know concerning the Prisoner at the Bar.

Gittens. The Thing is this, my Lord, this Gentleman at the Bar and myself were both in a Regiment in One Company as Serjeants about Twelve or Thirteen Years together. About a Day or Two before the King came to the Scaffold, Colonel Hewson did give notice to a Lieutenant that we should come to him, about 38 of us, and he put us all to our Oaths, that we should say nothing of what they did; he Swore us to the Book; after he had Sworn us, he asked us if we would undertake to do such an Act; if we would we should have an Hundred Pounds

down, and Preferment in the Army as long as that stood, and the Parliament. Afterwards we refused every Person, we thought Captain Hulet did refuse; after all refused, it seems he did undertake to do the Deed. When the King was brought on the Scaffold, we were in Scotland-yard, and they were upon the Guard in the Banqueting-Chamber; when they were there I laid down my Arms, and got into the Company; Captain Webb kept the Guard, with his Halbert in his Hand, by the Scaffold, and I did bustle to come near to them; then I returned back. Hulet (as far as I can guess) when the King came on the Scaffold for his Execution, and said, Executioner, is the Block fast? Then he fell upon his Knees.

Council. Who did?

Gittens. Hulet, to ask him forgiveness; by his Speech I thought it was he; Captain Atkins said, who would not undertake to do this Fact; I told him I would not do it for all the City of London; no, nor I neither for all the World, saith Atkins; you shall see Hulet quickly come to Preferment; and presently after he was made Captain-Lieutenant.

Council. Was he with his Regiment that Day?

Gittens. We could not see him with the Regiment all that Day; he was never absent at any Time before.

Council. Did you know his Voice?

Gittens. Yes, Sir.

Council. Did you mark the Proportion of his Body, or his Habit, what Disguise he was in?

Gittens. He had a Pair of Freez: Trunk Breeches, and a Vizer, with a Gray Beard; and after that Time Colonel Hewson called him *Father Gray-beard*, and most of the Army besides, he cannot deny it.

Hulet. I desire as to this Witness; he doth alledge that he and I were Serjeants in One Company, which I deny; he was not in that Company I was in; I desire to know of him how he comes to know that I was there at that Time.

Gittens. By your Voice.

Hulet. I will Swear that this Man was with the Regiment under the Scaffold; where were you at that Time when the Act was done?

Gittens. Where was I? By Captain Webb.

Hulet. Where was he?

Gittens. At the Door of the Banqueting-house.

Hulet. Was you on the Scaffold, or no, Sir?

Gittens. I was on the Scaffold End.

Hulet. My Lord, I desire you to consider what this Person saith, that he was upon the Guard in Scotland-yard, and at the Scaffold with Captain Webb. My Lord, I desire again, whereas he said I had a Gray Beard, let any Man besides himself say that ever I was called by that Name Gray-beard, throughout the Regiment.

Stammers Sworn.

Council. What have you to say concerning the Prisoner at the Bar.

Stammers. He was a Captain-Lieutenant to Colonel Hewson's Troop; when I had entered myself into that Troop I was a while in Dublin, and I was commanded by the Prisoner at the Bar, I and the rest, to march to a Place called Lutterels-Town, about 5 Miles beyond Dublin; the Prisoner at the Bar came thither to us Two Days after; then being in his Chamber he sent for me up; I went up and sat down; he examined where I had served: I told him I did formerly

merly belong to the Lord of *Inchiquen*; he asked me if I was ever in the King's Army? With that he walks about the Room Two or Three Turns; saith he, I was the Man that Beheaded King *Charles*, and for doing it I had an Hundred Pounds, saying, I was a Serjeant at that Time.

Hulet. *I desire to ask him a Question; I confess— (what is your Name?)*

Council. *Stammers*, his Name is *Stammers*.

Hulet. *Such a one was under my Command: I think I have not seen you these Eight Years: I desire to know when these Words were spoken, and the Place.*

Stammers. I say in *Lutterels Town*, in your own Chamber, and that was Nine or Ten Years ago.

Hulet. *It is about Eight Years ago since I left that Command: Who was by at that Time?*

Stammers. No body.

Hulet. *'Tis strange: How long had you been in the Troop before?*

Stammers. I was in *Dublin* about a Fortnight's time, then you sent for me, and I came to *Lutterels Town*; the first Time that I came to the Troop was at *Dublin*, and then you came to me with Two Orders from *Hewson*, and then you did pretend you was Brother to one Mr. *Chambers*, and then we went and quartered in *Lutterels Town*.

Hulet. *My Lord, his Examination in Ireland and this doth not agree; you did deny this before Baldwin a Trooper; I desire his Examination may be read, (which was accordingly read, and agreed with the Testimony now given.) I desire he may mention what Man that was, that I sent for him.*

Stammers. I cannot tell what Man.

Hulet. *My Lord, I desire that Servant may be either named or produced.*

Stammers. I cannot remember the Man, it was Seven Years ago.

Hulet. *Then again upon another Account, as he speaks before, that I should examine him where he had been, and that he should say at the Lord *Inchiquen's*.*

Captain *Toogood* Sworn.

Toogood. I shall first give your Lordships and the Jury what I have heard others say concerning the Prisoner at the Bar, and that is first Colonel *Hewson*; I was in the Year 1650, about September, in *Dublin Castle*, about some Business with *Hewson*; Captain *Hulet*, the Prisoner at the Bar, came into the Room, he talked with Col. *Hewson* a little while; I observed them very familiar, and I asked *Hewson* what he was, he told me he was his Captain-Lieutenant of Horse; I desired to know where he had him? he told me he made him so from a Serjeant, and a very Mettled Fellow he was; it was he that did the King's Business for him upon the Scaffold. In the Year 1653, there was a Disbanding of the Army in *Ireland*; this Gentleman was then continued Captain-Lieutenant in *Pretty's* Regiment: I discoursed with *Pretty* concerning him, and one Part of it, I remember, was about the King's Death; and he did tell me that he was assured by Colonel *Hewson*, that *Hulet* either cut off the King's Head, or held it up, and said, *Behold the Head of a Traitor*; Col. *Pretty* would not tell me which of the Two it was; but I saw the Person that did it, and methought he did resemble this Person. About 12 Months after I came

to live near the Prisoner in *Ireland*; once I remember at one Mr. *Smith's* at the *White-horse* in *Carlow* I met him there, and I was asking the Prisoner at the Bar the Question, Whether he was the Man that cut off the King's Head, or not? Saith he, Why do you ask me this Question? I told him I had heard so by several, namely, by *Hewson* and *Pretty*; upon that he said, well, *What I did I will not be ashamed of; if it were to do again, I would do it.* Once since that Time, about half a Year afterwards, I was in the same Place, and there talking with him about the King's Death; he was telling me it was true, he was one of the Two Persons, that were disguised upon the Scaffold. I desired to know what if the King had refused to submit to the Block? Saith he, there were *Staples* placed about the Scaffold, and I had that about me that would have compelled him; or Words to that Effect; other Times I have heard him speak something to this. *November* the last, in the Queen's County at *Maryborough*, Col. *Jones* took upon him to be Governour, and to chuse Two out of a Regiment that might be the Rulers of the People, Legislators I think they call'd them; I did Discourse about the Business again, and did oppose it all: After a while he began to be very hot in the Business about *Lambert*: Said I, you were heretofore too forward; says he, if it be the Business of the King's Head I will never deny it, call me to an Account when you will: I have observed in *Ireland*, that it hath been generally reported that he was either the Man that cut off the King's Head, or that held it up, as I said before, and I have heard them sometimes call him *Grandfire Grey-beard*.

Hulet. *My Lord, I do confess I know the Gentleman very well, we were in a Regiment together; I never discoursed with any concerning this, but only once at a Place going from Cullen to Munster we did drink at a Place called Goran, we were discoursing about the Business of the King, the Justification of the cutting off his Head; saith *Stammers*, I did hear that you were one of the Persons for that purpose, said I, they that say so, do me Wrong: Saith he, it is no Matter if you were so, for it was a Just Act: Said I, whether it was or no I have nothing to do to justify it; he was speaking, as I hope to be saved, I would have done it.*

Walter Davis Sworn.

Council. What can you say, Mr. *Davis*, to this Business?

Davis. Gentlemen, that which I can say is this; in *January* last was Two Years I was at *Dublin*, I met Captain *Hulet*, he invited me to take Share of a Pint of Wine, I went with him to a Tavern; when we were in the Tavern he called for a Pint of Wine, and I call'd for another; before we had Drank the last Pint of Wine, said I to Captain *Hulet*, I pray resolve me this one Question; it is reported that you took up the King's Head, and said, *Behold the Head of a Traitor*; Sir, said he, it was a Question I never resolved any Man, though often demanded; yet, saith he, whosoever said it then it matters not, I say it now, it was the Head of a Traitor.

Hulet. *I confess we did meet together, as you say, but I must and do deny the Words.*

Lieutenant-Colonel *Nelson* Sworn.

Nelson. My Lords, and Gentlemen of the Jury, upon a Discourse with Colonel *Axtell*, as I related

lated once this Day, about Six Years since, in many other Discourses we fell to discourse about the Death of the late King; I supposing he had been acquainted with that Affair, I desired him to tell me those Two Persons disguised upon the Scaffold; he told me I knew the Persons as well as himself; saith he, they have been upon Service with you many a Time; pray, Sir, said I, let me know their Names; truly, said he, we would not employ Persons of low Spirits that we did not know, and therefore we pitch'd upon Two stout Fellows; who were those, said I? It was *Walker* and *Hulet*, they were both Serjeants in *Kent* when you were there, and stout Men; who gave the Blow, said I? Saith he, poor *Walker*, and *Hulet* took up the Head; pray, said I, what Reward had they? I am not certain whether they had Thirty Pounds apiece, or Thirty Pounds between them.

Hulet. Pray let *Mr. Axtell* speak to this, he is hard by.

Colonel *Tomlinson* Sworn.

Council. Pray tell my Lords your Knowledge in this Business.

Tomlinson. My Lords, and Gentlemen of this Jury, I cannot punctually remember what their Habits were; they had close Garments to their Bodies, they had Hair on their Faces, one was Gray to the best of my Remembrance, the other was Flaxen.

Council. Can you tell who struck the Blow?

Tomlinson. My Lord, I cannot remember, but I think he with the Gray Hair on his Face did it.

Nelson. My Lord, I will not positively say it, but it came lately to my Mind, that I did hear in *Ireland* by Colonel *Pretty* that *Hulet* did it; my Lord, this Colonel *Pretty* is alive in *Ireland*.

Benjamin Francis Sworn.

Francis. My Lords, and Gentlemen of the Jury, as to the Prisoner at the Bar, he was very Active in that horrid Act; there was Two of them had both Cloaths alike, their Frocks were close to their Bodies, (as I remember,) they were rather in Butchers Habits of Woolen; one had a Black Hat on his Head cock'd up, and a Black Beard, and the other had a Gray gristed Perriwig hung down very low; I affirm that he that cut off the King's Head was in the Gray Perriwig, and I believe this was about that Man's Stature, (pointing to *Mr. Hulet*,) and his Beard was of the same Colour, if he had any. I was coming from *Westminster*, the Scaffold was encompassed within with a great Guard of Soldiers of *Redcoats*, I think commanded by *Biscoe*.

Hulet. Was you upon the Scaffold?

Francis. No, Sir, there was none of my Constitution upon the Scaffold.

Council. Fuller Evidence I think cannot be expected; you have heard all the Witnesses; what can you say for yourself?

Hulet. My Lord, here are several Witnesses examined concerning the Business, and for my Part I do not understand the Law; I must leave it to the Court. I can upon the other Account prove where I was at that very Time; I can in the next place, my Lord, since I came into London, for I did not hear it before, I can tell you who was the Person, that did that Act; I can bring Forty and Forty Witnesses that will prove, who they were that did it, as I have

been informed by several Witnesses, that they know who was the Person that did it: Upon the other Account, I can prove where I was that Day, but I did not know, when I was Arraigned, what was laid to my Charge; here were some Examinations taken before my Lord Mayor concerning the Person or Persons, that did that Act. [Here he offered a Paper, a Copy of the said Examinations, Subscribed *Mary Brandon*, and divers others.]

Mr. Secretary Morrice. Was you not examined in the Tower?

Hulet. Yes, Sir.

Mr. Secretary Morrice. Did not we tell you that you were charged with cutting off the Head of the King?

Hulet. Yes, Sir, you did tell me so.

Lord Chief Baron. Then you had time to provide your Witnesses.

Hulet. I was a close Prisoner.

Lord Chief Baron. Where were you on the Day of Execution?

Hulet. I was a Prisoner then at *Whitehall*.

Lord Chief Baron. For what?

Hulet. Upon this Account we were taken up, about Seven or Nine of us were taken up, we were all Serjeants, Three of Colonel *Hacker's*, the rest of *Pride's* and *Fairfax's*, and about Ten of Clock at Night were discharged.

Lord Chief Baron. For what was you Imprisoned?

Hulet. For refusing to be upon the Scaffold.

Burden. It was a Common Speech among the Soldiers, that *Hulet* cut off the King's Head.

Lord Chief Baron. How long before did you see *Hulet* upon the Guard?

Burden. The Day before, but not that Day, nor the Day after.

Lord Chief Baron. *William Hulet*, the Evidence against you is Twofold, one concerning the cutting off the King's Head, the other that you were in a Frock, if it be proved that you did not cut off the King's Head, yet if you were in a Frock in that Place, it will not excuse you; if you have any Thing to say I will be glad to hear it.

Hulet. I desire the Persons may be examined upon Oath, Prisoners and others, who was the Person that did it; I mean *Hacker*, *Huncks* and *Phayre*.

Lord Chief Baron. You that are the Prisoner, for that which concerns *Hacker* and *Phayre*, you know what Conditions they are in, one already tried for his Life, the other a Prisoner in the Tower; and *Hacker* saith himself he doth not know the Person at all; you that are Prisoner at the Bar, the Court conceives you have had Time to get your Witnesses here; you were informed of the Business before you came here, yet notwithstanding, it is conceived there are some here that can say something tending to the Information of the Jury, but they are not to be admitted upon Oath against the King.

Sheriff's Officer Examined.

Sheriff's Officer. My Lord, all that I can say in this Business is this; one of our Fellows that belong to our Master, the Sheriff, *John Rooten* by Name, he and I were talking about this very Story, and he did acquaint me with this, That he was in *Rosemary Lane*, a little after the Execution of the King, drinking with the Hangman, that he did urge him whether he did this Fact: God forgive me, saith the Hangman, I did

did it, and I had Forty Half-crowns for my Pains.

Abraham Smith Examined.

Smith. My Lord, as soon as that Fatal Blow was given I was walking about *Whitehall*, down came a File of Musketeers; the first Word they said was this, Where be the Bargemen? Answer was made, Here are none; away they directed the Hangman into my Boat; going into the Boat he gave one of the Soldiers a Half-crown; said the Soldiers, Watermen, away with him, be gone quickly; but I fearing this Hangman had cut off the King's Head, I trembled that he should come into my Boat, but dared not to examine him on Shore for fear of the Soldiers; so out I lanced, and having got a little way in the Water, said I, who the Devil have I got in my Boat? Says my Fellow, says he, why? I directed my Speech to him, saying, Are you the Hangman that cut off the King's Head? No, as I am a Sinner to God, saith he, not I; he shook every Joint of him; I knew not what to do; I rowed away a little further, and fell to a New Examination of him, when I had got him a little further: Tell me true, said I, are you the Hangman that hath cut off the King's Head? I cannot carry you, said I; No, saith he, I was fetched with a Troop of Horse, and I was kept a close Prisoner at *Whitehall*, and truly I did not do it; I was kept a close Prisoner all the while, but they had my Instruments. I said I would sink the Boat if he would not tell me true; but he denied it with several Protestations.

William Cox Examined.

Cox. When my Lord *Capell*, Duke *Hamilton*, and the Earl of *Holland*, were Beheaded in *Palace-yard* in *Westminster*, my Lord *Capell* asked the Common Hangman, said he, Did you cut off my Master's Head? Yes, saith he. Where is the Instrument that did it? He then brought the Ax, Is this the same Ax, are you sure? said my Lord. Yes, my Lord, saith the Hangman, I am very sure it is the same. My Lord *Capell* took the Ax, and kissed it, and gave him Five Pieces of Gold. I heard him say, Sirrah, wert thou not afraid? Saith the Hangman, they made me Cut it off, and I had Thirty Pound for my Pains.

Richard Abell Examined.

Abell. My Lord, in the House of one Mr. *Bramston* I did hear *Gregory* himself confess that he cut off the King's Head.

Lord Chief Baron. You that are the Prisoner at the Bar, the Court is willing to give all full Scope, as far as may be, to examine the Truth of the Fact; as they would not condemn the Innocent, so they would not acquit the Guilty: Do you desire further Time to examine the Truth of it, before it be put upon the Jury?

Hulet. I do confess I do not understand the Laws, I desire a little further time; I desire the Jury may be withdrawn; I desire a Fortnight's Time, but submit to the Court.

A Stranger Examined.

Stranger. My Lord, I was with my Master in the Company of *Brandon* the Hangman, and my Master asked *Brandon* whether he cut off the King's Head, or no? He confessed in my Presence that he was the Man that did cut off the King's Head.

Lord Chief Baron. You that are the Prisoner at the Bar, the Court was willing to give you as much Time as they could by Law; the Jury hath been charged, and Evidence given; all those Witnesses have been Examined that we could hear of now for your Advantage; I will say something to you. It was here said, and given in Evidence, that *Axtell* did send a Boat to fetch the Common Hangman: If we knew more that might tend to your Advantage it should be repeated. You Gentlemen of the Jury, mark it; There is first *Gittens*, he swears that he was in the same Regiment that you were in 12 or 13 Years together; he saith that he and others were called together upon their Oaths, and you amongst the rest; and there was an Oath of Secrecy, asking them if they would do such an Act; they all refused to do it, so did you; but he said, the Day of Execution of the King this *Gittens* got among them, and one Captain *Webb* kept the Door, and he saw you fall before the King, and ask the King Pardon; he said he heard your Voice, and so knew you; and that the Day after Captain *Atkins* said, you shall see *Hulet* shortly come to Prison; and he saith he did not see you in the Regiment that day; and that *Hewson* and all the Regiment used to call you *Father Grey-beard*. *Stammers* he saith, that you was Captain-Lieutenant to Col. *Hewson's* Troop; and you coming to *Lutterels* Town asked him several Particulars, whether he had been in the King's Army? Walking up and down, you said you were the Man Beheaded King *Charles*, and for that you had One Hundred Pounds; this he Swears positively. *Sampson Toogood*, he swears he saw you come to Col. *Hewson's* in 1650, you talked to him very familiarly; when you were gone he asked who you were? he told him you were a Captain-Lieutenant of Horse; and he said that you were a very Mettled Fellow, and did the King's Business upon the Scaffold; that afterwards Col. *Hewson's* Regiment being discharged, you came to be of *Pretty's* Regiment, and that he told this Gentleman that he was assured by Col. *Hewson* that it was you that either cut off the King's Head, or took it up, and said, *Behold the Head of a Traitor*. He saith afterwards, that in 1654 in *Carlou* he asked you the same Question, and you demanded of him who told him; he answered he was told by several Persons, namely, *Hewson* and *Pretty*; you said, What I did I will not be ashamed of, and if it were to do I would do it again; he says again at another Time, that you were One of the Two Persons who were then upon the Scaffold, and that there were Staples to enforce the King to submit, if he struggled; *I had that about me which would have done the Business*. And he says, in *November* last you came to a Meeting upon a Summons of Col. *Jones*, and then did avouch *Lambert's* Quarrel; he said you were too forward heretofore; you said, if it be the Business of the King's Head I will never deny it, call me to an Account when you will. He heard many call you *Grandfire Grey-beard*. Then there is another Witness, I think his Name is *Davis*, he was in Discourse with you drinking Two Pints of Wine; it is reported (says he) you took up the King's Head, and said, *Behold the Head of a Traitor*; and he desired you to resolve him whether it was so or no; you said again, it had been demanded often, but you never resolved

resolved any Man; you said, whosoever said it then, I say now, *it was the Head of a Traitor.* *Nelson*, he swears, That about Six Years since he was in discourse with *Astell* about it, and *Astell* told him they were a couple of Stout Men to your Knowledge, (speaking to *Nelson*;) I was one to do in that Affair; we made Choice of Two, *Walker* and *Hulet*; who gave the Blow? *Walker*; but *Hulet* took up the Head. Colonel *Tomlinson*, he says, that there were Two on the Scaffold, one that had a Gray Beard, and the other somewhat Flaxen. *Nelson* also heard by Col. *Pretty*, that you did it. And then *Ben. Francis*, he says, they had both Frocks alike, one a Black Beard, and a Gray-grifled Perriwig, and believes he was about your Stature. This is the Substance of what the Witnesses have said against you. Gentlemen, you hear what has been proved on behalf of the Prisoner, that is, if you believe the Witnesses that are not upon Oath, that *Brandon* confessed it, and denied he did it: Several Witnesses that say *Brandon* confessed he did it, and that he told them of a Sum of Money that was given him. *Gentlemen of the Jury*, You see the whole Point in this Case, the Indictment is for Compassing and Imagining the Death of his late Majesty; the Evidence goes Two Ways, part of the Witnesses one way, part another way; if you believe either of them, then you ought to find that the Defendant is Guilty; if either he was in the Frock, though he was not the Man that did it; or if you find he did it, it is a clear Testimony of his Imagining and Compassing the Death of the King. Now it rests upon you to consider the Evidence that is given for the Common Hang-man, that he should be the Man that did it, that the Prisoner at the Bar did not Cut off the Head: On the other Side, if you do believe he was One of the Two in the Frocks, upon the Relations of these Persons, *Pretty*, *Hewson*, and *Astell*; if you believe it upon their Relations, and after his own Confession, that if he was to do it again, he would do it; then upon this Evidence that is given you, he is to be found Guilty, tho' he did not cut off the King's Head. You have heard the Evidence on all Sides, it rests upon you; pray, go together, and consider of your Verdict. I have forgotten one Thing. God forbid I should omit any Thing that may be as well for Advantage, as against the Prisoner at the Bar: If you take it singly, if you have nothing of other Proof, what another Man says of me doth not charge me, unless there be something of my own; what you have heard from himself, and what you have heard by Relations from others, that is to be left to you. It is my Duty to tell you, that which is said by another of me, that alone is not a pregnant Evidence; you must remember with all what is sworn positively, what he said himself; this being said, I must leave it to you. Pray go together.

[*After a more than ordinary Time of Consultation, the Jury returned to their Places.*]

Clerk. Are you agreed of your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. *William Hewlet*, alias *Howlet*, Hold up thy Hand. Gentlemen, look upon the Prisoner at the Bar: How say you, is he Guilty of the High-Treason, &c.

Fore-man. Guilty.

Clerk. Look to him, Keeper. What Goods and Chattels?

Jury. None, to our Knowledge.

[*And then the Court adjourned till to Morrow Morning Seven a Clock, in this Place.*]

October 16th, 1660.

Sessions-House in the Old-Baily.

Proclamation being made.

Clerk of the Crown. Set *Isaac Pennington*, *Henry Marten*, *Gilbert Millington*, *Robert Tichburn*, *Owen Roe*, *Robert Lilburn*, *Henry Smith*, *Edm. Harvey*, *John Downs*, *Vincent Potter*, *Augustin Garland*, *Simon Meyne*, *James Temple*, *Peter Temple*, and *Tho. Wayte*, (in all Fifteen) to the Bar: which was done accordingly.

Clerk of the Crown. You the Prisoners at the Bar, those of the Jury that were last called are to pass, &c. If you, or any of you, will Challenge all, or any of them, you must Challenge them when they come to the Book, before they be Sworn.

Charles Pitfield, *Christopher Abdy*, *Richard Cheyney*, *George Tirrey*, *Daniel Cole*, — *Hall*, *Richard Abell*, *Edmund Starnel*, *Edmund Pit*, *Will. Witcomb*, *Fran. Dorrington*, and *T. Nicoll*, Called and Sworn of the Jury.

Clerk of the Crown. *Isaac Pennington*, *Henry Marten*, &c. Hold up your Hands. Gentlemen that are Sworn, look upon the Prisoners at the Bar. You shall understand that the said *Isaac Pennington*, &c. together with, &c. [*Here the Indictment was read.*] unto which they and every of them have severally pleaded Not guilty, and for their Trial have put themselves upon God and the Country, which Country you are: Now your Charge is to enquire, &c.

Council. May it please your Lordships, and you Gentlemen of the Jury, the Prisoners at the Bar stand Indicted of High-Treason, for Compassing and Imagining the Death of the late King *Charles* the First, of Glorious Memory. The Indictment sets forth several *Overt-Acts*, by which that Imagination doth appear, the Treason it self is the Compassing: Our Evidence will go on thus; we shall prove against them all, that they did sit (in that which they called the High-Court of Justice) upon the King, whilst the King was a Prisoner at the Bar, most of them did Sentence him; all but *Harvey* and *Pennington* did Sign that Bloody Warrant for his Execution; and that one of the Prisoners at the Bar was in before the High-Court of Justice, consulting of bringing it about. When we have proved this, I think it is enough. Pray call the Witnesses.

Harvey. My Lord, according to my Duty, I shall save this Honourable Court all their Trouble. I do humbly acknowledge that I was and did Sit in that Court, but I did not Sign and Seal that Warrant.

Lord Chief Baron. It is very true, Mr. *Harvey*.

Harvey. I hope your Lordships and this Honourable Bench will give me leave (in that Time which

which you shall appoint) to shew you my Reasons that I did it not of Malice, and it was an Error not of Will, but of Judgment; what I have to say will be thought not for the annihilating, yet for the Extenuation of my Crimes.

Lord Chief Baron. Say now what you will, only consider with your self whether you have not already spoken as much as you can for the Extenuation of it; say what you can further.

Harvey. Let me speak a Word.

Lord Chief Baron. Go on, Sir.

Harvey. My Lord, I do humbly conceive if I had conceived that I had then done any Thing of Treason, I would not for all the World have been there; I was present when his Majesty did not own the Court, desiring that both his Houses might meet, that he might have a Conference with them for settling of the Peace: My Lord, heartily and unfeignedly I did endeavour that that Advice might be embraced, and that no Sentence might be pronounced. I was one of those (with some others) that did so far promote it, that that which they called the High-Court of Justice did withdraw to consider of it, but the Major Part of it did dissent. But, my Lord, I was so unhappy as to return to the Court, though with Reluctancy; I went with a Resolution not to go more to them, nor never did; I was summoned to come to the Court: I did declare I abhorred the Thing, that my Soul had Reluctancy against it, and I was greatly grieved and troubled at it, and I did refuse any more to come, or to consult about any thing that followed, in order to His Majesty's Death, and to Sign, and to Seal. And that I may make it appear to your Lordships, I pray I may have a Witness or two examined.

Lord Chief Baron. Name them. Did he Sit upon the Day of Sentence?

Council. Yes he did; he followed it.

Mr. Edward Corbet Examined.

Mr. Corbet. My Lord, the Attestation which I this Day make solemnly, in the Holy Fear of Almighty God, and in Awful Reverence of this great Tribunal, hath only this great Scope, that Colonel *Harvey*, the Prisoner at the Bar, upon that Day of Signing the Warrant for that horrid Execution of his most Excellent Majesty, not in Title only, but in Reality, he finding me as I was passing to the Duty of my Place in the Assembly of Divines then Sitting, he seized on me, and desired Privacy of Time and Place, that he might disburden his Soul and Spirit unto me; it was then about Nine a Clock in the Forenoon to the best of my Remembrance.

Lord Chief Baron. What Day, I beseech you?

Corbet. To the best of my Remembrance upon the *Monday*; Sir, says he, I desire to make known unto you the deep Horror that sits upon my Spirit, the Sadness and Grief, above all Expressions, that my present Case has cast me into; I have endeavoured, Sir, (says he) in the Sight of God, all that possibly I could to divert them from the Sentence, I could not prevail. Sir, says he, I have been this Morning solicited with very much Earnestness, that I would go and Sign, and Seal, and Order that wicked Execution, which my Soul abhors; and, Sir, that I might be removed and withdrawn from all Temptations and Sollicitations of such a wicked Fact, I beseech you spare me your Time this Day; which I did, in the Presence of another

Divine, till Four a Clock in the Afternoon, and then I parted and went to *Westminster*, to Sign and Assist that which I did apprehend my bounden Duty, the Vindication of the Assembly of Divines, wherein we did testify, that it was far from our Thoughts to advise the Parliament to any such unheard-of unnatural Act.

Council. We do admit that after he sat, and Sentence past, that he did not Sign.

Harvey. Be pleased to call one Mr. Thomas Langham, he hath heard me often declare against that Act.

Mr. Thomas Langham Examined.

Lord Chief Baron. What do you say, Mr. Langham, as to this Business?

Langham. Sir, about the Time that his Majesty was executed in 1648, I was then Servant to Alderman *Sleigh*, who was formerly Partner with this Colonel, and he frequently came to Alderman *Sleigh's* every Night; and the Alderman having some Business with him, would ask him what News there was at the High-Court of Justice; he usually told him the Passages upon any Day; the Alderman asked him, if so be he thought His Majesty might escape? He told them this, That he would do what lay in his Power, that he might not come to have Sentence past: Upon *Saturday*, being also there, he told him this, That he had done what lay in his Power, to hinder the Sentence, but could not attain his Design; but he was resolved he would never Sign nor Seal to his Majesty's Death, for it was utterly against his Judgment.

Harvey. There is another, (my Lord,) and but one more, that is *George Langham*.

Lord Chief Baron. To what purpose? This is believed.

Harvey. I shall only crave and supplicate this Favour of this Honourable Bench, that this Honourable Bench will be pleased, on my Behalf, (since I have endeavoured it Two Months before,) to present my humble Petition to His Sacred Majesty, and to intercede for Mercy and Favour on my Behalf; my self, my Wife, and Thirteen Children, shall humbly pray.

[The Court received the said Petition, and promised to present it to his Majesty.]

Millington. I do not know whether it will be seasonable for me to interpose now, I would speak a little.

Lord Chief Baron. Is he next in Order?

Clerk. No, my Lord, *Pennington* is next.

Pennington. I am unwilling to be troublesome to the Court. This I shall take the Boldness to say, (which shall be nothing but Truth,) I never had a Hand in plotting, contriving malicious Practices against his Majesty, demonstrated by my utterly refusing to Sign the Warrant for his Execution, though often solicited thereto; I cannot deny but I sat amongst them that Day of the Sentence, but I cannot remember I was there when the Sentence passed. My Sitting amongst them was out of Ignorance, I knew not what I did, therefore I hope you will believe there was nothing of Malice in any Thing I did; I was misled to it.

Lord Chief Baron. I cannot hear you. [He not speaking aloud.]

Pennington. It was Ignorance, not Malice, that led me; if I had known what I had done I would not have done it; I humbly pray that there may be

be a favourable Construction made of it, I humbly leave it with you. I did my Duty to pray for the King, but had no Malice to act willingly against him.

Clerk. *Henry Marten.*

Council. He did both Sign and Seal the Precept for Summoning the Court, and the Warrant for Execution; sat almost every Day, and particularly the Day of Sentence.

Marten. My Lord, I do not decline a Confession, so as to the Matter of Fact, the Malice set aside, *Maliciously, Murderously, and Traitorously.*

Council. If you have any thing to say to that, we will prove it.

Lord Chief Baron. That I may inform you in it, there is Malice implied by Law, Malice in the Act itself: That which you call Malice, that you had no particular Intention or Design against the King's Person, but in relation to the Government, that will not be to this present Business; if it should extenuate any Thing, that would be between God and your own Soul; but as to that which is alledged in the Indictment, *Maliciously, Murderously, and Traitorously,* they are the Consequences of Law. If a Man meet another in the Street, and run him through, in this Case the Law implies Malice; though but to an ordinary Watchman, there is Malice by the Law in the Fact; if there was no such expressed Personal Malice as you conceive, yet the Fact done implies Malice in Law.

Mr. Solicitor General. My Lord, he does think a Man may Sit upon the Death of the King, Sentence him to Death, Sign a Warrant for his Execution, *Meekly, Innocently, Charitably, and Honestly.*

Marten. I shall not presume to compare my Knowledge in the Law with that of that Learned Gentleman; but according to that poor Understanding of the Law of *England* that I was capable of, there is no Fact that he can name that is a Crime of itself, but as it is Circumstantiated. Of killing a Watchman, as your Lordship instanced, a Watchman may be killed in not doing his Office, and yet no Murder.

Lord Chief Baron. I instanced that of a Watchman, to shew there may be a Malice by Law, tho' not expressed; tho' a Man kill a Watchman, intending to kill another Man, in that Case it is Malice in Law against him: So in this Case, if you went to kill the King when he was not doing his Office, because he was in Prison, and you hindred him from it, the Law implies Malice in this. It is true, all Actions are Circumstantiated, but the killing of the King is Treason of all Treasons.

Justice Foster. If a Watchman be killed it is Murder; it is in contempt of Magistracy, of the Powers Above; the Law says that Contempt adds to the Malice.

Council. We shall prove against the Prisoner at the Bar (because he would wipe off Malice,) he did this very Merrily, and was in great Sport at the Time of the Signing the Warrant for the King's Execution.

Marten. That does not imply Malice.

Ewer Sworn.

Council. Come, Sir, you are here upon your Oath, speak to my Lords and the Jury; you know the Prisoner at the Bar very well, you have sometimes served him; were you present in the

Painted Chamber, January 29, 1648, at the Signing the Warrant, the Parchment against the King?

Ewer. The Day I do not remember, but I was in that Chamber to attend a Gentleman there; I followed that Gentleman, [*looking at Mr. Marten,*] I followed that Gentleman into that Chamber.

Lord Chief Baron. After what Gentleman?

Ewer. *Mr. Marten,* My Lord. I was pressing to come near, but I was put off by an Officer, or Soldier there, who told me I should not be there; I told him I was ordered to be by that Gentleman. My Lord, I did see a Pen in *Mr. Cromwell's* Hand, and he marked *Mr. Marten* in the Face with it, and *Mr. Marten* did the like to him; but I did not see any one set his Hand, though I did see a Parchment there with a great many Seals to it.

Sir Purbeck Temple Sworn.

Council. What do you know of that Gentleman in his Carriage of this Business?

Sir Purbeck Temple. My Lords, I being present in Town, when that horrid Murder was contrived against the late King, there came some Persons of Honour, Servants to the late King, to my Father's House, *Sir Edward Partridge,* to engage me to join with them to attempt the King's Escape. In order whereunto they told me, nothing would tend so much to His Majesty's Service, as to endeavour to discover some Part of their Counsels, for that it was resolved by *Cromwell* to have the King tried at the *High-Court of Justice,* as they called it, the next Day, and desired me (if possible) to be there to discover their Counsels, whereby the King might have Notice, and those that were to attempt his Escape. In order whereunto, the next Day, by giving Money to the Officer of the *Painted Chamber,* I got in by Day-light in the Lobby of the Lords-House; I espied a Hole in the Wall, under the Hangings, where I placed my self till the Council came, where they were contriving the manner of trying the King when he should come before them: And after the manner of Praying, and private Consults amongst themselves, when their Prayer was over, there came News that the King was Landed at *Sir Robert Cotton's* Stairs; at which *Cromwell* run to a Window, looking on the King as he came up the Garden, he returned as White as the Wall: Returning to the Board, he speaks to *Bradshaw,* and *Sir Henry Mildmay,* how they and *Sir William Brereton* had concluded on such a Business; then turning to the Board, said thus: *My Masters, he is come, he is come, and now we are doing that great Work that the whole Nation will be full of; therefore I desire you to let us resolve here what Answer we shall give the King when he comes before us; for the first Question that he will ask us will be, by what Authority and Commission we do Try him? To which none answered presently.* Then after a little Space, *Henry Marten,* the Prisoner at the Bar, rose up, and said, *In the Name of the Commons and Parliament assembled, and all the good People of England;* which none contradicted, so all rose up, and then I saw every Officer that waited in the Room sent out, by *Cromwell,* to call away my Lord such-a-one, (whose Name I have forgot,) who was in the *Court of Wards* Chamber, that he should send away the Instrument, which came not, and so they adjourned themselves

selves to *Westminster-Hall*, going into the Court of *Wards* themselves, as they went thither. When they came to the Court in *Westminster-Hall*, I heard the King ask them the very same Question that *Cromwell* had said to them.

Mr. Solicitor. Gentlemen, the Prisoner at the Bar confesses his Hand to the Warrant for Executing the King; you see by his Servant how Merry he was at the Sport; you see by this Witness, how serious he was at it, and gave the Foundation of that Advice upon which they all proceeded; and now he says he did it not traitorously, I humbly conceive he means it was Justifiable.

Sir Purbeck Temple. At another Time I was in Town on a *Friday*, and wanting Horses I went to *Smithfield*, where I saw the Horses of State of his late Majesty, to be Sold in the common Market; at which I called to the Rider, said I, What makes these Horses here? Says he, I am to Sell them; Why, said I, there's the King's Brand upon them, *C. R.* and he shewed them me: Said I, will you sell these Horses? What Price? He asked me Three or Four-score Pound a piece; says I, Who Warrants the Sale of these Horses? Says he, *Mr. Marten* and *Sir William Brereton*. Afterwards I heard the Horses were taken into the *Mews* by the Prisoner at the Bar, and *Sir Will. Brereton*.

Council. Was this before the Trial?

Sir Purbeck Temple. It was in 1642, or 1643.

Council. That's nothing to this Business.

Marten. My Lord, the Commission went in the Name of the Commons assembled in Parliament, and the Good People of *England*: and what a Matter is it for one of the Commissioners to say, Let it be acted by the Good People of *England*?

Mr. Sol. Gen. You know all Good People did abhor it. I am sorry to see so little Repentance.

Marten. My Lord, I hope that which is urged by the learned Council, will not have that Impression upon the Court and Jury that it seems to have, that I am so obstinate in a Thing so apparently Ill: My Lord, if it were possible for that Blood to be in the Body again, and every Drop that was shed in the late Wars, I could wish it with all my Heart: But, my Lord, I hope it is lawful to offer in my own Defence that, which, when I did it, I thought I might do. My Lord, there was the House of Commons, as I understood it, (perhaps your Lordships think it was not a House of Commons,) but then it was the Supreme Authority of *England*; it was so reputed both at Home and Abroad. My Lord, I suppose he that gives Obedience to the Authority in being, *de facto*, whether *de jure*, or no, I think he is of a Peaceable Disposition, and far from a Traitor. My Lord, I think there was a Statute made in *Henry* the Seventh's Time, whereby it was provided, That whosoever was in Arms for the King *de facto*, he should be indemnified, tho' that King *de facto* was not so *de jure*: And if Supreme Officers *de facto* can justify a War, (the most pernicious Remedy that was ever adjudged by Mankind, be the Cause what it will,) I presume the Supreme Authority of *England* may justify a Judicature, though it be but an Authority *de facto*. My Lord, if it be said that it is but a Third Estate, and a small Parcel of that, my Lord, it was all that

was extant. I have heard Lawyers say, that if there be Commons appurtenant to a Tenement, and that Tenement be all Burnt down except a small Stick, the Commons belong to that One small Piece, as it did to the Tenement when all standing. My Lord, I shall humbly offer to Consideration, whether the King were the King indeed, such a one whose Peace, Crowns, and Dignities, were concerned in Publick Matters: My Lord, he was not in Execution of his Offices, he was a Prisoner. My Lord, I will not defer you long, neither would I be offensive: I had then, and I have now, a Peaceable Inclination, a Resolution to submit to the Government that God hath set over me. I think his Majesty that now is, is King upon the best Title under Heaven, for he was called in by the Representative Body of *England*. I shall, during my Life, long or short, pay Obedience to him: Besides, my Lords, I do owe my Life to him, if I am acquitted for this. I do confess I did adhere to the Parliament's Army heartily; my Life is at his Mercy; if his Grace be pleased to grant it, I have a double Obligation to him.

Mr. Sol. Gen. My Lord, this Gentleman, the Prisoner at the Bar, hath entred into a Discourse that I am afraid he must have an Answer in Parliament for it. He hath owned the King, but thinks his best Title is the Acknowledgment of the People; and he that hath that, let him be who he will, hath the best Title. We have done with our Evidence.

Marten. I have one Word more, my Lord, I humbly desire that the Jury would take notice, that though I am accused in the Name of the King, that if I be Acquitted, the King is not Cast: It doth not concern the King that the Prisoner be Condemned, it concerns him that the Prisoner be Tried: It is as much to his Interest, Crown and Dignity, that the Innocent be Acquitted, as that the Nocent be Condemned.

Mr. Sol. Gen. My Lord, this puts us now upon the Reputation of our Evidence; and you may see how necessary it is to distinguish between Confidence and Innocence; for this very Person that desires you to have a Care how you Condemn the Innocent, he doth seem to intimate to you, that he is an Innocent Person at the Bar; and yet confesses he did Sit upon the King, did Sentence him to Death; that he Signed the Warrant for the Execution; and yet here stands the Person that desires you to have a Care of Condemning Innocence: What is this at the Bottom of it, but that the Fact is such as I dare not call Innocence, but would have you to believe it such? Gentlemen of the Jury, was it your Intention the King should be so Tried as this Prisoner moved? It will concern you to declare, that the People of *England* do abhor his Facts and Principles; every Fact the Prisoner hath confessed himself, the Sitting in that Court, which was Treason; his Sentencing was Treason; Signing the Warrant for Execution was the Highest of Treasons: Gentlemen, all that he hath to say for himself is, there was an Authority of his own making, whereby he becomes Innocent; but we hope out of his own Mouth you will find him Guilty.

Gilbert Millington. I desire you to hear me; I come not hither to dispute, but to acknowledge;

I will not trouble you with long Discourses. My Lord, it is not fit for Wise Men to hear them, I am not able to express them; I will not justify myself, I will acknowledge myself Guilty. My Lord, the Reason why I said the last Day, *Not Guilty*, was in respect of being upon the Scaffold, and Murdering the King, and those Things; but I will wave all Things, if your Lordship will give me Leave, and will go unto the lowest Strain that possible can be; I will confess myself Guilty every Way. I was awed by the Present Power then in Being. This I leave with you, and lay myself at your Feet, and have no more at all to say, but a few Words in a Petition, which I desire you will please to accept, and so I conclude.

Council. We do accept this Honest and Humble Confession, — and shall give no Evidence against him to aggravate the Matter.

Lord Chief Baron. Your Petition is accepted, and shall be read.

Robert Titchburn. My Lord, when I first pleaded to the Indictment, it was, *Not Guilty, in Manner and Form as I stood Indicted*; my Lord, it was not then in my Heart, either to deny or justify any Title of the Matter of Fact; my Lord, the Matter that I was led into by Ignorance, my Conscience leads me to acknowledge; but, my Lord, if I should have said Guilty in Manner and Form as I stood Indicted, I was fearful I should have charged my own Conscience as then knowingly and maliciously to act it. My Lord, it was my Unhappiness to be called to *so sad a Work* when I had so few Years over my Head; a Person neither bred up in the Laws, nor in Parliaments where Laws are made. I can say with a clear Conscience, I had no more Enmity in my Heart to his Majesty, than I had to my Wife that lay in my Bosom. My Lord, I shall deny nothing; after I was Summoned, I think, truly, I was at most of the Meetings; and I do not say this, that I did not intend to say it before, but, preserving that *Salvo* to my own Conscience, that I did not maliciously and knowingly do it, I think I am bound in Conscience to own it: As I do not deny but I was there, so truly, I do believe I did Sign the Instrument. And had I known that then, which I do now, (I do not mean, my Lord, my Afflictions and Sufferings, it is not my Sufferings make me acknowledge,) I would have chosen a Red-hot Oven to have gone into, as soon as that Meeting: I bless God, I do this neither out of Fear, nor Hopes of Favour, though the Penalty that may attend this Acknowledgment may be Grievous; my Lord, I do acknowledge the Matter of Fact, and do solemnly protest I was led into it for want of Years; I do not justify either the Act or the Person; I was so unhappy then as to be Ignorant, and I hope I shall not now, (since I have more Light,) justify that which I was ignorant of; I am sure my Heart was without Malice; if I had been only asked in Matter of Fact at first I should have said the same; I have seen a little: The Great God before whom we all stand, hath shewn his Tender Mercy to Persons upon Repentance; *Paul* tells us, though a Blasphemer, and a Persecutor of Christ, it being done ignorantly, upon Repentance he found Mercy; my Lord, Mercy I have found, and I do not doubt but Mercy I shall find. My Lord, I came in upon the Proclamation, and now I am here, I

have in Truth given your Lordship a clear and full Account, whatever the Law shall pronounce, because I was ignorant; yet I hope there will be Room found for that Mercy and Grace that I think was intended by the Proclamation, and I hope by the Parliament of *England*. I shall say no more, but, in pleading of that, humbly beg that your Lordships will be instrumental to the King and Parliament on that behalf——

Council. We shall give no Evidence against the Prisoner; he says he did it ignorantly, and I hope and do believe he is a Penitent; and as far as the Parliament thinks fit to shew Mercy, I shall be very glad.

Owen Ree. I have not much to say, I never had any Ability; therefore, my Lord, it was never my Intent upon my Plea, as was said before, to deny any Thing I have done; for I was clearly convinced that I ought to confess it before, and I do confess against myself, that I did Sit there several Times, and to the best of my Remembrance I did Sign and Seal the Warrant for his Execution; and truly, my Lord, it was never in my Heart to contrive a Plot of this Nature. How I came there I do not know, I was very unfit for such a Business, and I confess I did it ignorantly, not understanding the Law, so was carried away hidden in the Business, not understanding what I did; therefore, my Lord, I humbly intreat this Honourable Court, that you will consider of it, and look upon me as one that out of Ignorance did it; and if I had known of my Act, I would rather have been torn in pieces with a Thousand Horses. When I heard of the Declaration and Gracious Pardon of His Majesty, I confess I went to my Lord Mayor's, and laid hold of it, and I thought my Life as secure as it is now in my own Hands; but I do wholly cast myself upon the King's Mercy; and as I have heard he is a Gracious King, full of Lenity and Mercy, so I hope I shall find it. I was never against Government; it is a Blessed Thing that we have it; I hope all the Nations will be happy under it. I shall submit to his Majesty and Government. I can say no more; I was not brought up a Scholar, but was a Tradesman, and was meerly ignorant when I went on in that Business; I do humbly intreat your Lordships, that you would, as tenderly as may be, present my Case to the King, whom I rest upon, and leave all to your Lordships Wisdom and Discretion, to do what you will concerning me——

Council. We accept his Confession, and do hope he is Penitent before God, as well as before the World.

Robert Lilburn. Be pleased to give me leave to speak a few Words; I shall be Ingenuous before your Lordships, I shall not wilfully nor obstinately deny the Matter of Fact; but, my Lord, I must, and I can, with a very good Conscience, say, that what I did, I did it very innocently, without any Intention of Murder; nor was I ever Plotter or Contriver in that Murder; I never read in the Law, nor understood the Case thoroughly; whatever I have done, I have done ignorantly.

Lord Chief Baron. Because you shall not be mistaken in your Words, God forbid that we should carp at your Words; the Word Innocent hath a double Acceptation, Innocent in re-

spect of Malice, and Innocent in respect of the Fact.

Lilburn. The Truth is, my Lord, I was for the withdrawing of the Court, when the King made the Motion to have it withdrawn; and upon the Day (my Lord) that the King was put to Death, I was so sensible of it, that I went to my Chamber and mourned, and would, if it had been in my Power, have preserv'd his Life. My Lord, I was not at all any Disturber of the Government; I never interrupted the Parliament at all. I had no Hand in those Things, neither in 1648, nor at any other Time. I shall humbly beg the Favour of the King, that he would be pleased to grant me his Pardon, according to his Declaration, which I laid hold on, and rendered myself according to the Proclamation.

Council. We shall say nothing against him.

Henry Smith. My Lord, I shall not desire to spend your Lordship's Time; what I have done, I did it ignorantly, not knowing what I did. I shall not deny the Matter of Fact; but as to that I pleaded *Not Guilty* before, it was in relation to that which I was ignorant of, the Law of the Nation; I have not been Bred to it. I humbly desire your Lordships to consider, that what I did was done ignorantly, not knowing the Law.

Council. What was that?

Smith. I do confess that I Sat in the Court, I do not remember that I Signed or Sealed, [*both the Warrants being shewed him*] adds, my Lords, I confess the Hands are like mine, but whether they be so or no, I know not.

Council. Then we will prove it. Is the Seal yours?

Smith. I do not know.

Council. Do you confess you were in the *Painted-Chamber* the 29th of *January*? Do you remember any Thing of that?

Smith. I do not certainly know that.

Council. My Lord, he hath said enough. Shall the Jury doubt of that which he believes?

Smith. I do not remember that I did write it.

Council. My Lord, we press it no farther, he hath confessed enough.

Smith. My Lord, what I have done I beseech you consider I did it in Ignorance, not knowing the Law; there were those about me that were able to call me, who were then in Authority, whom I dared not disobey, if so, I had been in Danger also.

Council. My Lords, we have done; be pleased to direct the Jury upon these several Evidences and Confessions.

Smith. I beg one Word, I must declare this, I can speak it seriously, that from the first to the last of these unhappy Wars, I have been a Man of Trouble and Sorrow; I have been (as many Wiser Men have been) run upon Error. My Lord, I know not what I have done; I pray that this Court will be pleased to be a Mediator for me, that I may have his Majesty's Favour, and that this Petition may be received on my Behalf. [*He then delivered his Petition to the Court.*] I can rejoice for that happy Settlement that is again in the Nations, and declare cheerfully my humble Submission to that Government, and desire the Lord will bless and prosper his Majesty and the Parliament in these Nations; my Lord, I rendered myself according to the Proclamation; I shall say no more.

VOL II.

Lord Chief Baron. Gentlemen, you of the Jury, these Prisoners that stand before you at the Bar, that is, Mr. *Harvey*, *Pennington*, *Marten*, *Millington*, *Titchburne*, *Roe*, *Lilburn*, and Mr. *Smith*, there are Eight, these are Persons who by the *Act of Indemnity* are to be Tried for their Lives for the Treasons they have committed, but no Execution is to be until the Parliament have further considered the Matter that is before us, and you are to find the Matter of Fact: What Mercy they shall find hereafter, that is to be left (as I told you) to the Consideration of the Parliament, we are to proceed according to Law and Justice. They are all Indicted for Compassing and Imagining the Death of our late Sovereign Lord *Charles* the First, of most Glorious Memory; and for that that hath been opened to you there are so many Overt-Acts, which are as so many Evidences to prove that Indictment, which is the Compassing and Imagination of their Hearts to put the King to Death. If any one of these be proved, that is alone enough to prove the Indictment, which is the Compassing and Imagining of the Heart, that is the Treason, the others are but Evidences. If any Thing burst forth from the Mouth, or from the Hand, as here it is, these are Evidences of the Imagination of the Heart; for this you have heard by the Confession of all of them, that they did enough to find the Indictment; they have all of them confessed their Sitting upon the King in that Traitorous Assembly, which they called the *High Court of Justice*. There is one of the Overt-Acts expressly laid down in the Indictment, they took upon them an Authority to consider how to put the King to Death, and that they did put the King to Death, but they were mistaken, as some of them said, that the actual Murdering of the King was not their Meaning. But if they did that which tended towards it, they are all Guilty of Treason; it is all one to you, if they be guilty of any of these; either Sitting, Sentencing, or Signing, they are Guilty; and all of these, except Two, are Guilty of all these. The Matter is clear and pregnant; there is something hath been said by many of them, with a great deal of Expression of Sorrow; they did confess (all but one) the Fact; and that which tended to their Defence was Ignorance; but that doth not at all concern you. It will be taken in its due Time into Consideration; the several Departments of them all, that is for another Judicature. Your Business is to find the Matter of Fact; only let me repeat unto you, there is Mr. *Harvey*, who hath pleaded several Matters which are not proper for you, expressing his Sorrow and Penitence, we shall not trouble you with that, because they are for the Consideration of another Court; we ought all to have a tender Compassion, ought to be sorry with and for them that are sorrowful. The like of Alderman *Pennington*. *Marten* hath done that which looks forward more than backward. I could wish with all my Heart he had looked more backward; that is, to Repentance of that which is past, than Obedience to that which is to come; it is a Trouble to repeat those Things which he said himself, and truly, I hope in Charity he meant better than his Words were. *Millington*, he hath done the like with the rest, confessed the Fact, put himself upon Mercy wholly, and said, he *was over-awed by the present Power*.

E e e 2

This

This I repeat, not as any Thing to you, who are to consider only Matter of Fact. For Alderman *Titchburn*, he hath spoken very fully, and truly very conscientiously—upon the whole Matter, acknowledges his Ignorance, his Sorrow, his Conviction in Point of Conscience; and I beseech God Almighty to incline his Heart more and more to Repentance. *They that Crucified Christ*, (to use his own Words,) *through Ignorance found Mercy*. Colonel *Roe*, he confesses the same wholly, and casts himself upon the King's Mercy, and he thought it a blessed Thing that the King was restored again, and submitted wholly to Mercy; and so did Mr. *Lilburn*, he said he went to his Chamber and mourned the Day the King was Beheaded; I am very glad he had so early a Sense of it. *William Smith* he did it ignorantly, he was not guilty thus far; that was, he was led on, even like one silly Sheep that follows another; by what Relation I have heard of the Person, at that Time he was not thought fit to be of the Privy Council. There is nothing more to say to you. The Fact is confessed by them all. It is so clear you need not go from the Bar.

[*After a little Consultation between the Jurors they returned to their Places.*]

Clerk of the Crown. Are you agreed of your Verdict?

Jurors. Yes.

Clerk. Who shall say for you?

Jury. Our Fore-man.

Clerk. *Edmund Harvey*, Hold up thy Hand. How say you, is the Prisoner Guilty of the Treason whereof he stands Indicted, and hath been Arraigned? or Not Guilty?

Jury. Guilty.

Clerk. Look to him, Keeper.

Clerk. What Goods and Chattels, &c.

Jury. None to our Knowledge.

The same Question being asked touching Alderman Pennington, Henry Marten, Gilbert Millington, Alderman Titchburn, Colonel Roe, Colonel Lilburn, and Henry Smith, they were severally found Guilty by the Jury in manner aforesaid. All which Prisoners finding the Place where they stood to be Cold and Unwholsom, prayed the Court they might have Leave to be returned to the Prison 'till the Court shall be pleased to command their farther Attendance; which was granted.

The rest of the Prisoners aforesaid, together with W. Heveningham, brought to the Bar.

Clerk. You the Prisoners at the Bar, those Persons last called of the Jury are to pass, &c. If you, or any of you, will Challenge all, or any of them, you must Challenge them when they come to the Book, before they be Sworn.

Clerk. *Charles Pitfield, Christopher Abdy, George Terry, Daniel Cole, Anthony Hall, Richard Abel, Edmund Starnel, Edmund Pit, William Whitcomb, Francis Dorrington, Thomas Nicholl, Robert Sheppard*, in all Twelve, Admitted and Sworn of the Jury.

Clerk. If any Man can inform, &c.

Clerk. *John Downes*, Hold up thy Hand, &c. and the like was said to all the other Persons following, viz. *Vincent Potter, Augustine Garland, Simon Meyne, James Temple, Peter Temple, Thomas Waite, and William Heveningham*. Look upon the Prisoners at the Bar, you that are Sworn; you shall understand that *John Downes*, the Prisoner at the Bar, stands Indicted, &c.

King's Council. May it please your Lordship's

and you Gentlemen of the Jury, the Prisoners at the Bar stand Indicted of High-Treason, for Compassing and Imagining the Death of the late King *Charles* the First, of Blessed Memory; the Evidence by which we shall make out against them this Treason of their Heart, in Compassing and Imagining the King's Death, (for that is the Substance of the Indictment, and all that follows is but Evidence,) will be by proving that they did sit as Judges in that pretended Court of Justice when the King stood a Prisoner at the Bar; that they did Sentence him to Death, every one of them; and we shall prove against all but one of them that they did Sign that Bloody Warrant for Murdering of the King; and against one of them that stands at the Bar we shall prove (to his Shame and Confusion of Face) that he did Spit in the Face of our late Sovereign Lord.

John Downes. My Lord, I have humbly pleaded *Not Guilty*; not with any Intention to justify the Fact, or to extenuate it; but, my Lord, in regard there is that charged in the Indictment, that my Conscience saith I am not guilty of, I durst not plead Guilty; otherwise, my Lord, I should not have troubled you with *Not Guilty*, but should have humbly taken the Shame and Confusion for it; it is my Intention to put the Court to as little Trouble as possibly I can; therefore I do humbly intreat of your Lordships, and the Court, that you will permit me to acknowledge that which will be a sufficient Evidence of my Conviction, if the Court so please, and that you will be pleased to hear me on my Behalf; if I can humbly offer to you some special Thing which is not in the Case of another, (I could wish it had, if it had we had none been here.) I do humbly acknowledge, that to sit upon that Occasion in that Place is Evidence enough to convince what is in the Heart, except by some signal Actions that might happen from some that might shew how it was his Unhappiness to be put into such a Business, yet had neither Malice nor Treason in his Heart: I do humbly conceive that there is that Goodness in you, that this Plea, this Allegation will be most Welcome to you. My Lord, though there was such a Thing, such an unparallel'd Thing, I was thrust into this Number; but never was in Consultation about the Thing: God is Witness I was not put in 'till the Act was ready to pass in a second Commitment, by one of the same Number; I denied it, yet they said I must make one, I must take my Share; so I came in. Never did I know of his Majesty's being brought to *London*, 'till he came. My Lords, in this great Unhappiness I think it is some Mitigation, and I judge it a Happiness, that so Wise, Prudent Persons as this Court consists of, that you are my Judges, that can look back, my Lord, and consider what the Times were then, and can, my Lord, account it a Happiness that there is a special Wisdom in you, that in Nice Cases you will be able to make a Distinction. I do indeed, my Lords, sadly and seriously confess, that was divers times with those Persons that were called Judges of the late King, at several Meetings and Sittings; it is long ago, I cannot say how often; I was several times there. My Lord, I do humbly beg of your Lordships, (I will trouble you as short as I can,) that you would be pleased so far to favour me as to give me leave to give you a short Account of the Business: The last Day His Majesty

came

came to that which was called then a Court, several times he was brought, (I think Thrice,) and His Charge was given in Words high enough; he said *He could not acknowledge their Jurisdiction*; that was the Answer, my Lord, till the last day; then I confess I was there. He that was called *President* did again and again tell him the Heads of his Charge; told him he had several Days given for Consideration, that this was the last Day that the Court (as they call'd themselves) would give him for his final Answer; if he stood still to Day, and moved to the Jurisdiction of the Court, they must take all *pro Confesso*, and would give Sentence: My Lord, to this His Majesty indeed with a great deal of Composedness and Wisdom told them to this Effect, I cannot own your Jurisdiction; you have Power enough indeed, I wish you may use it well; but because you are so ready to give a Sentence, which may be sooner given than avoided, I think fit to let you know that I have something that I desire to speak to my Parliament, for I have something to offer unto them that will be satisfactory to you'all, and will be for the immediate Settlement of the Kingdom in Peace.

—My Lord, he that was called *President* answered, that no Notice could be taken of any Thing, but only whether he would Answer to his Charge: Upon that, my Lord, His Majesty indeed, (with the greatest Earnestness that ever I beheld, and yet in no unseemly Passion,) told them they might soon repent of such a Sentence; that he did conjure them to withdraw once again, and to consider of it, if it were but half an Hour, or (saith he, if that be too much for you) I will withdraw. My Lord, here I can make my Appeal to him that must Judge me when you have done with me, I had not a murderous nor a traitorous Thought against him; but Sir, I confess such deep Passions did fall upon me, that truly myself I was not. I remember the Persons between whom I sat, as it fell out, were one Mr. *Cowly*, and Col. *Walton*, these Two I sat betwixt, these were the Words I spake to them, *Have we Hearts of Stone? Are we Men?* They laboured to appease me; they told me I would ruin both myself and them; said I if I die for it I must do it. *Cromwell* sat just the Seat below me, the hearing of me make some Stir, Whispering, he looked up to me, and asked me if I were myself? What I meant to do, that I could not be quiet; Sir, said I, no, I cannot be quiet; upon that I started up in the very Nick; when the *President* commanded the Clerk to read the Sentence, I stepping up, and as loud as I could speak, spoke to this Effect, these Words, or to the like Purpose; my Lord, (said I) I am not satisfied to give my Consent to this Sentence, but have Reasons to offer to you against it, and I desire the Court may adjourn to hear me; presently he stept up and looked at me; nay, saith he, if any one of the Court be unsatisfied the Court must adjourn: Sir, accordingly they did adjourn into the inner *Court of Wards*; when they came there I was called upon by *Cromwell* to give an Account why I had put this Trouble and Disturbance upon the Court? I did speak, Sir, to this Effect, (it is long ago, the very Words I think I cannot speak,) but to this Effect I did speak: My Lord, I should have been exceeding glad if the Court had been pleased to condescend to this gracious

Expression; but it is not too late for me: I desire not his Death, but his Life, and that the Nations may be settled in Peace: The King now is pleased to offer, that if he might but speak with his Parliament he would offer to them such Things as should be satisfactory to us all. So (said I) what would you have? Your Pretence of bringing him to these Proceedings was, that after such a long and bloody War His Majesty would not condescend to such Concessions as might secure the Parliament's Party; but now you hear him, that he will give every one of us Satisfaction: I told them, sadly told them, (I think I may truly say more sadly than at this Time,) that if they should go precipitantly on and give Judgment upon him, before they had acquainted the Parliament with what the King was pleased to offer, we should never be able to answer it; the rather, my Lord, (and that I did press with all the little Understanding that I had) if they did but consider the last concluded Order that the Parliament made after the passing of the Act for Trial, (that which was so called,) I say there was this Order that shut up all, that upon any Emergency that could not at that Time be thought on in the House the Court shou'd immediately acquaint the House, with it. My Lord, I did infer as strongly as I could to them, that if this were not Emergent I could not tell what was: The King denied the Jurisdiction of the Court, and yet with all Vehemency desired to speak with his Parliament; were not these Emergencies? If not, I knew not what were Emergencies. My Lords, besides this, there was another Thing I did press, that I thought was of greater Consequence than this, as to the Satisfaction of every Man's particular Conscience; that admitting (if it might be admitted) that the King was liable to His Subjects, that they might call him to an Account, and might Condemn him, (I beg your Pardon that I take the Boldness to make such Admissions,) but if such a Thing might be admitted, certainly it did exceedingly become those Judges that were to give such a Sentence, (not against a Common Person, but against the greatest,) to be very well satisfied in Matter of Fact, to a full Evidence before them, that such and such Things that were said were true. I do acknowledge this, that to the best of my Apprehension, (I wish it had been so to others,) there was a great Shortness in this; I do humbly affirm this, that not one Member of the Court did hear one Witness *Viva Voce*; I did press that if the Court did give Judgment against the King, without a fair Examination, I said it was such a Thing as no Judge at any Assizes would do against a common Person; what I had was from *Peters*, and from some private Whispers from one of them that is gone, and hath received his Sentence and Doom. *Cromwell* did answer with a great deal of Storm; he told the *President*, that now he saw what great Reason the Gentleman had to put such a Trouble and Disturbance upon them; saith he, sure he doth not know that he hath to do with the hardest-hearted Man that lives upon the Earth; however, it is not fit that the Court should be hindered from their Duty by one peevish Man; he said, the Bottom was known, that he would fain save his Old Master; and desired the Court, without any more ado, would go and do their Duty. Another that spoke to me in Answer was