

Mr. Serg. *Jefferies*. Did you hear Mr. Alderman *Cornish* say so? What this Gentleman? Do you know him?

Mr. *Higgins*. Says he to Sheriff *Shute*, You shall have all Right done to you.

Mr. Serg. *Jefferies*. Who else did you see there?

Mr. *Higgins*. I saw Mr. *Swinock*.

Mr. Serg. *Jefferies*. Did you see Mr. *Key*? Did you see Mr. *Pilkington*?

Mr. *Higgins*. I did not see Mr. *Pilkington*: I saw *Shute*.

Mr. Serg. *Jefferies*. Did you see Mr. *Jekyl*?

Mr. *Higgins*. Yes.

Mr. Serg. *Jefferies*. Which of them do you mean?

Mr. *Higgins*. The elder Man.

Mr. Serg. *Jefferies*. There is *John Jekyl* the elder, Gentlemen; and *John Jekyl* the younger.

Mr. *Higgins*. I was disputing with a Fellow that his Toes came out of his Shoes, and had a green Apron; said I, *Are you a Livery Man? Yes, I am*, said he. *Surely*, said I, *they don't use to make such as you are, Livery Men*. Says Mr. *Jekyl*, *He may be as good a Man as you, for aught I know*. That was about half an Hour after my Lord Mayor went home.

Mr. Serg. *Jefferies*. What Time was the Adjournment?

Mr. *Higgins*. About five or six. I was speaking something, *You are all in a Riot. This is no Riot*, says Mr. *Swinock* to me; I can never meet you, but you are railing against the King's Evidence.

L. C. J. The King's Evidence, what was that?

Mr. *Williams*. What was done by Mr. *Jekyl*?

Mr. *Higgins*. He was talking among the People.

Mr. Serg. *Jefferies*. He did encourage, among the rest.

Mr. *Williams*. You are in a Passion now.

Mr. Serg. *Jefferies*. No, Sir, I am not.

Mr. *Higgins*. He seconded Mr. *Cornish* when he said, *Insist upon your Rights*.

Mr. Serg. *Jefferies*. Who did so?

Mr. *Higgins*. *Protestant*, my Lord, that they call the *Protestant Cheesemonger*.

Mr. *Williams*. A very pretty Word indeed.

Mr. Serg. *Jefferies*. Ay, so it is; he is so called; you will give us Leave to hear what the Witnesses speak.

Mr. *Williams*. Another Epithet would do a great deal better.

Mr. Serg. *Jefferies*. *William Bell*, what was done upon the Spot? Was there any Hurt?

Mr. *Williams*. Do you say, upon your Oath, that Gentleman was there?

Mr. *Higgins*. I have seen him in the Balcony.

Mr. Serg. *Jefferies*. He says, he uses to be there upon publick Days in the Coffee-house.—*Bell*, I would desire to know of you, whether you are able to give an Account after my Lord Mayor's Adjournment, who was there? Name as many Persons as you can.

Mr. *Bell*. Mr. *Bethel*; and I saw Mr. *Cornish* go through the little Gate into the Yard.

Mr. Serg. *Jefferies*. Who else?

Mr. *Bell*. That is all, Sir; Sheriff *Pilkington* delivered two Poll-Books into my Hand.

Mr. *Att. Gen.* Mr. *Vavasor*, will you tell my Lord and the Jury what you saw?

Mr. *Vavasor*. It happen'd thus: Mr. *Hammon* had taken a Man upon Execution, who was Bail for a Client of mine who had paid the Moneys long before; upon that I came to know who employed him; and coming here, I found Mr. *Hammon* in

that Place, and the Croud was so great, *Don't go back again*, said he, *for you will go near to be abused*. Whilst I staid there, I asked him what was the Meaning; says he, *In this Room are the Sheriffs and some others casting up the Poll*; and whilst I staid, there came in Mr. *Goodenough* to-and-fro from them, and before they would admit any, they would know their Names; there was Mr. *Key*, my Lord *Grey*, and Sir *William Gulston*.

Mr. *Att. Gen.* What afterwards?

Mr. *Vavasor*. Yes, Mr. *Cornish* was there; he and Sheriff *Shute* came out together, and they went upon those Stairs under the Clock.

Mr. *Att. Gen.* Who came out with Sheriff *Shute*?

Mr. *Vavasor*. *Cornish*.

Mr. *Williams*. What *Cornish*?

Mr. *Vavasor*. Alderman *Cornish*.

Mr. *Williams*. Very mannerly.

Mr. Serg. *Jefferies*. His Name was *Cornish* before he was an Alderman.

Mr. *Vavasor*. And Sheriff *Shute* told the People, *If they would stay a little time, he would give them Satisfaction*. Upon that, Mr. *Cornish* went through the Company; and when they came to the *Hustings*, Mr. *Shute* ordered Proclamation to be made, and told them, *Whereas my Lord Mayor had taken upon him to adjourn at nine a Clock; We the Sheriffs of London and Middlesex, being the proper Officers, do adjourn it to Tuesday at nine of the Clock*. Upon that, an antient Gentleman desired they might proclaim the Election. Then says *Shute*, that *I can't do it now, for we have taken very good Counsel for what we do*. Had it not been for Mr. *Hammon*, I had been, I believe, trod under Foot sufficiently.

Mr. Serg. *Jefferies*. Mr. *Denbam*, who did you see?

Mr. *Denbam*. I saw Sir *Thomas Player*, and Mr. *Jenks*.

Mr. Serg. *Jefferies*. Where did you see them, pray?

Mr. *Denbam*. In the Yard. I went home with my Lord Mayor, and then I saw them. I had a kind of a Glance, but I can't swear positively to Mr. *Jenks*.

Mr. Serg. *Jefferies*. Sir *Thomas Player*, and Mr. *Jenks*; what did you see them do?

Sir *Fr. Winn*. Hark you, Friend, where was it you saw them?

Mr. *Denbam*. In the Yard.

Sir *Fr. Winn*. What did you see them do?

Mr. *Denbam*. Nothing at all.

Mr. Serg. *Jefferies*. How many People might be there then? Two or three hundred?

Mr. *Denbam*. Above a thousand.

Mr. *Williams*. What did you hear Sir *Thomas Player* say?

Mr. *Denbam*. Nothing.

Mr. *Williams*. How far was he from his own Door?

Mr. *Denbam*. On t'other Side the Hall.

Mr. *Williams*. A mighty way indeed, a mighty thing. What said Mr. *Jenks*?

Mr. *Denbam*. I can't say, Sir, that I heard him speak a Word, only in the Tumult.

Sir *Fr. Winn*. Friend, I ask you this; I think I heard you say, you saw Sir *Thomas Player* and Mr. *Jenks* in the Yard, but you did not see them do any thing at all?

Mr. *Denbam*. No.

Mr. Serg. *Jefferies*. Pray, Mr. *Farrington*, will you tell my Lord and the Jury what you saw after my Lord Mayor had adjourned the Court?

Mr. *Far-*

Mr. *Farrington*. I saw there Sheriff *Pilkington*, *Shute*, Sir *Thomas Player*, Mr. *Wickbam* the Scrivener in *Lotbury*, Mr. *Jenks*, *Babington*, one *Jennings* an Upholsterer.

L. C. J. Sir *Thomas Player* you say in the first Place?

Mr. *Farrington*. Yes, and *Wickbam*, my Lord, a Scrivener in *Lotbury*.

L. C. J. Who then?

Mr. *Farrington*. Sheriff *Pilkington* and *Shute*, and Mr. *Cornish*, Alderman *Cornish*.

Mr. Serg. *Jefferies*. Did you see one *Deagle* there?

Mr. *Farrington*. No, Sir.

Mr. Serg. *Jefferies*. *Wickbam* you saw there?

Mr. *Farrington*. Ay, Sir, I know him very well.

Mr. *Thompson*. What is *Wickbam's* Christian Name?

Mr. Serg. *Jefferies*. *John Wickbam*, he goes by that Name, it may be he was not christen'd. Was *Jenks* there, do you know him?

Mr. *Farrington*. The Linen draper.

Mr. Serg. *Jefferies*. Ay, very well, he goes by the Name of *Francis Jenks*. Did you see *Jekyl* there?

Mr. *Farrington*. I don't know the Name; I saw a great many I knew by Sight, but not their Names.

Mr. *Holt*. What did these Gentlemen do?

Mr. *Farrington*. I'll tell you, Sir; there was Sheriff *Pilkington* and Sheriff *Shute*, I went in where they were taking the Poll; said I, Gentlemen, my Lord Mayor hath adjourned the Court, what do you here? I suppose it lies in my Lord Mayor's Power; if it lies in him to call, certainly he must dissolve.

Mr. *Williams*. You argued thus.

Mr. Serg. *Jefferies*. Pray give us Leave to go on.

Mr. *Farrington*. There was Mr. *Wickbam*, and says he, My Lord Mayor hath nothing to do here, neither will we be ruled by any of your Tory Lord Mayors. This is not the first Asperson, said I, that you have cast upon a Gentleman that loves the Church and the Government established by Law; and they fell about me, and had it not been for Mr. *Fletcher* and Mr. *Hill*, I believe they had done me a Mischief; for they trod upon my Toes; who did it I can't tell.

Mr. Serg. *Jefferies*. But you say Sir *Thomas Player*, and *Pilkington*, and Alderman *Cornish*, were amongst them?

Mr. *Farrington*. Yes, Sir.

Mr. Serg. *Jefferies*. That's enough.—Pray, Mr. *Cartwright*, will you tell my Lord and the Jury what you observed there, and who was there.

Mr. *Cartwright*. I know the Names of no Persons that were there; all that I can say was this: As soon as my Lord Mayor adjourned the Court upon the *Hustings*, he came down, and going out of the Hall, he had like to have been thrown down, had it not been for Mr. *Shaw*; and going to save my Lord Mayor, I wrenched my Back, and I spit Blood for seven Days after.

Mr. Serg. *Jefferies*. Tell that, Mr. *Cartwright*, over again.

Mr. *Cartwright*. My Back was wrenched in saving my Lord Mayor, and I spit Blood seven Days after.

Mr. Serg. *Jefferies*. Endeavouring to save my Lord Mayor, his Back was so wrenched, that he spit Blood six or seven Days after. Hark you, Mr. *Cartwright*, ever since that Time have you found any Indisposition?

Mr. *Cartwright*. I have not been my own Man since.

Mr. *Williams*. He took a Surfeit.

Mr. Serg. *Jefferies*. He took a Surfeit of ill Company I am sure.

Mr. Sol. Gen. Mr. *Shaw*, give my Lord and the Jury an Account of what you know.

Mr. *Shaw*. My Lord, my Lord Mayor sent to the Sheriffs, and ordered them to forbear polling, and come up to the Chamber, and sent two or three times; but they denied coming to him, and went on and ordered the Common Cryer to make Proclamation for them to depart; and if they staid, that he would look upon them as Rioters; and there was hissing and a great deal of Crowd; and there was Sir *James Edwards* in the Court, they hunched him with their Elbows; and as his Lordship came down, going down the Steps there was such a Crowd, that if I had not caught his Lordship in my Arms, he had fallen upon his Forehead, and his Hat was off.

L. C. J. Who did you see so misbehave themselves?

Mr. *Shaw*. My Lord, I can't tell.

Mr. Serg. *Jefferies*. I think we have now proved it against every body we design, save only against Mr. *Deagle*; for we do not now proceed against *Dorman Newman* and *Benjamin Alsop*. Now, my Lord, we will only prove against *John Deagle*, and then we shall have done. Mr. *Kemp*, will you tell my Lord and the Jury who you saw here? Did you observe any Particulars after the Court was adjourned?

Mr. *Kemp*. I don't remember I observed any one Man.

Mr. Serg. *Jefferies*. You don't? Had you any Discourse with Mr. *Deagle* at any time?

Mr. *Kemp*. Yes, I had.

Mr. Serg. *Jefferies*. What did he tell you?

Mr. *Kemp*. He did confess he was there about Seven a Clock at Night.

Mr. Serg. *Jefferies*. He did own he was amongst them?

Mr. *Kemp*. Yes, with Alderman *Cornish*.

Mr. Serg. *Jefferies*. What say you, Mr. *Rigby*?

Mr. *Rigby*. I saw him about Seven a Clock.

Mr. Serg. *Jefferies*. Was he in the Crowd?

Mr. *Rigby*. Yes, amongst the People.

Mr. Serg. *Jefferies*. Here is all now, Gentlemen, but *Dorman Newman* and *Benjamin Alsop*, and we don't go against them now. After they had done this, and hiss'd at the King, and cried, *No King, no Lord Mayor*, what Acclamations went these People off with?

Mr. *Hammon*. When the Court was broke up by the Sheriffs, they cried, *God save our true Protestant, Sheriffs*; and in that manner they followed us.

Mr. Serg. *Jefferies*. What say you?

Mr. *Hammon*. They hollowed us home, Sir, as far as *Fishmongers-Hall*.

Mr. Serg. *Jefferies*. They began with a Hiss, and ended with a Hollow.

Mr. *Williams*. Gentlemen, I am Counsel for the Defendants; and, my Lord, the Question is, under Favour, Whether these Persons taken for Defendants, whether they be guilty of this Riot, as it is laid in the Information. We are now upon a special Case, and the Question is, Whether guilty, or not guilty. My Lord, in the first Place; for the Cries; what the Cry was hath been too often mentioned; for those Cries, there is nothing at all fix'd upon any Person that is Defendant; all that is charged upon us, is, that we were in the Hall it seems,

seems, and because there was this Noise heard, therefore we must be guilty. In this Crowd where we are, I hear hissing, especially at t'other End of the Hall; which of us are concerned in it, is a hard matter to judge; it is a hard matter, and it were very well, and it had been very happy, if some of those Persons had been apprehended for their hissing. I won't say, Gentlemen, that either one Party or t'other in the Contest made the Noise of hissing, but there is nothing of it fix'd upon any of us. Our Case is this, my Lord, with Favour; When we have stated our Case and proved it, we are very innocent, and not guilty of the Riot. In some measure it hath been stated on the other side. They say in the Information, that the Lord Mayor called a Common Hall; we don't dispute that matter, we agree it, that the Lord Mayor of *London* is the King's Lieutenant; but to make such an Inference, That because the Lord Mayor is the King's Lieutenant in the City of *London*, that he must execute all the Offices in the City, is of no Credit in the World; so that they are mistaken in that. Men are bounded in their Offices. The Lord Mayor does not execute all the Offices in the City tho' he be Lord Mayor. The Question between us is this; Whether the Sheriffs, in this Case, did more than their Office as Sheriffs of the City of *London*. There is a Superiority due to the Lord Mayor. Another Thing we agree with them; we agree it is in the Lord Mayor only to call these Common Halls, and as Mr. Sergeant *Jefferies*, that hath been in a good Office in the City, he agrees it himself; and it is apparent, there are some fix'd Days for Election; but yet tho' there be fix'd Days for Election, yet there must be that Formality of a Summons from the Lord Mayor to the City, to meet in order to the Election of Sheriffs for the City of *London* and other Officers; that we do agree that my Lord Mayor hath the Power of calling Common Halls, and he is the proper Officer. We agree also, Gentlemen, that when the Business is done, for there is nothing in vain in Nature, and there is nothing in Government that should be in vain, when the Business is done, my Lord Mayor is to bid the Company, *Fare them well*, which you may call discharging the Common Hall; we agree That to be commonly and usually done by my Lord Mayor. But herein we differ, which we are to try, the Right of the Office of Sheriffs being the Question; it is a Question of Right, and I don't see the Government is concerned one way or other.

L. C. J. Upon my Word I do see it; and surely you must be blind, or else you would see it too: when a Company is got together, *No God save the King, no King, no Lord Mayor*.

Mr. Williams. My Lord, I thought I had opened it plainly, I speak before a great many People; I desire, my Lord, this may be very well heard. I thought I had said very well, from all these Noises and Cries we are all innocent, we justify nothing of it, only we would have been glad if they had apprehended any Man that made that Noise; it had been a very happy thing if one of them, or all of them had been Defendants to be tried. My Clients are Defendants, they are innocent and unconcern'd; it is a Crime committed by some where these Gentlemen were by, but they are innocent; we hear hissing at t'other End of the Room, it was an ill thing, and of a reasonable Complexion; but for these Gentlemen they are unconcern'd. The Question between the Lord Mayor and the Sheriffs of the City, is a Question

of Right between the Mayor and Sheriffs, Whether it be the Prerogative of the Mayor, or the Right of the Sheriffs? And I say, under Correction again, this Question, Whether my Lord Mayor of *London* may adjourn the Common Hall to a certain Day, is a Question of Right; Whether he can do it, or the Sheriffs? and I don't see what Consequence it can have upon the Government. The Lord Mayor is the King's Deputy, the Sheriffs they are the King's Officers; and the Question is, Whether it be in the Lord Mayor or the Sheriffs of *London* to adjourn it? They are very good Subjects, I am sure this very Year they are so; therefore I wonder at these Gentlemen of the King's Counsel, that will meddle with the Government, and say the Government is concerned in this; I appeal to any Man if there be any more Concern in this; I say this, here was a Common Hall call'd, grounded upon Custom in the City of *London*, and here is a single Question, Whether these Sheriffs did any more than their Duty; whether they were guilty of a Riot in continuing this Poll? Gentlemen, this is the Method we shall take. First of all, it is not proved, that ever the Lord Mayor, before this Time, did ever attempt to adjourn a Common Hall to any certain time; all the Witnesses that were call'd, that pretend to be knowing in the Customs of *London*, the Common Sergeant himself, he does not pretend that it was adjourn'd to a Day.

Mr. Serg. Jefferies. You mistake. *Sir Robert Clayton* did from *Saturday* to *Monday*.

L. C. J. What need if there had been no Precedent? If so be an Assembly of People are met about Business, and they can't make an End of it in a reasonable time, must they be kept all Night till they have? What Argument will you make of it? If a Man may call and dissolve, do you think if there be Occasion, but, by the Law itself, that he may adjourn to a convenient Hour?

Mr. Williams. That will be a Question between us. My Lord, what I say certainly of Fact carries something in it.

L. C. J. Not at all.

Mr. Williams. Then my Lord I have done.

L. C. J. Give us Leave to understand something, Sir.

Sir Fr. Winn. My Lord, by your Lordship's Favour—

L. C. J. I spake to *Mr. Williams*, and he takes it so heinously at my Hand that Facts signify nothing; I do again say it, the Fact signifies nothing. For I tell you again as Law, it is not denied the Lord Mayor may call, he may dissolve; then I say by Law without Fact, by Custom, he that can both call and dissolve, may adjourn to a convenient Time. Do not Judges of Assize in all the Counties of *England* do it, when a Cause is appointed to be tried in such a County such a Day, and it may be it is tried three Days after? And yet I pray find me the Statute or Commission, or find me one thing or another, besides the very Law itself, that doth give them Leave to adjourn from time to time.

Mr. Williams. My Lord, there is a mighty Difference, but I am only upon Fact; these Gentlemen will agree it was never practised before *Sir Robert Clayton's* Time; what the Consequence in Law will be, that is in your Lordship's Breast; I am now speaking upon the Evidence that this hath not been practised. What the Law is, for that we are to have your Judgment, which I humbly crave, I will

will be judged by Gentlemen that are my *Seniors*, and better read in this Matter; but, my Lord, a Man may have a Power of calling or dissolving, and not of adjourning; it may be so. But, my Lord, admitting it to be so for this Time; yet, my Lord, whether we are guilty of a Riot, take the Circumstances of our Case. Whether the Right of adjourning be in the Sheriffs, yea, or nay; it is a Question of Right, and I had rather apply myself to your Lordship, than to the Jury. If there were a Question of Right between the Lord Mayor and the Sheriffs, it may be admitted by our Counsel, that it was his Right to adjourn the Court, and probably the Sheriffs might be in the Wrong, and the Lord Mayor in the Right. The Lord Mayor adjourns the Court, and they continue it; they go on with the Poll, and go on with the Execution of their Office, as they apprehended; if they were still for their Right, I hope your Lordship will not make this a Riot. My Lord, for the Circumstances that followed, the Noise that was made, which I don't love to mention; if, I say, they were guilty of this, I am silent; but if they did no more, as I hear no more proved upon them, than continuing the Poll, then, I say, it will be hard to make them guilty of the Riot. And another thing is this; my Lord, we all know, if there were a thousand Electors, any Man knows, that when there is a Question upon an Election, it is impossible such a thing shall be carried on but there will be Reviling, ill Language, and the like; and to turn all these things to a Riot, a thing so common from the Beginning of Elections to this Time, if there be a Division and Polling, there will be something you may turn to a Riot. But, I say this, they have not instanced in any one Defendant, that he was guilty of any one particular Act that amounted to a Riot in itself, they have not instanced in one. They say of Alderman *Cornish*, that he was of the same Opinion with the Sheriffs, that they did insist upon the Rights of the City, he took it to be the Right of the Sheriffs; *And*, says one of them, *I will stand upon it, Bethel* that had been Sheriff. Now we will call our Witnesses, we will prove what hath been the constant Practice in the City, we will prove the Methods of Adjournment; and, my Lord, this is to be said, which your Lordship will observe, That the Sheriffs adjourned the Court to the very same Time with my Lord Mayor; so that it was no more than to bring the Matter to an Issue in this Case.

Sir *Fr. Winn*. Spare me a Word in this Case, my Lord. There is no Evidence produced against *Trenchard*, nor against *Jekyl* the younger, nor against *Bisfeld*, nor ——— Of these there is no Question, but they are as if they were out of the Information; I must beg Leave for a Word or two as to those Defendants, that they have offered some Evidence against. The Question is now before your Lordship, Whether they are guilty of a Riot or no? My Lord, for aught I see, it will stand upon a Nicety of Judgment; yet, if there be not Matter enough, Gentlemen, to make the Defendants guilty of a Riot, then it will clear the Defendants. My Lord, as to those Words, that really were Words that ought to be inquired into, who they were that spoke them in relation to his Majesty; I think it was a very ill Thing of those Men that saw them, that they would not neglect all manner of Business to seize them, I think it was a Duty to fix upon them; but, my Lord, there is no

Evidence to put it upon any of the Defendants. My Lord, that being pared off, now the Question is, That the Meeting together was lawful, that is agreed; then when they came together, my Lord. I do think, that if we do rely upon the Evidence, it will be a mighty hard thing to make this a Riot; setting aside those villainous Words that were spoken, which cannot relate to the Defendants. Suppose, my Lord, that among the Electors the whole Common Hall of the City, there doth a Dispute arise, before the Election is over, concerning the Adjournment of the Sheriffs or the Lord Mayor; some Men are of one Opinion, some are of another; and their Evidence, Mr. *Peter King* and another, Attorneys, I asked the Question several times, *Did the Lord Mayor of London ever interpose or concern himself in adjourning the Hall, till the Election was quite finished?* And they said, *No*. Then, my Lord, I must say it as to these particular Defendants, in such a Concurrence of People as were met there, it is as slender a Proof of a Riot as ever was, and intimates that the Citizens of *London*, they that happen not to be the greater Number, they that lose the Election, may be found guilty of a Riot in chusing other Officers, as well as in the Business of Sheriffs; which being so tender a Point, I think it will be a very severe Exposition, my Lord, to make this a Riot. But now for the Matter, we will call to your Lordship several Witnesses, Men that have been Magistrates in the City, that it was always looked upon, that my Lord Mayor, as he is the principal Magistrate, he gives Notice for Common Halls; and when the several Electors are met, and the Business is over, he directs them to go home, and dissolves them; but my Lord Mayor meddles not in every little Administration of the Election of Officers, but leaves them to inferior Officers, the Sheriffs and others; that is their Duty; my Lord, with Submission, they poll them, and send them home during the Election, therefore by Law they do this; for, my Lord, the Custom of a City, and the Custom of a Place, is the Law of the Place; and if the Custom of the Place had been, that the Sheriffs have been the Persons that have managed it, it is their Right; but the Common Sergeant he says he hath the sole Management of it; then if it be as Mr. Common Sergeant says, if that must go, upon my Word, Gentlemen, your Privileges are reduced to a little Compass. ———

L. C. J. They did confer one with another who they took to have the most Voices, and so reported it; not that he did claim any thing in his own Right, but as an Officer of the City. Now it is plain, and I think there is no Inconveniency falls upon it, if an Officer acquaints my Lord Mayor, according to the best of our Judgment, we think such a Man hath the most Voices; that does not give him a Right for him to make an Officer, not at all.

Sir *Fr. Winn*. I say what he said in his Evidence; but one of the Attorneys swears, that they have all equal Power; I wonder then who should make an End of the Business. My Lord, we will call to your Lordship ancient Citizens, that have been frequent at Elections, to give you an Account that the Sheriffs always had the Management; that my Lord Mayor never concerned himself, till he had Notice it was determined; and if that be so, and the Practice hath been so, then I don't see, under Favour, my Lord, how they will make this a Riot; that is the Case.

Mr. Thompson. Sir Robert Clayton, will you please to tell my Lord and the Jury in what manner the Election of Sheriffs hath been, and how the Mayors have usually left it to the Sheriffs in that Case?

Sir Robert Clayton. My Lord, I have never heard this Matter hath been in Question till of late; so I cannot declare much upon my own Knowledge, how the Truth of Fact is or should be; I can only say this, what the Practice hath been. When I came to the Chair, I did endeavour to know my Duty, and to do it. The first time I had Occasion to take Notice of this Matter, was in the Year of my Mayoralty; I did then, according to Custom, summon a Common Hall; when I had summon'd it, there was a Person presented to the Hall I had drunk to; the Hall did refuse him, and there was a great Noise and Hubbub upon it, and we found a way to accommodate that Matter, and left them to chuse two Sheriffs for themselves. I retired into this Court together with my Brethren, and Mr. Recorder that was then: We sent for the Sheriffs up to examine the Matter; they told us, that they could not agree the Thing, there were four Persons in Nomination, but they had granted a Poll. After this we went down into the Hall; of that Mr. Common Sergeant hath given some Account, and Mr. Sergeant *Jefferies*; I shall to the best of my Memory give the best Account I can of it: I shall only tell you what I did understand to be my Duty: I do not determine what the Practice was, but what I understood to be my Duty. When we came down into the Common Hall, to declare how the Matter stood, and that a Poll was agreed upon and granted, we would have adjourned the Court to a longer Time; but the People cried out, to go to the Poll presently. I was, as you have been told by Mr. Common Sergeant, to go to the Trial of one *Giles*, upon the Assassination of *Arnold*, to the *Old Baily*. I did twice or thrice attempt to get down out of the Hall through the Crowd, and was repulsed, the Crowd was so great I could not get through, but was fain to retire back again to the *Hustings*, as I remember, two or three times. There might be some such Discourse as Mr. Common Sergeant hath said; but thus far I can remember, that I did both myself and the Common Sergeant, signify to them the Business I was about, and so many Aldermen as made up a Bench, together with Mr. Recorder, to manage that Business, must go; and that I would leave the Sheriffs to manage the Poll, which I thought was their Duty.

Mr. Thompson. Did you take it to be their Right?

Sir R. Clayton. I did not apprehend it to be my Right then.

Mr. Thompson. And therefore you left it to the Sheriffs as their Right?

Sir R. Clayton. I left it to the Sheriffs to manage the same.

Mr. Williams. Sir Robert Clayton, I suppose when you were Lord Mayor, you were as much for the Honour of the Chair as any Man, you would not have quitted the Right of the Chair?

Sir R. Clayton. I did not; there was a Trial of me in that Case.

Mr. Williams. Now, Sir, for adjourning the Poll: Did you know any such Question, whether a Poll was to be adjourn'd upon the Election of any Sheriffs?

Sir R. Clayton. There hath been a great Noise about Adjournments of late. That Poll was the

most litigious of any that I know we have had before or since; that was adjourned for several Days.

Mr. Williams. Who adjourn'd that Poll?

Sir R. Clayton. The Sheriffs did adjourn it, I think, Gentlemen; I do think the Sheriffs did adjourn it, I was not present.

Mr. Att. Gen. Sir Robert, don't serve the Court thus.

Mr. Williams. Don't brow-beat our Witnesses, Gentlemen; I know, Mr. Attorney, you are an Example of fair Practice: We are examining our Witnesses.

Sir R. Clayton. Pray, my Lord, let me explain myself; I shall let Mr. Attorney General understand me. I did never appear at *Guild-hall*, unless upon the Account of a Court of Aldermen; I did never appear at *Guild-hall*, but the first Day we had Consultations here in this Court about the Adjournment, and upon the *Hustings* about going about the Business we intended, and the Hall was very intent upon the Poll; I twice attempted to go out, and could not get out; whereupon we were fain to acquaint the Hall, as well as we could for the Noise, of the Business we were to go about, and they let me go. I left behind the Sheriffs and the Common Sergeant; how long they stay'd, I can't tell; I can, upon my own Knowledge give no Account of them. I was not consulted, to the best of my Knowledge, afterwards, nor did give any particular Directions for Adjournment. I did not do it for this Reason; I did not look upon it to be in my Power: If I had such a Power, I did not understand it.

Mr. Williams. Sir Robert, how many Days do you think that Poll continued?

Sir R. Clayton. About six Days.

Mr. Williams. Of those six, how many Days were you present?

Sir R. Clayton. I did not understand it to be my Duty, and so did not look after it.

Mr. Thompson. Sir Robert Clayton, I desire to ask you a Question, as to this Matter you have given in Evidence: Do you give it to the best of your Remembrance, or positively?

Sir R. Clayton. I tell you I speak to the best of my Remembrance every thing that I say.

Mr. Att. Gen. Sir Robert Clayton, I beg your Favour, To the best of your Remembrance, is no Evidence, it is so lately; if you please, Sir Robert, you are to give Evidence of a Thing about three Years ago. I ask you, upon your Oath, Who were your Sheriffs?

Sir R. Clayton. Sir Jonathan Raymond, and Sir Simon Lewis.

Mr. Att. Gen. I would ask you then a plain Question, Sir Robert, because you come in with your Remembrance: Did you give express Direction to the Common Sergeant or the Sheriffs to adjourn, upon your Oath?

Sir R. Clayton. I must, Mr. Attorney General, by your Favour, take in my Remembrance.

Mr. Att. Gen. Then you are no Evidence. Sir Robert, Did you give Directions or not, upon your Oath?

Sir R. Clayton. I can't say it was given.

Mr. Att. Gen. Did you, or did you not?

Sir R. Clayton. My Lord, I hope I have spoke *English* in the Case: We did discourse of the Adjournment in this Court, I believe it was discours'd below; but, as I said, I was engaged to go to the *Old Baily*, and I would leave that Matter to the Sheriffs, whose proper Business I understood it to be.

Mr. Att.

Mr. *Att. Gen.* I asked you, Sir *Robert*, one of the plainest Questions that ever was asked; I ask you whether you gave the Sheriffs or the Common Sergeant express Order to adjourn?

Sir *R. Clayton*. I believe I did not.

Mr. *Att. Gen.* Did the Sheriffs tell you they had a Right then?

Sir *R. Clayton*. There was no Dispute who had the Right.

Mr. *Serg. Jefferies*. Sir *Robert Clayton*, if you please, I would ask you a Question or two. Do you remember that the Court was adjourned while you were there or not? Do you understand the Question, Sir *Robert*? Do you remember the Common Hall was adjourned while you were there?

Sir *R. Clayton*. Yes, Sir, if you give me Leave to explain myself, I think the Common Hall was adjourn'd; it was declared; but there was such a Noise in the Hall, that the People could not hear it.

Mr. *Serg. Jefferies*. But there was a sort of Declaration made by yourself, you did make an Adjournment; but the Noise was such, that the People did not hear: And if you remember, there was a Person affronted one of the Sheriffs, and I committed him to Custody upon it.

Sir *R. Clayton*. We desir'd to adjourn for an Hour or two, that we might go and refresh ourselves.

Mr. *Serg. Jefferies*. Then you remember there was an Adjournment: I ask you whether it was appointed to be made by you or the Sheriffs?

Sir *R. Clayton*. Truly I believe it was appointed by me.

Mr. *Serg. Jefferies*. Sir *Robert*, by asking a Question or two, Sir *Robert*, I know I shall bring some Things to your Remembrance.

Sir *R. Clayton*. My Lord, I don't know I have given any great Occasion of Laughter to my Brethren; these Adjournments have been very common with us, and I might agree to it, or order it, or direct it; but one of them I believe I did, or two of them.

Mr. *Serg. Jefferies*. Sir *Robert*, I would only have a Question or two asked, and I know by asking a Question or two, I shall bring Things to your Memory, which I am sure you cannot easily forget: Were there Directions given for Proclamation to be made for all Parties to depart in the King's Name?

Sir *R. Clayton*. I believe there might.

Mr. *Serg. Jefferies*. The next Question is, Whether the Sheriffs ordered that Proclamation to be made for all Parties to depart?

Sir *R. Clayton*. If it were done while I was present, I make no Doubt in the Case but I did direct it, I make no Question of that.

Mr. *Serg. Jefferies*. Very well: Now, Sir *Robert Clayton*, we are got to an Adjournment to a Time by your Direction, and Proclamation by your Direction. Now I will ask another Question, upon your Oath: Was not you in the Common Hall, and gave Order for an Adjournment till *Monday* following; for I remember that Day to be *Saturday*?

Sir *R. Clayton*. Truly I don't remember that.

Mr. *Serg. Jefferies*. You do not! Sir *Robert*, you know very well, that the Sheriffs of *London*, when the Lord Mayor and Aldermen come back to the *Hustings*, the Sheriffs sit remote, one on the Right-hand, and the other on the Left, furthest from the Lord Mayor; so that all the Aldermen

fit nearer to the Lord Mayor than the Sheriffs do: Did you mind that the Sheriffs came to you to speak to you any thing of an Adjournment?

Sir *R. Clayton*. I never saw it.

Mr. *Jones*. I would ask you a Question or two: You know this Gentleman, don't you?

[Pointing to the Common Sergeant.]

Sir *R. Clayton*. Yes.

Mr. *Jones*. Did he attend the Court at that Time?

Sir *R. Clayton*. Yes.

Mr. *Jones*. Sir *Robert*, I ask you a fair Question, Did you lay any Command on him to adjourn the Hall at that Time, from *Saturday* till *Monday*?

Sir *R. Clayton*. Pray, my Lord, give me Leave to answer Mr. *Jones* in my own way.

Mr. *Jones*. My Lord, I'm in your Judgment, it is a fair Question within his own Recognizance lately done, he ought to answer positively, Yes or No.

Sir *R. Clayton*. Am not I upon my Oath; can you tell me what I can say?

Mr. *Jones*. Ay or No. Any honest Man would do it.

Sir *Fr. Winn*. All Witnesses answer their own way, Don't they?

Mr. *Jones*. Let him answer then his own way.

Mr. *Att. Gen.* My Lord, you know there is a Rule in Chancery, if it be a Matter within seven Years, if it be not answer'd positively, it is no Answer: If one asks a Witness a Question that lies within a little while, if he will not answer either affirmatively, or negatively, he is no Witness.

L. C. J. I can't tell, Mr. Attorney.

Mr. *Jones*. Will you answer or no, Sir *Robert Clayton*, whether you commanded the Common Sergeant to go and adjourn the Hall or no?

Sir *R. Clayton*. I don't remember that I did.

Mr. *Jones*. Then I only ask you this further Question, Whether Mr. Common Sergeant did not tell you, that it was not his proper Business to do it, and that unless you would lay express Commands upon him, and put the very Words in his Mouth, he did desire to be excused, and did he not stand there?

[Pointing to the Bar.]

Sir *R. Clayton*. I have heard, Sir, what Mr. Common Sergeant did say, and I cannot charge my Memory with it; but I have that Charity for Mr. Common Sergeant, to believe there might be Discourse to that Purpose.

Sir *Fr. Winn*. Mr. *Love*, in all your Experience, what do you remember?

Mr. *Williams*. How long have you known *Guild-hall* and Elections?

Mr. *Love*. I suppose, my Lord, these Gentlemen don't expect I should say any thing that was done that Day; but, my Lord, all that I suppose you expect from me is, what I did observe to be the Practice of the City; to the best of my Remembrance, I shall give you an Account. My Lord, about 22 Years ago, I did observe the Practice to be this; when I was call'd into this Office of Sheriff, I took it as a thing for granted, that it was the Sheriff's Office to manage the Common Hall, that I did, as my Lord Mayor's was to have a Sword borne before him; I have received it by Tradition from all before me, and my own Experience. My Lord, I remember when we came to chuse Sheriffs upon *Midsummer Day*, after the Lord Mayor and Aldermen had been there, my Lord Mayor said to me and my Brother Sheriff; Gentlemen, look to your Office. We accordingly went to it, and chose two Sheriffs, one Gentleman

that

that had been drank to by my Lord Mayor, I think it was Alderman ——— but notwithstanding that Drinking to him, we took no Notice of that as a Ceremony, he was put in Nomination among others, and being a Senior sitting Alderman, we returned him; otherwise, my Lord, I assure you I would not have returned him, notwithstanding the Drinking. After once that the Lord Mayor and Aldermen withdrew to go to the Council-Chamber, they said to us, Now, Gentlemen, look to your Office.

Mr. *Thompson*. What was your Office?

Mr. *Love*. To chuse Sheriffs.

Mr. *Thompson*. Did my Lord Mayor meddle with the Election, or left it to the Sheriffs?

Mr. *Love*. Left it to the Sheriffs.

Mr. *Williams*. What was your Opinion, Sir, was it in the Lord Mayor to take the Poll, or the Sheriffs?

Mr. *Love*. Truly, Sir, I am not a competent Judge of whose Right it was; but if my Lord Mayor had gone about to meddle in it, I should have prayed my Lord Mayor to meddle in his own Office, and let me alone with mine.

Mr. *Att. Gen.* Yes, Mr. *Love*, you were then the Tribunes of the People.

Sir *Fr. Winn*. Here are some say the Common Sergeant and the Common Cryer have a Power, nay, the whole Power of ordering the Hall during the Election. What is the Office of the Common Sergeant there?

Mr. *Love*. Truly, Sir, I look upon the Common Sergeant and the Common Cryer as Persons left to assist us, because they could not put us to the Trouble of crying Oyes ourselves; and if any Common Sergeant or Common Cryer had durst to put a Question without my Direction, I would have known whether he could or no.

Sir *Fr. Winn*. Mr. *Love*, Was it ever discours'd to you when you was Sheriff, or before, or since, that ever my Lord Mayor did interpose before the Election was over?

Mr. *Love*. Since I was discharged of being a Magistrate, I never was at a Common Hall since. I have spent my Money for the City's Service, but never got a Penny by them; I never heard, that ever the Lord Mayor, till these late Times, interposed, but that the Sheriffs managed the whole Business of chusing Sheriffs.

Mr. *Att. Gen.* Mr. *Love*, I desire to have a Word with you; you speak of the Time of your Reign; I would ask you a plain Question, Was it before the King came in?

Mr. *Love*. It was that Year the King came in.

Mr. *Att. Gen.* Was you chosen before?

Mr. *Love*. Yes, I was.

Mr. *Att. Gen.* Do you remember an Act of Parliament in 48, then in Force, of shutting out my Lord Mayor?

Mr. *Serg. Jefferies*. I would ask him a Question or two. Hark you, Mr. *Love*, Let me ask you a Question or two.

Mr. *Love*. Sir *George*, I would give Mr. Attorney an Answer.

L. C. J. What would you make of it? If you ask him of an Act of Parliament, it is something.

Mr. *Att. Gen.* You speak of a Time when my Lord Mayor had no more to do with it than I had. There was an Ordinance of Parliament, did you never see that?

Mr. *Love*. To the best of my Remembrance I never saw it in my Life.

Mr. *Att. Gen.* Nor heard of such a Thing?

Mr. *Serg. Jefferies*. Hark you, Mr. *Love*, I perceive you would have disputed with my Lord Mayor; who was the Lord Mayor that you talk of?

Mr. *Love*. Sir *Thomas Allen*.

Mr. *Serg. Jefferies*. Now I would desire to know whether you remember the City before the King came in?

Mr. *Love*. For a little while.

Mr. *Serg. Jefferies*. Do you remember any thing of that Custom of the Lord Mayor's Drinking to Sheriffs; was not that used before the King came in?

Mr. *Love*. A long time.

Mr. *Serg. Jefferies*. It is well enough; a long time.

Mr. *Williams*. My Lord, we have seven or eight more to the same Purpose, but we are satisfied with these, Gentlemen: We will prove, if there was any thing like a Riot, we will prove my Lord Mayor, and those that were with him, were the Authors of it.

L. C. J. When Multitudes of People are gather'd together upon a lawful Occasion, supposing that they had a Right to be there, I do say that in that case it would be much a Mitigation of the Fine, so for this same Riot; but on the other Side you must know, that these Men that do it, it doth not excuse them for *ignorantia juris*; is not an Excuse. It is true, if they had had a lawful Occasion to continue to do it, but in truth they had not, that will excuse them *à tanto*, but *non à toto*.

Mr. *Holt*. My Lord, I beg to put in this Case; there is a great deal of Difference where a Person does claim a Right to himself, and does an extravagant Action. Now, my Lord, these Persons did claim a Right to themselves to continue the Common Hall, and that it was not in my Lord Mayor's Power to adjourn it without them: Now, my Lord, they claimed this Right, if they used no Violence, that is excusable. If I should claim a Right to another Man's Estate, tho' I have no Title, and say I have a Right, and give it out in Speeches, no Action lies against me; but if I do an extravagant Action, and say another Man hath a Title, there lies an Action against me.

L. C. J. Now go to your Fact.

Sir *Fr. Winn*. My Lord, put a Point to us, and we need not call more Witnesses.

L. C. J. I don't speak to hinder you from calling your Witnesses.

Sir *Fr. Winn*. I put this Case, we undertake to prove, that it was always looked upon, that it was the Right of the Sheriffs: Suppose, my Lord, upon the Dispute it should be found, that the Opinion of the Jury should be otherwise; will this turn to an illegal Act?

L. C. J. Call your Witnesses.

Mr. *Wallop*. I beseech your Lordship I may put one Case in this Point; in a Point of Right, if they have a probable Cause to insist upon it. Suppose I send forty Men to a Wood, and take a Car or a Team, if they be a competent Number to cut down Wood, if we are mistaken in the Title, that is no Riot. *Lambert* puts the Case.

L. C. J. But what if I had sent a great many Men to cut down the whole Wood?

Mr. *Williams*. We will call some Witnesses that will take us off from the Riot thus, if so be we can excuse ourselves of the Disorder, and put it upon my Lord Mayor, then we are innocent.

L. C. J.

L. C. J. Very well, if you do that.

Mr. — *Mr. Sibley*, Are you acquainted with the Manner of the Election of Sheriffs? How long have you known it?

Mr. Sibley. I have been of the Livery ever since 39; in all my Time, I speak, Gentlemen, to the best of my Remembrance; it hath been the Custom in all my Time, except here of late, that the Sheriffs of *London* have had the Management of the Election.

Mr. — Did my Lord Mayor ever interpose till the Election was over?

Mr. Sibley. I never knew my Lord Mayor interpose till lately.

Sir Fr. Winn. Did you ever hear my Lord Mayor pretend to it till of late?

Mr. Sibley. No, my Lord.

Sir Fr. Winn. Did the Mayor use to be present at any Election during the Election?

Mr. Sibley. I have been most commonly there.

Sir Fr. Winn. But the Mayor; would the Mayor be there?

Mr. Sibley. The Mayor and Aldermen went off the Bench.

Sir Fr. Winn. Who managed the Elections?

Mr. Sibley. The Sheriffs.

Sir Fr. Winn. Were the Common Sergeant and the Common Cryer there?

Mr. Sibley. The Common Sergeant and the Common Cryer are always there.

L. C. J. I pray thus; you have known the City, it seems, a great while. I would ask you this: Pray who did call the Assembly that was to chuse the Sheriffs, did the Sheriffs, or the Lord Mayor?

Mr. Sibley. We commonly received the Tickets by the Officers of the Companies.

L. C. J. Did the Officers of the Companies summon the Assembly? Hark you, pray, Sir, recollect yourself; Do you take it, that the Officers, the Beadles it may be, of the several Companies, did they summon the Livery-men, and so a Common Hall was call'd together; was it so in your Time?

Mr. Sibley. It hath been commonly so; we have received Tickets from the Beadle of the Company.

L. C. J. And my Lord Mayor had nothing to do with it then?

Mr. Sibley. What Order the Masters and Wardens had from my Lord Mayor, I never inquired into that.

L. C. J. When the Hall was dissolved, who ordered Proclamation to be made, the Sheriffs or the Lord Mayor?

Mr. Sibley. My Lord Mayor hath not used to be there.

Mr. Thompson. When they had done, they went away. He won't trouble your Lordship.

L. C. J. Pray, had my Lord any hand in Summoning; did he direct the Summoning of them?

Mr. Sibley. It is more than I know.

L. C. J. You bring a Witness that knows nothing of the Matter.

Mr. Serg. Jefferies. *Mr. Deputy Sibley*. Give me Leave to ask *Mr. Sibley* a Question or two: I shall set him to-rights presently. *Mr. Sibley*, if I be not mistaken, you are one of the Company of Tallow-Chandlers, and you have been Master of the Company, and you have been Warden of the Company. You very well know what Directions are given to the Beadle are generally by the Master or Wardens: Pray, upon your Oath, when you were Master or Warden, was there ever any Pre-

cept sent to you to summon a Common Hall?

Mr. Sibley. Indeed I don't remember that, Sir.

Mr. Thompson. If your Lordship please, we have done with our Evidence; I would beg your Lordship's Opinion in it.

Sir Fr. Winn. We do admit my Lord Mayor summons the Court.

L. C. J. But you bring a Witness that knows nothing in the World of it, but yet you would have it taken for Gospel, that the Sheriffs had all the Management before that time forty Years together, till now very lately. But when he comes to be asked, how is this Assembly or Common Hall call'd together, alas! he knows no more of that than one in *Utopia*.

Mr. Thompson. My Lord, we have several other Witnesses, but we will call no more.

Mr. Att. Gen. If you have no more, we will call two or three more.

Mr. Thompson. We have some to prove, that my Lord Grey came to speak with *Sir William Gulston*, and went away again; and we desire to call *Sir Thomas Armstrong*.

Sir Fr. Winn. My Lord, if your Lordship pleases, thus, there will be it seems some particular Defences made. Your Lordship hath heard their Evidence, and what we have said; we desire to call two or three Witnesses to another Head. Your Lordship hath heard there was some Rudeness by some of the People, but who they were it doth not appear. We will call two or three Witnesses of the Behaviour of those Men and Company that came with my Lord Mayor; that whatsoever Disturbance was made, they were the chief Men that made the Disturbance, and my Lord Mayor could not help it, nor we neither.

L. C. J. *Sir Francis*, I believe those Men that would not have *God save the King*, my Lord Mayor could not hinder them; but will you undertake to prove, that those that came with my Lord Mayor, that they were the Men?

Sir Fr. Winn. They were with them, my Lord.

Mr. Serg. Jefferies. They were with them that cry'd, *God blefs the Protestant Sheriffs*.

Mr. Sibley. My Lord, I desire to explain myself to what I said; it is several Years ago since I was Master of the Company; I do not remember, but I believe the Summons was directed from my Lord Mayor.

Mr. Freak. *Mr. Winstanley*, what Account can you give to my Lord and the Jury?

Mr. Winstanley. I have lived near the Hall, and I often came in, but I was not a Livery-man upon that Poll that was between *Mr. Kiffen* and *Sir Robert Clayton*; the Sheriffs managed it.

Mr. Freak. Who managed it?

Mr. Winstanley. The Sheriffs.

Mr. Freak. Who declared?

Mr. Winstanley. The Sheriffs.

Mr. Freak. Did the Mayor come down to declare the Election?

Mr. Winstanley. The Mayor came down after the Poll, but the Sheriffs took the Poll.

Mr. Freak. Who was then Mayor?

Mr. Winstanley. *Sir James Edwards* was Sheriff, and *Sir John Smith*.

Mr. Freak. Who was Mayor?

Mr. Serg. Jefferies. It was *Sir Samuel Starling*.

Mr. Freak. Who put the Question upon the *Hustings*?

Mr. Winstanley. I can't tell.

Mr. Freak.

Mr. *Freak*. What did you hear the Sheriffs say, or see them do?

Mr. *Winstanley*. The Sheriffs presently granted a Poll, and parted one to one Door, and the other to t'other.

Mr. *Freak*. And who took the Poll?

Mr. *Winstanley*. The Sheriffs took it.

Mr. *Freak*. Who declared the Election?

Mr. *Winstanley*. The Sheriffs.

Mr. *Freak*. Who were Sheriffs then?

Mr. *Winstanley*. Sir *James Edwards*, and Sir *John Smith*.

Mr. Serg. *Jefferies*. Mr. *Winstanley*, I would ask you this Question: Do you take it upon your Oath, that the Sheriffs declared the Election?

Mr. *Winstanley*. I declare upon my Oath, that the Sheriffs took the Poll.

Mr. Serg. *Jefferies*. Mr. *Winstanley*, you may guess pretty well what I mean by this. First of all, I ask you, Did the Sheriffs put the Question?

Mr. *Winstanley*. The Sheriffs took the Poll, Sir.

Mr. Serg. *Jefferies*. Nay, answer my Question: Did the Sheriffs put the Question, or did any body else?

Mr. *Winstanley*. Truly, Sir, I have forgot; you were there.

Mr. Serg. *Jefferies*. I know I was, Sir: I know very well: I ask you upon your Oath, who was it that declared the Election afterwards, upon your Oath?

Mr. *Winstanley*. Truly, Sir *George*, I don't remember.

Mr. Serg. *Jefferies*. Mr. *Winstanley*, one went out at one Door, you say; and t'other went out at t'other, you say; now I say, Who took Notice, and told the Names of those that went out at one Door and t'other?

Mr. *Winstanley*. The two Sheriffs.

Mr. Serg. *Jefferies*. Who else?

Mr. *Winstanley*. I can't tell.

Mr. Serg. *Jefferies*. Do you remember me there at the great Door, when they poll'd and went out? Do you remember who told them?

Mr. *Winstanley*. No, truly.

Mr. Serg. *Jefferies*. Pray, do you remember when one Mr. *Broome*, a Wax-chandler, was chosen Ale-conner?

Mr. *Winstanley*. I was in the Hall; but I do not charge my Memory with it.

Mr. *Sol. Gen.* Hark you, Mr. *Winstanley*, Who is it grants the Poll when it is demanded?

Mr. *Winstanley*. I do remember very well, Sir *George Jefferies* was in the Hall; they demanded a Poll, and so went out.

Mr. *Sol. Gen.* Who granted it?

Mr. *Winstanley*. The two Sheriffs.

Mr. Serg. *Jefferies*. I will put you a Case nearer home, Mr. *Winstanley*: You remember when Sir *Thomas Player* was chosen Chamberlain, when the Question was put, Who should be Chamberlain, between him and a Gentleman I see not far from me; Who, do you remember, managed the Poll then?

Mr. *Winstanley*. There was no Need, Sir *George*.

L. C. J. What do you mean to do with these little Witnesses? You call Witnesses that know nothing of the Matter, or nothing to the Purpose.

Mr. Serg. *Jefferies*. My Lord, let me ask him but one Question more: I know he hath been a very great Evidence in this Case; I remember when that Gentleman was in for Bridge-master: Who was the Poll demanded of at that Time?

Mr. *Winstanley*. Truly, Sir, I think it was demanded of the Court.

Mr. Serg. *Jefferies*. Of the Court?

Mr. *Winstanley*. Usually upon other Days, my Lord Mayor, and the Court come down; but upon *Midsummer Day* they go up.

Mr. Serg. *Jefferies*. But I ask you, of whom the Poll was demanded at that Time?

Mr. *Winstanley*. I don't remember it, I'll assure you.

L. C. J. You told us that Point would be granted, and you would not stand upon it.

Mr. *Williams*. My Lord, where there are so many Men, there may be many Minds: I would have your Lordship and the Jury hear them.

Mr. *Jones*. The Government is concerned, Mr. *Williams*.

Mr. Serg. *Jefferies*. This is not a Matter of Mirth I'll assure you; it reaches the Government.

Mr. *Williams*. My Lord Mayor hath the Power of adjourning the Hall, but not till the Business is done.

Mr. *Thompson*. My Lord, I would put you a Case* — Sure, Mr. *Jones*,^{* Here Mr. Jones offered to interrupt Lm.} I ought to be heard. If my Lord Mayor hath Power to call a Common Hall, he hath not to adjourn it before the Business is done.

L. C. J. If a Writ come to the Sheriffs to chuse Parliament-men, then the Sheriffs have it; but this is my Lord Mayor's Office, he hath Power to dissolve and adjourn.

Mr. *Thompson*. I speak to this Case, my Lord; I will shew your Lordship an Instance where it cannot be done. My Lord Mayor hath Power to call here, and he hath Power to dissolve, say they: My Lord, it cannot be, with Submission, in all Cases. He hath Power to call an Assembly when there is a Mayor to be chosen; and the Citizens have a Privilege to move their Mayor, or continue him: Now if it were in the Power of the Mayor, and there should happen a Question, Who they were? For, in a great Number of Electors, if it were in his Power to adjourn from time to time, he must continue Mayor.

L. C. J. It is plain he may do it for all your Objection. You know it was agreed by all Sides, that Sir *Samuel Starling*, the Lord Mayor, had well dissolved the Assembly, that is, in point of Law, and they could not say the Assembly was in Being; yet afterwards there was an Action brought against him; and there they laid, how that maliciously, and to the Intent that he who was chosen into the Place of Bridge-Master, to which he was duly elected, should be set aside, he goes and dissolves the Assembly, and denied to grant him a Poll, which they ought to have had; yet for all that the Assembly was well dissolved.

Mr. Serg. *Jefferies*. Conclude, Gentlemen, conclude.

Mr. *Thompson*. That which I have to say is a Point of Law.

Mr. Serg. *Jefferies*. Sir *Fr. Winnington*, if you design to conclude, I tell you beforehand, I would not interrupt you; we will call a Witness or two.

Sir *Fr. Winn*. My Lord, because we would make an End, I will call two of those Men that came with my Lord Mayor, to shew that if there was any Rudeness, those very People that came with my Lord Mayor, were the Cause of it.

Mr. *Sol. Gen.* That they that came with my Lord Mayor, caused them to stay after my Lord was gone.

Mr.

Mr. *Thompson*. Mr. *Jackson*, pray can you remember, whether any of the Defendants here, were concern'd in any Affront to my Lord Mayor, or who it was that my Lord Mayor received an Affront from?

Mr. *Jackson*. I did observe, my Lord, as he went out of the Hall, I took my Back and set it against the Crowd, and had my Face towards my Lord Mayor; and I was crowded so, that I could scarce see myself one way or other, but got off the Steps at last, and went home with my Lord Mayor.

Mr. *Thompson*. Can you say who struck off the Hat?

Mr. *Sol. Gen.* Where do you live, pray?

Mr. *Jackson*. I live at *Charing-cross*.

Mr. *Sol. Gen.* With whom?

Mr. *Jackson*. With myself, Sir.

Sir *Fr. Winn*. What is your Name?

Mr. *Serg. Jefferies*. Don't you know the Sword-bearer of *Bristol*, Sir *Francis*?

Mr. *Thompson*. Mr. *Roe*, were you here when my Lord Mayor was crowded? Who offered any Affront?

Mr. *Williams*. Pray will you give my Lord and the Jury an Account of what you heard, and where the Disorder began?

Mr. *Roe*. My Lord, I was in *Cheapside*, and I heard a great Noise of huzzaing, and a terrible Noise indeed; and I met with a Fellow running, my Lord, and I stop't the Fellow: What is the Matter? Nothing, said he, but an old Fellow riding *Skimmington* and *Skeleton*; and in the Street I saw a matter of a Hundred with their Hats upon Sticks, crying, Damn the Whigs; said I, *Gentlemen, What's the Matter?* said they, *The Work is done to stop the Poll*; and that is all.

L. C. J. Hark you, Were you in *Guild-hall*?

Mr. *Roe*. I followed them a little Way down the Street.

L. C. J. Hark you, Did you see my Lord Mayor's Hat down upon the Ground; and was he like to be thrown down; did you see that?

Mr. *Roe*. No, I saw nothing of that; I heard such a Noise, I was glad I had got rid of them.

Mr. *Williams*. My Lord, we have no more to say in the general; all that I have to say now is for my Lord *Grey*. The Evidence against my Lord *Grey*, was, that he was here: Now, my Lord, we have Witnesses more particularly to defend my Lord *Grey*.

Mr. *Att. Gen.* We shall call a Witness or two to clear what that Gentleman said when Sir *Robert Clayton* was Mayor.

Mr. *Serg. Jefferies*. Pray, Gentlemen, let us have a little Patience. Pray, my Lord, if your Lordship please—Here is such a horrid Noise—Upon all the Matter, I don't perceive, but Sir *Robert Clayton* does himself believe Proclamation was made by him; he does believe the Adjournment was made by him; but as to the Adjournment to *Monday*, he is not certain of that. But if your Lordship pleases, we have here both the Sheriffs, Sir *Jonathan Raymond*, and Sir *Simon Lewis*, that will shew the Court whether there was any such thing.

Mr. *Att. Gen.* Before *Bethel* came out of the North, no Sheriff ever pretended to it.

Mr. *Serg. Jefferies*. Pray, Sir *Simon Lewis*, I desire you would satisfy my Lord and the Jury concerning the Adjournment when you went to the Sessions House in the *Old Baily*: Did you

order the Adjournment of the Poll, or my Lord Mayor?

Sir *Simon Lewis*. We came and waited upon my Lord Mayor here, and told him they demanded a Poll without; we took his Directions, and my Lord Mayor did adjourn the Court, by reason that the Assassins of *Arnold* were to be try'd; and by reason of that it was adjourn'd till *Monday*, and my Lord Mayor and the Aldermen went thither; but indeed we were left as Prisoners, and I receiv'd a Blow on my Breast.

Mr. *Att. Gen.* Sir *Jonathan Raymond*, Did you pretend to have the Power then of adjourning the Court?

Sir *Jon. Raymond*. My Lord did adjourn the Court because of that Trial, and then afterwards we went upon the Poll; we were several Days upon it: We only appointed from Day to Day till we had made an End; and when we had made an End, we declared it to my Lord Mayor and the Court of Aldermen; and my Lord Mayor and the Court of Aldermen came upon the *Hustings*, and declared who it fell upon.

Mr. *Att. Gen.* Sir *James Smith*, When you were Sheriff, did you pretend to have any such Power?

Mr. *Serg. Jefferies*. Upon your Oath, Did you pretend to have a Power of adjourning Common Halls?

Sir *J. Smith*. No, Sir; we were Sheriffs immediately after Sir *Robert Clayton*; I never heard it questioned but my Lord Mayor had the Right of it.

Sir *Fr. Winn*. Sir *Jonathan Raymond*, I think you say the Sheriffs did adjourn from Day to Day at that Time?

Sir *J. Raymond*. We could not make an End of Polling; and we did appoint from Day to Day till we had made an End of Polling.

Mr. *Com. Serg.* My Lord, I will give your Lordship an Account of that whole Day's Proceedings: We came to the Hall, and after Mr. Recorder, Sir *George Jefferies* had attempted to speak to the Hall, (for they were in such a Tumult they would not suffer him to speak) my Lord Mayor withdrew: There was a very great Clamour and Noise; but at last the Question was put; and I came up with the Sheriffs hither, and acquainted my Lord, that Mr. *Bethel* and Alderman *Cornish* had the most Hands, and that there was a Poll demanded between Mr. *Box* and Mr. *Nicholson*, and Mr. *Bethel* and Mr. *Cornish*; then the Dispute lay as between *Box* and *Nicholson*, and Alderman *Cornish* and Mr. *Bethel*: I acquainted my Lord Mayor that was, Sir *Robert Clayton*, that Mr. Recorder said he would not go down to make Declaration, they would not hear him: Upon that Sir *Robert Clayton* took a Paper and gave it to me, with these very Words: [It is the greatest Tumult I was ever in all my Life, and I have some Reason to remember it.] Pry'thee, says he, do you make Declaration to them; for if they will hear any body, they will hear thee: Sir, says I, because it is not the Duty of my Office, I desire your particular Direction: Then, says he, tell them I must adjourn it till *Monday*, because I must go to the *Old Baily*, to try the Assassins of *Arnold*: Whereupon the Hall was adjourn'd, and in a great Tumult, and my Lord Mayor attempting to go out, he was beat back twice or three times; he spake something to them, and they went away, leaving me and the Sheriffs upon the *Hustings*, and there they kept us Prisoners till six or seven o' Clock at Night. On *Monday*, when

when we came to Poll again by his Direction, I went to his House, and he gave me Direction to go with the Sheriffs to adjourn it; afterwards there was a Court of Aldermen purposely called, and, upon their Direction, I took the Poll and kept it, and every Adjournment was made by his particular Direction to me.

Sir Robert Clayton. Gentlemen, I do desire I may explain myself, because I was imperfectly heard: Some Part of the Story that Mr. Common Sergeant does say, I do remember, and will tell you what I do remember of it. I remember the coming up, and I remember, that Mr. Recorder was not willing to go down, there was such a Hubbub; I remember that very well. The particular Words I said to him, I cannot charge my Memory with; we had discoursed. I remember the Adjournment, and we discours'd of the Adjournment below; we made Proclamation, but the Noise was so great they could not hear; and upon my attempting to go out, I was beaten back twice or thrice, and then we were fain to let them know the Business we went about as well as we could, and then they let me go, and I left the Sheriffs with them to agree of the Manner and Methods of Polling. There were several Adjournments made afterwards; I can't charge myself with it: I might be particularly consulted; but for the particular Times of Adjournment, I did not think myself concerned in point of Reputation; if I thought I had been blameable, I should have concerned myself to have given more particular Directions.

Mr. Thompson. If your Lordship please, I have but this; admitting the Right to be in the Lord Mayor —

L. C. J. Do you make a Doubt of it now?

Mr. Thompson. Admitting it, those Gentlemen that came to continue the Poll, it is a Question whether they can be guilty of the Riot or not.

Mr. W. — There are some three or four of the Defendants that have a particular Case; that stands by themselves; and it rests upon this Point, Whether my Lord Mayor hath this Power or not. For so much of the Evidence as concerns any Noise or Hissing, or any thing of that, That relates to the Time of Adjournment; for it was done at the Time of the Adjournment. As for *Mr. Cornish*, *Mr. Goodenough*, my Lord Grey, and one or two more, they did not come till within some three Hours after that, so that they cannot be engaged in the Noise, or That.

L. C. J. It is no matter, they came time enough.

Mr. Williams. We have done, my Lord, with the general Evidence; we have something to say in Defence of my Lord Grey; all the Evidence against my Lord Grey is this, that he was here about Seven a Clock at Night. For that, Gentlemen, we say this; that my Lord Grey had some Business here, and my Lord's Business was this; my Lord Grey was here about the Sale of a Manor in *Essex* with *Sir William Gulston*; my Lord, they had appointed this very Day for that Business, it was my Lord's Interest mightily to pursue it, and *Sir William* happened to be at *Sir Thomas Player's*, and knowing this to be an Election-day, my Lord dined that Day at an Eating-house in the *Hay-Market*, and afterwards came to *Peter's Coffee-House* in *Covent-Garden*, and staid there till between Four and Five a Clock in the Afternoon, when he thought the Heat would be over; and then he came to make Inquiry after *Sir William*,

and took up in *Bruen's Coffee-house* about Five or Six a Clock; there he continued quiet in the House till all the Noise was over; then he sent to inquire for *Sir William Gulston*, and hearing he was at *Sir Thomas Player's*, he and *Sir William* went to a Tavern, and there they treated, and finished the Affair. My Lord, we will prove it; Call *Mr. Ireton*.

Mr. Ireton. My Lord, I know that at this very Time my Lord Grey was treating with *Sir William Gulston* about the Manor of *Corsfield* in *Essex*, and my Lord Grey and *Sir William Gulston* had appointed to meet that Night at t'other End of the Town, if the Poll were ended. In the Evening I met my Lord Grey, who told me he had been with *Sir William Gulston* in London, and had dispatch'd the Business.

L. C. J. Did my Lord tell you so?

Lord Grey. He treated for me, my Lord, with him.

L. C. J. Pray, for God's-sake, you must lay your Matter a little closer together; if he was to treat about the Purchase of a Manor, was there no convenient Place for Company to treat about it, but while they were casting up the Poll-books with the Sheriffs and *Goodenough*? Was that Place fit?

Mr. Holt. My Lord had appointed to speak with *Sir William Gulston* that Day in *Covent-Garden*, if the Poll had been over; but not finding him there, came into the City.

Lord Grey. That Gentleman went between *Sir William Gulston* and I.

L. C. J. Where were you to meet?

Lord Grey. At the *Rose Tavern* in *Covent-Garden*.

L. C. J. What made you here then?

Lord Grey. Not finding him there, I came hither, and spake with *Sir William Gulston* in that very Room. The Poll was over, and the Company gone.

Mr. Williams. *Mr. Ireton*, Do you know there was any Treaty between my Lord Grey and *Sir William Gulston* about the Sale of any Land?

Mr. Ireton. Yes, Sir, I do.

Mr. Williams. When was that Treaty?

Mr. Ireton. About a Twelve-month since:

Mr. Williams. Do you know they had any Discourse about it?

Mr. Ireton. Sir, they had; I think it was *Midsummer-day*, the Day the Election of Sheriffs was.

Mr. Williams. Were they about that Treaty that Day?

Mr. Ireton. That Day, my Lord.

Mr. Williams. Where was the Treaty?

Mr. Ireton. In *Sir Thomas Player's* House.

Mr. Williams. What Time of the Day?

Mr. Ireton. About Twelve a Clock.

Mr. Williams. Where went my Lord afterwards?

Mr. Ireton. My Lord went to Dinner, as he told me, in the *Hay-Market*.

Mr. Williams. Did you know of any Appointment to meet again?

Mr. Ireton. I was informed so, but cannot positively tell.

Mr. Williams. *Sir Thomas Armstrong*, Pray, Sir, will you give an Account where my Lord was that Day?

Sir Thomas Armstrong. I came up this Way about Six a Clock, and was in a Coffee-house by *Guild-ball*.

Mr. Wil-

Mr. *Williams*. Do you know any thing about that Treaty?

Sir *Tho. Armstrong*. I saw them together that Night. I saw them together at Sir *Thomas Player's* about Twelve o'Clock, and again at Eight.

Mr. *Williams*. Do you know any thing of treating about this Land in *Essex*?

Sir *Tho. Armstrong*. No, I do not.

Mr. *Att. Gen.* You did not see them in the Chamber?

Sir *Tho. Armstrong*. Does any body say I did?

Lord *Grey*. My Lord, I will give you an Account of it.

Mr. *Williams*. My Lord, Mr. *Ireton* tells you this; my Lord *Grey* and Sir *William Gulston* were in Treaty about buying these Lands that very Morning together; says Sir *Thomas Armstrong*, about Noon; afterwards my Lord went to the *Hay-Market*, and staid there till Evening, and my Lord and Sir *William* were together again at Night. My Lord, this Case will depend upon your Lordship's Directions. It is very plain, that my Lord Mayor of *London* hath the summoning the Common Hall, and when the Business is done he hath the discharging them. My Lord, if it be true what Mr. *Love* and others say, they tell you, that in all their Time, their Opinion is so, that it belongeth to the Sheriffs, and not to the Lord Mayor; what may be the Consequence, lies in your Lordship's Opinion. Now for the Consequence of it, if it were no more than a Matter of Opinion and Right, and the Sheriffs insist upon it: Are these Defendants and the Sheriffs guilty of these Outrages? For there is nothing proved upon them. This don't make them guilty of any thing more than a bare continuing the Poll. Therefore, my Lord, I must submit to your Direction, how far the Jury will find us, or any of us, guilty of a Riot in this Case.

Sir *Fr. Winn*. My Lord, we agree they did continue the Poll, and the Defendants did apprehend it was lawful for them so to do; if the Jury should think they did misapprehend what was the antient Usage of the City; if your Lordship should be of Opinion, that by Law the Lord Mayor ought to do it; yet I do say, it being so probable a Case, their insisting upon it will not make it a Riot: Your Lordship will be pleased, I hope, to take notice of it, if they find the Mayor hath Power to adjourn it.

Mr. *Wallop*. I humbly conceive, that the Information does in truth destroy itself, for it is agreed on all Hands, as the Information sets forth, that they came together upon very lawful Occasions; and the Information sets forth, that by Colour of their Office they did as if they were lawfully assembled. Now, my Lord, they have overthrown the Definition of a Riot, for a Riot is, when three or more are come together to do an unlawful Act, and they do it. So that it is a very hard matter to make this a Riot.

L. C. J. Does not this Matter appear upon Record?

Mr. *Holt*. No, no, my Lord, it don't.

Mr. *Wallop*. If Men do lawfully meet together, if by chance they fall together by the Ears, and commit many Misdemeanours, this can never be a Riot. But, say they, here was an Adjournment, a Command by my Lord Mayor to adjourn the Court, and they continue after Adjournment: Now, my Lord, the Question is, Whether he had

Power to adjourn it or no, the Citizens did insist upon it, that he had no Power. Now, Gentlemen of the Jury, if you find in your Conscience, that the Citizens had a probable Cause, and they insist upon it, this can never be a Riot.

Mr. *Holt*. It doth appear that they were lawfully assembled together. And for the throwing off my Lord Mayor's Hat, suppose that my Lord Mayor hath a Power for to adjourn the Court, yet, my Lord, it must be agreed, that those that come thither must have a convenient Time to depart; for my Lord Mayor, as soon as ever he had adjourn'd the Court, he went away, and all the Hall could not go of a sudden, but must have a convenient Time to go; some followed him immediately, and the other Gentlemen that staid behind, not at all consenting to that rude Action about my Lord Mayor, cannot be guilty, for there is no Proof of any Miscarriage committed by any of these Defendants; it may be there was some Discourse concerning the Power of my Lord Mayor. I only mind your Lordship of Sir *Robert Atkins's* Case, a late Case in the *King's-Bench*; there can be no Assembly to choose an Alderman, as in that Case, unless the Mayor was there; the Assembly was held, and yet, Gentlemen, because it was not done in a tumultuous manner, but with a good Intent, it was held, that Sir *Robert Atkins* was not guilty of a Riot. There must be an evil Intention to do some Mischief.

Mr. — *Turner* brought his Action against Sir *Samuel Starling* for dissolving the Hall: And, my Lord, that being the Case of the Election of a Bridge-master, surely there is a parallel Reason for the Sheriffs.

L. C. J. That Case is against them.

Mr. — No, my Lord.

L. C. J. There the Lord Mayor hath a Power by Law to dissolve the Assembly, tho' in truth he should not have done it.

Mr. *Sol. Gen.* The Action was brought for denying a Poll, my Lord.

Mr. *Thompson*. It is laid in that Declaration, that it is the Custom of the City, that my Lord Mayor cannot dissolve.

Mr. *Att. Gen.* May it please your Lordship, and you Gentlemen of the Jury, you have now heard all the Evidence * ———

* *The Counsel clamour'd.*

L. C. J. Gentlemen, you shall not over-rule me so: Because I am willing to hear every body, therefore you impose upon me. You shall have Law, by the Grace of God, as far as I am able.

Mr. *Att. Gen.* We have now done with the Evidence on both Sides, and you do now see the Right of the Lord Mayor, notwithstanding all the vulgar and popular Discourses is asserted; it appears now upon full Evidence, they themselves do not contradict it, that my Lord Mayor is the supreme Magistrate of this City, both for calling all your Assemblies, and for dissolving them; they won't pretend against this; but indeed they make a Question whether my Lord Mayor can adjourn or no. Necessity of Affairs requires it sometimes, if there be such a Tumult, such an Interruption, that they cannot proceed orderly; or if the Matter be so long that they can't determine it in one Day, there is a Necessity that there must be an Adjournment to another Time; and they give you no Instances, Gentlemen, that ever the Sheriffs in any Age did attempt it, never any Sheriff made an Adjournment

journalment of his own Accord. Mr. *Love*, he gives no Instance of an Adjournment, he only tells you of his Supremacy at that time when my Lord Mayor had nothing to do with it; and, Gentlemen, at that time you must remember when he was elected, the Law was otherwise when Mr. *Love* was elected; then the Sheriffs were the Tribunes of the People, and they had shut my Lord Mayor quite out of their Common Hall, and declared, that he had no Power to dissolve or adjourn them. The next Instance is that of Sir *Robert Clayton's*, and how do they make that out? Sir *Robert Clayton* swears only upon his own Memory, and what is that? He remembers just nothing. He does think the Common Sergeant does speak Truth in some Things, but he can't remember other Things. But we prove not only an Adjournment from *Saturday to Monday*, but other Adjournments by special Direction from Sir *Robert Clayton*. So that whatever Mr. *Love* did fancy of the Authority of Sheriffs, to tell my Lord Mayor he had nothing to do therewith; yet that my Lord Mayor is certainly the Chief Magistrate, we have proved all along to this present Time, till within these two or three Years, and whenever there was an Adjournment, we have proved it to you, that it was by my Lord Mayor. So that it is nothing like the Case, put by the Gentlemen on the other Side; there was never any Shadow of Pretence for Right. Whoever knows *London*, must know the Sheriffs of *London* are not Officers of this Corporation as Sheriffs, but they are the King's Officers of the County, granted to be chosen by the Sheriffs: They are in their particular Cases Judges, for choosing Parliament-men, but in no Corporation Act whatsoever: So that, Gentlemen, you see there is no Pretence for that: But admit there were, what is it like the Case when a Man lays Claim to a Wood, and he sends three or four Persons, or half a dozen Persons to cut it down? Yet, Mr. *Wallop*, notwithstanding your Authority, tho' that be not a Riot, it is a Rout, where you will send such a Number to raise Terror in the King's People, and they will continue together after they are commanded to depart by a Magistrate. But it is a different thing where Men will concern themselves in a Matter of publick Government, as if any Man should pretend he hath the King's Commission to take your Lordship off the Bench.

So that here is quite a different thing; this relates immediately to the Government; here the publick Peace of the City is in Danger, and if my Lord Mayor had been a Person of great Spirit, and had presently raised others to have suppress'd this Riot, then the City had been in a fine Condition, by these People that would have *No God bless the King*, but *God bless the Sheriffs*. There is no Pretence of Right can justify such a thing. Now, my Lord, for a Riot, this must be acknowledged to be; for many to meet together to do an unlawful thing, is a Riot.

Mr. *Wallop*. And do it.

Mr. *Att. Gen.* And do it, I put in that too, Sir. The Meeting here is unlawful, and it is as certain that my Lord Mayor hath Power to adjourn, that is a Consequence of Law, if the Adjournment be necessary, and he is the only Judge of Adjournment; and when he hath adjourn'd, I do say the continuing Persons together to do that, which if they had summon'd them to do, had been unlaw-

ful, is as much an unlawful thing, and a Riot, as that. I would fain know, if the Sheriffs had summon'd all the Citizens together to meet to choose Sheriffs, or any others, would any Man question but this is an unlawful Act, a Subversion of the antient Government of the City, the usurping an Authority in the City contrary to the King's Grant and the Charter? And after they are adjourn'd, if they will make Proclamation, and order the People to stay, and go on with the Poll, is not that the same thing in point of Law? Surely no Man almost of common Sense but will say, it is the same thing. In the Case that Mr. *Wallop* puts, if there be any Disorders committed, precedent to the Magistrate's dissolving the Society; that will not amount to a Riot; but if the Magistrates comes and makes Proclamation for them to depart, and they stay after, it makes a Riot; if they continue still together, it is a Rout and an unlawful Assembly. But they say there is no Proof, that these Gentlemen, that are in the Information, are guilty of the Riot; they are all Parties to the Riot, the very being there, and giving Countenance to it, is an unlawful thing. Pray, Gentlemen, if Ten Men should go to rob a House, and one stands off at a Distance, is not the Tenth Man guilty of the Burglary? If there be as many Persons together, and Three only do an unlawful Act, and the others give Protection, for Number is always a Protection, are not all these Gentlemen guilty? And therefore, Gentlemen, it is hoped you will settle the City by destroying this Pretence, which hath been fluttering in the Air, but hath no Ground for it.

L. C. J. Gentlemen of the Jury, this is an Information against several, for a Riot, and it sets forth, that there was a Common Hall that was call'd by the Lord Mayor for choosing several Officers, and that afterwards the Lord Mayor did dissolve that Assembly, and yet notwithstanding the Defendants (so many as by-and-by I shall name to you, that they have given Evidence against, they) kept together and committed a Riot; it is said so particularly in the Information. For the Matter in Fact that hath been altercated between them, the Question is, whether the Lord Mayor for the Time being hath Power in himself to call an Assembly, and to dissolve it? And truly as to this Point, even the Counsel for the Defendants did one while grant it, but another while did bring Witnesses that did know nothing of the Matter, I must needs say. But for aught I see, even until this very time, the Lord Mayor did call the Assembly, and he did dissolve it, and that they did seem to grant even at the Beginning of the Cause: But then they make a Distinction, but he could not adjourn it to a certain Time. That was a very weak thing to say, that if the Lord Mayor may call and dissolve the Hall, that he cannot adjourn it to a convenient Hour. Suppose now the Business to be done was not dispatched sooner than this time a-night, so that upon the Matter they must be either adjourn'd till To-morrow, or kept in the Hall all Night: Does any Man think, that that Magistrate that hath Power to call and dissolve, hath not Power to adjourn? There is no Man doubts of it in Fact or Law; and that it was so, Sir *Robert Clayton* did that very thing; if there had been no Precedent, it had been all one. But they make a great deal of Business of it, how that the Sheriffs were the Men, and that the Lord Mayor was nobody, and

and that shews it was somewhat of the Commonwealth's Seed, that was like to grow up among the good Corn. — * Pray, Gentlemen, that is a very undecent Thing; you put an Indignity upon the King, for you ought not to do it, if you knew your Duty: Pray, Gentlemen, forbear it, it does not become a Court of Justice.

* Here the People humn'd and interrupted my Lord.

I will tell you, when Things were topsy-turvey, I can't tell what was done, and I would be loth to have it raked up now. They might as well (as I perceive they have at another time said) have said, that the Power of dissolving and adjourning might have been in the Livery-men, all People, every body; and so then if they had been together by the Ears, I don't know who must have parted them, that is the Truth of it. But I think their own Counsel are very well satisfied both in Fact and Law, that the Lord Mayor, for the Time being, hath this Power of calling, dissolving, and adjourning the Assembly. Then there is another thing that is to be considered, and that is this; the Defendants they say, We did mistake the Law, it was only a Mistake of the Law, and nothing else; and we did do all to a good Intent, and therefore it must not be a Riot. To give you some Satisfaction in that: First, I must tell you, that a Man must not excuse himself of a Crime, by saying he was ignorant of the Law; for if so be that turn to an Excuse, it is impossible to convict any Man; if so be he must be excused because he did not know the Law, then no Man will be found guilty. But if it appear, that the Defendants did verily believe, that the Law was for them, that may be considered in another Place; if so be that they were really ignorant, the Fine, it may be, may be the less, but it won't excuse them from all. But truly, in the next Place, you must consider, whether or no these Gentlemen were ignorant, or whether or no they did not, in a tumultuary way, make a Riot to set up a Magistracy by the Power of the People. For I must tell you, I have not heard by the Defendants, and I will appeal to your Memory, I have not heard, before this Time, that ever the Sheriffs did quarrel with the Mayor, or continue a Common Hall after the Mayor had adjourned it. As for these Gentlemen, they could not be ignorant of it, because the daily Practice before their Eyes was for the Mayor to do it. But this was a new Notion got into their Heads, tho' it was otherwise before, it must be so now; and one said, they would have no Tory Mayor to be Mayor; thus the King should have something to do to support the Mayor by his Power, for aught I know. Now, Gentlemen, for the Parties that are accused to be in it, there is *T. Pilkington*, *Samuel Shute*, *Henry Cornish*, *Lord Grey*, *Sir Thomas Player*, *Slingsby Bethel*, *Francis Jenks*, *John Deagle*, *Richard Freeman*, *Richard Goodenough*, *Robert Key*, *John Wickham*, *Samuel Swinock*, and *John Jekyl* the elder; some Witnesses are to some, and others to others, but some of them have seven or eight Witnesses. There is *Pilkington*, and *Shute*, and *Cornish*, these had a great many Witnesses against them; others have two. First, for the Sheriffs, and *Mr. Cornish*, that had been Sheriff but two Years before, they kept them together after my Lord Mayor was gone; and to see what People they were, No, *Not God bless the King*, no, no,

but the Protestant Sheriffs; so that in truth the King must be put out of his Throne, to put these two Sheriffs in it. It is not proved, that either of these did say so, nor the others neither, but they were those that clung to them, and they would help them, and they would set them to rights, and I know not what; and there is no other way to know in this Case what they were, but by these they kept Company with; and it may be, (I would be loth to say ill, it may be) it was in order to dethrone the King as far as they could; for my Lord Mayor, when truly he had adjourn'd the Hall, and was going home, he had like to be trod under Foot himself, his Hat was down, and that was the great Respect they gave to his Majesty's Lieutenant in the City. It is true, it cannot be said who it was, but those were the People that would have *No God save the King*, and those the Mayor had nothing to do with. The Sheriffs they would go on to poll, and cast up their Books, and would make a Disquisition who had most Hands, and the like; three Hours after my Lord Mayor was gone, there were so many that did countenance and foment this sort of Proceedings. There is a shrewd Act that was made since his Majesty came in, that the Villainy of some Men might be stopp'd, thirteenth-fourteenth of the King, that for Words in some Cases makes High Treason; it is well his Majesty does not take any severe Prosecution, but I can tell you, I would not have Men presume upon it. It can't be said, You or you said so; yet they kept them together, they were they that kept all this Rabble three Hours together; the Lord Mayor does adjourn the Court, and they must have some time to be gone, and thereupon would persuade us they could not get away in three Hours; they ask for a Poll, and cast up the Scrutiny, and I know not what. There are some, and that is my Lord Grey and *Mr. Goodenough*, how these two should come there I know not, they had nothing to do here, and therefore I doubt it will be worse upon them than upon the rest, for they had nothing to do here, they must come to set the Citizens together by the Ears. My Lord Grey he says, and hath called some Witnesses, that he had Business with *Sir William Gulston*, about the Sale of *Corsfield* in *Essex*; but I do not see any of his Witnesses that do say he came to speak with *Sir William Gulston* here, he came here to see how the Poll went. But, look you, Gentlemen, he hath given some sort of Evidence, and the Counsel did open it very fairly, but the Evidence did not come fully. If you think he did only come upon real Occasions to *Sir William Gulston*, only to speak to him about that Business, and concern'd himself no otherwise, then you will do well to find him Not guilty; if you do not, you must find him likewise as well as the rest, for *Goodenough* he was here to promote the Matter. There is one, and truly he said, that for his part, as the rest would have *No God bless the King*, so truly he would have *No Tory Mayor*. And all this Flame, I must tell you, took Fire from this Spark, that the Sheriffs might do what they thought fit about choosing Officers. Gentlemen, it hath been a long Trial, and it may be I have not taken it well; my Memory is bad, and I am but weak: I don't question but your Memories are better than mine; consider your Verdict, and find so many as you shall think fit.

The Jury withdrew, and in some time returned.

Are you all agreed of your Verdict?

Jury. Yes.

Who shall speak for you?

Jury. The Foreman.

Do you find the Defendants Guilty of the Trespas and Riot? &c.

Foreman. We find them all Guilty in that Paper.

This is your Verdict?

Jury. Yes.

T. Pilkington, S. Shute, H. Cornish, Lord Grey, Sir Thomas Player, S. Bethel, F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Key, J. Wickham, S. Swinock, and John Jekyl the Elder, are Guilty.

You say they are all Guilty? &c.

Jury. Yes.

On the 15th of June following, Mr. Attorney-General moved in the Court of King's-Bench at Westminster, that Judgment might be awarded against them upon their former Conviction, in order to their being fined for the Riot, &c. But the Lord Chief Justice Saunders, and Mr. Justice Raymond, by reason of their Indispositions, being neither of them on the Bench, Mr. Justice Jones, with the Consent of Mr. Attorney General, referred it to the 19th Instant, when Mr. Attorney again moved for Judgment, alledging the Heinousness of the Crime, viz. That it was an open Affront to Justice and Magistracy, and might prove an evil Precedent, if it should escape unpunish'd, which he prayed it might not do; but that since they had been fairly convicted, the Court, in pursuance thereof, would award such Fines as might deter others from the like Attempts, &c. Upon this Motion Mr. Williams, of Counsel for the Defendants, moved, That seeing there had first a *Venire* been directed to Mr. Pilkington and Mr. Shute, late Sheriffs of London, and afterward an *Alias Venire* to the present Sheriffs, and yet that in the Information all the Defendants were joined, tho', as he suggested, that at the time of the first *Venire* some of them were not made known, and that since Mr. Pilkington, Mr. Shute, &c. had appeared upon the first, and many of the others not till the second; he humbly prayed, that an Error might be thereon assigned.

To which the King's Counsel reply'd, That if any Prejudice was sustained in the Methods and Manner of Proceeding to the Trial of the Persons convicted of the Riot and Battery, it was sustained on the Part of the King; and seeing he was willing to dispense with it, that not in the least affected the Defendants, unless in redounding to their Advantage; for that they had a legal Trial, all of them pleading Not guilty, and putting themselves upon their Country, to try the Issue between the King and them, which Country had found them guilty of the Offences before-mentioned, and that now nothing remained but the Judgment of the Court in awarding their Fines, &c.

To this it was alledged, That seeing they were assembled in *Guild-hall* upon a lawful Occasion, they could not be guilty of a Riot, or the like Misdemeanour, the Legality of their first Assembling not admitting thereof: But this Allegation was over-ruled for these Reasons; That altho' an

Assembly be never so legally convened, yet if they tumult or break the Peace, the Legality of the Assembly cannot bear them out: And moreover, that when the Lord Mayor had adjourned the Poll, the Assembly was no longer a lawful Assembly, but ought immediately to have departed to their respective Habitations, which the Defendants not only delayed to do, but in Contempt of Authority continued the Poll, and in a riotous manner assaulted the Person of the Mayor. And that for Inference, If a Congregation be assembled at a Church, to hear Divine Service, which in itself is lawful; yet if Blows happen, or a riotous or disorderly Tumult is made, the Legality of the Meeting shall in no wise excuse the Authors of such Disorders from the Penalties of the Law, &c. of which Opinion were not only the Counsel for the King, but the Judges likewise.

These, and such-like, being the Arguments of this Day, Mr. Justice Jones being indisposed, and Mr. Justice Raymond not coming upon the Bench, the passing Sentence was deferred till Friday the 22d Instant, and from thence till Monday the 25th Instant, at what time Mr. Justice Jones being indisposed, it was put off till Tuesday, the 26th of June; when Mr. Attorney moved for Judgment, requiring, that the Parties found guilty upon the Information, might be fined; and was seconded by Mr. Sergeant Jefferies; both of them praying, that they might have good Fines set on them, as an Example to deter others from the like Attempts; as also did Mr. Jones, of Counsel for the King; when, on the other Side, Sir Francis Winnington, Mr. Williams, Mr. Wallop, Mr. Pollexfen, Mr. Thompson, and Mr. Holt, of Counsel for the Defendants, urged many Arguments for the Extenuation of the Fines, seeing they were at the Mercy of the Court, alledging, That the Defendants did that of which they were convicted rather out of Ignorance than Malice, or any Design they had to injure or affront the Government; as not being then capable to determine, whether the Right to adjourn the Common Hall lay in the Lord Mayor or Sheriffs. But after the Arguments on both Sides had been heard, Mr. Justice Jones proceeded to declare the Heinousness of the Fact, and what an evil Precedent it might prove if it should pass unpunished; and after some Conference with Mr. Justice Withens, he proceeded to award their Fines as followeth:

On Thomas Pilkington, Esq; by reason of his being a Prisoner, only 500*l.* S. Shute, Esq; 1000 Marks, Ford Lord Grey of Werk 1000 Marks, Sir Thomas Player, Kt. 500 Marks, Slingsby Bethel, Esq; 1000 Marks, H. Cornish 1000 Marks, Francis Jenks 300 Marks, R. Freeman 300 Marks, R. Goodenough 500 Marks, John Deagle 400 Marks, Robert Key 100 Marks, John Wickham 100 Marks, S. Swinock 500 Marks, and on John Jekyl, senior, 200 Marks; all of them appearing in Court, except the Lord Grey, Mr. Key, and Mr. Goodenough, and according as they appeared to be of Ability, so were their Fines regulated.

This Judgment was afterwards reversed in Parliament, 1 *Wil.* and *Mary*; and the Defendants petition'd, that the Prosecutors and Judges might be excepted out of the then intended Act of Grace.

To the KING's most Excellent
M A J E S T Y,

The humble Petition of Sir Thomas Pilkington, Knt. Lord Mayor of London, Slingsby Bethel, Esq; Samuel Swinock, John Deagle, Richard Freeman, John Jekyl, John Key, and John Wickham, in behalf of themselves, and of the respective Executors and Administrators of Sir Thomas Player, Kt. deceased, Henry Cornish, Esq; deceased, Samuel Shute, Esq; deceased, and of Francis Jenks, deceased,

SHEWETH,

THAT your Petitioners, and the said deceased Persons, were, in the Year 1682, and 1683, by the Contrivance and Confederacy of Sir John Moore, Kt. Sir Dudley North, Kt. Sir Peter Rich, Kt. Sir Edmund Saunders, Kt. late Chief Justice of the King's-Bench, and some others, persecuted and convicted for a Riot; the Fact objected against them being no other in truth, than the peaceable doing their Duties as Citizens of London and Englishmen, in Election of Sheriffs for the said City and County of Middlesex.

That in the Proceedings upon the said pretended Riot, many notorious Violations of the Law were committed, and your Petitioners denied common Justice by the Combination and Confederacy of the Persons last above-named, and others; insomuch that your Petitioners, and the said deceased Defendants, were by Judgment of the Court of King's-Bench, in Trinity Term 1683, unreason-

ably fined 4100*l.* and were, by Imprisonment and otherwise, forced to pay the same; which Sum of 4100*l.* was long since paid into the Exchequer.

That at your Petitioners Prosecution, the said Judgment was reversed, the last Parliament, as erroneous; whereby your Majesty stands by Law liable to make Restitution of the said Sum of 4100*l.* as your Petitioners are advised.

Now forasmuch as your Majesty's generous Undertaking in coming into this Kingdom, tended only for the vindicating and establishing our Religion, Laws and Liberties, and for relieving the Oppressed; and for that it is agreeable to Equity, that such as did the Wrong should make the Restitution: And your Petitioners hoping the Parliament now assembled will take the whole Matter into their Consideration, and pass a Bill for Relief of your Petitioners out of the Confederates Estates, and not leave them to be satisfied by your Majesty:

Your Petitioners therefore humbly beseech your Majesty, That the said Confederates, the Prosecutors of your Petitioners, and the Judges, and Others concerned therein, may be Excepted in the Act of Grace, intended by your Majesty, as to All they did in relation to the Prosecution and Judgment upon the pretended Riot above specified.

And your Petitioners shall always pray, &c.

This Act of Grace is 2 Gul. & Mar. c. 10. but there is no such Exception in it, only of Sir Francis Withens, who was excepted upon other Accounts.



CXVI. *The Trial of Sir PATIENCE WARD, Kt. * at the King's-Bench, for Perjury at the Trial between the Duke of York Plaintiff, and Thomas Pilkington, Esq; Defendant, on an Action † upon the Statute de Scandalis Magnatum. 19 May 1683. Paschæ. 35 Car. II.*

The JURY were,

Sir Thomas Bridges, Kt.
Henry Reynell, Esq;
Thomas Herriott, Esq;
Thomas Airsby, Esq;
Richard Pagett, Esq;
John Foster, Esq;

Thomas Eaglesfield, Esq;
Edward Mapleden, Esq;
John Sharp, Esq;
James Suckle, Gent.
John Olinger, Gent.
Richard Filher, Gent.

AN Information had been preferred by the Attorney General against Sir Patience Ward, for that he had maliciously and wilfully perjured himself in the Court of King's-Bench, upon the Trial between the Duke of York, and Thomas Pilkington, Esq; to which the Defendant pleaded Not Guilty, and was tried May 19.

Cryer. Oyez: If any Man will give Evidence on the Behalf of our Sovereign Lord the King, against the Defendant Sir Patience Ward, let him come forth, and he shall be heard.

Mr. Dolben. May it please your Lordship, and you Gentlemen that are sworn, This is an Information of Perjury preferred against Sir Patience Ward. Whereas the most illustrious James Duke

* Burnet's History of his Own Times, Vol. I. p. 536.

† In this Action the Duke of York had recovered 100,000*l.* Damages.

of York brought an Action upon the Statute *de Scandalis Magnatum* against *Thomas Pilkington*, wherein was declared, that, whereas he was the only Brother to our Sovereign Lord the King, the said *Pilkington* did speak in the hearing of divers of his Majesty's liege Subjects, these false and scandalous Words, *He hath burnt the City*, (meaning the City of London) *and is* (meaning the said Duke) *come to cut our Throats*. Gentlemen, the Information sets forth further, that the Defendant *Pilkington* pleaded he was *Not guilty*, and that upon the Trial of this Issue, *Sir Patience Ward* was produced as a Witness upon the Behalf of the Defendant *Pilkington*; and that the said *Sir Patience Ward* then and there was duly sworn to speak the Truth, the whole Truth, and nothing but the Truth, in the Premises; and that the said *Sir Patience Ward* did falsely and corruptly swear and give in Evidence to the Jurors empanelled to try the Issue aforesaid, *That there was no mention at the Time of this Discourse aforesaid had between the said Thomas Pilkington and divers of his Majesty's Subjects, concerning the said James Duke of York, that there was no mention of cutting of Throats, and that before Mr. Pilkington* (meaning the said *Thomas Pilkington*) *came in*, (meaning the Time when the Discourse aforesaid was had) *the Discourse about the Duke of York was over*; and further, *that the Duke of York was not named*, (meaning at that Time when the Discourse aforesaid was had) whereas in truth at the same time there was mention of cutting of Throats; and whereas, before *Mr. Pilkington* came in, the Discourse concerning the Duke of York was not ended; and whereas the said Duke of York was named at the Time when the Discourse aforesaid was had, so that the said *Sir Patience Ward* in the Case aforesaid did commit wilful and flat *Perjury*.

Sir Robert Sawyer. Mr. *Attor. Gen.* My Lord, and you Gentlemen of the Jury, *Sir Patience Ward* the Defendant stands accused for *Perjury*, committed in a Cause, that was between the Duke of York Plaintiff, and *Mr. Pilkington* Defendant, and in that Cause *Mr. Pilkington* was accused to have spoken false Words of the Duke of York, *He hath burnt our City, and is come to cut our Throats*; to excuse this, *Sir Patience Ward* he comes, and swears positively, first, *That the Duke of York was not mentioned in the Discourse, and therefore those Words could not be meant of the Duke of York*; this little Evasion we don't trouble you with; but they related to one *Hubert*, hanged many Years before; however we will lay that aside, and not trouble you with it. The next direct Matter, which proves it was maliciously done, that he was so ill a Man, and that he had spoken such Words, he swears, *That all the Discourse relating to the Duke of York was over before Pilkington came into the Room*. This Allegation is directly false, he swears positively, *there was no mention made of cutting Throats*. Gentlemen, we will first prove unto you the Words; then we will prove unto you, that they were false, for *Pilkington* did speak these Words of the Duke of York. Gentlemen, we will leave it to you whether this Gentleman hath not forsworn himself.

Mr. S. Jeffries. If it please your Lordship, and you Gentlemen of the Jury, I must needs say, that this is a Cause of very great Consequence of one Side and t'other; it concerns a very great Person, a Man that has been *Lord Mayor* of London, and

I think is still an *Alderman* of London; it is in its own Nature of very great Consequence, it is no less than the charging him with the Crime of wilful *Perjury*; it comes to a publick Audience, as it was very requisite it should. The Crime we charge this Gentleman with was committed in this very Place, in the Face of this Court, and I think to the Admiration and Astonishment of all Persons, that heard this Gentleman swear at that very Time: And therefore, that the thing may be intelligible to these Gentlemen, I shall crave your Lordship's Patience, to give an Account how this Matter was: This Matter was attended with Circumstances of Malice, which shew it was not a Slip in Evidence, but a malicious perjurying himself, Gentlemen; and they are these. Upon his Royal Highness's Return out of Scotland, and coming to *Newmarket* to his Majesty, a very loyal Gentleman, then *Lord Mayor* of London, *Sir John Moore* by Name, with some other Persons, that I have in my Eye, had it in Prospect, as it became them to do, to so great a Prince as he was, to wait upon him. My Lord, there being this Design of the Aldermen and *Lord Mayor* to attend upon his Royal Highness, to congratulate his Arrival from Scotland; in order thereto, upon a special Court-day, there was an Order made, that the *Lord Mayor* and Aldermen should attend his Majesty, to desire his Leave, that they might come and attend likewise his Royal Highness, to congratulate his late Arrival. This I think was upon a special Court, before they went to Church, upon a *Sunday*. In order to this, there happen'd another Meeting of the *Lord Mayor* and Aldermen, to prosecute this Design of theirs, to wait upon his Royal Highness, to congratulate his Arrival; and thereupon an Intimation was given to *Sir Patience Ward*, with one of the Sheriffs, *Pilkington*, of their Intentions. At which Time, *Sir William Hooker*, and another worthy Gentleman, *Sir Harry Tulse*, happening to be together in a Place, which I presume some of you do well know, in the Long Gallery or Ante-chamber to the Council Room, where the *Lord Mayor* and Aldermen most usually sit, some Discourse arose touching the Occasion of their then Meeting; whereupon a Question was proposed, Whether they should wait upon his Royal Highness or not? One of these Gentlemen was pleased to say, at that Time, that it was too late now the Court had determined it, there being then present this *Sir Patience Ward*, and these two Gentlemen along with *Mr. Pilkington* then Sheriff, who, in Objection to the Proposal of waiting upon the Duke of York, (after this Discourse was over, and after they had mentioned the Duke of York's Name to him) said, *He hath burnt the City, and is now come to cut the Throats of our Wives and Children*. This, Gentlemen, was to deter and fright the others from going, and given as a Reason why he would not go to attend the Duke of York. My Lord, this thing happening thus, an Action was brought for this, and came to a Trial before your Lordship. It is very true, in that Trial we did only produce *Sir Harry Tulse*, that was present, and he swore to all the Words about *burning the City*, and likewise to the *cutting of Throats*. But *Sir Patience Ward*, without any manner of Hesitation; nay, and not only that, (I appeal to the Memory of those that heard him swear at that Time) but boasting himself, as having as good

good a Memory as any Man in *England*, (though he was cautioned at that time to have a Care what he swore) did positively say, *The Duke of York was not named after Pilkington was there; that the Discourse of the Duke of York was done before he came in.* He doubled his Evidence on purpose to make the thing more plain. But afterwards, when it came a little further to be discours'd of, I appeal to the Memory of the Court, and the Gentlemen at the Bar, whether he did not flutter about in *St. James's Park*, and out comes *Hubert*; the Duke of *York* was not named, but *Hubert, Hubert, I clapp'd my Hand upon his Mouth, says I, you mean Hubert*, and so we had got *Hubert* into the Cause on purpose to shuffle out the Business about the Duke of *York*. My Lord, after this (I do it to refresh the Memory of these Gentlemen) he was positive, and said, *I do positively say, there was not a Word of cutting of Throats, even to the Surprize not only of all the Auditors, but even of all those People that were concerned in Affection for him, as well as they who were engaged in the Cause that they were to support.* My Lord, in the first Place we will give you an Account, that it was a designed and malicious Evidence, necessary for the bringing off that Man, for if there were not a Word spoken of the Duke of *York*, then our *Action* was no *Action*; if there was not a Word spoken of *cutting of Throats*, then, of consequence, the Verdict must have been against us; and therefore finding there was but one Evidence, which was *Sir Harry Tulse* against his Evidence, that made him swear so positively; but afterwards your Lordship may please to remember, we called *Sir William Hooker* (a Gentleman of well known Integrity) to preserve the Credit of so great a Prince, maugre the Malice of all his Enemies. I speak this to shew it is fit, it is necessary to clear this Cause. In the first Place we will prove what is recited in this Record, and give you an Account what this Person did swear at the Time of the Trial. The Matters, that I have opened, I think they will sufficiently satisfy the Court and the Jury, as they did satisfy the Jury before, that what *Sir Patience Ward* swore then, is false now, and was false then.

The Record of Pilkington's Trial read.

Mr. S. Jefferies. Read the Information. *The Record was Anno prædicto, but when it was recited in the Information, it was Anno ultimo supradicto.*

Mr. Ward. It is necessary, when we come by way of Recital of the Record, to recite the very Words in the Record, now in the Record it is *Anno prædicto.*

Mr. Williams. My Lord, they are reciting the Record.

*Sir Edward
Sunder.*

L. C. J. They do not recite it in *hæc verba*, the Substance is true, the Words are varying from the Record, in the Record they are *Anno prædicto*, but in the Recital, *Anno ultimo supradicto.*

Mr. Williams. That is not the same in Substance as to say *Anno prædicto*, the Year before said, there are many *Anni prædicti*, and that may refer to any of them; if there had been but one, it might have been so, but when there are several Years mentioned before, *Anno ultimo prædicto* restrains it to the last Year *prædicto*.

Mr. Attor. Gen. You may spend as much Time as you will; in the first Record there was but one Year mentioned.

Mr. Recorder. That the City of *London* was burnt in the Year 66; that was one Year mentioned before, I am sure. *Sir George
Treby.*

Mr. Attor. Gen. There are several Years mentioned in this Record; there we must say *ultimo prædicto*.

L. C. J. The Objection is, That whereas it was in the Record *Anno prædicto*, here you have more; and when you recite *Anno prædicto* you add *ultimo*.

Mr. S. Jefferies. We could not do it otherwise, my Lord.

L. C. J. As if a thing could not be well except it were in such precise Words: That was *Anno prædicto*; this, you say, is *Anno ultimo prædicto*. Now if the first had been *Anno ultimo supradicto*, and in this you had said *Anno prædicto*, when several were mention'd, then it might have been an Objection; now it is not.

Mr. S. Jefferies. If *Sir Patience* had been as exact in swearing, as you are in observing, he had done well enough.

—— Call Mr. Hatch.

[Who was sworn.]

Mr. Williams. Pray let's know your Name, Sir?

Mr. Hatch. My Name is *Hatch*.

Mr. S. Jefferies. Pray, Mr. Hatch, was you present at the Trial between his Royal Highness and Mr. *Pilkington*?

Mr. Hatch. Yes, my Lord, I was present.

Mr. S. Jefferies. Was *Sir Patience Ward* produced as a Witness?

Mr. Hatch. *Sir Patience Ward* was sworn.

Mr. S. Jefferies. What did he swear?

Mr. Hatch. He did swear, upon his Oath, That the Sheriffs were not present; that there were some Aldermen at the Table in the matted Gallery in *Guild-hall*, smoking a Pipe of Tobacco, and that they had some Discourse about waiting upon the King and the Duke, pursuant to an Order from my Lord Mayor the Day before, and he said, the Sheriffs were not present.

Mr. S. Jefferies. What Sheriffs?

Mr. Hatch. The Sheriff: And he did afterwards say, he did positively affirm, upon his Oath, that *Pilkington* did not come in till all the Discourse was over about the Duke.

Mr. S. Jefferies. What did he say about cutting of Throats?

Mr. Williams. Good Mr. Sergeant.

Mr. Jones. You say he positively said, there was no Discourse about the Duke of *York* after *Pilkington* came in.

Mr. Hatch. But then after, my Lord, he said; I do positively affirm, upon my Oath, that *Pilkington* did not come in till all the Discourse was over concerning the Duke of *York*. And further; there was Discourse about burning the City by the Papists, saith *Pilkington*, he hath burnt the City; with that *Sir Patience Ward* took him by the Shoulder, saying, Explain yourself: What! you mean *Hubert*, I warrant you? Yes, said he. He being ask'd the Question, Whether any thing of the Duke was nam'd, he said, No: And further, Whether there was not any mention of *cutting of Throats*, he did positively say, *There was no mention made of cutting of Throats.*

Mr. Williams. Mr. Hatch, Where were you placed at the Trial?

Mr.

Mr. Hatch. At the Trial, Mr. Williams, I stood just there.

Mr. Williams. Had you a Pen and Ink about you?

Mr. Hatch. Yes, Sir, I write Characters.

Mr. Williams. Pray, Sir, did you take the Words in Writing then, or no, in the Court?

Mr. Hatch. I believe I might, I can't positively tell.

Mr. Thompson. Have you your Notes here?

Mr. Hatch. I think I have not.

Mr. Thompson. A Man of a good Memory.

Mr. S. Jefferies. We have a matter of some thirty or forty Witnesses; don't make such a Rout.

Mr. Pollexfen. Mr. Hatch, you are repeating what Sir Patience Ward said; Did he, in that Evidence, mention the Duke of York, or not?

Mr. Hatch. He said, there was Discourse about going to the King at St. James's, but not to the Duke. Sir George Jefferies asked him that very Question.

Mr. Pollexfen. Let him now repeat the Evidence which he swore just before.

Mr. S. Jefferies. I thought that would not have been such a mighty Question at this Time of Day.

Mr. Williams. I desire he may say again what was sworn by Sir Patience Ward.

Mr. S. Jefferies. Begin and repeat, Sir, in what manner he swore, in the very same Form he spake then.

Mr. Hatch. Sir Patience Ward, being sworn and examined upon the Account of Mr. Pilkington, did say, That *there were some Aldermen met at the Matted Gallery, the Matted Chamber in Guild-hall, and smoking a Pipe of Tobacco, and there was Discourse of waiting upon the King, and the Duke, pursuant to an Order of the Lord Mayor the Day before; and being asked, Whether Mr. Pilkington was not present, he said, The Sheriffs were not present, but at the Court of taking Licences in Guild-hall, and that there was a Discourse about burning the City by the Papists, and, says Mr. Pilkington, Hath he burnt the City? Hath he burnt the City? Upon that, Sir Patience Ward took him by the Shoulder, and bid him explain himself: You meant Hubert, I warrant you, saith he. Yes, saith Pilkington; and being asked, Whether there was any Discourse about the Duke of York, he said No; but positively said, that there was no mention made of cutting of Throats.*

Then Mr. Boxton was sworn.

Mr. Williams. Your Name, Sir.

Mr. Boxton. My Name is Boxton.

Mr. S. Jefferies. Mr. Boxton, will you tell my Lord and the Jury, whether you remember what was said by Sir Patience Ward?

Mr. Boxton. My Lord, I was present at his Trial, I happened to return the Jury.

Mr. S. Jefferies. Pray will you tell my Lord and the Jury, what was said by Sir Patience Ward?

Mr. Boxton. My Lord, I was present at this Trial, having returned the Jury that was to try that Cause of his Royal Highness: I was above in the Gallery, and I could not so well understand it; but as that Gentleman said before, he was saying, *he heard no mention made of cutting of Throats; I can't say the very Words, for I took no Notes.*

Mr. Williams. You were in the Gallery then?

Mr. Boxton. Yes, Sir.

Mr. S. Jefferies. Pray, Mr. Aston, I think you were present.

Mr. Aston. I was present in the Court that Day, and I do remember, that Sir Patience Ward did swear, I think positively, to the best of my Remembrance, that *the Duke of York was not named, while Mr. Pilkington was by.* That is all I do remember.

Mr. S. Jefferies. What do you mean by *positively*? that he used the Word *positively*?

Mr. Aston. I think I am pretty sure he did take it *positively*, or *upon his Oath*.

Mr. S. Jefferies. What did he take positively?

Mr. Aston. That the Duke of York was not named while Mr. Pilkington was by.

Mr. S. Jefferies. Do you remember any thing else?

Mr. Aston. As to *cutting of Throats*, I do not remember it. Several People have asked me, and I gave them that Relation, or else I believe, *that had been out of my Mind.*

Mr. Wood sworn.

Mr. S. Jefferies. Mr. Wood, pray will you give my Lord and the Jury an Account of what you heard Sir Patience Ward swear, in the Cause between his Royal Highness and Mr. Pilkington.

Mr. Wood. My Lord, I was in Court when Sir Patience Ward gave Evidence for Mr. Pilkington, and I heard Sir Patience Ward say, that *the Duke of York was not named; and that the Discourse concerning the Duke was over before Mr. Pilkington came in, and that there was no mention of cutting of Throats.*

Mr. Jones. Did he swear these Things positively, or as he believed, or heard?

Mr. Wood. To the best of my Remembrance, I think he clapt his Hand upon his Breast, and said *positively there was no mention of cutting of Throats.*

Mr. Attor. Gen. Do you speak of your best Remembrance as to his Posture, or to the Word?

Mr. S. Jefferies. Did he say that Word *positively*?

Mr. Wood. To the best of my Remembrance, he said *positively*, or *upon my Oath*; one of them he did say, I can't tell which.

Mr. S. Jefferies. Either he said *positively*, or *upon my Oath*. Now, my Lord, if your Lordship pleases, we have given your Lordship and the Jury, a sufficient Account how *positive* this Gentleman was; but as positive as he was at that Time, we will give you an Account, that he did forswear himself.

Swear Sir James Smith (*which was done*).

Mr. Attor. Gen. Pray will you tell the Court what you can say?

Sir James Smith. I did little think to be call'd to give any Evidence upon the Account of Sir Patience Ward, considering the Relation that is between us, as Aldermen. I did not take particular Notice, but I do remember, that he used that kind of Posture as they say, and did *positively*, or *upon his Oath*, say, I can't be certain of the Words he used, that *Mr. Pilkington was not there while they were discoursing concerning going to St. James's, for he did declare, the Duke of York was not talked of, and I do remember a very good Circumstance that he did swear so, for my Lord Chief Justice Pemberton was pleased to apply himself to Sir Harry Tulse upon it; and I remember Sir Harry Tulse made Answer, I am very sorry to say it, he was there all the while.*

Mr. *Att. Gen.* Did you hear any thing about cutting of Throats?

Sir *James Smith.* I don't remember that.

Sir *William Rawsterne* sworn.

Mr. *S. Jefferies.* What say you, Sir *William Rawsterne*?

Sir *Will. Rawsterne.* My Lord, I was here, but I took no particular Notice, but I do remember, that Sir *Patience Ward* did say, that the Duke was not named when *Pilkington* was in the Room; I can say nothing else.

Mr. *Jones.* Did you hear him swear it?

Sir *Will. Rawsterne.* Yes, Sir.

Mr. *S. Jefferies.* Sir *James Smith*, did he swear it upon his Oath?

Sir *Ja. Smith.* My Lord, I said before, I cannot say the Word he expressed it in, but either positively, or upon his Oath, he was not there all the while that Discourse was.

Mr. *Pollexfen.* First he says, the Discourse was of going to *St. James's*.

Sir *Ja. Smith.* My Lord, as I said before, he did declare, that the Sheriff that then was, Mr. *Pilkington*, was not by while they were discoursing of going to *St. James's*, for he said they did not speak of the Duke of *York*; but the Discourse was about going to *St. James's*, and that Discourse was at an End before Mr. *Pilkington* came in; and while they were talking about firing the City, upon that Mr. *Pilkington* saying, he bath fired the City, he desired him to explain himself, whether he did not mean *Hubert*.

Sir *John Peake* sworn.

Mr. *S. Jefferies.* Sir *John Peake*, I desire to know what you can say.

Sir *John Peake.* I was present at the Trial, and Sir *Patience*, I do remember this, laid his Hand upon his Breast, and either said positively, or upon his Oath, I cannot tell which, one of the two I am certain of, That Mr. *Pilkington* was not by while the Duke of *York* was mentioned.

Mr. *S. Jefferies.* What about cutting of Throats?

Sir *John Peake.* There was something said of cutting of Throats, but I am not so positive.

Mr. *S. Jefferies.* Sir *Thomas Field*, I think you was one of the Jury that tried the Cause.

Sir *Tho. Field.* Yes, Sir, I was upon the Jury.

Mr. *S. Jefferies.* Pray do you remember, that Sir *Patience Ward* was a Witness?

Sir *Tho. Field.* Yes, I do remember it.

Mr. *S. Jefferies.* Do you remember what he swore?

Sir *Tho. Field.* I do remember he swore the Duke was not named; that I can remember.

Mr. *Att. Gen.* Do you remember any thing else?

Mr. *S. Jefferies.* Do you remember any thing about cutting of Throats?

Sir *Tho. Field.* There was something, I cannot positively say that.

Mr. *S. Jefferies.* Do you remember what other Words he said?

Sir *Tho. Field.* He did say likewise, that Mr. *Pilkington* was not in the Room when any thing was spoken relating to the Duke of *York*:

Mr. *S. Jefferies.* Sir *Francis Butler*, Pray will you please to give my Lord, and the Jury, an Account whether you were of the Jury, in the Cause between his Royal Highness and Mr. *Pilkington*?

Sir *Fr. Butler.* I was of that Jury:

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Mr. *S. Jefferies.* I think you were the Foreman; Sir.

Sir *Fr. Butler.* I was the Foreman.

Mr. *S. Jefferies.* Pray, do you remember Sir *Patience Ward* was produced as a Witness?

Sir *Fr. Butler.* He was produced.

Mr. *S. Jefferies.* Do you remember any thing he swore? and what?

Sir *Fr. Butler.* The Evidence he swore (which I thought we had Reason to observe, for the great Question was, Whether the Words related to the Duke of *York*, or no?) was, that it did not relate to the Duke of *York*; and Sir *Patience Ward* was proving Alderman *Pilkington* was not in the Room while they discoursed of the Duke of *York*, and that the Duke of *York* was not named.

Mr. *S. Jefferies.* Did he swear that positively?

Sir *Francis Butler.* To the best of my Remembrance, positively; I heard nothing of Qualification at all.

Mr. *S. Jefferies.* This is a Gentleman of great Worth, and the Foreman of that Jury.

Sir *Fr. Butler.* We did debate it after we went out of the Court, among ourselves, before we brought in our Verdict, and I remember something more in it; for we should have laid a little more Weight upon his Evidence, if he had not said, that when Sir *William Hooker* took some Exceptions at his Words, and asked, *What do you mean?* Sir *Patience Ward* then laid one Hand upon Alderman *Pilkington's* Mouth, and, as I remember, t'other upon his Breast, and asked, *What do you mean?* And t'other answered, *Hubert.* That made us believe his Evidence was to be laid by.

Mr. *S. Jefferies.* Now, my Lord, if your Lordship pleases, I think we have sufficiently satisfied your Lordship, and the Jury, what Words he swore; now we will prove, that they were false.

Mr. *Att. Gen.* Sir *Harry Tulse*, pray, will you acquaint my Lord, and the Jury — We will ask you first; Sir *Harry Tulse*, were you present when this Gentleman swore?

Sir *H. Tulse.* I was present; I sat down on a Fore-seat, and he gave his Evidence behind: I never saw him touch the Book, nor kiss it.

Mr. *Att. Gen.* What did you hear him say?

Sir *H. Tulse.* I was a little discomposed at what I had heard him say, and so I am not able to give an Account, and I thought I had some Reason for it.

Mr. *S. Jefferies.* Why what Reason? Was it because he swore truly or rashly?

Mr. *Thompson.* Good Mr. *Sergeant*, don't lead so.

Mr. *Williams.* I think it is a Reflection upon an Alderman to be led by any.

Mr. *Att. Gen.* Mr. *Williams*, I can shew you, you have led Aldermen, and against Law too.

Mr. *Sol. Gen.* Will you please to give my Lord an Account whether Mr. *Pilkington* was by when there was any Discourse about the Duke of *York*? Mr. *Finch.*

Sir *H. Tulse.* Gentlemen, I don't know whether you expect the Account I formerly gave; that I think I have very perfect in my Memory.

Mr. *Att. Gen.* Give an Account of that Passage.

Sir *H. Tulse.* The Evidence I gave was this: Upon the Tenth Day of *April*, (I will not be positive, I think it was that Day) according to an

Order of Court made the Day before, we met at *Guild hall*; there was *Sir William Hooker*, *Sir Patience Ward*, *Sheriff Pilkington*, and myself, I remember no more; and *Alderman Pilkington* said, *He burnt our City, and is come, or will come, one of these two Words, to cut our Throats*. This was the Evidence that I gave, this was true. I was asked by the Court, what was the preceding Discourse, whether made by *Alderman Pilkington*; or *Sir Patience Ward*, I can't be positive; but it was concerning an Order of going to *St. James's*, or to the *Duke of York*, one of the two; he did complain of that Order, they were complaining of that Order, and seemed to me as if they would have it re-debated; I made Answer, it was too late, for the Court had agreed it.

Mr. Att. Gen. Was there any Discourse concerning the *Duke of York* while *Mr. Pilkington* was by?

Sir H. Tulse. *Alderman Pilkington* was by, all the while the Discourse was.

Mr. Att. Gen. And was there any Discourse about the *Duke of York*?

Sir H. Tulse. I did never hear the *Duke of York* named by *Alderman Pilkington* at all, as I remember; they complained of the Order made the Day before, that is, concerning going to *St. James's*, or to the *Duke of York*, seeming to me as though they would have it re-debated; upon which I made Answer, it was too late now, for the Court had agreed it; and then came these Words, *He hath burnt our City, and is come, or will come, to cut our Throats*.

Mr. Att. Gen. Do you say *Pilkington* was there when the Discourse was?

Sir H. Tulse. Yes, Sir.

Mr. S. Jefferies. *Sir Harry Tulse*, I would ask you a Question, by your Favour, you say there was then mention of cutting of Throats, and you say *Mr. Pilkington* did not name the *Duke of York* himself, that you can't say; but you say he was there while there was a Discourse about going to congratulate the *Duke*.

Sir H. Tulse. I cannot be positive of that; we discours'd about the Order, that was the Order that was made before, to congratulate the *Duke of York*; I cannot say that *Alderman Pilkington* did ever name the *Duke of York*, but he was present at that Discourse.

Mr. Sol. Gen. *Sir Harry Tulse*, you say there was mention made concerning debating the Order, was there mention made of the Order? Did they name what Order they would have re-debated?

Sir H. Tulse. Yes, Sir. The Order was this, an Order made the Day before, that we should go and congratulate the *King's* safe Return, and with the *King's* good Leave or Licence, we should then congratulate the *Duke of York*, that was the subject Matter.

Mr. S. Jefferies. *Pilkington* was present then?

Sir H. Tulse. He was present there.

Mr. S. Jefferies. And upon that Discourse, pray, *Sir Harry Tulse*, did *Pilkington* say these Words, *He hath burnt the City, and is come to cut our Throats*?

Sir H. Tulse. No, Sir, that did not immediately follow.

Mr. Sol. Gen. *Sir Harry Tulse*, what Order did they say they would have re-debated?

Sir H. Tulse. I took it for the Order made the Day before.

Mr. Sol. Gen. Did they name the Order?

Sir H. Tulse. I did make mention of the Order, that the Court had agreed it, and it was too late for that.

L. C. J. He says it was too late to be debated or spoke of in Court, I apprehend it so.

Mr. Just. Jones. Was the *Duke* named, or not?

Sir H. Tulse. At that Time, truly, Sir, I cannot positively say he was named; for the Debate was about the Order made to congratulate the *Duke of York*, or of going to *St. James's*; one of them, I am sure, was named, but I cannot be positive.

Jury-man. I desire to know whether this Gentleman was there all the while.

Sir H. Tulse. My Lord, I believe I was there all the Time that there was a Word spoke in this Matter, the whole Time.

Mr. S. Jefferies. *Sir Harry Tulse*, I would ask you another Question: Who did you apprehend to be meant, when *Pilkington* said, *He hath burnt the City*? Who do you think he meant by that?

Sir H. Tulse. I will answer any thing that the Court thinks fit I should answer. I humbly pray my Lord and the Court would ask me Questions.

L. C. J. *Sir Harry Tulse*, it was said the *City* was burnt. Pray who did you apprehend was meant that burnt the *City*? Who did they mean?

Sir H. Tulse. Who did I apprehend, my Lord? Truly, my Lord, I think I was the Man that made Answer, that it was *Hubert* that burnt the *City*, because he was hang'd for it.

Mr. Just. Withins. Did you apprehend it was *Hubert*?

Sir H. Tulse. My Lord, there was a Talk of *Hubert*; and I remember *Sir Patience Ward* took hold of it, and bid him explain himself, Who do you mean? *Hubert*? And then there was a little Stop among us; and, as I remember, I made this Answer, I think, that *Hubert* burnt the *City*, for that he was hang'd for it.

L. C. J. Hark you; I would ask you one Question, if you please; You heard the Expression of *cutting of Throats, he is, or will come to cut our Throats*?

Sir H. Tulse. Yes, my Lord.

L. C. J. Pray who did you apprehend should be meant by that? He could not mean *Hubert*, surely, for that?

Sir H. Tulse. My Lord, I must give my Opinion, that it was the *Duke of York*.

Mr. Thompson. Did you understand that he meant so at that Time?

Mr. S. Jefferies. *Sir William Hooker*, will you give an Account of it?

Sir W. Hooker. My Lord, I will, as near as I can, tell the very Words; I may lose some Words, but of the Matter of Fact, I am confident I shall miss nothing. We met in pursuance to an Order made the Day before; the Order was made to meet on the *Monday* following, to wait upon the *King* and the *Duke of York*. My Lord, accordingly, when I came into the Gallery, I found *Sir George Waterman* sitting on one Side, and I sat opposite to him, and *Sir Henry Tulse* at the End of the Table; not long after, came in *Sir Patience Ward*, my Lord, *Sir Patience Ward* sat down close by me, and *Mr. Pilkington* stood at the other End of the Table, opposite to me. My Lord, to the best of my Remembrance and Belief, *Sir Patience Ward* did move, that we might consider this Business of waiting on the *Duke*, and,

and, my Lord, Answer was made, I do believe, by Sir *Henry Tulse*, that it was now too late, for my Lord *Mayor* was come, and would be going; upon his saying it was too late in this manner, *Pilkington* standing at the End of the Table, said these Words; *Hath he burnt the City, and is he come to cut our Throats?* Upon this, my Lord, I reply'd; Brother *Pilkington*, said I, thou art infinitely mistaken in this Point; thou mayest as well charge it upon a Child unborn, as upon him; for the Duke of *York* was as careful in the Fire to preserve the City at the same time, in a Yard in *Coleman-street*, as any who was by, was; though the Ashes came upon our Heads; and I never knew a Man look more carefully than he did, at the same Time. This, my Lord, is the Substance, but I cant say that Mr. *Pilkington* made a Reply either one Way or other, but I think there was something of *Hubert* spoke besides. Then Sir *George Waterman* went away, and I went away afterwards.

Mr. *Att. Gen.* So that you are positive that *Pilkington* did say, *he is come to cut our Throats?*

Sir *W. Hooker.* *Hath he burnt the City? And is he come to cut our Throats?*

Mr. *S. Jefferies.* And did you immediately tell him this of the Duke of *York?*

Sir *W. Hooker.* Immediately.

Mr. *Sol. Gen.* I think you say it was pursuant to an Order about waiting on the Duke of *York?*

Mr. *Att. Gen.* Did you name the Duke of *York?*

Sir *W. Hooker.* I did name the Duke of *York* to *Pilkington*, after these Words were spoke.

Mr. *S. Jefferies.* *Pilkington* was there then before the Discourse of the Duke of *York*. Was Sir *Patience Ward* there while the Discourse was, concerning cutting of Throats?

Sir *W. Hooker.* I am not able to swear whether Sir *Patience Ward* did hear it or no; undoubtedly he was there.

Mr. *Sol. Gen.* Sir *William*, do you think that Sir *Patience Ward* did wink when he stopt his Mouth, or no?

Sir *W. Hooker.* Truly I did not see him stop his Mouth.

Mr. *Sol. Gen.* Sir *William*, was it plain to you that he meant the Duke of *York?*

Sir *W. Hooker.* I am not able to know other Mens Thoughts; but certainly nothing could appear more plain.

Mr. *Sol. Gen.* Was the Subject-matter of Discourse concerning the Duke of *York?*

Sir *W. Hooker.* About that, and nothing else.

Mr. *S. Jefferies.* He named the Duke of *York*, did he?

Sir *W. Hooker.* He did not name the Duke of *York*; I don't say that.

Mr. *S. Jefferies.* But you named him.

Sir *W. Hooker.* Yes, Sir.

Mr. *Att. Gen.* Was that all you discours'd of?

Sir *W. Hooker.* This is all.

Mr. *S. Jefferies.* Here is the Order.

Mr. *Williams.* We agree the Order.

Mr. *S. Jefferies.* For the present we will rest here, and see what Account they will give.

Mr. *Recorder.* May it please your Lordship, and you Gentlemen, of the Jury: I am of Counsel for Sir *Patience Ward*, the Defendant. My Lord, as the Counsel for the King say they will rest it here, so if we should rest here too, I think there is nothing proved that sticks upon us. My Lord, I observe first, that of all their Witnesses they pro-

duce concerning the Words in Court, there is not one of them all, but the first pretends to be a Penman, and he says he believes he did write, he can't tell whether he writ or no, and he can't tell whether he hath his Notes about him, and this is all we can have of him. And the Truth is, they vary so much among themselves, that that is enough to make any one wonder, on the whole speaking of the Words. And we see these worthy Aldermen are very cautious; they did expect to be call'd upon their Oaths, I did take particular Notice of it. The Truth is, my Lord, for this Matter, it is certainly as great and heinous a Crime, as any can be, and I believe these Gentlemen will think, that in this Case, they should have no less Evidence to convict this Gentleman of this foul Crime of Perjury, than to convict him of any Crime that concerns his Life. The Truth of it is, if such a foul Disreputation and Scandal should stick, yet the Jury must have plain Proof. If there were a rash Word, if there were a Mistake in a Person's Remembrance, it is not every Slip that will criminate a Man of Perjury, it must be a wilful and corrupt forswearing a Man's self against his own Knowledge, and nothing less than that is sufficient. My Lord, it is agreed on all Hands, the Record shews it, that the Duke hath recovered a Verdict. The Cause went for him. If the Duke would have had a Verdict, he hath it; if he would have had more Damages, for aught I know, he might; he hath more than an 100,000 *l.* for he hath all Costs, to the utmost Farthing. My Lord, in Cases of this Nature, a Man's Words must be taken together. Your Lordship will acquaint the Jury, that if there be any thing in any Part of his Evidence, that does explain, that does limit, that does qualify it, the whole Discourse must be taken as one intire Evidence, and that he shall have the Advantage of it in every Part. My Lord, the Use I would make of this is to this Purpose, that whatever these Witnesses fix upon him, they do it by culling and picking out Pieces of Words; they don't pretend upon their Memory, much less upon Writing, that they are able to repeat the whole Evidence. Your Lordship does very well remember the Lady *Carr's* Case, a greater and plainer Instance than this, if it were proved as it was pretended, in Chancery; she swears she never received Money of such a Man, and she made a second Answer, and there she says she received no Money after *such a time*, and it was resolved, that that should be taken together, and that that was no Perjury. My Lord, we shall insist upon the two Things: *First* of all, that the Words were not spoken as they are laid, that they were not sworn by Sir *Patience Ward*, as they are laid and charged in the Information; for they are charged there positively and directly, but we say they were spoken with all the Caution that any Man can speak them with, as *he believed*, and to the *best of his Memory*, and *as he apprehended*; and this, I say, circumscribed with great Caution and great Tenderness. If they had been spoken as they are laid, yet this could not be Perjury; that is the *second Thing*. So that if it fall out that he was mistaken in this, your Lordship will acquaint the Jury, that a *rash Oath is not Perjury*, if it were so. My Lord, as to the latter Part, Sir *Harry Tulse* does go a great way; for he says, that he can't take upon him to say, that Sir *Patience Ward* ever saw Mr. *Pilkington*; if he did never see Mr.

Pilkington, how can he be charged with Perjury then, for saying he was not there? Under Favour, if he did not see him there, he must swear according to his Senses, that he was not there, and you cannot charge Perjury upon that. It demonstrates the Uncertainty of these Words, that when they come to lay the Declaration, they are fain to lay these Words four several Ways, as they do. And yet these two worthy *Aldermen* say, they took down the Words that very Day. If these Words were so uncertain then, though they were writ down, what should make them otherwise now?

Mr. *Att. Gen.* There hath not been such a Word said yet.

Mr. *Recorder.* We will prove it, Sir. As to the *third Point*, we say this: It is charged there was no cutting of Throats, no mention of cutting of Throats; as to that, my Lord, I take it from one of their Witnesses Mouths, that is, Mr. *Buxton*; he says, that Sir *Patience Ward* swore, that he heard no mention of cutting of Throats; under Favour, Sir, to say that there was no mention of cutting of Throats, that is positive, that there was no such thing spoken; but their own Witness says, that there was no such thing heard. Can there be a greater Difference than for a Man to say, there was no such Word spoken, and to say, there was no such Word heard by me? This of cutting of Throats, if it were spoken at all, tho' I believe it was; for I have that good Opinion of these worthy Aldermen, I mean Sir *William Hooker* and Sir *Henry Tulse*, that I presume there was something about cutting of Throats; but I answer, that Sir *Patience Ward* might not hear it. And I think they have given a very good Ground for it: Says Sir *Henry Tulse*, Is he, or will he, come to cut our Throats? Whether it were *is*, or whether it were *will*, that he cannot tell. Sir *William Hooker*, says he, *is come* to cut our Throats: One speaks affirmatively, the other interrogatively. Sir *Henry Tulse* says it was *our Throats*; says Sir *William Hooker*, the *Throats of our Wives and Children*. Do not these two Aldermen differ as much between themselves, as either or both of them do with Sir *Patience Ward*, when Sir *Henry Tulse* shall say, there was no *Wives and Children* mentioned? It is no Reflection at all, and I hope there will be no Cause to reflect upon the other Alderman. The *next Point* is, that there was a Discourse concerning the Duke of *York*, and that it was before Mr. *Pilkington* came in: Here the Witnesses vary extremely; one says before he *came in*; another says, before he came to the *Table*; another says, while he was in the *Room*; all these Varieties we find in the Witnesses that swear the Words out of Sir *Patience Ward's* Mouth; and certainly Sir *Patience Ward* would never say these Words; it is impossible to say the Discourse concerning the Duke was ended, when in the very next Words he says, the Duke was not named at all: For, my Lord, Sir *Henry Tulse* says, he was never named. But, my Lord, besides this, if I say he was not there in the Sight and View of Sir *Patience Ward*, he is not guilty, be it true or false, that he was there before the Discourse ended; for it is a long Room, and no Man can say but a Man might be behind Sir *Patience Ward* as he sat at the *Table*. The *second Thing*, my Lord, is this, that the Duke was not named; that he is charged to have sworn. My Lord, the Evidence that he delivered was, that the Duke was not named in his Hearing. Now Sir *Henry Tulse* says

the very same that Sir *Patience Ward* did, that there was a Discourse about an Order, he says, but nobody named the Duke, and Sir *William Hooker* says, the Duke was not named.

Mr. *Just. Withins.* He says he cannot say he was named.

Mr. *Recorder.* 'Till after the Words spoken; and, my Lord, it was so doubtful, that it seems there was need of Explication; for the Words, (under Favour) as proved, do not relate to cutting of Throats, but to the *burning of the City*; and what Sir *William Hooker* says afterwards, makes it more plain. If we prove these Things, that Sir *Patience Ward* carried himself thus, if he expressed himself with so much Caution, under Favour, that doth clearly avoid this Charge in the Information. But, my Lord, if there were Perjury, it was committed at the Trial of Mr. *Pilkington*, and at that Trial, when it was committed, it was best understood; for here is no new Evidence as to the Words spoken in the Gallery; therefore, under Favour, the Perjury was as observable then, and more, because it was fresh then. Now it is said, that it was with great Astonishment; we shall give in Evidence, that there was no such Apprehension, that the *Court*, that the *Council*, that every body did apprehend it as delivered with that Caution as I have opened it to your Lordship: *First*, Sir *George Jefferies*, in the very Conclusion, asked him, if there were nothing spoke of the Duke while Mr. *Pilkington* was by. No, saith he, not to the best of my Memory, saith Sir *Patience Ward*. Saith Sir *George Jefferies*, by Reply, Your *Invention is better than your Memory*. Surely that were the most impertinent Thing in the World, if it had been otherwise. And every body knows Sir *George Jefferies* is a Man that would not have said such a Thing, if he had not wholly refer'd to his Memory, and given him an Occasion for that Reply. And Mr. *Solicitor*, he says these Words, in repeating the Evidence to the Jury: Sir *Patience Ward* goes a great way to confirm that of the other Aldermen, and that shews, that they did observe it far enough from Perjury; and my Lord *Chief Justice*, my Lord, when he came to direct the Jury, he says, that Sir *Patience Ward* had said, that, as he conceived, there was no mention of cutting of Throats, and so on; and says he, it is easy to forget such Circumstances. If, in the Judgment of my Lord *Chief Justice*, it were an easy thing to forget, can it be wilful Perjury in any Man to testify that which was spoken as he conceiv'd? And truly, my Lord, it is the more for that my Lord *Chief Justice* was upon his Oath as well as the Witnesses: And your Lordships, that sat with him, would have rectified my Lord *Chief Justice*, if he had misapprehended him: And the Jury did apprehend it so, and looked upon Sir *Patience Ward's* Evidence as a Confirmation. My Lord, all these things are negative, and they do refer to the Memory, and that my Lord *Chief Justice* said a Man may easily forget, and that is enough to excuse him. Besides, my Lord, this was given in Evidence seven or eight Months after the Time that the Words were spoken; and if any Man were to repeat what was said at this Bar, no doubt but in seven or eight Months they would differ more than Sir *Patience Ward* did from these Gentlemen. Besides, my Lord, he is a Man of good Reputation and Credit, he hath born great Offices in the City, Mayor and Sheriff of *London*,

don, and this a Crime for mean Persons, and we think much less Evidence than this will satisfy your Lordship. We will prove what was said at the Trial, not by the imperfect Memories of People that did not write, or cannot tell whether they writ or not; but by some that did take very exact Notes, and especially by one that wrote the Whole.

Mr. Williams. My Lord, the Question is, what was spoken by Sir *Patience Ward*. My Lord, if Sir *Patience Ward* did not swear as they have laid it in the Information, Sir *Patience Ward* is not guilty. They have laid the Information thus: That as to the cutting of Throats it was sworn positively by Sir *Patience Ward*; but if Sir *Patience Ward* did only speak as by Hearsay, as he heard, that there was no mention of cutting of Throats in his hearing, then we are not guilty. My Lord, how far then the Evidence doth touch us in this Matter, how far they have proved us guilty, is to be considered. I do not find, that any one Witness in this Trial says, that Sir *Patience Ward* did swear positively, that there was no mention of cutting of Throats. Every Man that speaks, speaks to the best of his Memory, and to the best of his Knowledge, and no otherwise; and I will appeal to your Lordship, upon what every Witness hath said, whether any Witness can be convicted of Perjury; for every Man hath appealed to his Memory. Observe every Witness, and not any of them do agree. The two Aldermen that were then sworn, one of them Sir *Harry Tulse*, tell you of the Discourse concerning coming to burn the City, and cutting of Throats; as I take it, Sir *Harry Tulse* said it by way of Question, *Is he come, is he come to cut our Throats?* Sir *William Hooker* tells it positively, *He is come, he is come to cut our Throats*. If Gentlemen do vary, as these two Witnesses, and have several Apprehensions of the same thing, it ought to have no Influence upon this. In this Case, we are here for wilful Perjury. If it be a Mistake of the Memory, that will never come up to Perjury. We will make it out, that it was spoken with great Caution and Restriction. And then for the other of the two Assignments, if this be true, that there was no Discourse of the Duke of *York*, then the second will naturally fall. The first thing is this, that he should swear there was no Discourse of the Duke of *York*; if this be true, that there was no Discourse of the Duke of *York*, then the second will fall. If the Discourse of the Duke of *York* was done before Mr. *Pilkington* came into the Room, if there were no Discourse of the Duke of *York*, it is impossible that should be the Meaning. And here I must observe, Sir *Harry Tulse* is a Thousand Witnesses in this Case; he tells you expressly, that there was no Discourse of the Duke of *York*, he hath told you plainly there was no Discourse of the Duke of *York*, nor any Discourse of the Duke's Name; and what says Sir *Harry Tulse*? He says very plainly, there was a Discourse of an Order made the Day before. We allow the Duke is mention'd in that Order, but the Question is, whether there was mention of the Duke's Name at this Time. If you believe Sir *Harry Tulse*, there was no mention of the Duke's Name.

Mr. Just. Jones. He did not remember, that there was. He did not remember, that the Duke of *York* was named.

Sir F. Winnington. By any body.

Mr. Just. Jones. He does not say, that the Duke was not named.

Mr. Williams. Sir *Harry Tulse* is as much obliged to remember in this Case as any Man here. This will be a mighty Evidence to justify my Client, then the Perjury will certainly fall upon these, but we will clear this too. In this Matter Sir *Patience Ward* was a most cautious Evidence, so is he, he did not say positively, that there was no mention of the Duke's Name, but he says, to the best of his Remembrance. So that there is nothing proved against us. We will call Mr. *Blaney*, Mr. *Blaney* is a thousand Men in this Case.

Sir Geor. Jefferies. Is he so?

Mr. Williams. He takes Notes exactly. We will tell you what was sworn by Sir *Patience Ward*.

Sir Geor. Jefferies. I have known him out in a Verdict.

Mr. Pollexfen. That the Duke of *York*'s Name was named in the Discourse, is not proved; nobody says it was before the Words spoken.

Mr. Just. Jones. After the Words spoken; it was then he tells you; but it was not before the Time of the Discourse.

Mr. Pollexfen. There was a Discourse of going to *St. James's*, and upon this Discourse these Words were spoken, that *Pilkington* did speak; but the naming the Duke was after the speaking of the Words in the Declaration; therefore, there being nobody that does prove, that the Duke was named in any Discourse preceding the Words spoken by *Pilkington*, I think it is no Evidence at all.

L. C. J. You make things so intricate, that no Man shall be able to understand what another says, but must take it as you would have it. When it was said he had burnt the City, well, what says t'other? Sir *William Hooker*, I think, makes Answer, says he, the Duke is as innocent as a Child, and he was one that endeavoured to save it. Must not we understand, now, that this was a Discourse of the Duke, all this while?

Mr. Pollexfen. My Lord, the Question is, whether there were any such Discourse preceding the Words, or any thing in Question, but what happened after the Words.

Sir Geo. Treby. If the Duke were not named before the Words, can the Name of the Duke refer to the expounding of them?

Sir Geor. Jefferies. No; but *Hubert*, ten Years after he was hang'd.

Sir Fr. Winnington. My Lord, I see we are in Question for corrupt and wilful Perjury.

L. L. J. You had best call your Witnesses; for aught appears, you are so yet.

Sir F. Winnington. We will call our Witnesses, and shew what he did swear.— Mr. *Blaney*, will you acquaint my Lord and the Jury, whether you were by at that Trial; and give an Account of what you know Sir *Patience Ward* did swear, and whether you took any Notes?

Mr. *Blaney*. I was present at the Trial between his Royal Highness and Mr. *Pilkington*; I did sit upon one of those Stools there, and I did take Notes, to the best of my Skill.

Sir Geo. Jefferies. Have you your Notes?

Mr. *Blaney*. Yes, Sir.

Mr. Williams. First of all, acquaint my Lord and the Jury, what was sworn by Sir *Patience Ward*.

Mr. *Blaney*. Having received a *Subpœna* from Sir *Patience Ward* about this Matter, I looked over my Notes, and turned down the Leaves in several Places.

Mr.

Mr. Williams. Tell what Sir *Patience Ward* swore concerning cutting of Throats; and what that was: Recollect yourself about what was sworn by Sir *Patience Ward* concerning cutting of Throats.

Mr. Att. Gen. Pray, Sir, don't look upon your Notes.

Sir *F. Winnington*. Your Witness don't remember whether he writ Notes or no.

Mr. Blaney. I have read my Notes To-day, again, and looked upon them; I do find it is thus, and I do really believe to be true; for I don't know I ever altered any Man's Evidence, either in Substance, or Form. He did then say, *Upon my Oath, if it were the last Word I was to speak, I did not bear one Word of cutting Throats.*

Mr. Williams. Pray, Sir, say as he said.

Mr. Blaney. These were the Words: *Upon the Oath I have taken, if it were the last Word I was to speak, I did not bear one Word of cutting of Throats.*

Sir *F. Winnington*. Was it writ so in your Notes at that Time?

Mr. Blaney. It is so in my Notes.

Sir *F. Winnington*. Are your Notes alter'd since?

Mr. Blaney. No, Sir.

Sir *F. Winnington*. There was no Thought of Perjury then.

Sir *Geo. Jefferies*. Not by him, but by others.

Mr. Williams. Are these the Notes that were then taken?

Mr. Blaney. These are the Notes that were then taken.

Sir *F. Winnington*. I ask you this; did you take them as he said them?

Mr. Blaney. I did, to the best of my Skill, neither added nor diminished; Sir *Patience* in the Beginning of his Evidence did say these Words: That there was nothing mentioned of the Duke, but of *St. James's*, in his Hearing.

Sir *F. Winnington*. Are you sure the Words are there?

Mr. Blaney. They are here. Any Man that could read my Short-hand may see it.

Sir *F. Winnington*. Were the Words then taken?

Mr. Blaney. They were then taken.

Sir *F. Winnington*. Are they altered since?

Mr. Blaney. They are not, Sir.

Sir *F. Winnington*. How are the Words?

Mr. Blaney. That there was nothing mention'd of the Duke's Name, but of *St. James's*, in his Hearing.

Mr. Williams. If this be true, it shuts out the second Assignment; but however we will ask him concerning the other Assignment, whether there was any Discourse concerning the Duke after *Pilkington* came in.

Mr. Blaney. If you please, Mr. *S. Jefferies* was pleased to press it upon Sir *Patience Ward*. Sir, you were pleased to ask the Question, Was all the Discourse over concerning going to *St. James's*, or the Duke of *York*, before Mr. *Pilkington* came in? Was it all over before Mr. *Pilkington* came in? And Mr. *S. Jefferies* then said—

Sir *G. Jefferies*. What did he answer to my Question? Was there nothing said of it while he was by?

Mr. Blaney. Sir *Patience Ward* said, *Not one Syllable of it to my Memory*; whereupon Sir *George Jefferies* said, *Your Invention is better than your Memory*. And he reply'd, my Lord, *I thank God, I have a good Memory, though perhaps that Gentleman hath not.*

Mr. Williams. Was this written down in your Book?

Mr. Blaney. It was then taken by me in Writing, in my Book.

Mr. Williams. Is any thing altered?

Mr. Blaney. Not one Word.

Mr. Williams. Did you write them sitting there as they were spoken?

Mr. Blaney. Just as he said them: There I sat where Mr. *Owen* sits now.

Mr. Att. Gen. Do you swear you remember any Part of it?

Mr. Blaney. Sir, this I do remember, as well as I can remember any thing in the World.

Mr. Att. Gen. Blaney, tell me positively what he said.

Mr. Blaney. He said, *Not one Syllable of it, to my Memory*; I do remember it.

Mr. Att. Gen. Upon what Question?

Mr. Blaney. Sir, of the Duke's being not named, but *St. James's*, I do remember likewise; but I can't well say any thing of the Business of cutting of Throats; I find it in my Book unaltered, I do not know that I am mistaken.

Mr. *S. Jefferies*. Hark you, Mr. Blaney; I know his Notes have been mistaken sometimes; I remember once, upon *Raree-show* Business, they were mistaken. Upon your Oath, Sir, did you hear Sir *Patience Ward* speak at that Time any Words concerning a Law-suit? Look upon your Notes.

Mr. Blaney. Sir, I will so.

Mr. *Pollexfen*. What have we to do with *Raree-show*? Are we trying that?

Mr. *Just. Withins*. Gentlemen, don't be angry, let the Cause be tried fairly.

Mr. *S. Jefferies*. I may ask a Question, I hope. I ask a fair Question, I would fain meet with that among his Characters.

Mr. Blaney. Sir, I would not have looked it over, if I had met with any such thing in my Notes.

Mr. Att. Gen. Can you swear any thing positively upon your Notes?

Mr. *S. Jefferies*. It is some Discourse near the Question.

Mr. Blaney. Then, Sir, indeed it is not in my Notes.

Mr. *S. Jefferies*. Did Sir *Patience Ward* use the Word *positively* at any time in your Notes; and tell us to what?

Mr. Att. Gen. Whether he was positive to any one Thing?

Mr. *S. Jefferies*. Did he swear positively to any one Thing? And tell us to what? I desire to be satisfied by Mr. Blaney's Notes. Some Men can take Notes on the one Side, and forget Things on t'other.

Mr. Williams. Come, Mr. *Beaver*.

Mr. Blaney. I don't see the Word *positive*.

Mr. *S. Jefferies*. No, not at all.

Mr. Blaney. I don't pretend to say I have written every Word.

Mr. *S. Jefferies*. But you do pretend to write more than he said.

Mr. Williams. What he writ is true.

Sir *F. Winnington*. He does not undertake to say he writ every Word that pass'd, but whether or no he writ any Word that was not said. Is all that you writ true?

Mr. Blaney. I verily believe it is true.

L. C. J. Is that any manner of Satisfaction when he hath not taken all that was said, and so spoiled the Sense, by leaving out some of the Words?

Mr.

Mr. Just. *Withins*. How is it possible for a Man to be a good Witness, that comes and swears in one Part, I know nothing of any such Words; and at another Time says he does not write all in his Notes?

Sir G. *Treby*. Let that pass for a Rule, and then no Witness they produce can be believed.

Sir Fr. *Winnington*. They have given Evidence by Witnesses *viva voce*, without Notes, and make an Objection, because he does not remember every Passage; therefore he signifies nothing. We urge it in point of Evidence, my Lord; he is known to be a Man very dexterous in writing Short-hand; in a material Thing he swears to the best of his Remembrance. He took them from the Mouth of the Person that swore at that Time. My Lord, we asked him whether he writ any thing that was not said. We leave it in point of Evidence, my Lord, to encounter theirs.

Mr. *Williams*. We would give our Evidence in, if they would give us Leave. — *Richard Beaver*, Were you by, at Mr. *Pilkington's* Trial?

Mr. *Beaver*. My Lord, I was by, all the while.

Mr. Just. *Jones*. Did you take Notes?

Mr. *Williams*. Were you present at the Trial of Mr. *Pilkington*?

Mr. *Beaver*. I was present.

Mr. *Williams*. Can you remember what was sworn by Sir *Patience Ward* upon that Trial?

Mr. *Beaver*. Yes, Sir.

Mr. *Williams*. Can you remember what Sir *Patience Ward* swore, concerning cutting of Throats?

Mr. *Beaver*. My Lord, he did say, That to his best Remembrance the Discourse was over before *Pilkington* came into the Room. To the best of my Remembrance, my Lord, that Discourse concerning the Duke was over before *Pilkington* came into the Room.

Mr. *Williams*. How did he express it? Pray swear what Sir *Patience Ward* spake; tell how he expressed himself.

Mr. *Beaver*. Sir *Patience Ward* did say, to the best of his Remembrance, That the Discourse concerning his Highness the Duke of *York* was over before Sheriff *Pilkington* came into the Room, where they were smoking Tobacco.

Mr. *Williams*. He said these Words to the best of his Remembrance?

Mr. *Beaver*. He did so. Upon which Sir *George Jefferies* said again to him, that he had a good Memory, and he said he had, and my Lord Chief Justice said, You may thank God you have a good Memory; my Lord Chief Justice himself said so.

Mr. *Williams*. What did he say?

Mr. *Beaver*. To the best of his Knowledge, he did not hear any thing of cutting of Throats.

Sir Fr. *Winnington*. Can you remember the Way of his Expression?

Mr. *Beaver*. The Way of his Expression was, as I remember, to the best of my Remembrance, he did strike his Hand upon his Breast, and said, When Sheriff *Pilkington* came in, he struck his Hand upon his Breast, and asked him if he meant *Hubert*, so he said, upon his Salvation, or to the best of his Knowledge.

Sir Fr. *Winnington*. What did he say?

Mr. *Beaver*. He said ———

Sir Fr. *Winnington*. What did he say concerning cutting of Throats?

Mr. *Beaver*. He said he did not hear any thing, as he believed.

Mr. Just. *Jones*. Of what?

Mr. *Beaver*. Of cutting of Throats.

Mr. Just. *Jones*. Is that all he said, he did not hear any thing of cutting of Throats?

L. C. J. You Friend; you said that Sir *Patience Ward* said he did not remember any thing of cutting of Throats; did you say so?

Mr. *Beaver*. Yes, my Lord.

L. C. J. And thereupon you say, My Lord Chief Justice did commend his Memory for it; pry'thee, how came he to be praised for such a great Memory, when he said he did not remember any thing? Thou hast not laid the Plot well together.

Mr. Just. *Withins*. Was he commended because he said he did not remember?

Mr. Just. *Jones*. Where did you stand?

Mr. *Beaver*. I stood over-against Sir *Patience Ward*.

Mr. Just. *Jones*. Did you hear well?

Mr. *Beaver*. Yes, my Lord, I heard every Word. He said he got Honour by speaking Words against the Duke of *York*.

Mr. Just. *Jones*. What is that?

Mr. *Beaver*. That *Pilkington* had got Honour by speaking against his Highness the Duke of *York*.

Mr. S. *Jefferies*. In the mean time look that Part out in your Notes, that he speaks of. Now I would ask you a Question, Friend.

Mr. Att. Gen. Pray will you recollect yourself? Did you hear Sir *Patience Ward* say, to the best of his Remembrance the Discourse concerning the Duke of *York* was ended before *Pilkington* came in? Pray what did he say, touching the Discourse of the Duke of *York*?

Mr. *Beaver*. Sir, he said to his best Remembrance, that Discourse was over.

Mr. Att. Gen. What Discourse?

Mr. *Beaver*. Concerning his Highness, that it was over.

Mr. S. *Jefferies*. Mr. *Beaver*, I would ask you a Question, because I know you will remember it presently. Do you remember any thing Sir *Patience Ward* swore, that he never had a Law-suit in his Life? Do you remember any thing of that?

Mr. *Beaver*. If you please, Sir, there was something said of that.

Mr. S. *Jefferies*. Then look that in your Notes too, Mr. *Blaney*. — Pray, upon your Oath, do you remember he used the Word *Positively*?

Mr. *Beaver*. Nothing at all, *positively*.

L. C. J. Upon my Word, your Memory must be commended.

Mr. S. *Jefferies*. Mr. *Beaver*, where do you live, Mr. *Beaver*?

Mr. *Beaver*. I live, Sir! You know well enough, Sir: What would you say to me?

Mr. S. *Jefferies*. I only desire to know where you live, Sir.

Mr. *Beaver*. I live in *Soaper-Lane*, Sir.

Mr. *Williams*. He is an honest Man. He was commended when he was Church-warden.

Mr. S. *Jefferies*. Many a wise Man hath been in that Employ.

Mr. *Williams*. Mr. *Crisp*, you were present at the Trial between his Royal Highness and Mr. *Pilkington*.

Mr. *Crisp*. My Lord, I was present here.

Mr. *Williams*. Can you remember, Sir, what was sworn by Sir *Patience Ward* concerning cutting of Throats, and how he swore it?

Mr. *Crisp*. I cannot give any perfect Account: I was here, and a great many Expressions I did hear,

hear,

hear, a great many I did not hear. I heard Sir Henry Tulse give some Account, and Sir William Hooker, that Mr. Pilkington should say such Words about the Duke's being come ———

Mr. Jult. *Witbins*. Go on, pray, Gentlemen.

Mr. *Williams*. Can you say any thing of what Sir Patience Ward sware about cutting of Throats?

Mr. *Crisp*. Sir Patience Ward was speaking whether or no such Words were spoken that were swore; he did say there was something said, that *he was come to burn the City*, that he did confess: but as to *cutting of Throats*, there was not a Word spoken in my *Hearing*, or to the best of my *Remembrance*, or something to that Purpose, I cannot be positive.

Mr. *Williams*. Can you be positive in this, Sir, that he said in his *Hearing*, or *I cannot be positive*?

Mr. *Crisp*. I took it in that Way, Sir.

Mr. *Williams*. Pray, Mr. *Crisp*, I would ask you this; Do you remember any thing he said, whether Mr. *Pilkington* was in the Room, when there was any Discourse of his Royal Highness, or the Duke of *York*?

Mr. *Crisp*. To the best of my Memory, he spake it thus: We were discoursing together about going to wait on his Majesty, and then to go to his Royal Highness; and we entered into some other Discourse; and when we were discoursing of that, Mr. *Pilkington* came to the Table to us: It was concerning the Work of the Day; and when we were about that Discourse, Mr. *Pilkington* came to us to the Table. Whether he said he was not in the Room, or came into the Room then, I can't tell; but I remember he said he came to the Table to us when we were about this Discourse.

Sir *Fr. Winnington*. Do you remember any thing that my Lord Chief Justice said to Sir Patience Ward's Evidence?

Mr. *Crisp*. That I remember more than any other Particular, because Sir *George Jefferies* had made some Reflection upon Sir Patience Ward, and my Lord said, Sir Patience, that is usual with Counsel to speak so to Evidence; but do you go on with your Evidence for all that, says my Lord Chief Justice; Sir Patience, recollect yourself; it is supposed by your Evidence, that you leave out those Words, either about the Duke of *York's* being named, or about *cutting of Throats*; therefore, Sir Patience, recollect yourself. Says Sir Patience, I do speak it to the best of my Memory. Says Sir *George Jefferies*, upon that or some other Time, *Your Invention is better than your Memory*, which I took more Notice of than other Things.

Sir *Fr. Winnington*. When my Lord Chief Justice bade him recollect himself, how did he express himself? Did he say, to the best of his Memory?

Mr. *Crisp*. That he did, positively.

Mr. *Williams*. Mr. *Crisp*, recollect yourself, as near as may be: When my Lord Chief Justice made that Answer, either to those Words of *cutting of Throats*, or the Duke of *York's* being mentioned; was it in the Conclusion of his Evidence?

Mr. *Crisp*. It was towards the Conclusion; for I went away, being very much sweltered.

Mr. *S. Jefferies*. Mr. *Crisp*, did you hear Sir Patience Ward say, in his Evidence, that he never had any Suit?

Mr. *Crisp*. He did speak something when you did reflect upon him, *I don't remember that ever I had any thing to do with Courts; my Business is at Home*.

Mr. *S. Jefferies*. A further Question I ask. ——— Mr. *Crisp*, can you tell, upon your Oath, whether

Sir Patience Ward swore any thing positively?

Mr. *Crisp*. I don't know, Sir; I took no Notes at all; I cannot swear, or declare those Words were not spoken; but still it was in his *Hearing*, or the best of his Memory.

Mr. *S. Jefferies*. Do you remember he ever used the Word *positively*, or was positive in any Part of that Trial?

Mr. *Crisp*. I do remember he spoke it very positively; but whether he said the Word *positive*, I can't say: But still it was with this Reservation.

Mr. *S. Jefferies*. Hark you, Mr. *Crisp*, I will ask you one Thing more. Do you take it upon your Oath positively, that he used either to the best of his Memory, or the best of his Belief, in any thing he said?

Mr. *Crisp*. In his Answer to my Lord Chief Justice he did.

Mr. *S. Jefferies*. In any other Part, will you take it upon your Oath, positively, that he ever used the best of his Remembrance, or the best of his Belief?

Mr. *Crisp*. I said before, I did not fix it in my Memory.

Sir *F. Winnington*. My Lord, he thinks it convenient to say to the best of his Memory too ——— Call Mr. *Wright*.

Here the King's Counsel attempted to remark on the Evidence.

Mr. *Williams*. Pray, my Lord, when we have given all our Evidence intire, if they have any Observation, we will submit to it; but to remark upon every Witness, would occasion too many Interruptions. We would give our Evidence intire.

L. C. J. You will agree, that they may ask a Question, when you have done with them?

Mr. *Holt* (to Mr. *Wright*). Was you present at the Trial between his Royal Highness and Mr. *Pilkington*?

Mr. *Wright*. Yes, Sir; and Sir Patience Ward, I remember, was asked this Question, Whether he heard any Words concerning killing, or cutting of Throats; and Sir Patience Ward said, *For killing, I heard that Discourse; but for cutting of Throats, he never mentioned*.

Mr. *Williams*. You are a Gentleman that exercise your Memory; pray, Sir, did he say any thing of cutting of Throats?

Mr. *Williams*. It was to his *Hearing*, or the best of his Remembrance; he did it very cautiously.

Mr. *Williams*. Was it as he believed or remembered, Mr. *Wright*? Did he say positively there was no Discourse of cutting of Throats, positively, or with any Reference to his *Hearing*?

Mr. *Wright*. As far as I can remember, thus he said, *There was a Discourse concerning firing the City, but not concerning cutting of Throats*.

Mr. *Williams*. Did he say that positively, or to the best of his Understanding?

Mr. *Wright*. The Occasion of it was this, Sir, whether Sir *Pilkington* was present when the Discourse was about waiting on his Majesty, to congratulate his coming to Town from *Newmarket*, and his Royal Highness; Sir Patience Ward did believe he was not then present when the Discourse was; he was in *Guild-hall*, with the Lord Mayor, licensing of Ale-houses.

Sir *F. Winnington*. When he did mention that about *cutting of Throats*, how did he express himself?

Mr.

Mr. Wright. *I believe, or do think, there was no such Word spoken.*

Mr. S. Jefferies. I would ask your Parson one Question.

Mr. Wright. What you please, Sir George.

Mr. Att. Gen. Can you swear yourself positively what he said?

Mr. Wright. I swear thus far, according to my Remembrance.

Mr. S. Jefferies. I would ask him a Question.---

Mr. Att. Gen. All Issues must be tried by Belief or Memory; what new Practice is this? Can you swear this upon your Oath, or do you only say, I think or believe it?

Mr. Wright. I speak to the best of my Remembrance.

Mr. S. Jefferies. Mr. Wright, I would ask you a Question. If I take you right, at the Beginning, there was a Talk concerning killing and cutting of Throats; my Lord, I appeal to the Memory of the Court and the Jury, if he did not say it two or three times over. Mr. Wright, remember what I say.

Mr. Recorder. He did say it cautiously.

Mr. Just. Jones. He did not insist upon it.

Mr. S. Jefferies. Was there any Discourse, upon your Oath, when Sir *Patience Ward* gave his Testimony, that there was any Discourse concerning killing and cutting of Throats?

Mr. Wright. *He believed that the Word killing was not spoken in Mr. Pilkington's bearing.*

Mr. S. Jefferies. Now I ask you another Question: Now, Mr. Wright, pray do you remember, that there was any Discourse concerning Sir *Patience's* having a Law-suit, or no Law-suit?

Mr. Wright. Sir *Patience* said this when you made a Reflection upon him. My Lord, *I hope you will not suffer me to be abused; for I never remember I was in any Court upon any Occasion of Law before.*

Mr. S. Jefferies. Now I would ask you another Question, Mr. Wright, because you have remembered more than other People have remembered; you have, by your Profession, an extraordinary Occasion to use your Memory; do you take it upon your Oath, that he did give any Evidence positively?

Mr. Wright. I do not remember he used the Word positively.

Mr. S. Jefferies. Did he swear any thing positively?

Mr. Wright. I do not know what you mean by positively.

Mr. S. Jefferies. Do you take it upon your Oath, that he did positively declare any thing in that Trial? Methinks a Man of your Profession should understand that.

L. C. J. Did he speak positively, or the best of his Remembrance? Do not you understand that Word?

Mr. S. Jefferies. Or directly, or categorically, or any Word you use; I perceive you do not understand *positive*, therefore I put another Word.

Mr. Att. Gen. Did he swear any thing positively?

Mr. Wright. The most of his Evidence that I heard, was with *cautionary Words*, to the best of his Remembrance.

Mr. S. Jefferies. Do you remember he swore any thing positively?

Mr. Wright. I cannot remember, Sir, the whole Trial.

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Mr. S. Jefferies. Did he swear any thing directly or positively?

Mr. Wright. Thus far he said, *To the best of my Remembrance, to the best of my Knowledge, this Discourse was over.*

Mr. S. Jefferies. Did he directly swear it?

Mr. Wright. My Lord, he spake *cautionarily*, those Words he spake *directly*.

Mr. Att. Gen. Did he swear any thing indirectly?

Mr. S. Jefferies. Where does my Parson live? Where do you live, Mr. Wright? Upon your Oath, where do you live, before you go?

Mr. Wright. If it be a *material Question*, I will answer it.

Mr. Just. Raymond. You must do it.

Mr. Wright. My Lord, I live in *Essex* at *Walthamstow*.

Mr. S. Jefferies. Are you the Minister of the Place?

Mr. Wright. Yes, Sir.

Mr. S. Jefferies. He hath heard the Word *killing*, which nobody else heard before.

Mr. Williams. Pray call Colonel *Birch*.

Mr. Holt. Come, Col. *Birch*, will you come over on this Side?

Ma. Williams. Thus, were you at the Trial between his Royal Highness and Mr. *Pilkington*?

Col. *Birch*. I was — My Lord, I am sworn to speak the Truth, and the whole Truth, and nothing but the Truth. As for speaking nothing but the Truth, I shall be sure to do; as to speak the whole Truth, I cannot. My Lord, I stood where those Gentlemen do: Sometimes I could hear, sometimes I fell back, and could not hear, so that indeed I cannot speak to any one Sentence as it was delivered. This is all I can say.

Mr. Williams. Then say what you can.

Mr. Holt. Colonel, please to go your own way.

Col. *Birch*. My Lord, that which I took Notice of was the *Caution* that I observed Sir *Patience Ward* to give his Evidence with, that was the principal Thing; I heard some Pieces of other Things, and then by-and-by I was put out of Hearing. *But methought it was something strange, because I have not usually heard the like and therefore I charged my Memory with it; that is, Some Things he said to the best of his Memory, other Things as he remembered, or to the best of his Knowledge; these were the Things that I charged my Memory withal, but to what Sentence he applied, I am not able to give your Lordship an Account upon my Oath.*

Mr. Williams. Colonel *Birch*, did you observe this in giving his Evidence, generally: Was it according to his Remembrance, or cautiously?

Col. *Birch*. That was the main Thing he spoke of; *what he did in the general, was with Caution.*

Mr. Attor. Gen. Can you judge of that by what you heard?

Col. *Birch*. I am very ancient, Mr. Attorney; but I can judge of a Man's Caution by his speaking.

Mr. Attor. Gen. Colonel, did you see him strike his Hand upon his Breast?

Col. *Birch*. *I do not remember. I cannot apply it to any Sentence; but from henceforth I will never give Evidence, but what I can do directly.*

Mr. Williams. Mr. *Northey*, were you at the Trial between his Royal Highness and Mr. *Pilkington*?

Mr. Northey. My Lord, I was there, and stood behind there, but I could not hear very perfectly, to know any Sentences fully.

Mr. Williams. What did you observe?

Mr. Northey. I do remember that Sir Patience Ward did several times say, *to the best of his Memory, and to the best of his Knowledge, one Time particularly, Sir George Jefferies did particularly say, that his Invention was better than his Memory.*

Mr. Thompson. Was that towards the Conclusion of his Evidence?

Mr. Northey. *He did it several times.*

Mr. Thompson. But that time, Sir?

Mr. Northey. *He did swear very cautiously to the best of his Remembrance; I cannot, my Lord, say what he swore.*

Mr. S. Jefferies. You heard my Question: When I said to him his Invention was better than his Memory, upon your Oath, upon what Occasion was it?

Mr. Northey. Really I cannot say, Sir George, what; *but your Voice being much louder than other Mens, I heard you plainly.*

Mr. Holt. Mr. Nelson, were you at the Trial?

Mr. Nelson. My Lord, I was present at the Trial, *and in some Cases Sir Patience Ward did rely upon his Memory, for Sir George told him, his Invention was better than his Memory.*

Mr. Williams. Do you remember generally he did so?

Mr. Nelson. *I had not remembered this, Mr. Williams, if it had not been for Sir George Jefferies's Reply.*

Sir Fr. Winnington. Mr. Baker, pray will you tell my Lord what you know of Sir Patience Ward's giving Evidence?

Mr. Baker. My Lord, according to the best of my Remembrance, my Lord Chief Justice Pemberton did say, *Sir Patience, Sir Patience, you speak to the best of your Memory, to the best of your Remembrance; I say, my Lord Chief Justice Pemberton did speak to Sir Patience Ward, Sir Patience, Sir Patience, you speak to the best of your Memory.* My Lord, says he, *I do it to the best of my Remembrance, my Lord, all that I can say.*

Mr. Williams. Can you remember the Occasion of this, or the Time?

Mr. Baker. My Lord spoke to him once or twice, as I remember, he said once, mind your Evidence, *Sir Patience; Sir Patience was angry a little at somebody.*

Mr. Williams. Can you say what was it?

Mr. Baker. Some Words, as I remember, passed between Sir George Jefferies and Sir Patience.

Mr. Williams. And what was the Occasi

Mr. Baker. *I cannot remember indeed.*

Mr. Williams. Did you observe upon the Trial, that Sir Patience Ward did swear generally positively, or to the best of his Remembrance?

Mr. Baker. *I apprehended him to swear to his Hearing and Memory sometimes.*

Mr. Just. Jones. Do you remember the particular Things he swore?

Mr. Baker. No, my Lord.

Mr. S. Jefferies. I would ask Mr. Blaney this: I know you exactly take Notice of what he says; find out in your Book, *Sir Patience, Sir Patience, you speak to your Memory.*

Mr. Williams. Mr. Bennet, pray can you remember what was sworn by Sir Patience Ward?

Mr. Bennet. Sir, I was here, and I could hear very little; but then some time after, something

towards the latter End, I got my Head in, and could hear a little, and that was that Mr. Pilkington was not at the Table, and the Discourse was ended before he came, of waiting upon his Royal Highness, about going to his Majesty, and after to St. James's.

Mr. Williams. How did he speak that, positively, or to his Remembrance?

Mr. Bennet. He was asked both by you and Sir George Jefferies. He did not answer you, but he answered Sir George; for Sir George asked him this Question, Was this Discourse quite over before Mr. Pilkington came in? He did declare— (I will tell you immediately, if you will give me Leave) *He did declare not one Tittle was spoken, or to that Purpose.* It was the latter Part, near it I am sure.

Sir Fr. Winnington. How did he express himself in that?

Mr. Bennet. He declared, as I have told you, *that not one Syllable was spoken in his Hearing.*

Sir Fr. Winnington. He says, my Lord, that not one Syllable was spoken in his Hearing.

Mr. S. Jefferies. The Court hears what he says.

Sir Fr. Winnington. Sir, that agrees with the Notes of Mr. Blaney.

Mr. S. Jefferies. The Word that he said was, to the best of his Memory. How was the Word, *Sir Patience, Sir Patience?*

Mr. Blaney. That was not in, Sir.

Sir Fr. Winnington. My Lord, now we will go to another Part of the Evidence; we will call Persons of Quality, that have long known Sir Patience Ward, that will give your Lordship an Account, whether he be a Man likely to forswear himself corruptly and wilfully. — Sir William Ruffel, are you sworn? Pray how long have you known Sir Patience Ward?

Sir Will. Ruffel. *Near upon twenty Years.*

Sir Fr. Winnington. Pray will you give an Account what you know of him?

Sir Will. Ruffel. *I have had several Transactions with him for considerable Sums of Money, I never found but very fair, and honest, and reputable Dealing.* I have known him almost twenty Years, I have dealt with him for several Sums of Money, and have found him very fair, just and reputable in all Transactions between him and me.

Mr. Williams. Do you think he would wilfully or corruptly forswear himself?

Sir Will. Ruffel. I never had that Opinion of him: I was impanelled upon the Jury, but the Court refused me, and I went away.

Mr. Williams. Sir, did you observe him to be a Man of Truth in his Trading?

Sir Will. Ruffel. *Ever, Sir.*

Mr. Williams. Was he given to tell Lyes, or prevaricate?

Sir Will. Ruffel. I always found him *a Man of Truth and Justice* in his Dealing, all the Time I dealt with him.

Mr. S. Jefferies. Sir William, I know you will speak the Truth; you are a civil Gentleman. Have you not taken him to be a factious, seditious Man? Did you look upon him to be a Man well-affected to the King and Government?

Sir Will. Ruffel. I never did concern myself in those Affairs much, I never had any Converse with him about them.

Mr. S. Jefferies. I know you were a Common-Council-man in his Mayoralty.

Sir *Will. Ruffel*. I was a Common Council-man in his Time.

Mr. *Att. Gen.* Pray, upon your Oath, did you look upon him to be a Man well-affected to the Government?

Sir *Will. Ruffel*. I do not understand, Mr. *Attorney*, that I ought to pass my Opinion upon Persons in that Point.

Mr. *Att. Gen.* Have you not observed in the City his Actions there?

Sir *Will. Ruffel*. I was concerned at that time when he was Mayor.

Mr. *Att. Gen.* How did you observe him?

Sir *Will. Ruffel*. I do not know that I have heard him speak in a Court of Aldermen.

Mr. *Att. Gen.* I ask you, Sir, would he strain a Point to serve a Party?

Sir *Will. Ruffel*. I do not know, Sir.

Mr. *Williams*. I think you have known Sir *Patience* a great while: Do you take him to be a good Subject to the King or no?

Sir *Will. Ruffel*. I never knew otherwise by him.

Sir *Fr. Winnington*. Mr. *John Johnson*.

Mr. *Just. Jones*. This kind of Evidence doth weigh very little.

Mr. *Recorder*. It is a very improbable thing, that a Man that hath borne so many great Offices, that hath represented the King in that great Office of Lord Mayor, should be guilty of this.

Mr. *Att. Gen.* My Lord, if they talk of Reputation at large, we will call all the Court here for the Reputation of our Witnesses.

Mr. *Just. Jones*. For a Man that hath been so eminent as Sir *Patience* hath been, there is very little more to be said for his Reputation.

Sir *Fr. Winnington*. Mr. *Johnson*, do you know Sir *Patience Ward*?

Mr. *Johnson*. Yes, Sir.

Sir *Fr. Winnington*. How long, Mr. *Johnson*, have you known him?

Mr. *Johnson*. Ten or twelve Years, Sir.

Sir *Fr. Winnington*. Have you had Dealing with him?

Mr. *Johnson*. Yes, Sir, for considerable Sums, for Thousands of Pounds.

Sir *Fr. Winnington*. Has he dealt with you as a just Man?

Mr. *Johnson*. A very honest just Man as ever I dealt with in my Life.

Sir *Fr. Winnington*. Do you think he would forswear himself?

Mr. *Johnson*. I don't think he would tell a Lye.

Mr. *Att. Gen.* No, not for a Party?

Mr. *Johnson*. No, not for a Party. Said I, Sir *Patience Ward*, you are looked upon to be a Person disaffected to the Government. Says he, It is my Misfortune; I am as loyal as any Man in England.

Mr. *Just. Withins*. Hark you, Sir, pray how came you to question whether he was or no?

Mr. *Johnson*. Being intimate with him, Sir.

Mr. *Just. Withins*. What made you doubt, to ask the Question?

Mr. *Pollexfen*. Do you apprehend him to be a Man that would forswear himself?

Mr. *Johnson*. No, truly, he was a Man of few Words.

Mr. *Pollexfen*. Was he cautious?

Mr. *Johnson*. Yes, Sir, as exact a Man as ever I dealt with in my Life. — I am very well known in the Court. I don't come to serve a Party. I can serve his Majesty as well as some in Court.

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Sir *Fr. Winnington*. Mr. *Toriano*, how long have you known Sir *Patience Ward*?

Mr. *Toriano*. Thirty Years.

Sir *Fr. Winnington*. In all the Time have you looked upon him as fair in his Dealing?

Mr. *Toriano*. I have known him a Man of Truth, one that would not be false to his Knowledge.

Sir *Fr. Winnington*. Do you think he would forswear himself?

Mr. *Toriano*. I don't think he would tell a Lye to his Knowledge.

Mr. *S. Jefferies*. You say how long you have known Sir *Patience Ward*: Have you not wondered within three or four Years?

Mr. *Toriano*. I have not meddled with Things. He hath, by his Discourse, been as loyal a Man as any.

Mr. *Williams*. Mr. *Pickering*, how long have you been acquainted with Sir *Patience Ward*?

Mr. *Pickering*. My Lord, I have been acquainted near forty Years. We have dealt together as long as he did follow a Trade.

Mr. *Williams*. Pray, in your Conversation and Dealing with him, did you observe him a Man given to Lying, or Falseness, or Deceitfulness, in his Conversation and Dealing?

Mr. *Pickering*. I never in all my Life did observe him guilty of any thing inclining that way, but of a fair Conversation, never given to many Words.

Mr. *Williams*. Do you think he would corruptly forswear himself upon any Account?

Mr. *Pickering*. Truly I believe not willingly do it, nor any thing that way.

Mr. *Att. Gen.* Mr. *Pickering*, you have observed him to be swerving of late?

Mr. *Pickering*. Truly I have been a Common Council-man in the Ward where he is Alderman, and all the Discourse I heard from him was very loyal truly.

Mr. *S. Jefferies*. By his Actions you have looked upon him to be a Man very well affected to the Government?

Sir *Geo. Treby*. (To Capt. *Griffith*.) Do you know Sir *Patience Ward*?

Capt. *Griffith*. I have known him ever since he hath been Alderman of that Ward.

Sir *Geo. Treby*. How many Years, Sir?

Capt. *Griffith*. About thirteen or fourteen Years.

Sir *Geo. Treby*. In all that Time how have you looked upon him?

Capt. *Griffith*. I have looked upon him in that Repute he was in as an Alderman. I never had any Dealing with him.

Sir *Geo. Treby*. Did you think he would forswear himself?

Capt. *Griffith*. No truly, I think no Man of Honour would forswear himself.

Mr. *Att. Gen.* Captain *Griffith*, upon your Oath, how hath he carried himself towards the Government?

Mr. *Williams*. Sir *Harry Tulse*, in all your Time did you find him to be a Man given to tell Stories for Truth?

Sir *H. Tulse*. Sir, I never had any Dealing with him in Matter of Trade.

Mr. *Williams*. How did you find him in his Conversation?

Sir *H. Tulse*. Truly, Sir, I never heard any thing ill of him.

2 R 2

Mr.

Mr. Williams. Did you find him a Man of Fal-
sity or Truth in his Conversation?

Sir H. Tulse. I never had any Dealing; so can
speak little; I never heard any thing amiss of
him; I have heard he is a very considerable Mer-
chant, and I believe he is so, and accounted a
very civil Gentleman. I have had the Honour to
sit in the Court of Aldermen ten Years with him,
and we have had sometimes some Difference in
Judgment.

Sir Geo. Treby. Would he wilfully forswear him-
self, do you think?

Sir H. Tulse. Truly, I believe not.

Mr. S. Jefferies. Do you believe every thing
he swore at the last Trial was true? You are upon
your Oath, Sir Harry Tulse.

Sir H. Tulse. I believe they were not true.

Mr. S. Jefferies. Sir William Hooker, we would
give you no more Trouble.

Mr. Williams. Because they called you, Sir Wil-
liam, I would ask you a Question, what do you
think of Sir Patience Ward?

Sir William Hooker. Truly thus, according as it
hath been said; but truly when I consider what
a Condition Sir Patience Ward was in, when he
delivered his Evidence; for to my Remem-
brance, he looked like a Man three quarters
dead—

Mr. S. Jefferies. Do you believe whatever he
swore was true?

Sir Will. Hooker. I do not remember any thing
he swore then.

Mr. Just. Jones. Have you done?

Mr. Williams. We have done, we leave it to
the Court.

Mr. S. Jefferies. Sir Francis Lee — Sir Francis,
Were you at this Trial, and do you remember
what Sir Patience Ward said at the Trial?

Sir Fr. Winnington. Always you come with
Drops at last.

Mr. Williams. This is a new way of going to
Work.

Sir Fr. Lee. I was upon the Jury between his
Royal Highness and Mr. Pilkington, and Sir Pa-
tience did swear, that Mr. Pilkington was not in
the Room, when the Discourse concerning the
Duke of York was mentioned; but afterwards
did swear, when Mr. Pilkington said, he hath burnt
the City, said he, I clapp'd my Hand upon his
Mouth, and t'other upon his Breast, and bid him
explain himself; who do you mean? Hubert? Sir
Francis Butler, who was our Foreman, and stood
next to me, jogg'd me, and bid me take Notice
of that; and so I did: And after we had this
Discourse together, he said, Sir Francis, I would
have had you to take Notice: Did you take No-
tice of it? I told him I did. Truly, it seemed
clear to me, *That he should swear he was not pre-
sent at the Discourse about the Duke of York, and
afterwards he must infer he meant the Duke of York;
or else, what should he have stopp'd his Mouth for?*

Mr. Williams. My Lord, here are Gentlemen
that heard all the Trial, they might have been
called certainly in Order. But, my Lord, to come
in at last, when the thing is heard on both Sides,
then to come in with Witnesses again, I don't
understand.

L. C. J. They may call theirs, when you have
done with yours.

Sir Fr. Winnington. My Lord, I will but put
this one Instance; in a civil Cause it hath been
denied, much more in Perjury.

Mr. Williams. We will leave it to the Court;
if Mr. Attorney says he will, we will.

Mr. Just. Withins. Take your Liberty on both
Sides, I pray.

Mr. Att. Gen. If Sir Patience did not know it
to be false, then it is no Perjury.

Sir Geo. Treby. I said no such Words.

Mr. Just. Withins. They resolve they will con-
clude; therefore, Gentlemen, take your Time.

Mr. Att. Gen. I remember what you proposed
t'other Day, you made a Speech after two or
three o'th'Clock in the Afternoon.

Sir Geo. Treby. Who, did I?

Mr. Just. Withins. Nay, good Gentlemen, don't
quarrel.

Sir Geo. Treby. I desire to say a Word or two.
That your Evidence doth not at all encounter
ours, it stands with it; let them have as much
Reputation as they will. They say, Sir Patience
Ward did say thus and thus, as concerning cut-
ting of Throats, and as concerning the Discourse
being ended, and as concerning the Duke's being
not named; ours say the same too; but they say
more; they say, he said with all the Caution in
the World, from the Beginning to the End. My
Lord Chief Justice bids him recollect himself;
he says, he speaks to his Memory. Upon Sir
George Jefferies's Question, he says, he speaks to
the best of his Remembrance, and thereupon is
that memorable Reply of Sir George, Your In-
vention is better than your Memory. One of
their own Witnesses says it was so, and so says Mr.
Blaney, and so says another Witness. While the
Discourse continued, whether he was there or no,
Sir Harry Tulse doth agree, that he cannot say he
did see him. Now, under Favour, if he did not
see him, he might say, he was not there, for no
Man can swear otherwise than according to his
Senses; what a Man does not see, may be behind
his Back, although he had not limited himself
with that Caution, as he did limit himself with
the greatest Caution, and said, as he did believe,
he was not there. My Lord, none of their
Witnesses will undertake to say he used the Word
Positive: They don't deny the Thing, it is impos-
sible any Man should; but that there were these
Words of Limitation, they might be said, and not
heard by them, they might be said, and not ob-
served by them. None of them did pretend to
write Notes, except the first; and from the Evi-
dence of the first, I have all the Reason in the
World to believe, that *his Notes* did contain all
those Cautions, and all those Qualifications, that
we speak of; why else should he be to seek to
that written Short-hand? He *did not know whether
he had Notes here*; he did know, whether he had
consulted the Notes since. Would any Man in
the World lay by Notes at this rate, that in-
tended to give full Evidence? Though I will
say that for him, he does not undertake to say
positively, but according to the best of his Me-
mory, and according to his Belief. Sir William
Hooker says, he was in a great Confusion. Here
are a great many Gentlemen beyond all Excep-
tion in the World, that do say his Dealing was
so fair, that he never told a Lye, that he was
most exact and most just in his Dealing. It is im-
possible that a Man should avoid such an Evil
as this is, for so long a Time, and in so great
Places and Offices, and should now at last be
guilty of such a vile and base Sort of Crime as
Perjury is, which no Man ought to presume of
another,

another, unless there be the greatest and plainest Proof to the contrary. But, my Lord, on our Side is the plainest Proof that can be, by Witnesses that remember the Words as well as the Qualifications; and one of our Witnesses is worth Abundance of their Witnesses that did not write, especially such a one as *does not shew his Notes*. But as I said before, they were testified by Sir *Patience Ward*, with all those Cautions; and we do think, that there is no Colour in the World that this should be Perjury.

Mr. *Williams*. Gentlemen, I am of Council for the Defendant, and the Question is, Gentlemen, Whether Sir *Patience Ward* be guilty of the wilful and malicious Perjury that is laid to his Charge in this *Information*? Gentlemen, it is agreed on all hands, and that will appear to you, there hath been no manner of Evidence given for the King against Sir *Patience Ward*, either as to his Honour, or Reputation, or Truth: There is nothing, Gentlemen, endeavoured to be charged upon him, but this particular Crime. The Gentlemen that prosecute him do not offer any one Thing against his Reputation or his Dealing; so that, Gentlemen, for aught appears to you yet, before this was laid to his Charge, he was a very clear Man. Gentlemen, he hath borne great Offices in the City of *London*; he hath been Lord Mayor of *London*; he is now in a considerable Place of Magistracy; he is an *Alderman*. We have proved by several Gentlemen, he is a Man of great Value, a Man of great Reckoning and Dealing, a Man of Truth, a Man of Veracity, a Man, that they believe, would not forswear himself for a World: Gentlemen, the very Witness against us, they say it. Sir *William Hooker* tells you, he was under that Consternation, he was like a Man three Parts dead, so that there could be nothing of Malice in that Man; he was without Sense, without Passion; and if any thing was done, it was done as it were by a dead Man, a Man that was senseless. Sir *Harry Tulse* believes, he would not willingly have perjured himself; then he is not guilty of wilful Perjury, and that is the Question you are to try. Now I have said this, Gentlemen, as to the Condition of the Person. And now for the Imputations that are laid upon him. The second Observation that I make, is from the Nature of the Crime; we are accused of Perjury, *first*, that we have perjured ourselves. That in any one casual Thing done upon any Account whatsoever, to prove the Fact done, that a Man is perjured, it is an easy Matter. Men are subject to mistake; the Words spoken, Gentlemen, were spoken in a very few Moments. Consider what a Thing the Memory of Man is, how subject Men are to mistake Words. To say, that Men shall not differ, that there shall be no Variation between Man and Man, it is to put an End to all Conversation, there would be no bringing of Witnesses, if there might be no Variation. Nay, Gentlemen, to justify what I have observed to you, observe these two Gentlemen; Sir *H. Tulse*, he tells you, that the Words were by way of Question, *Is the Duke come?* That *Pilkington* should speak the Words by way of Question, *Is he come? Is he come to cut our Throats?* So that he tells you, *Pilkington* said these Words by way of Interrogation. This is the Evidence of Sir *Harry Tulse*; and both of them agree, Gentlemen, that they were spoken at one Time. What says Sir *William Hooker*? How does he ap-

prehend these Words? He tells you they were positive in the present Tense: *He is come, he is come to destroy our Wives and Children*. So that if these Gentlemen mistake, one takes them by way of Question, t'other says, they were delivered *positively*, in the present Tense. Suppose this were brought against these Persons, no Man will say this is Perjury. As these Gentlemen have misremembered, so might Sir *Patience Ward* have misremembered; and if he had, it is his Infirmity, no Crime: For any Man is subject to mistake. We are now upon the Perjury, and it is not any thing that is Affirmative, but they are Negatives. The first *Negative* is this, that he should say there was no Mention of cutting of Throats. Say? The Question is, What was the Discourse about cutting of Throats? Say I, there was no Discourse about cutting of Throats; it is natural to a Man to say, I heard no such Thing, and every Man must speak to his Hearing; it is that which must pierce your Ears; that Organ must be touched. There was no Discourse, I heard no Discourse; I could say no otherwise, nor any Man that goes by common Reason. It must be by Hearing, it is not natural: Won't you believe what they say, that Sir *Patience Ward* did say, and Mr. *Blaney*, and other Witnesses with him, there was no such Discourse? Is it not rational for a Man to believe there was no such Discourse? So that, I take it, was the Nature of the Thing. For the other Thing, there is not one Man that hath proved it to you, that he said there was no Discourse of cutting of Throats. Let them shew me that Witness that he did positively say it, and then I will give up the Cause, for my Share. I am sure Mr. *Aston*, a Clerk in the Court, he says it was, to the best of his Observation. Mr. *Aston* is a Man that uses to be here, and a vigilant Man in the Court; he does not take it upon him positively. These worthy Gentlemen, the Aldermen, don't take upon them positively. Their Witnesses were wary in it. Are there any two of them agree how the Words were spoken? So that, Gentlemen, there is no positive Proof against us. Now the Proof lies on our Part. We prove very plainly by Mr. *Blaney*; and can any Man do better in this Case? The same Evidence runs to the other two Instances, as to this; therefore I do not love to multiply Words. Now our Evidence is to justify this. Here is Mr. *Blaney*, he sat in a most proper Place, and the most likely to hear of any Man in the Court; he sat in the Middle, between the Court and the Jury, near the Witnesses, heard as much as any about the Court. He tells you directly, he did refer his Evidence to his *Hearing*; he tells you, he referr'd all the Parts of it either to his *Memory* or his *Observation*. He does not trust to a frail Memory; but he tells you he took it in Writing, and tells you that Writing is here; he produces it here. He is a Gentleman that uses to take Writing; so that if you give Credit to this Gentleman, certainly he is in the right. Mr. *Blaney* is not alone in this Matter; we have called several, and they agree with Mr. *Blaney*. Every Witness that speaks, justifies Mr. *Blaney*. So that we have so many Witnesses that justify every thing, or most of the Things that we have said. Now, Gentlemen, when I have said all this to you, consider; for there are some Things remarkable in all Causes, and the Truth is, all the Witnesses give you one remarkable Instance, and that is, of Sir *Geo. Jefferies*,

Jefferies, that he made a Comment upon the Word *Memory*; he admired his Invention, but lessened his Memory, as if the Gentleman had been troubled, that he had not remembered; for I remember it was a Reflection upon his Memory, that his Memory was not better; but commended his Invention mightily. So that this, Gentlemen, is a remarkable Thing. They give you that Instance to justify what was said by Mr. *Blaney*: Now, Gentlemen, I have said all this to you, we must rely upon these Things. They ask, Whether any thing that was said, was positive? It was a Trial lasted some Hours; and I think Sir *Patience Ward* was an Hour in examining. Did he say any Word positively? Can any Man answer such a Question? It is an impertinent Question. Gentlemen, upon those three Matters that are assign'd, whereof he was accused; as for those three Things, they are answered particularly. Gentlemen, now we are in your Hands, and the Question is, What you will do in our Case? Here is a positive Proof for us; all the Presumptions that can be for us; here is the Proof of our Reputation; here is nothing against the Gentleman's Reputation; and a *Man of Honour* had rather be tried for his Head, than for his Ears. I know, Gentlemen, you are Men of Value, Men that value your own Reputation; I leave it to you, whether you can in Conscience say, upon your Oaths, that this Gentleman is guilty of wilful Perjury.

Sir *H. Winnington*. My Lord, this is a Cause of great Importance, not only now, but in point of Example hereafter. My Lord, the Information is, that Sir *Patience Ward*, by his Consent, and out of a wicked Mind, did falsely, voluntarily, and corruptly swear so and so: So that if so be that he hath not sworn wilfully and corruptly, I know your Lordship and the Court will tell the Jury, he is not guilty of Perjury. Truly, my Lord, in this Case, I must observe to your Lordship and the Jury, that we are now contending what Witnesses have the best Memory; for the Thing is not in Controversy for any Act done, but our Defence is, what Sir *Patience Ward* did swear at the Time when he was at the Trial. I must say, there are no Memorials in this Cause given on the other Side, of any Man that did undertake to write down at that instant Time for the King; but one Man says, he cannot very well tell whether he took Notes or no. So that I do say, my Lord, with your Lordship's Leave, that of all the Witnesses they have produced, there is not any one of them but does vary in Words; they are not consistent in Expression, even to any particular Questions that were asked; and can it be said to be wilful and corrupt Perjury, upon such an uncertain Evidence? I don't doubt, Gentlemen, but you will take great Care of it. My Lord, I will mention but two Particulars to your Lordship, that I think, go through the Case. My Lord, Mr. *Blaney* hath told you several Particulars that have been remembered he writ it at that Time, without any Variation; it hath a great Advantage over the other Side, that have only retain'd it in their Memories, and their Memories might fail them, and differ from the Time of speaking; but here the Writing remains, that was writ at that very Instant; here it was fresh written out of his Mouth. The Question was asked, Can you swear, Mr. *Blaney*, you writ every Word, or no? It was asked the Witnesses, Can you swear, that he swore nothing positively? I must confess, my Lord, it is a

Question that is strange for a Man to answer. Any thing positive! Does he know what a Man means? He must reduce it to Particulars. But, my Lord, I have asked Mr. *Blaney*, Did you take it as it came from his Mouth? He swears these Words he spake, and there is no Variation, but written instantly at that very Time. My Lord, I do think this is a Thing goes a great way. My Lord, there is one thing more that I think goes through the Cause, and that is Mr. *Crisp*; for *Crisp* acquaints your Lordship, that when there was some Variation between the Assertion of Sir *Harry Tulse*, and Sir *Patience Ward*, my Lord Chief Justice gave an Admonition to Sir *Patience Ward*, Sir *Patience*, Sir *Patience*, recollect yourself. My Lord, saith he, what I deliver, I do according to the best of my Remembrance; and then this afterwards, (for this was at the End of his Evidence) is a Qualification quite through the Cause. This being to weigh it with t'other Side. But I would say one Thing more; to what End should this be? Is any Man damnified by this Oath? Is there any Man can say this Oath hath prejudiced any Man in his Reputation or Estate? It was very strange, that a Man that hath brought so many Witnesses, and those very worthy Persons, that say they believe he would not forswear himself, should do this for nothing, that a Man should be the wickedest Man in the World at *one Jump*, that you can hear nothing of any Act of Falsity of him before. Now when there are such plain Evidences, undubitable Evidences, it is a Thing of great Consequence. And Colonel *Birch* says, generally, as he does remember and believe, he did cautiously speak. And Sir *William Hooker* says, he was under Consternation at this Time. So that it appears he had much Caution; and if so, it is of mighty Consequence, and concerns any Witnesses to come. Here is a Man perjured, and a great many Witnesses may. You are not to mind what is said by the Counsel of both Sides, but what is said in point of Proof. It will make all Men cautious, because they may infer Danger by a positive Assertion. My Lord, this is a Case of Perjury, in which I, and every honest Man, that values his Reputation, should be tender. If this Man be guilty, it is a great Crime; I must leave it to your Consciences.

Mr. *Pollexfen*. The Nature of the Case I do humbly pray your Lordship to take into Consideration, and the Jury. It must be wilful and corrupt; for so are the Words in this Information, and in all Indictments: It must be *wilful and corrupt Perjury*. My Lord, if so be that several Witnesses interfering one with another, one remembering one Parcel of Words that were spoken at the same time, any Man should be perjured in this Case, by remembering, and not remembering, no Man almost durst be a Witness. What Discourse hath pass'd, let us but observe in this Matter. Here were three Aldermen present, one of them swears there was no Discourse of cutting of Throats; it is a *Negative*, not an Affirmation; and no Man that hears him, but must say of it, *no Discourse, that he heard*. When I say there was no Discourse of such a Thing, any Man will understand, No such Discourse came to my Observation or Hearing. For the others that say there was such Discourse, they vary themselves; one says it was *cutting our Throats*; t'other, *cutting the Throats of our Wives and Children*. I only say this to shew the Weakness and Fallibility of Mens Memories,

Memories, that carry Things so in an Uncertainty. Two or three Men swear a Man said so, t'other says he did not; no Man can understand it in any other Sense, but he did not hear him say so: For a Man can say no more of what another says, than what he heard. So, my Lord, considering the Circumstances of the Case, it is so that Men may perjure one another upon Omissions. One Man may bring one little Part of a Discourse, and another another; it will be a very unsafe Thing for a Man to be a Witness so. But, my Lord, the next Thing is this of positive Evidence, and upon Remembrance. My Lord, if so be there must be positive Evidence to convict a Man of Perjury, I would leave it to your Lordship in the Cause, whether there be any among all their Witnesses, have proved it positively? Next, my Lord, if so be that we must have of t'other Side positive Evidence, we have more positive Evidence than they, under Favour, considering that Mr. *Blaney* hath his Notes. This I answer to that Objection of theirs, Did he say any thing positive? Did you write down this or that? That is not the Matter; there is no Man that writes all: But the Question is of that he did write, Whether that be true? If that be true, it is more certain, being written at that Time, being written here in Court, when there was no Thought of being made use of as an Evidence, is stronger than many Mens slippery Memories. But *he* in this is back'd with a great many other Witnesses that do speak it, though not so positively as he does, because he hath his Notes to help him; and he says particularly to one Thing, that he does particularly remember it. And so, being they were written at that Time, that is, under Favour, a better Evidence than twenty slippery Mens Evidence can be. So that taking all this together, considering the Person accused, and the great Offices he hath borne, considering the great Shame and Scandal of the Crime, all Men that have known him for twenty Years together, saying he was not any false Man; better a Man had taken his Head from him, than taken away his Reputation. Unless, my Lord, there be plain and full Evidence, I hope it will not affect us, nor Witnesses that shall come afterwards.

Mr. *Att. Gen.* The Matter, Gentlemen, before you, is, Whether or no Sir *Patience Ward*, for swearing these Words, be guilty of wilful or corrupt Perjury? I shall admit that; but it is the first time I ever heard of, that we must go to prove the Intentions of this Gentleman, that if he did not intend to swear wilfully, or voluntarily false, that it will not be a corrupt or wilful Perjury. My Lord, therefore I must observe this to the Jury; if the Matter that he swears be false, the Law construes it to be corrupt and wilful: If the Matter, I say, does directly come in Issue, and he in that Issue swears that which is false, so as that it hath an Influence upon that Issue, the Law construes it corrupt and wilful: For that is the Reason, my Lord, why that Regard is given to all Oaths in Causes, that they may be plain and direct; and a great Punishment is upon them, if they are not true; that is the only Reason for it, and no other. For without Doubt, we have nothing to prove the Case, but these two Things; for we cannot search into a Man's Intentions, that when he speaks of the Duke of *York*, he intends *Hubert*; but we must take Things as they are, whatever a Man intends. So the Jury are to inquire but of two Things; Whether or no these Words were spoken

by him, as they are laid? The next is, *Whether they are false?* We have nothing more to do: But if we prove these two Things, that the Words that were spoken, were spoken by him as they are laid, in that Manner, not as these other Witnesses would have, with the Words, *I believe*, and, *as I remember*, but that they were plainly and positively spoken, my Lord; that we are to prove, and we have proved it. The next Thing we are to prove, is, that the Words are false; that they are false, they do admit by all the Witnesses; they don't go about to encounter that Proof at all; they have not at all endeavoured it, but that these Words, as they are laid, are absolutely false; and they were contrary to the Matter, that was in Issue in that Case. That this Gentleman spake them, my Lord, the very Thing speaks; for he was heard by the Court as a Witness, and as their Evidence in the whole Cause; and the Court, after he was examined, put it upon this Gentleman, *What do you swear?* If it had been all, *as I remember*, and, *as I believe*, the Court would have declared it was no Evidence. My Lord, if a Matter be in issue, and a Man comes and says, *as I remember*, and *believe*, this doth not encounter the Issue, nor the Proof that is for that Issue, when there were two positive Witnesses, that positively swore the Words, that the Court should then refer it upon the Testimony of Sir *Patience Ward* to the Jury, the Court would give Judgment he was no Evidence; it is plain he was no Evidence, if he swore to his Memory and Belief. That that is no Evidence, the Reason is plain; for there would be an End of all Trials, if ever that sort of Doctrine be admitted: No Man can be perjured upon *his Remembrance*, nor upon *his Belief*; who can tell he believes contrary to what he says? So that there is an End of that which ought to be the Cure of all the false Witnesses in *England*; for I take it in point of Law, the best of *Remembrance* in this Nature, or *as I believe*, is no Evidence at all, and therefore the insisting much upon that, is to charge the Court with Injustice to put that upon the Jury; and the Jury need not have given any Reason why they would not believe him; for there had been an End, if he had said, *as I remember*; the Jury might have said presently, there are two positive Witnesses against him. The two first Witnesses we have call'd, *Hatch* and *Wood*, they do swear as to those Words of *cutting of Threats*; they swear it positively, both of them. Whether he used the Word *positively*, or whether it was upon his Oath, that, indeed, they could not speak to; but they were positive, without any Reference to *his Belief* or *his Memory*. To the other Point of the Duke of *York* and *Pilkington* being there, that they speak positively to, and I think Sir *James Smith* doth speak as positively that he was sure his Words were, either *I do positively say*, or *upon my Oath*, one of them; but without any Words of Reference. Mr. *Aston*, who is a Clerk of this Court, and sat there in this Place, he speaks to that positively.

Sir *F. Winnington*. *I think, I am pretty sure, I think, these are the Words.*

Mr. *Att. Gen.* The Foreman of the Jury he repeats the same positively, and gives a plain Reason; if it were not positive, it were an idle Thing.

Mr. *Williams*. Will you do us Injury in the Cause?

Mr. *Aston*. If he spake any Words of Mitigation, they were so low, I could not hear; and I think I could hear them all.

Mr. *Just. Watkins*. Pray go on.

Mr.

Mr. *Att. Gen.* I say, my Lord, several Witnesses we produced, and Sir *William Hooker* particularly; for we had never made use of him, if there had been only so idle an Evidence; for we did not call Sir *William Hooker* till after his Evidence was given, to encounter this positive Evidence. We then produced Sir *William Hooker*, after he had given positive Evidence, and Sir *William Hooker* did swear it positively upon him again; then the Court asked him, *What do you swear?* My Lord, after this, he might be shy in his Evidence, and say, *I remember, and I believe.* After this, we put it upon him again, and then we say the Words were sworn positively; for by way of Hear-say and Belief is no Evidence. Now Mr. *Blaney* is all in all, and I think now Mr. *Blaney* will signify nothing. I say, my Lord, Mr. *Blaney*, what is his Evidence? He pulls out his Notes, and there he tells you, to such a Question there was such an Answer, and there indeed it is *to the best of his Remembrance.* But what does Mr. *Blaney* tell you? Mr. *Blaney* positively tells you, that these are but short Notes, many Things omitted, and I perceive whole Sentences omitted, a great deal of Discourse omitted; and that appears by that Passage of Sir *George Jefferies's* Interrogation. Then, my Lord, in one Place he comes and says, *to the best of my Remembrance;* afterwards he is press'd; for surely it was to no Purpose we would let such an Evidence pass, but when he is press'd; Mr. *Alderman*, is it so, or no? For Belief is no Evidence. There, my Lord, he answers positively, and that is omitted out of Mr. *Blaney's* Book: This was necessary, my Lord, we should do, and not let such a Thing pass, as that *to the best of my Remembrance.* My Lord, then to see what Mr. *Blaney* himself says, he took Notes, he did not answer one Thing positively throughout the Whole; for which he is to be rejected, I think, as no Witness in the Case, as a Person that comes and swears by Hear-say; and it was so remarkable a Thing, my Lord, that we who are of the King's Counsel, should take Notice of it to the Court. He is no Witness; he swears nothing positively: It is an Art, my Lord, was never invented till of late, and if it be allowed, it will make an End of all Trials; for you will have as much *forswearing*, as you have *lying.* Here is one gives Evidence he never told a Lye in his Life, and I care not whether the Jury believe that or no. Surely, my Lord, we should not let a Man go away with such an Answer as this, *to his Remembrance.* If they take upon them this Way of Swearing, I tell you plainly they are no Witnesses at all. My Lord, I must appeal to the Court, if such a thing be allowed, what will become of all Trials? The Punishment of Perjuries does make Men cautious in swearing; and so it was from the Beginning, ever since Swearing was allowed to decide Causes, Perjury was to be punished. By the Law of God it was severely punished. If there be a new way introduced of giving Evidence, *to the best of my Remembrance,* you have shut out the Punishment. Can you convict any Man of all their Witnesses, when none of them swear? Colonel *Birch*, and others, they come and say to *some Things*, there were these qualifying Words; if it had been to material Things, my Lord, were we so senseless, or the Court so senseless, to let *the best of my Remembrance* pass for Evidence? So that, my Lord, they do not tell you plainly, they speak nothing at all express. When they are ask'd, Can you swear, that he added these Words, *to the*

best of my Remembrance? they say he did to some Things, but are not positive to what. So that your Lordship sees we have plain Testimony, they have no Proof. So you see what sort of Evidence this is. Now, my Lord, for his *Crime.* He hath been a fair Dealer, surely, in the World, or else he could never have gain'd such an Estate; but when Men are engaged in Parties, we see what a Man will do for a Party, and to help a sickly Brother, that was falling into the Pit, over the Hedge. But I say, my Lord, it is impossible, that their Evidence should encounter ours. And, indeed, if we had had Notice, that this would have been given as material Evidence, truly we could have given a great deal to shew the many Blots in this Gentleman; but, my Lord, I say this is not material, of what Reputation a Man hath been, but whether or no he spake these Words in this Manner, and whether they are false; that they are false, *is granted,* and that he spake them as they are laid, that *we have proved.*

Mr. *Sol. Gen.* The Questions that we were to prove were, Whether Sir *Patience Ward* did give his Evidence at the Trial between the Duke of *York* and *Pilkington?* Whether or no he did swear positively, that *Pilkington* did not come in till the Discourse concerning the Duke of *York* was over? Whether he did swear positively, that there was no mention made of *cutting of Throats?* Sir *Patience Ward*; we say, did take upon him to swear this before positively, and not with that Restriction that they would have pass'd upon them. We call'd two Witnesses, and they are both very positive in it; for they swear, That Sir *Patience Ward* did swear, *That all the Discourse concerning the Duke of York was over before Mr. Pilkington came in;* that they swear positively, that he did it positively; both of them do swear, that Sir *Patience Ward* did take it upon his Oath, and to the Manner of it, positively, though he did not use the Word *positively,* yet they swear them without any such Restriction. These are the two Witnesses, *Hatch* and *Wood.* Then there is Sir *Fr. Butler* hath given you an Account of his Evidence, and they did debate it among themselves, and give you the Reason why they did not believe Sir *Patience Ward.* Now, *first,* they encounter us with the Evidence of Mr. *Blaney*, and his Notes must be the Measure of the Truth of his Case, and nothing must be taken for true but what he hath writ; he tells you at the same time he had not writ all. Mr. *Attorney* made a full Observation upon that: Suppose he did say he did not hear any mention of *cutting of Throats,* or did say *to the best of his Remembrance,* yet surely that doth not contradict our Witnesses, that take upon them to swear positively, that he swore it without any such Restriction; and it is reasonable to believe he might be press'd to say something to the Questions that were asked; for if he said he did hear it, it had been an immaterial Evidence. Sir *Fr. Butler* doth take upon him to say, that he did say it without Restriction; and their considering the Weight of it to reject it as untrue, doth make good what our Witnesses have said, that he did swear it without any Restriction. But after all this, they say he cannot be found guilty, for this might not be wilful and corrupt Perjury; nay, they go so far, that they are setting up a Doctrine, that I dare say no Man shall be guilty of Perjury for any Words he shall swear *wilfully* and corruptly. If a Man is,

is conscious to himself, that the Truth is otherwise, or if he be uncertain whether it be so or no, yet if he take upon him to swear it, that is wilful Perjury in him, for he did not know it to be as he did affirm. Now, my Lord, I shall offer but one Circumstance more: Consider how this Discourse did rise; it was upon a Debate concerning waiting upon his Royal Highness upon his Return, they were all present in the Gallery at *Guildhall*; and it is reasonable to be presumed, that every one must hear the whole Discourse — And *Sir Patience Ward*, by the Action he did in this Case, must be presumed to hear every Particular of it. When *Mr. Pilkington* came to these Words, *He hath burnt the City, and is come to cut our Throats*, *Sir Patience Ward catches him, and stops him immediately upon his saying this*. Now he that was so near him as to lay Hands upon him, surely it cannot be presumed but he must hear what he said, and he check'd him for what he said, and would fain have fetch'd him off by an Invention that serves to little Purpose; but did verify this, that he had spoken Words of the Duke of *York*, and therefore did administer an Excuse to him; therefore I say it cannot be presumed but that he must hear it. But however, if he took upon him to swear a thing positively, that he was *not certain of*, it will be wilful and corrupt Perjury in him. But, they say, though he should say it positively, it must be understood *he did not hear it*; that he swears there was no such Discourse as *he did hear*. At this Rate, my Lord, no Man will be found guilty of Perjury, but there will be all the Mischief in the World introduced; for a Man that swears to the best of his Remembrance, there will be no Danger of that Man's being indicted of Perjury, that is no Evidence. But a Man that will take upon him to swear positively there was no such Discourse, he is an Evidence, and a material Evidence in the Case. Suppose, my Lord, there were Witnesses concerning the Publication of a Man's *Last Will*, that there were two Witnesses did sit upon the sick Man's Bed, one swears he did hear him publish it in that Form, and that this was his *Last Will and Testament*; the other comes and says positively, he said no such Words; certainly this is a very material Evidence. Shall that Man come off from a Conviction of Perjury in this Case, by saying he did not hear? What a dangerous Case are all Mens Inheritances in at that Rate? My Lord, I will not trouble your Lordship, only there is one Observation they have made, which I cannot let pass, that there is no Damage in the Case. If a Man should forge a Deed, and the Jury detect this Forgery, there is no great Damage, shall the Man be accused, because he is discovered? Shall no Perjury be punished, but what is successful?

Sir Geo. Jefferies. I should not have troubled you in this Cause, but that *Mr. Solicitor* was call'd into another Court. My Lord, I shall not offer any thing in this Cause, nor repeat any thing that hath been said. My Lord, I shall say of this Cause, what the Gentlemen of the other Side said; it is a Cause of very great Consequence, and it is a Cause of that Consequence, that I know it hath a very great Impression upon your Lordship, and likewise upon the Jury; and they are not now come to try whether or no *Sir Patience Ward* did deal very fairly between Man and Man in a Matter of Mo-

ney, but whether or no *Sir Patience Ward* did swear what we have alledged in the Information he did swear, and what he did swear was true: And for that Matter, my Lord, I must needs agree with them; nay, I cannot believe the Gentlemen of the Jury will take any thing to be Evidence that is said by us that are Council at the Bar, but only so far forth as they have Evidence proved to them in Court; for in case we were to guide Juries, I confess *Mr. Pellexfen* hath determined it, by saying the Jury's Verdict must be false, if they find against *Sir Patience Ward*; which I think is a pretty strange Inference, and one of the sharpest Inferences for such a way of Reasoning, that I confess my poor Sense won't reach it. In the next Place, I say, the Gentlemen of the Jury ought not to take any Consideration in this of his Reputation, notwithstanding all his Dealings before this Cause; for certainly till such time as *Sir Patience Ward* came to be called upon his Oath, any Man of Conscience and Justice, and common Charity, had he been asked the Question, he must have said he did not believe, that *Sir Patience Ward* would wilfully forswear himself. God forbid any Man should have such a Thought of him, if he were a Man of less Quality than *Sir Patience Ward*! But I must conclude, that after *Sir Harry Tulse* was of that Opinion, so I must conclude with *Sir Harry Tulse*, if in our Case he be to be believed, at that Time he did believe he did forswear himself. — Pray, good Sir, give me Leave, I will not, to the best of my Remembrance, do you any thing of Injustice. My Lord, I do say, in this Case, that though he hath been Lord Mayor of *London*, and botne the Office of Sheriff, and though he is now an Alderman, yet, I do say, Persons that have borne these great Offices, have been guilty of greater Crimes, that is, Crimes that have greater Punishments, than this Gentleman is now accused of; I mean that of Rebellion, and all that Mankind can be capable of: So that it is not the Dignity of Place, excuses Men from Offence. But certainly upon his Evidence, *Sir Patience Ward* ought to be believed by the Jury guilty of wilful Perjury, rather than three or four *Aldermen* that swore against him. Gentlemen, the next Thing is, the Observation of *Mr. Williams*, of the Variance and Difference of Expression between these two worthy *Aldermen*, *Sir Harry Tulse*, and *Sir William Hooker*; one comes and says as though it were *positive*, t'other as though it were a *Question*. If it can be expressed, my Lord, either one way or t'other, or both, he would be guilty of Perjury; for your Lordship remembers the Record mentioned in this Record, and all the Words that were swore by *Sir Harry Tulse*, were Part of the Action that *Pilkington* was charged with; all the Words *Sir William Hooker* swore, were likewise Words put in the Record; so that both of them were material to the Issue. Now what comes *Sir Patience Ward* to do? Does *Sir Patience Ward* come and testify it to make a Difference between these two Gentlemen? You see both of them agree there was a Talk of *cutting of Throats*. Says *Sir Harry Tulse*, *Is he now come to cut our Throats?* Says *Sir William Hooker*, *Is he now come to cut the Throats of our Wives and Children?* What says *Sir Patience Ward* as a third Man? He says there was no such Discourse of *cutting of Throats*, that is the thing these Gentlemen have a Mind to forget; one says *he is come to burn the City*. *Is he come to burn the*

City, says t'other? That is not the main Question; these are little minute Differences. It is the Prudence of Mankind to take all Words in their Affirmations, rather than to make Contradictions between them. In this Case he finds there was a Necessity to serve a Turn, and he comes positively, and says, all the Discourse about the Duke of York was ended before such time as *Pilkington* came in; and there is an End of all, in case he swears true; for in this Oath he absolutely contradicts what both these Gentlemen swore; for this is not such a little Variance as these Gentlemen would have you to believe. But, Gentlemen, I shall apply myself to the Evidence they have offered, which is designed to overthrow ours. The first is, Mr. *Blaney*, and there is a great Value put upon Mr. *Blaney*; he sat in a convenient Place, just in the Middle, and there he took Notes, and believes he did not alter them. Now I appeal to your Lordship, and the Court, I appeal to the Jury, whether or no their own Witnesses did not hear Sir *Patience Ward* say, *he had never been in a Trial*; he never took notice of a Word of that. And another Man (Mr. *Baker*) says, that my Lord Chief Justice said, *Sir Patience, Sir Patience, have a Care; you speak according to the best of your Remembrance.* Now, my Lord, Mr. *Blaney* takes not the least Notice of that in his short Notes. The Question was asked Mr. *Blaney*, Can you take, upon your Oath, that he swore any thing positively, or that he did not? Truly, *I can't tell; not in my Hearing*, are his Words. Next comes *Beaver*; his Word was, *In my Hearing.* It was Mr. *Blaney's* Short-hand Remarks that Mr. *Beaver* prefaces all his Discourse with, to the best of my Remembrance. They have called Witnesses that could not be positive. I appeal to your Lordship, and the Memory of the Jury, whether ever any one of them was able to say, that the Words, *to the best of my Remembrance*, were annex'd to this, or that, or t'other Sentence. But, my Lord, on the other Side, I must say, that there are here Aldermen that have sat upon the Bench, and have behaved themselves with Loyalty and Integrity to the King and Government; these very Aldermen here do positively say, Sir *James Smith*, Sir *John Peake*, Sir *William Rawsterne*; it is true he cannot be positive as to the Business concerning cutting of Throats; but as to the first, does not Sir *James Smith* particularly say, *I cannot say whether he did say positively, or whether he did say, upon my Oath*; but he did undertake to say, that either the one or the other he was positive in, that he was very express, that the Duke of York was not named after *Pilkington* came in. And for the saying, that *Blaney* took Notes at that very Time, therefore Mr. *Blaney* must be a Man of Ten thousand, as they call him; he is worth Ten thousand Witnesses, because he took Short-hand Notes: I would have you consider what Sir *Francis Butler* says, that was Foreman of the Jury at that Time, that bid Sir *Francis Lee* take notice of it at that Time; he did it positively: He says, Sir *Francis* took notice of that, and says he, *we debated it immediately among ourselves.* And I remember, particularly, Sir *Francis Lee*, Sir *Francis Butler*, and Sir *Thomas Field*, all three do agree together; this positive Oath they swear Sir *Patience Ward* did make. They did debate immediately after, among themselves, two Witnesses swearing against him was the Occasion of the Debate. But, my Lord, I

must come to another Thing: Mr. *Aston*, a Clerk in the Court, a Man very well us'd both to Writing and Hearing; Mr. *Aston*, as well placed as Mr. *Blaney*, he gives this Account: *I do positively say, That the Duke was not named after such time as Pilkington came there.* But his being a frail Memory, as they would have it, and no Notes to refresh him, they put no great Value upon it: But I remember what Mr. *Aston* said; I have several Times asked the Question, and that makes me contain this Thing in my Memory. This does Mr. *Aston* positively speak to. So there, Gentlemen, all these five or six several Witnesses do positively swear to it: The two first Witnesses they are positive, *Hatch* and *Wood*; they do directly swear to every Particular. Gentlemen, you are not to mind the Flourishes that are made by the Gentlemen at the Bar; here is a Lord Mayor of London, here is an Alderman, can you believe him guilty? But do you think, that these Gentlemen of Quality, that have acquitted themselves so dutifully, and so loyally, as they have done, and so faithfully, that no Man can lay a Blemish upon them, will you take it upon your Oaths, that these Gentlemen are forsworn? Will you take it upon your Oaths? That will be a strange Thing! The Laws and the Exercise of Justice are concern'd, and are to be maintain'd. I beg your Lordship's Pardon, that I have taken up so much Time. My Lord, I say, Justice is to be done; there is no Man so big as to be exempted from Punishment: The greater the Person is, the greater is his Crime. One that will come and tell an Untruth in a Court of Justice, the greater the Person, the more is the Crime. We have given your Lordship, and the Gentlemen of the Jury, an Account of the Matter before you, and we shall leave it to you.

L. C. J. Gentlemen of the Jury, this is an Information against Sir *Patience Ward* for Perjury; and the Information doth set forth, that there was an Action that was brought by his Royal Highness against *Thomas Pilkington*, and it was for speaking scandalous Words of his Highness; saying, *he burnt the City*, and that *he was come to cut their Throats, and cut their Wives and Childrens Throats.* These were the Words that were laid in that Action. That Action was in this Court in *Michaelmas* Term last. The Information that now is before you, is this: Sir *Patience Ward* he was sworn to give Evidence, and that he in his Evidence, upon his Oath, did positively swear, upon mentioning the Discourse concerning his Royal Highness, by *Pilkington*, and concerning his burning the City, and cutting of Throats, Sir *Patience* did say, that there was not any mention of cutting of Throats at all, and that before Mr. *Pilkington* came in the Discourse of the Duke of York was over. And upon this Mr. *Attorney General* hath assigned a Perjury, that this was false; whereupon the Defendant hath pleaded Not guilty. The Question is, whether Sir *Patience Ward* is guilty of this Perjury, or no. In the first Place, I must aver to you, that if so be this was false, then this must be what the Law calls a wilful and malicious Perjury. For it was the very Point in Question then, it was an Action brought against *Pilkington*; the Question, Whether he said these Words or not? And Sir *Patience Ward* he did come, and did swear, that there was no such thing. Plainly, that was to acquit the Defendant. So that it was the principal Matter that was to be considered. Now for aught
I do

I do perceive plainly — Pray do not go with any Mistake, for I would be loth to do wrong in this; but as far as I do perceive, one Side and t'other upon the Matter do agree, that if Sir *Patience Ward* did swear it positively, it is agreed on both Sides, that it was false; it is agreed; for aught I see, there is nothing at all said to the contrary. Here are three substantial Men, Men of very good Quality, that do all say there was a Discourse of his Royal Highness in *Pilkington's* Presence, and in the Presence of Sir *Patience Ward*; they do likewise all of them swear, that there were such Words. So that I say it is agreed, for aught that I see, that it is plain, that it was so in Fact, that there was a Discourse of the Duke, and that it was in *Pilkington's* Presence, and that there was likewise mention of cutting of Throats. Now the Matter that you are to consider; I will tell you, you are to consider, whether or no this was spoken by Sir *Patience Ward* positively, or, as the Defendants would have it, that it was not spoken in his Hearing, or as he remembered; for they would qualify it, and say that the Defendant did not say it positively, but with those Qualifications; and if with those Qualifications, then it is plain he cannot be convicted of Perjury; because no Man can be convicted for saying he did not remember. This I must observe to you though, by the way, suppose now that Sir *Patience Ward* comes here, and says that it was not spoken in his Hearing, or in his Remembrance, take it that way, there is this considerable Why Sir *Patience Ward* did hear it spoken, and so far heard it, that he took notice of it, and would restrain it, and put an Interpretation upon it? Would any Man, that had minded his Oath, would he have said, that nothing was said in his Hearing, when even he himself was present; nay, and so take away the Excuse of his not hearing, though he were by? He himself takes notice of it, and if I take it right, he puts an Interpretation upon it when he talk'd of burning the City; Oh, it is *Hubert*. It is very hard for a Man to swear it was not in his Hearing. — Pray set me right, if I mistake.

Mr. *Pollcxsen*. No Man denies but these Words were spoken; but the going to *St. James's*, and the Duke of *York*, whether that were not before he came in?

Sir *Geo. Jefferies*. It was one intire Sentence, my Lord.

L. C. J. I do take it, the Evidence was, that *Pilkington* did say, he had burnt the City, and he was, or would, come to cut their Childrens Throats; that was in one Sentence: For the burning the City, Sir *Patience Ward* being there at that Time when *Pilkington* said the Words, Oh, says he, you mean *Hubert*; ask'd the Question, *Who be meant by it?* he meant *Hubert*.

Mr. *Williams*. He did not hear t'other Part.

L. C. J. That I will leave to the Jury; that is to say, there were upon the Matter but two Clauses, *burning the City*, and *coming to cut our Throats*. And now it is, for aught I perceive, agreed, that Sir *Patience* did hear one Part of the Sentence, and did not hear t'other. But this I will make an Observation on by-and-by. But surely he did not so well, if it were no more than that for a Man to say he did not hear any such thing, when it is plain he took notice of it at the same time. For that, Gentlemen, that they say here is no Man that hath any Harm; if a Man does commit wil-

ful Perjury, though no Man is injured by it, hath not he committed a Crime? And though he had not injured any Man by his Perjury, it might have fallen out, that he might have done it; and if so be it hath not Success, it is the same Crime: For it is very plain, if so be the Jury had given a greater Credit to Sir *Patience Ward*, than they did to the other two Gentlemen, then it is very plain it had gone another way, and that had been an Injury. And therefore, Gentlemen, that is nothing at all. But that you must lay aside, and you must come to this Matter, that is the principal Point. The Question is, Whether or no Sir *Patience Ward* did give his Evidence with Qualification, as he did believe, or as he had heard, or believed, or whatsoever it was, or whether he did give the Evidence positively. At the Trial there was two, I think three, but two that were at first examined, that did prove the Words spoken by him against the Duke of *York*, and swore they did reprove him for it. Sir *Patience Ward* was produced by the Defendant, for to defend the Issue on his Side, and to prove him to be not guilty in that Action, that he had not said the Words. Now it is plain, if so be Sir *Patience Ward* said only, *I don't believe such a Thing, I don't remember it*, or any such thing, that certainly had not been an Evidence that had been worth the Consideration of the Jury; for that was no more Evidence than any Men that they might take up; the next Man in the Court might have said, he did not believe it, or the like. Now for the King, in this Case, there are several, I think there are eight or nine; and they all of them do say, that they remember it very well; nay, and some of the Witnesses do say, they took special Notice of it then, for they were something astonish'd to hear such Evidence. It is true, all of them don't come to both Parts, but either to one Part, or to both; they all agree in this, that it was positive Evidence, and not as *he believed*, or *heard*. There was a Question about Mr. *Aston*, and he was asked himself; he says it was *positive*; if he did qualify it, it was so low, he could not hear it; and that he might do as he pleased. I think there is none of these Gentlemen, that any thing at all is to be alledged against. That eight or nine Gentlemen, and some of them of very good Quality, and all of them of very good Credit, that they should join together to perjure themselves, for a Revenge upon Sir *Patience Ward*, is strange. For aught appears, there is not any Man appears, but is sorry for him, and some of them have a Kindness and Respect for him. That is the Evidence the former give; I can't go to every one of the Evidences, to open what they say; that will make it very long; and I think there is no Occasion for it. You have heard it well, and I believe remember it better, possibly, than I do. On the *other Side*, for the Defendants: They do bring you, in the first place, Mr. *Blaney*; and he does say, That he hath taken Notes, and in his Notes it was by Qualifications that Sir *Patience Ward* did speak, that it was according to the best of his Knowledge, and that he was here, and sat here in a Place where he could very well hear all that was said, and that he took it from Sir *Patience Ward's* Mouth. This is said against him, that it is plain he did not take every thing; and whether or no this was taken truly, or not, is still a Question for you to consider on. They, when they did call him, did say he was as good as *Ten thousand*.

They

They would have his Witnesses to be of more Value than Nine thousand that did swear upon their Memories, and they had some Reason to say so too, for to observe there is never a Man that does come positively; but he does say, as he takes it, and he was sure it was right, although in some other Parts it is plain he did miss. But he does say, it was true. But then for the next Witnesses, Mr. *Beaver* and Mr. *Crisp*, they do come and say, how that the Defendant did interlard his Discourse, as he believed, and as he heard. But when he came to be pinched upon that Point, Do you swear this Thing positively, or according to the best of your Memory, then every one of them, (pray correct me, if I be mistaken) every one of these Witnesses did say, it was according to the best of Memory. And, Gentlemen, the nine Witnesses on t'other Side, every one of them did take it upon them.

Council. No, no.

L. C. J. Look you, look you, Gentlemen, one spake to one Part of the Words, another to another; but these Witnesses did swear *positively* to what they did swear.

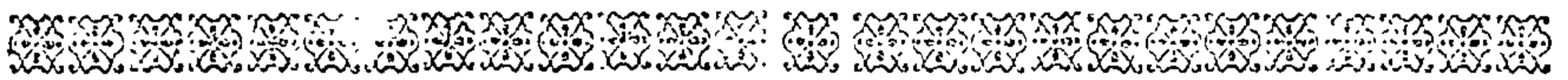
Mr. Williams. They were upon their *Memories*, still.

Mr. Just. Wubins. Sir *Francis Butler*, Sir *Henry Lee*, was not, nor Sir *Thomas Field*; and *Hatch* and *Wood* was not.

L. C. J. But did take it upon them *positively*. For your Witnesses, there was *Beaver*, and *Crisp*, and *Wright*, these three they did say, that Sir *Patience Ward* did say, *as he believed*, or according to the best of his Memory; but they would not take it upon their Memories precisely, but according to the best of their Memories. And now for Colonel *Birch*, and *Northey*, and *Nelson*, and *Baker*, and *Perry*; they said, that he said, according to the best of his Memory, but they could not hear very well what was said; so that they

could not say any one Sentence that was said, and that is, I think, the most of the Evidence, all your Evidence, *as to Words*. You have brought some Persons to testify for *Credit*; truly, I think, that of all the Aldermen, one that hath pass'd the Chair, should not have brought under an Alderman, at least, to have justified him. But 'tis plain there are others come and say, he was a fair Dealer, and they have known him for a great many Years. Nay, I must confess, here was one of his Brethren, Sir *Harry Tulse*, and truly he looked upon him as a fair Dealer, and did not look upon him as stain'd with any enormous Vice whatsoever. When he was asked by the King's Counsel, whether he did believe he had sworn true in this Particular, he could not say to there. But, Gentlemen, for all this, I do not see any thing, whatsoever hath been said, that doth stick upon his Reputation, only this very Thing that he must be tried upon. And, Gentlemen, upon the Evidence you have heard, you are to consider the Merits of the Cause, and not the Person, one way or other, any otherwise than doth relate to it. If you believe the Witnesses that have sworn for the King, that he did swear this *positively*, then it is agreed, that it was false; if he did swear it positively, then you must find the *Defendant Guilty*. If so be you believe the Evidence that hath been given on the Defendant's Part, against the King's Evidence, if you do believe that, and not the King's Evidence, then you must acquit the Defendant. It is a great Crime, that is the Truth of it.

The Jury withdrew, and after some Time return'd, and brought the Defendant in Guilty; but before the Day for Sentence, he thought it best to go out of the Way, having had Intelligence they intended to set him in the Pillory.



CXVII. The Trial of Captain THOMAS WALCOT*, at the Old Bailey, for High Treason, July 12, 1683. 35 Car. II.



Hursday July 12. 1683. at the Sessions-House in the Old Bailey, London: The Court being met, and Proclamation made for Attendance, the Proceedings were as follow:

Thomas Walcot being set to the Bar, and after having held up his Hand, the Indictment was read as follows:

London. *The Jurors for our Sovereign Lord the King, upon their Oaths, present, That Thomas Walcot, late of London, Gentleman, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil; and the true Duty, and natural Obedience, which True*

and Faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King, do bear, and of Right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II. King of England, &c. the Five-and-thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, aforesaid, maliciously and traitterously, with divers other

* *Barnet's History of his Own Times, Vol. I. p. 558.*

other Traitors, to the Jurors aforesaid unknown, did conspire, compass, imagine and intend our said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down, but also our said Lord the King to kill and to Death to bring and put, and the antient Government of this his Kingdom of England to change, alter, and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King, through his whole Kingdom of England, to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up, within this Kingdom of England: And to fulfil and perfect the said most horrible Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, the said Thomas Walcot as a false Traitor, then and there, and divers other Days and Times, as well before as after, maliciously, traitorously and advisedly did assemble, meet together and consult with the aforesaid other Traitors, to the Jurors aforesaid unknown, and with them did treat of and for the executing and perfecting their Treasons, Compassings, Imaginations and Purposes aforesaid; and that the said Thomas Walcot as a false Traitor, maliciously, traitorously, and advisedly, then and there, and divers other Days and Times, as well before as after, did take upon himself, and to the aforesaid other Traitors did promise to be aiding and assisting in the Execution of the Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid; and in providing Armour and armed Men, to fulfil and perfect the said Treasons and traitorous Compassings, Imaginations and Purposes aforesaid. And the said most wicked Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to pass, be the said Thomas Walcot as a false Traitor, maliciously, traitorously and advisedly, then and there did procure and prepare Arms, to wit, Blunderbusses, Carbines, and Pistols, against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in that Case made and provided, &c.

Cl. of Cr. What sayst thou, Thomas Walcot? Art thou Guilty of this High Treason, whereof thou standest indicted, or Not guilty?

Capt. Walcot. Not guilty.

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

Capt. Walcot. By God and my Countrey.

Cl. of Cr. God send thee a good Deliverance.

Then were William Hone, John Rouse, and William Blague arraigned, who pleaded Not guilty to their Indictments; and the Court adjourn'd till the Afternoon. When Thomas Walcot being again brought to the Bar, after some Exceptions, the following Jury was impanell'd.

Nicolas Charlton, Christopher Pitts, Robert Beddingfield, John Pelling, William Windbury, Thomas Seaton,	}	Jur ^y	William Rutland, Thomas Short, Theophilus Man, John Genew, John Short, Thomas Nicholas.
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Cryer. Oyes, If any one can inform my Lords the King's Justices, &c.

L. C. J. Mr. Sheriffs, This is an extraordinary Case; it is reasonable the Evidence should be well heard:

I require you both to keep the Court quiet.—

Mr. Tanner, swear the King's Evidence one at a time.

Clerk. Thomas Walcot, Hold up thy Hand. You of the Jury, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of Thomas Walcot, Gent. *prout* in the Indictment before, *mutatis mutandis*. Upon this Indictment he hath been arraigned, and thereunto pleaded Not guilty, and for his Trial put himself upon his Country; which Country you are. Your Charge is to inquire, &c.

Mr. North. May it please your Lordship, and you that are sworn, the Prisoner stands charged, That he being a false Traitor to the King, and intending to raise War and Rebellion against the King, and to bring his Majesty to an untimely Death, did on the second of *March* in the five-and-thirtieth Year of the King, at the Parish of *St. Michael Bassishaw*, meet with other Traitors like himself, and there conspired to bring these Treasons to Effect; and accordingly promised to be aiding and assisting to provide Arms for it; and did actually provide several Arms, as Carbines, Blunderbusses, and Pistols, for the perpetrating this Treason. This is the Charge, to which he says he is Not guilty. We will call our Witnesses and prove it, and then you are to find it.

Mr. Att. Gen. Gentlemen of the Jury, the Prisoner at the Bar is accused of the highest of Crimes, High Treason against his Sovereign Lord, in compassing the Murder of the King, in raising Rebellion within this Kingdom, to the overthrowing of the best constituted, and the most excellent Government in the World. Gentlemen, he does not stand alone; and therefore he is charged in the Indictment with a Conspiracy with many others; I am heartily sorry to say there are many. Indeed there is hardly any Kingdom or Nation, wherein there are not discontented Persons, whose narrow Fortunes, or malevolent Spirits, render them uneasy in that Condition God Almighty hath put them; but to find Men that pretend to be Christians, or to have any thing of Virtue, and under the best of Governments, that indeed is a matter of Wonder; and indeed it casts so great a Stain and Reproach upon the Protestant Name, that it is not to be wiped off, but by the severest Justice of the Kingdom. Gentlemen, this Design was for a general Rising, and at the same time to assassinate the King and the Duke of York: This is the Design which the whole Course of our Evidence will open to you, and lies so naked, that I hope no *Englishman* that lives, but will see through these Men, that have made such a Noise and Tumult in these latter Days. This Design to assassinate the King, and the Rising, was designed to be in *October* last, upon the King's Return from *Newmarket*; and at that time there was a Noble Lord, that is gone now to his own Place, as will appear by the Evidence, that furnished them with considerable Sums of Money, for the providing Men and Arms for the assassinating the King at that time; but the Assassins were not then ready, as God appointed they should not be ready; and so at that time they were disappointed. Then the general Rising was put off till *Queen Elizabeth's Day*, which will open your Eyes to see upon what Grounds the tumultuous Meetings were encouraged in the City, to the Terror of all honest Men: But that Rising was also disappointed because

Sir Robert
Savoyer.

Sir Francis
Pemberton.

because some of the Conspirators were not ready with their Men in the Country. And then, Gentlemen, though it was press'd on by the Person I mentioned, he then thought it high time to leave these Confederates to themselves. Gentlemen, after this we shall trace them in their several Meetings and Consultations; for there was a time, that they struggled with themselves, which should be effected first, whether they should first kill the King and the Duke; or whether they should first rise, and prosecute him in an open Rebellion, and destroy him that way. And the Course of our Evidence will shew, how ingenious these Men were; for it appears there were Men of great Ingenuity and Courage, as appears by the Prisoner at the Bar; and they would discourse of these Matters in Phrases, that common Persons should not understand them. —

Capt. *Walcot*. I do not understand you.

Mr. *At. Gen.* I speak as loud as I can. At their Meetings, for cutting off the King, that was the executing of a Bargain and Sale; and a short Conveyance, to come to their End. The raising of a War, that was under the Notion, and so to be discours'd of, of executing a Lease and Release, to work both upon the Possession and upon the Reversion: And under these mystical Terms they discours'd of all these Subjects, when they were in publick Places.

Capt. *Walcot*. I do not hear.

Mr. *At. Gen.* You will hear the Witnesses, and that will concern you more. Then, Gentlemen, in these several Meetings they contrived to allot every Man in his Part; some were to provide Arms, others were to provide Men to do the Execution, which was last resolved upon to be at the *Rye*, upon the King's last Return from *Newmarket*. Gentlemen, in all these Parts, which I hope to prove, the Prisoner will appear to have a principal Part in them all: In all the Consultations and Advising for the raising Men, wherein he was to be a principal Commander, according to the Skill he hath; but for the Assassination at the *Rye*, *Rumbold* was to conduct the Men hired for that Purpose. Gentlemen, accordingly the Time was appointed for his Majesty to come, and the Assassins to meet him there: But it pleased God, that that was disappointed by a miraculous Fire; for so all *Englishmen* may call it: And whereas they were to go down on *Friday* to *Rumbold's* House, and the King to come up on *Saturday*, the Fire brought him to Town on *Tuesday*: But notwithstanding this great Providence to divert them, *Rumbold* and others of the Confederates resolved to go on with it still; and several Places were appointed, and several Officers were appointed to view those Places, either between *Hampton-Court* and *Windſor*, or else to do it at the *Play-houses* or upon the King's Passage from the *Play-house*, by *Bedford-wall* at *Covent-Garden*; but if these should fail, they were resolved to do it at the *Bull-feast*. Gentlemen, they went further; they provided Arms; which very Arms opportunely fell into our Hands: We seized those very Arms that were bought for that Purpose to kill the King and the Duke. We shall go through with it; I will name you the material Places of their Meetings, that so you may understand the Witnesses; the *Green-Dragon* Tavern on *Snow-hill*, the *Salutation* Tavern in *Lombard-street*, the *Angel* Tavern near the *Exchange*, and Mr. *West's* Chamber in the *Middle-Temple*; these were some of the principal Places, tho' they

had several other Places, wherein all these Matters were consulted and transacted. They had prepared a new Model of Government, and they were for overturning all, as all these Politicians do; tho' they had a most excellent Government, yet they had a better in their own Brains; or, at least, their Share would be greater in it, as all Rebels have a Prospect of. Gentlemen, for the other Parts, we shall have less Occasion to give Evidence of now; for every one had their particular Part; some for the great Design of the Rising, some for the Killing of the King, whereof that Gentleman, the Prisoner, was one; and there were other Parts assign'd to others, for taking and surprizing the *Tower*. We will call our Witnesses, and prove all that we have opened, and make it as clear to you as the Sun shines: Such a prodigious Villainy nothing but a Firebrand from Hell could kindle in Mens Minds, to kill the best of Kings, and to destroy the best Frame of Government. Gentlemen, I do not question your Justice, but that this Man shall pay what is due to the Justice of the Kingdom.

Mr. *Serg. Jefferies*. My Lord, I only desire to give an Account of the Method of our Evidence.

Capt. *Walcot*. My Lord, I desire I may have the Favour of Pen and Ink.

L. C. J. That you shall have.

Mr. *Serg. Jefferies*. My Lord, and you, Gentlemen of the Jury, Mr. Attorney hath already given you an Account of the Design that was to be put in Execution by a Parcel of evil Men, whereof the Prisoner at the Bar we charge to be one. We shall not detain you longer with opening the Matter, but beg the Favour of the Court, that we may acquaint you a little with the Method we intend to follow in calling our Evidence for the King against the Prisoner at the Bar. In the first place, my Lord, we will call our Witnesses, to give your Lordship and the Jury Satisfaction, That there was a Design in general, and that that Design was first intended to be a general Rising over all the Kingdom; in which Design the Prisoner at the Bar had a very considerable Share; and was looked upon to be a very proper and fit Person for the Managery of that Part of the Design: For other Meetings, and at what Places, Mr. Attorney hath already opened to you. We will then come to more particular Agreements that were between them, in order to the carrying on this admirable good Work, as it hath been truly stated, for the Destruction of the best and most merciful of Kings, and for the Destruction of the best of Religions, the Religion of the Church of *England*. I take Notice of it, because all Men may know, The most of these Persons, nay all of them, concerned in this hellish Conspiracy, were Dissenters from the Church of *England*.

And the better to effect this horrid Villainy, (I am sure I want Words, and so does any Man else, to express the Baseness of these Crimes, the better to effect this Thing) the way it was to be done, was by taking off the King, and by taking off his Brother too. At length after several Debates, and some Proposals made between these Persons, they came to a Determination, and an actual Resolution, to take off the King, and his Royal Brother. My Lord, we will prove generally, that this was the Intent of the Design or the Plot in general. My Lord, we will then give you an Account, That they entered into several Consultations for

a new Model and Frame of Government; for they intended to set up the People, and they had even fix'd a certain Superiority, and resolv'd, as all People of their Principles have a mind, according to their several Inclinations, to fix the Power in the People; Gentlemen, an old Tenet, that brought the King's Father to that untimely and horrid End, by fixing the Power in the People. These Gentlemen had a mind to insinuate and engage the People, by fixing the Power in them, and saying, that publick Proclamations were to be made. And after this horrid and barbarous Murder intended upon the King and the Duke, there were Declarations to be made in the Names of such and such Lords, and the Associating Members of the last House of Commons; these were the Persons thought fit, in whose Hands the Power of the whole Kingdom should be lodged. Gentlemen, after we have given you an Account of the several Meetings, then we will come to the Prisoner at the Bar, and prove against him, That he had not only an Hand in the first Part of the Plot, about the Rising, but he was also to be one of those Villains that were to murder the King: I cannot express myself in more moderate Terms, and I am sure no Man can blame me that hears the Proof. Gentlemen, when we have thus given you this Evidence, I hope we shall satisfy the Court, and all Mankind, That Persons that have been thus guilty, under Pretence of Religion, or under any other Pretence whatsoever, are fit Objects of the Severity of human Laws. If we prove against the Prisoner at the Bar, That he had an Hand in this horrid Conspiracy, I make no Doubt but you will shew yourselves to be *Englishmen*, loyal Men, and overtake all Men that thirst after the King's Blood.

Mr. *Sol. Gen.* Gentlemen, we will call our Witnesses; and as no Man can doubt, but the Murder of the King, that vile Design, would have been seconded by a Power to back that horrid Villany; so we shall shew you, That this Gentleman was concerned in both Parts, in the immediate Assassination of the King, and the raising of Arms. We need not go about to give you an History of the Thing any other way than in applying it to this Person, for there is no Part of this Conspiracy he can clear himself from, and all the Evidence that speak of this Design, speak of this Man as a chief Actor in it.

Mr. *Att. Gen.* Call Col. *Rumsey*.

[*Who was sworn.*]

Mr. *Sol. Gen.* Col. *Rumsey*, Pray, give my Lord and the Jury an Account of what you know of the Prisoner at the Bar, whether he were concerned, either in relation to the Murder of the King, or the raising Arms.

L. C. J. Mr. *Rumsey*, raise your Voice so audibly, that you may be heard.

Col. *Rumsey*. The first Meeting I had with this Gentleman was at Mr. *West's* Chamber.

Mr. *Att. Gen.* Before you begin to tell of your Meeting, give an Account of any Rising that you heard of.

Col. *Rumsey*. Sir, about the latter End of *October*, or the Beginning of *November*, I was with my Lord *Shaftsbury* late at Night, and he told me, That the Duke of *Monmouth*, my Lord *Ruffel*, my Lord *Grey*, and Sir *Thomas Armstrong*, were at one Mr. *Shepherd's* House, near *Lombard-street*. He desired me to go to know what they had done

about the raising Arms at *Taunton*. I did go, and Mr. *Shepherd* carried me up to them, and they told me, That Mr. *Trenchard* had failed them about the Men, and they could proceed no further at that time.

L. C. J. What *Shepherd* was this?

Col. *Rumsey*. Mr. *Shepherd*, the Merchant, near *Lombard-street*, one Mr. *Thomas Shepherd*. And so I came to my Lord the next Day, and told him of it; and then he made his Preparation to be gone for *Holland*.

L. C. J. What Discourse had you with my Lord *Shaftsbury* thereupon? What did he say? What made you believe he made Preparation to be gone?

Col. *Rumsey*. My Lord, he said there was no Dependence upon those Gentlemen that met, and he would leave *England*. After that, a Fort-night or three Weeks, there was a Meeting one Day at Mr. *West's* Chamber, and there was Mr. *West*, and Mr. *Goodenough*, and Mr. *Wade*, and somebody else there was, but I cannot remember his Name. Captain *Walcot* was in *Holland* then. There it was propos'd nothing was to be done by a general Rising; but there was no surer way than to take off the King and the Duke; and that to that Intent and Purpose they could not carry it on without Mr. *Ferguson*; and so he was writ for into *Holland*; and he came out of *Holland* upon that Letter, and Captain *Walcot* with him. After Mr. *Ferguson's* coming back from *Holland*; there was very suddenly a Meeting again, and then it was concluded, that nothing was to be effected without taking off the King and the Duke, or to that Purpose. Mr. *Ferguson* was not at that Meeting. There were two or three Meetings before Captain *Walcot* was there, to find out Men, and they could not find out a Number of Men, without which Mr. *Rumbold* would not undertake it. So, about three or four Meetings after, Captain *Walcot* came; and he was resolv'd at last to join in the Matter; but he would not have any Hand in attacking the Coach, but he would command a Party that should charge the Guards.

L. C. J. What did he say?

Col. *Rumsey*. He would not meddle with the King in the Coach, but he would command a Party that should charge the Guards that came along with him.

Mr. *Att. Gen.* After what manner was it settled that it should be done?

Col. *Rumsey*. There were several Parties; one small Party was to have killed the Postilion, another to kill the Horses, and Mr. *Rumbold* with a certain Number to seize the Coach, and Capt. *Walcot* the Guards.

Mr. *Att. Gen.* Where was it to be done?

Col. *Rumsey*. At Mr. *Rumbold's* House.

L. C. J. Where is that?

Col. *Rumsey*. Near *Hodsdon*.

L. C. J. For what Purpose was Mr. *Rumbold* and those other Men to attack the Coach?

Col. *Rumsey*. To murder the King and the Duke.

L. C. J. How was it design'd to be done, by Pistol, or how?

Col. *Rumsey*. By Blunderbuffes, and if they misfed, then Swords.

Mr. *Att. Gen.* Did they give any Directions about preparing Arms?

Col. *Rumsey*. When that time fail'd, after the Fire fell out at *Newmarket*—

L. C. J.

L. C. J. When was this to be done?

Col. Rumsfy. When the King returned from *Newmarket*.

L. C. J. About what time?

Col. Rumsfy. The *Saturday* before *Easter*.

L. C. J. I don't ask you the Day; but was it when the King was last at *Newmarket*, or before?

Col. Rumsfy. Last at *Newmarket*.

L. C. J. When he was last at *Newmarket*, in his Return from thence?

Col. Rumsfy. In his Return from thence.

L. C. J. Whereabouts?

Col. Rumsfy. At *Rumbold's* House, which is near *Hodsdon*.

L. C. J. In *Hertfordshire*?

Col. Rumsfy. In *Hertfordshire*.

L. C. J. And you say, those Methods were chalked out by them, that *Rumbold* and some others were to attack the Coach, others to kill the Postilion, others to kill the Horses; and this Gentleman, with a commanded Party, was to fall upon the Guards? You say this?

Col. Rumsfy. Yes, my Lord.

Capt. *Walcot*. I would beg Leave, my Lord—

L. C. J. Stay, Captain *Walcot*, you shall have Leave to ask him any thing by-and-by; but you must first let the King's Counsel have done with him.

Mr. *At. Gen.* I would ask you what you know of a Design at any other time?

Col. Rumsfy. I do know nothing, I heard by Mr. *West*, but I knew nothing before.

L. C. J. Mr. *Rumsfy*, About what time was this Resolution taken up, as near as you can? I ask neither the Day nor the Week, but about what Month?

Col. Rumsfy. The Beginning of it was in *February*.

L. C. J. Last *February*?

Col. Rumsfy. Last *February*. Mr. *Ferguson*, and Captain *Walcot*, came to this Town upon *Ash-Wednesday*.

Mr. Serg. *Jefferies*. What other Meetings were you at, Sir?

Col. Rumsfy. This was the first, when the Prisoner at the Bar came in. The first Time was at Mr. *West's* Chamber, where he came: There it was considered and debated.

Mr. Serg. *Jefferies*. Very well, you say that was the first Time Capt. *Walcot* came in?

Col. Rumsfy. It was at Mr. *West's* Chamber: This was before the King came from *Newmarket* that they were to do this, and the Number of Men could not be got ready; so there were several Meetings afterward at Mr. *West's* Chamber, to consult whether they could raise the Number they resolved upon; and there were Notes brought by Mr. *Goodenough*, and Mr. *Rumbold*, of many Names, I cannot say who else brought Notes of the Mens Names, to see that they might not be deceived in the Number; and that Time Captain *Walcot* was there, and did undertake to go to Mr. *Rumbold's* House, and I think did go down to the very Place.

L. C. J. Look you, Sir, Was there any Number of Men insisted upon for doing this Villainy?

Col. Rumsfy. Capt. *Rumbold* did insist upon 50 Men.

L. C. J. But Capt. *Walcot*, How many was he to have?

Col. Rumsfy. It was not divided to a perfect Number.

Mr. Serg. *Jefferies*. What other Meetings were you at with Captain *Walcot*?

Col. Rumsfy. I was at the *Salutation* with him, and the *Green-Dragon* with him.

Mr. Serg. *Jefferies*. Where is that?

Col. Rumsfy. The *Green-Dragon* is upon *Snow-hill*.

Mr. Serg. *Jefferies*. Where is the *Salutation*?

Col. Rumsfy. In *Lombard-street*.

Mr. Serg. *Jefferies*. Now tell what Discourses you had there?

Col. Rumsfy. That was about dividing the City into 20 Parts, to see how many Men could be raised out of every Part, and they were to be divided into Fifteenths, and every Man to lead a Fifteenth, that they might not be at a Loss.

Mr. *At. Gen.* Who was intrusted with this to do it?

Col. Rumsfy. Mr. *Goodenough*, Mr. *West*, and Mr. *Wade*.

Mr. *At. Gen.* What Account did they give of what they had done?

Col. Rumsfy. Mr. *Goodenough* gave an Account of 7 Parts of the 20, and said out of them would be raised 2900 Men, and made an Estimate, that the other 13 would not raise above as many more; for those were the most considerable Parts, as *Wapping* and *Southwark*.

Mr. Serg. *Jefferies*. Mr. *Rumsfy*, Pray what Consultation had you afterward, and what was done after?

L. C. J. Pray let us go on a little *gradatim*. What was the Reason, that this was not effected when the King returned from *Newmarket*?

Col. Rumsfy. The Fire happened, and brought the King sooner from *Newmarket* than the Men could be got ready.

L. C. J. Was there a Day appointed for the doing this? Had you a Prospect when the King would return?

Col. Rumsfy. Yes, it was commonly talked that it would be the *Saturday* before *Easter*, but he came on the *Tuesday* before.

L. C. J. Then give us an Account how that Design was disappointed at that time.

Col. Rumsfy. The Fire happened in *Newmarket*, and they were all in Confusion, and could not get their Men ready by *Tuesday*; the News came upon *Friday* to Town.

L. C. J. Of the Fire?

Col. Rumsfy. Of the Fire, and there was a Meeting. Mr. *Ferguson* lodged then in *Covent-Garden*, and sent to several to come to him, to see if Men could be got together against *Tuesday*, when the King was to come in; and it could not be done, and it was laid aside for that time.

Mr. *At. Gen.* Upon that, what Resolution was taken?

Col. Rumsfy. Then they had a Meeting, and *Ferguson* was not there, there was Capt. *Walcot*, Mr. *West*, and Mr. *Goodenough*; this was immediately after this Disappointment: I am not certain whether it was in Mr. *West's* Chamber; and that there might no Accident happen afterwards to hinder it, it was resolved, that Money should be raised for the buying of Arms; and Mr. *Ferguson* undertook to raise Money to buy Arms, and Mr. *West* did undertake to provide them.

Mr.

Mr. *Att. Gen.* Who undertook to provide Men?

Col. *Rumsey.* Mr. *Goodenough*, and Mr. *Rumbold*.

L. C. J. Look you, Colonel *Rumsey*, after this Disappointment, when this next Meeting was, had you any further Design upon the King then?

Col. *Rumsey.* Yes, my Lord.

L. C. J. Give us some Account of that.

Col. *Rumsey.* It was to be done a coming from *Windsor* to *London*, or from *Windsor* to *Hampton-Court*, or the *Play-houfe*; and therefore that Arms should be ready against any Opportunity that should happen, let it be what it would: And Mr. *West* did undertake to provide Arms, and he told me he bought them, and did not get his Money in six or seven Weeks after. A Day or two after going to *Ferguson*, he told him now he might have his Money, if he would send a Note to Major *Wildman*; but after, he was told, that Major *Wildman* would not pay it by Note, but he must send Mr. *Rumbold* to him for it; for he would trust no body else but him. And so Mr. *West* did send Mr. *Rumbold*, and he was there at his House by six o' Clock in the Morning, but he was gone out of Town an Hour before; so Mr. *West* went to Mr. *Ferguson*, and he then told him, that he should have Money in two or three Days, if he would come to him; and Mr. *West* did go to him, and he paid him an hundred Pounds.

Mr. *Att. Gen.* Was there any Provision made for a Rising now again?

Col. *Rumsey.* Yes, this general Rising, by this Division of the City, was intended to be ready against the first Opportunity that happened.

Mr. *Att. Gen.* Before this Discovery, did you keep up these Meetings?

Mr. *Sol. Gen.* When was your last Time?

Col. *Rumsey.* My Lord, I think it was the very *Thursday* before the Discovery; but then on *Friday* or *Saturday* we had Inklings, that this was discovered, and did meet at the *George* upon *Ludgate-Hill*.

L. C. J. Who met then?

Col. *Rumsey.* I think it was the very *Thursday* before; I am not very certain; we met at the *Salutation* in *Lombard-street*, and there was Captain *Walcot*, Mr. *West*, Mr. *Wade*, the two *Goodenoughs*, and Mr. *Nelthrop*, and myself.

Mr. *Att. Gen.* What did it come to, pray, what was your Discourse then and Resolution?

Col. *Rumsey.* The Resolution was still to carry it on. We went thither to know of Mr. *Goodenough* what was done about the other thirteen Parts; he told us he had no Account, but he said, he thought he should have a Meeting on *Saturday* in the Afternoon at *Ludgate-Hill*, at the *George*, to have his Answer; but the Discovery coming, there did only meet Mr. *Norton*, Mr. *Bourn*; — there was another, I don't know who the other was; there was a fourth.

Mr. *Att. Gen.* Mr. *Rumsey*, Pray, after the Discovery, What did you resolve upon? What Meetings had you upon your Flight?

Col. *Rumsey.* We met at Capt. *Tracy's*.

Mr. *Att. Gen.* What Day was that?

Col. *Rumsey.* That was upon the *Monday* after the Discovery.

Mr. *Serg. Jefferies.* Who was there?

Col. *Rumsey.* There was Capt. *Walcot*, Mr. *West*, Mr. *Wade*, Mr. *Nelthrop*, the two *Goodenoughs*, and Mr. *Ferguson*.

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Mr. *Att. Gen.* What did you discourse of there?

Col. *Rumsey.* There was exclaiming against Mr. *Keeling*, and taking Resolutions to be gone.

L. C. J. Mr. *Keeling*! What was *Keeling*?

Col. *Rumsey.* Mr. *Keeling* was he that made the Discovery.

Mr. *Serg. Jefferies.* Have you ever been in *Keeling's* Company?

Col. *Rumsey.* I was that time we met at the *Salutation*; he came in there for a quarter of an Hour.

L. C. J. Look you, Sir, Do you know Capt. *Walcot*? Are you sure it is that Gentleman at the Bar?

Col. *Rumsey.* Yes, my Lord.

L. C. J. Hath he owned always the Name of *Walcot*?

Col. *Rumsey.* Yes, my Lord.

L. C. J. What did he say to Mr. *Keeling*, when he came to the *Salutation*?

Col. *Rumsey.* There was in that very Day's *Gazette* a Report of the Rising at *Cologne*, and one *Gulick* that headed them; and said Mr. *West* to *Keeling*, he should be our *Gulick*.

Mr. *Att. Gen.* Pray, how did he interpret it at that time?

Col. *Rumsey.* Mr. *West* said, that *Gulick* was *Keeling*, *Gu* was *Keel*, and *lick* was *ing*.

Mr. *Serg. Jefferies.* A Quirk upon his Name.

Mr. *Att. Gen.* When you resolved to fly, had you any Discourse of making a Stand, and fighting the Government then?

Col. *Rumsey.* Not that I know of, I was not all the time with them.

L. C. J. Look you, Colonel *Rumsey*, let me ask you this: What was *Keeling* to do? Was there any Post assigned to *Keeling* in this?

Col. *Rumsey.* I never saw him before.

L. C. J. How long was it before the Discovery that you did see him?

Col. *Rumsey.* The *Thursday* before.

L. C. J. At the *Salutation-Tavern*?

Col. *Rumsey.* Yes: He was there call'd *Gulick*.

Mr. *Serg. Jefferies.* If Capt. *Walcot* will ask him any Questions, he may.

L. C. J. Look you, Mr. *Walcot*, Now you may ask Col. *Rumsey*; tell me what Questions you would have asked, and I will ask him.

Capt. *Walcot.* I desire Colonel *Rumsey* may be asked, Whether I ever met at Mr. *West's* Chamber, till after his Majesty's Return from *Newmarket*?

L. C. J. Look you, Sir, you hear the Question; it is, Whether ever Mr. *Walcot* met with Mr. *West*, till after the King's Return from *Newmarket*?

Col. *Rumsey.* Till after?

L. C. J. Till after the King's Return.

Col. *Rumsey.* Yes, Sir.

Capt. *Walcot.* My Lord, I have sufficient Evidence against that.

Mr. *Serg. Jefferies.* I think that he was to undertake the Guards; that was before the King came from *Newmarket*.

L. C. J. He hath given this Evidence, He was there, and he would not attack the Coach; he would not meddle with the King, but he would fall upon the Guards.

Capt. *Walcot.* Shall I speak a Word, my Lord?

L. C. J. Look you, I will tell you, you shall have your Answers to these things; you have Pen, Ink, and Paper.

Capt. *Walcot*. But I have a bad Memory, and I am afraid I shall forget this very Thing.

Mr. Serg. *Jefferies*. I hope the Jury will not forget it.

L. C. J. Look you, Mr. *Walcot*, we must not admit you to break in upon the King's Evidence. When that is heard, you shall have your Liberty to make your Answer to any thing, and call any Witness.

Col. *Rumsey*. My Lord, I will give one Instance more: There was one Meeting at the *Five Bells* in the *Strand*, where there was only *Ferguson*, Captain *Rumbold*, Mr. *West*, *Goodenough*, and myself: And Mr. *Ferguson* told us that Night, that Captain *Walcot* would come the next Meeting we had at Mr. *West*'s Chamber.

L. C. J. Then Captain *Walcot* was not with you at the *Five Bells*?

Col. *Rumsey*. Mr. *Ferguson* told us he would come in the next time at Mr. *West*'s Chamber, and there he did come.

L. C. J. And that was before the King went to *Newmarket*. Pray, Sir, answer this, Was this before the King went to *Newmarket*, or not?

Col. *Rumsey*. No, my Lord, this was when he was at *Newmarket*: for the King was at *Newmarket* when he and Mr. *Ferguson* came from *Holland*, the King was then at *Newmarket*.

Mr. Serg. *Jefferies*. Now we will call Mr. *Keeling*.

[Who was sworn.

Mr. *Att. Gen.* Pray, will you acquaint my Lord, and the Jury, what you know of these Conspiracies touching this Man.

Mr. *Keeling*. Some time, my Lord, before the King went to *Newmarket*, I was at the *Sun-Tavern*, and in company with *Richard Rumbold*, *Richard Goodenough*, and some others. *Goodenough* calls me forth of the Room, and asked me, What Men I could procure? I asked him, For what Purpose? He said, To go down towards *Newmarket*. I asked, for what End? He said, To kill the King, and the Duke of *York*. I told him, I thought none. Before the King came from *Newmarket* he renewed his Question to me again several times: I had in the *Interim* some Discourse with *Burton* and *Thompson*. *Burton* told me, That *Barber* would be concern'd; and he also told me, *Thompson* would. The *Saturday* after the Fire happened at *Newmarket*, *Rumbold* came down to my House, or the *Friday*, the Day that the News was of the Fire, the Day that he commonly came to Town, he came to my House; it was on the *Friday*, to see those Men I could procure, and he desired to see them on the *Morrow*, which was the *Saturday* before the King returned. The *Saturday* after the Fire I went into *London*, and met Mr. *Rumbold* that Day at the *Exchange*, and he then put me in mind of the Matter again. I did go to *Burton* and *Thompson*, and *Barber*; the Place appointed on *Saturday* was the *Mitre-Tavern* at the Corner of *Duke's-place* within *Aldgate*. He did meet there, where there was some Discourse happened tending to that Matter by *Rumbold*; the Substance of which was, Whether they were willing to go down? I think he called the Place by the Name of *The Rye*, that is his House; there being, says he, no greater Conveniency than in that, I believe scarce in *England*, for the executing such a Design, being an House very intire to itself, and very remote from Neighbours, besides the Advantage that belongs to it of a Court or Wall. And, among other Discourse, this was

an Argument to prevail with those Persons: For, saith he, it will be a keeping one of the Commandments, to kill the King, and the Duke of *York*; for, says he, if that be not done, there will be otherwise a great deal of Bloodshed committed. He also told us the way that he design'd to effect this at his House; That he had a Conveniency for our Horses; and that there would be so many appointed to shoot at the Postilion and the Horses; and that there would be so many appointed at the Coach, and so many Men to attack the Guards: And if there was a Failure in shooting the Coach-horses, that then there should be Men in the Habit of Country-men, with a Cart in the Lane, and they should run this Cart athwart the Lane, and so stop the Coach. I believe there might be some other Particulars, which, at present, I do not remember. From thence we went to the *Exchange*, and there we met in the Afternoon at the *Dolphin-Tavern* in *Bartholomew-Lane*; there was *Rumbold*, *West*, *Goodenough*, and *Hone* the Joyner. And after we had been there a little, *West* asked *Rumbold*, Whether he heard the King would come home that Night? He said, Yes, he heard so; but said *West*, I believe he won't come till *Monday*, and I hope he won't come till *Saturday*; for that was the Day appointed to go down to the *Rye*, to meet the King, and the Duke of *York*. Said *Rumbold*, I hope they will not come till then: But, said *West*, if they do come, How many *Swan-quills* must you have? How many *Goose-quills*? And how many *Crow-quills*, with Sand and Ink, must you have? Said they, Six *Swan-quills*, *Twenty Goose-quills*, and *Twenty or Thirty Crow-quills*.

L. C. J. Explain that.

Mr. *Keeling*. I am coming to it. I asked *West* or *Rumbold*, or both of them, what they intended by it? They told me *Swan-quills* were *Blunderbuffes*, *Goose-quills* *Muskets*, and *Crow-quills* were *Pistols*, Sand and Ink Powder and Bullet. This is all my Lord, as I remember in general, as to the Design.

L. C. J. What can you say concerning the Prisoner at the Bar?

Mr. *Keeling*. I was at the *Salutation-Tavern*, and Captain *Walcot* was there; and when I came in, there was some Person called me *Culing*, and I a little stranged at it, not knowing the Meaning. Says I, Gentlemen, What do you design by it? Says one, Here's a good Health to our English *Culing*. Says *West*, *Culing* in Dutch is *Keeling* in English. And says Mr. *West*, I hope to see Mr. *Keeling* at the Head of as good an Army in *Wapping*, as *Culing* is at *Collen*. I suppose Captain *Walcot* remembers it very well. I can say no more, Sir, to the Prisoner at the Bar; I remember not to have seen him any other time upon this Design.

Mr. Serg. *Jefferies*. Would the Prisoner at the Bar ask him any Questions?

Capt. *Walcot*. My Lord, I don't remember any such thing. If you please, my Lord, to ask him, whether I call'd him *Culing*, or said any thing more or less to him.

Mr. *Keeling*. I don't say you did, but you were by, that I say.

Mr. Serg. *Jefferies*. I think, Mr. *Keeling*, you were the Person that made the Discovery; give an Account of it for the Satisfaction of the World.

L. C. J. Upon what Occasion did you reveal this?

Mr. *Keeling*.

Mr. Keeling. If your Lordship please, I will give you an Account. There was something happened before that time. Some time before this thing was discovered, *Goodenough* came down to my House, and I went with him to drink a Dish of Coffee, and there was in Company with him *Richard Rumbold*, and his Brother *William*, that I believe Mr. *Walcot* knows; and when we were by ourselves; he pulls out some Papers out of his Pocket, and gave me one. I asked him what he meant. He told me he had divided the City and Suburbs into twenty Parts, and there were three Divisions: And, says he, you know the Persons better than I, and who you can trust with it. One is for yourself, and I would have you take to your Assistance nine or ten Men, more or less, that you may communicate it safely to; and they were to go to several Persons, and ask them, Supposing that the Papists should rise, or that there should be a general Insurrection, or a *French* Invasion, are you in a Posture of Defence? This was all we were to communicate of the Matter to them, and this was to feel them, and see how many Men they could raise. And he told me there was a Design to kill the King, and the Duke, which was designed to be done at the Bull-feast; for Mr. *West* had told me it was to be done between *Windsor* and *Hampton-Court*. I asked him, If that Design went on; and he said, No; for the Duke of *York* seldom came with the King from *Windsor* to *Hampton-Court*, but it was to be at the Bull-feast. And says he, these Men are to be in a Readiness, and it's design'd, that the thing should be laid upon the Papists, as a Branch of the Popish-plot. He also told me, there was one drawing a Declaration, which would relieve poor People of that which seemed most burdensome to them, which was the Chimney-money; and then the common People would fall in with them more readily.

Mr. Att. Gen. How came you to discover it?

Mr. Keeling. I will tell you, Sir: I was troubled in my Mind about it, and do declare that was the only Reason. I thought I did very ill in not discovering it, and I had no Peace, nor Satisfaction, nor Content, nor did I mind my Business, nor could I take the Rest that at other times I did, and that was the moving Cause, and no other. I thought, if it were a Sin in *David* to cut off the Hem of *Saul's* Garment, it was a Sin in me much more to kill my King.

L. C. J. Was there any Post in this Case assign'd to you? Was it requir'd of you to do any thing yourself, more than to raise those Men, and know whether they were in Readiness? Were you design'd to go down to *Rumbold's* House? Tell what Part you were to act.

Mr. Keeling. In the first place, I was to raise some Men; but I thought they looked upon me for one to go down myself with some Men I raised; but I remember not, that I was asked the Question.

L. C. J. Were any of those Men to go down?

Mr. Keeling. Those three I named were to go down, *Burton*, *Thompson*, and *Barber*.

Mr. Att. Gen. Call Mr. *Bourn*.

L. C. J. Tell us the Manner of your revealing and discovering this, who you discovered it to?

Mr. Keeling. I revealed it to one Mr. *Peckham*,

L. C. J. Who did he bring you to?

Mr. Keeling. To my Lord *Dartmouth*.

L. C. J. And so you did discover the whole Business to him?

Mr. Keeling. I had offered to discover it to another Man before, but I thought he was careless; so I did not tell him positively what I thought to tell him; because I saw he slighted the Matter. He was a Minister of the Church of *England*. Then I went to Mr. *Peckham*, knowing he was intimate at Court, and from thence to my Lord *Dartmouth*, and then I was carried to Mr. Secretary *Jenkins*.

Mr. Att. Gen. Was there no Design to take off the Mayor or the Sheriffs in particular?

Mr. Keeling. I will tell you: *Goodenough* did tell me, That the Design was to secure the Lord Mayor, and the Sheriffs; and he told me, they had a Design to secure the *Tower*.

Mr. Att. Gen. Were you employed to arrest my Lord Mayor?

Mr. Keeling. I did arrest my Lord Mayor.

L. C. J. What are you? How came you to arrest my Lord Mayor? What are you by Profession?

Mr. Keeling. A White Salter, or Oyl-man.

L. C. J. How came you to arrest my Lord Mayor?

Mr. Keeling. I was put upon it by *Goodenough*, and those Men.

L. C. J. As a special Bailiff?

Mr. Att. Gen. He was as a special Bailiff.

Mr. Keeling. Under the Coroner.

Mr. Serg. *Jefferies*. A special Bailiff under a special Coroner.

Mr. Bar. Street. Was this Coroner at any time of your Meetings?

Mr. Keeling. No, my Lord.

Mr. Bar. Street. I am glad he was not.

L. C. J. What say you, Capt. *Walcot*?

Capt. *Walcot*. My Lord, I have nothing to say.

Mr. Sol. Gen. Call *Zachary Bourn*.

[Who was sworn.

Mr. Att. Gen. Pray will you recollect yourself, and tell what Knowledge you have of the Prisoner, what Meetings you had, and what was agreed.

L. C. J. Raise your Voice a little.

Mr. *Bourn*. The Occasion of my knowing Capt. *Walcot* was Mr. *Ferguson's* lodging at my House. Capt. *Walcot* used to come thither, but it was some time before I changed any Words with him.

Mr. Att. Gen. Speak aloud, Mr. *Bourn*.

Mr. *Bourn*. Mr. *Wade* came presently after I came to Town from the *Wells*, and said, I must needs meet in such a Place, it was at the *Dragon* upon *Snow-hill*, where we met several others besides Capt. *Walcot*: The Business was a Design to raise Men, and divide the City into twenty Divisions, in order to the securing of his Majesty, and the Duke of *York*, and setting up the Duke of *Monmouth*.

L. C. J. Was it securing, or killing?

Mr. *Bourn*. It was not killing, I think; we never expressed it killing at those Meetings. I think, every time I met them, Capt. *Walcot* was there. Once I was at the *Salutation* in *Lombard-street*.

L. C. J. What was the Result of your Meetings.

Mr. *Bourn*. To make all Expedition imaginable.

Capt. *Walcot*. But I have a bad Memory, and I am afraid I shall forget this very Thing.

Mr. Serg. *Jefferies*. I hope the Jury will not forget it.

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Mr. *Keeling*. I am coming to it. I asked *West* or *Rumbold*, or both of them, what they intended by it? They told me *Swan-quills* were *Blunderbuffes*, *Goose-quills* *Muskets*, and *Crow-quills* were *Pistols*, Sand and Ink Powder and Bullet. This is all my Lord, as I remember in general, as to the Design.

L. C. J. What can you say concerning the Prisoner at the Bar?

Mr. *Keeling*. I was at the *Salutation-Tavern*, and Captain *Walcot* was there; and when I came in, there was some Person called me *Culing*, and I a little stranged at it, not knowing the Meaning. Says I, Gentlemen, What do you design by it? Says one, Here's a good Health to our English *Culing*. Says *West*, *Culing* in *Dutch* is *Keeling* in *English*. And says Mr. *West*, I hope to see Mr. *Keeling* at the Head of as good an Army in *Wapping*, as *Culing* is at *Collen*. I suppose Captain *Walcot* remembers it very well. I can say no more, Sir, to the Prisoner at the Bar; I remember not to have seen him any other time upon this Design.

Mr. Serg. *Jefferies*. Would the Prisoner at the Bar ask him any Questions?

Capt. *Walcot*. My Lord, I don't remember any such thing. If you please, my Lord, to ask him, whether I call'd him *Culing*, or said any thing more or less to him,

Mr. *Keeling*. I don't say you did, but you were by, that I say.

Mr. Serg. *Jefferies*. I think, Mr. *Keeling*, you were the Person that made the Discovery; give an Account of it for the Satisfaction of the World.

L. C. J. Upon what Occasion did you reveal this?

Mr. *Keeling*.

Mr. *Keeling*. If your Lordship please, I will give you an Account. There was something happened before that time. Some time before this thing was discovered, *Goodenough* came down to my House, and I went with him to drink a Dish of Coffee, and there was in Company with him *Richard Rumbold*, and his Brother *William*, that I believe Mr. *Walcot* knows; and when we were by ourselves, he pulls out some Papers out of his Pocket, and gave me one. I asked him what he meant. He told me he had divided the City and Suburbs into twenty Parts, and there were three Divisions: And, says he, you know the Persons better than I, and who you can trust with it. One is for yourself, and I would have you take to your Assistance nine or ten Men, more or less, that you may communicate it safely to; and they were to go to several Persons, and ask them, Supposing that the Papists should rise, or that there should be a general Insurrection, or a *French* Invasion, are you in a Posture of Defence? This was all we were to communicate of the Matter to them, and this was to feel them, and see how many Men they could raise. And he told me there was a Design to kill the King, and the Duke, which was designed to be done at the Bull-feast; for Mr. *West* had told me it was to be done between *Windsor* and *Hampton-Court*. I asked him, If that Design went on; and he said, No; for the Duke of *York* seldom came with the King from *Windsor* to *Hampton-Court*, but it was to be at the Bull-feast. And says he, these Men are to be in a Readiness, and it's design'd, that the thing should be laid upon the Papists, as a Branch of the Popish-plot. He also told me, there was one drawing a Declaration, which would relieve poor People of that which seemed most burdensome to them, which was the Chimney-money; and then the common People would fall in with them more readily.

Mr. *Att. Gen.* How came you to discover it?

Mr. *Keeling*. I will tell you, Sir: I was troubled in my Mind about it, and do declare that was the only Reason. I thought I did very ill in not discovering it, and I had no Peace, nor Satisfaction, nor Content, nor did I mind my Business, nor could I take the Rest that at other times I did, and that was the moving Cause, and no other. I thought, if it were a Sin in *David* to cut off the Hem of *Saul's* Garment, it was a Sin in me much more to kill my King.

L. C. J. Was there any Post in this Case assign'd to you? Was it requir'd of you to do any thing yourself, more than to raise those Men, and know whether they were in Readiness? Were you design'd to go down to *Rumbold's* House? Tell what Part you were to act.

Mr. *Keeling*. In the first place, I was to raise some Men; but I thought they looked upon me for one to go down myself with some Men I raised; but I remember not, that I was asked the Question.

L. C. J. Were any of those Men to go down?

Mr. *Keeling*. Those three I named were to go down, *Burton*, *Thompson*, and *Barber*.

Mr. *Att. Gen.* Call Mr. *Bourn*.

L. C. J. Tell us the Manner of your revealing and discovering this, who you discovered it to?

Mr. *Keeling*. I revealed it to one Mr. *Peckham*.

L. C. J. Who did he bring you to?

Mr. *Keeling*. To my Lord *Dartmouth*.

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L. C. J. And so you did discover the whole Business to him?

Mr. *Keeling*. I had offered to discover it to another Man before, but I thought he was careless; so I did not tell him positively what I thought to tell him; because I saw he slighted the Matter. He was a Minister of the Church of *England*. Then I went to Mr. *Peckham*, knowing he was intimate at Court, and from thence to my Lord *Dartmouth*, and then I was carried to Mr. Secretary *Jenkins*.

Mr. *Att. Gen.* Was there no Design to take off the Mayor or the Sheriffs in particular?

Mr. *Keeling*. I will tell you: *Goodenough* did tell me, That the Design was to secure the Lord Mayor, and the Sheriffs; and he told me, they had a Design to secure the *Tower*.

Mr. *Att. Gen.* Were you employed to arrest my Lord Mayor?

Mr. *Keeling*. I did arrest my Lord Mayor.

L. C. J. What are you? How came you to arrest my Lord Mayor? What are you by Profession?

Mr. *Keeling*. A White Salter, or Oyl-man.

L. C. J. How came you to arrest my Lord Mayor?

Mr. *Keeling*. I was put upon it by *Goodenough*, and those Men.

L. C. J. As a special Bailiff?

Mr. *Att. Gen.* He was as a special Bailiff.

Mr. *Keeling*. Under the Coroner.

Mr. *Serg. Jefferies*. A special Bailiff under a special Coroner.

Mr. *Bar. Street*. Was this Coroner at any time of your Meetings?

Mr. *Keeling*. No, my Lord.

Mr. *Bar. Street*. I am glad he was not.

L. C. J. What say you, Capt. *Walcot*?

Capt. *Walcot*. My Lord, I have nothing to say.

Mr. *Sol. Gen.* Call *Zachary Bourn*.

[Who was sworn.]

Mr. *Att. Gen.* Pray will you recollect yourself; and tell what Knowledge you have of the Prisoner, what Meetings you had, and what was agreed.

L. C. J. Raise your Voice a little.

Mr. *Bourn*. The Occasion of my knowing Capt. *Walcot* was Mr. *Ferguson's* lodging at my House. Capt. *Walcot* used to come thither, but it was some time before I changed any Words with him.

Mr. *Att. Gen.* Speak aloud, Mr. *Bourn*.

Mr. *Bourn*. Mr. *Wade* came presently after I came to Town from the *Wells*, and said, I must needs meet in such a Place, it was at the *Dragon* upon *Snow-hill*, where we met several others besides Capt. *Walcot*: The Business was a Design to raise Men, and divide the City into twenty Divisions, in order to the securing of his Majesty, and the Duke of *York*, and setting up the Duke of *Monmouth*.

L. C. J. Was it securing, or killing?

Mr. *Bourn*. It was not killing, I think; we never expressed it killing at those Meetings. I think, every time I met them, Capt. *Walcot* was there. Once I was at the *Salutation* in *Lombard-street*.

L. C. J. What was the Result of your Meetings.

Mr. *Bourn*. To make all Expedition imaginable.

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L. C. J.

L. C. J. Was it discours'd how, or in what manner, those Persons were to be raised? Don't refer yourself to the Evidence that went before, but tell it yourself.

Mr. Bourn. The City was to be divided into twenty Divisions, and to raise as many Men as they could out of them; but they were not to tell the direct Business, but if there should be Occasion, or the Papists should rise, they might know their Strength, and what they were able to do.

Mr. Att. Gen. This was their Pretence, because it should not be told those Men.

L. C. J. Did *Mr. Goodenough* bring any Account of it?

Mr. Bourn. *Mr. Goodenough* brought an Account of about four thousand; three I think it was, or very near, out of those Divisions he had an Account of.

L. C. J. Was Captain *Walcot* there at that time?

Mr. Bourn. Yes.

Mr. Serg. Jefferies. When the Discourse was about securing the King, and the Duke, was Captain *Walcot* there?

Mr. Bourn. Yes.

L. C. J. Did you hear what Parties were design'd to be in this Act?

Mr. Bourn. They were not come to that.

L. C. J. Did you break off from them before that?

Mr. Bourn. No, the Discovery prevented it.

L. C. J. When was your first Meeting? About what time?

Mr. Bourn. About ten Days before the Discovery was made.

L. C. J. Was *Mr. West* at any of your Consults?

Mr. Bourn. Yes, at some of them, and Captain *Walcot* was at three of them, if not at all, I think.

L. C. J. What was to be done?

Mr. Bourn. They were to have seized my Lord Mayor, and the two Sheriffs, and some of the Aldermen, and the chief Ministers of State about Town.

Mr. Bar. Street. Was there any body designed for that particular Business?

Mr. Bourn. No, not then, it was not come to that.

Mr. Att. Gen. Was there any thing about my Lord Keeper?

Mr. Bourn. Yes, *Mr. West* did say to me, it should be my Business to secure my Lord Keeper. I told him, I did not care to meddle with any of my Neighbours. He said he would call him to Account with all his Heart, he would put him in mind of *Colledge*.

Mr. Att. Gen. Pray were you employed to speak with any of the Nonconformist Ministers about it?

Mr. Bourn. I would have spoke to two of them, and *Mr. West* was unwilling; for he said, the Ministers had destroyed all Designs ever since *Constantine's* time, and he would have nothing to do with them now.

Mr. Att. Gen. When was your last Meeting, before the Discovery, that you were at?

Mr. Bourn. The Saturday before the Discovery, we met at Captain *Tracy's*, and that Evening we had some Intimation, that there was a Discovery made. And I went again on Monday Morning.

Mr. Att. Gen. Who was there?

Mr. Bourn. Captain *Walcot*, *Mr. Ferguson*, *Mr. Goodenough*, *Mr. West*, *Mr. Norton*, and myself; one Captain *Pottle* came in, but he did not stay.

Mr. Att. Gen. Colonel *Rumsey* was there too, was not he?

Mr. Bourn. Yes, Sir.

L. C. J. And what did you resolve upon then?

Mr. Bourn. Truly they resolved upon nothing; I left them upon the Debate of killing *Mr. Keeling*.

Mr. Att. Gen. Why would they kill him? Was that debated among them?

Mr. Bourn. Yes, because he made the Discovery.

Mr. Att. Gen. Did you hear them talk of standing to it with Swords in their Hands?

Mr. Bourn. Yes, rather than be hang'd, they thought that was the better way, and to have *Keeling* dispatched out of the World.

L. C. J. Look you, Sir, did any of them talk of securing themselves?

Mr. Bourn. The next Morning I went again, and they were all gone but *Mr. West*, they had all secured themselves.

L. C. J. Was the Prisoner at the Bar there at that time, when they consulted about killing *Mr. Keeling*? Was he there at that Meeting on Monday Morning?

Mr. Bourn. He was there at Captain *Tracy's*; he was there, I think, all the while, while I was there; for I was not there all the time.

L. C. J. (To *Walcot*.) Now, Sir, what Question would you have?

Capt. Walcot. My Lord, if you please, I would ask whether he ever heard me say any thing, more or less, of assassinating the King?

L. C. J. In the first place, did you hear any thing in general of assassinating the King?

Mr. Bourn. I did hear of it, my Lord, when the thing was over. And as to his Question, I did never hear him discourse of that Matter. I understood the Design was prevented.

L. C. J. Who did you understand that from?

Mr. Bourn. From one *Mr. Row*, and *Mr. Ferguson*.

Mr. Att. Gen. Pray, in all your Meetings, was there no Discourse of killing the King and the Duke?

Mr. Bourn. Very little.

Mr. Serg. Jefferies. The Discourse was about securing the King, while *Walcot* was there?

Mr. Bourn. There was such Discourse in several Meetings. It was said, it would be well if they were off, and the Discourse was about Lopping.

Mr. Att. Gen. Pray tell my Lord, what Discourse you had of Lopping, and the general Point.

Mr. Bourn. They said, there was no way like Lopping them.

Mr. Att. Gen. What was understood by that?

Mr. Bourn. The taking off the King, and the Duke of York.

L. C. J. Was that the usual Phrase among you to signify that?

Mr. Bourn. Yes, my Lord.

L. C. J. Was he there?

Mr. Bourn. I have heard it several times, and I suppose he was at the hearing of it.

L. C. J. (To *Walcot*.) Look you Sir, he speaks of the time of Discourse, of securing the King, and says you were there then.

Capt. *Walcot*. I had no hand in it.

Mr. *Att. Gen.* We will nail it home upon you; we will call Mr. *West*. [Who was sworn.

Mr. *Serg. Jefferies*. Come, Mr. *West*, do you tell my Lord and the Jury the whole Story.

Mr. *West*. My Lord, I came acquainted with the Prisoner at the Bar last Summer Vacation, by the Knowledge of one *Wilcocks*, who, I suppose; return'd his Money out of *Ireland*. I heard a very fair Character of him, and he, I suppose, met with such an one of me; which did incline us both to an Intimacy, and to talk freely with one another. About the Middle of *October*, I observ'd a general Discontent in the City, and was afraid there was some Design in hand, and was very inquisitive to know it: I was unwilling to be involved and surpris'd into a sudden Ruin, and so thought fit to inquire of them that were most likely to be concerned. I took Capt. *Walcot* for one, being inform'd that my Lord *Shaftsbury* had sent for him out of *Ireland*; and Capt. *Walcot* told me, that my Lord was also sending for some *Scotish* Gentlemen, on occasion of *Carolina*; but that he was very cool in *Carolina* Business, and that that was but a Pretence. My Lord, one Morning Capt. *Walcot* came to my Chamber, and we discours'd concerning the Election of Sheriffs carried on in the City, contrary, as we thought, to the Justice of it: Says he, Will the People do nothing to secure themselves? With that he told me a Secret, and said there was a Design of an Insurrection to be made within three Weeks or a Month, that would make us free, or worse. I told him, I thought it was a certain way to bring us in a worse Condition, and that it was very full of Hazards. He told me then, he did not know whether he should be concerned: But a little while after he told me, my Lord *Shaftsbury* was engag'd in such a Design, and he had engag'd him in it, and he told me, he had an Expectation of being a Colonel of Horse, and ask'd me, If I would have any Command under him? I told him, I knew some Gentlemen of the *Temple* that I might engage in it; but told him, I had not a Constitution to bear the Toils of War. My Lord, he told me then, That my Lord *Shaftsbury*, to the best of my Remembrance, had another Design upon the King and the Duke, as they came from *Newmarket* in *October* last; but he told me he abhor'd any such thing, it was ungenerous, and he would not be concern'd in it, but only in a general Insurrection. But this he did tell me, I think, before the thing was to be executed. I imparted it to nobody, till after the Time of both was past: But in the Discourse of the Insurrection, he told me, I should lend him a Suit of Silk Armour, which I bought about four or five Years ago, when the Popish Plot broke out; and he would have had me kept that, and used it myself, which I did decline. Then he told me he had very good Swords in *Ireland*, but he wanted them here. Says he, I am a Man that am observed, because I have a Correspondence with my Lord *Shaftsbury*; and asked me, If I would provide him a good stiff Tuck. I told him I would, and I did bespeak one; but before it was done, the Design was laid aside, and the Tuck was left upon my Hands. I came to understand, that the Design was put off by means of Mr.

Trenchard, who had discours'd about a Fortnight before of great Forces he could raise in the *West*; and the Duke of *Monmouth* sent for him, but his Heart fail'd him; and he could not raise any Men; upon which, my Lord *Grey* call'd him *Coxcomb*. This was about the 19th of *November*.

Mr. *Att. Gen.* What Time of *November*?

Mr. *West*. The 19th.

Mr. *Att. Gen.* But upon what Day?

Mr. *West*. Queen *Elizabeth's* Day.

Mr. *Att. Gen.* No, Sir, that is the 17th:

Mr. *West*. Now after this I understood by Capt. *Walcot*, that Mr. *Ferguson* had the Management and Conduct of the Assassination in *October*, and that he likewise was acquainted with the Insurrection, and was a great Man in it. I met with Mr. *Ferguson*, and fell into Discourse with him, and he treated me, as he always did, with a long Story of the Miseries of *Scotland*, and that the People were all in Slavery and Bondage, and would be so here, if they did not free themselves: And, says he, there are two ways thought upon for it; one is by a general Insurrection, and that is gone off; the other is a much more compendious way, by killing the King, and the Duke of *York*. My Lord, I told him, I thought the first way was a very dangerous way, that the People were in no sort of Capacity to carry it on, that the Government had the Navy and the Militia, and this would at the best entail a long War. He told me he thought the other was the best way, and we went to a Tavern, where Col. *Rumsey*, and one *Row*, and he and I, went divers times. They propos'd to meet at my Chamber as a Place of Privacy, and little Observation. My Lord, when they came to my Chamber, Mr. *Ferguson* propos'd several ways of doing it. One way was, as the King and Duke had their private Visits in *St. James's*, where it was an easy thing for Sword-men to kill them. There is one thing I have omitted, and that was after the Design of *October* had miscarried, I think, to the best of my Remembrance, Capt. *Walcot* told me, there was another Design of attacking the King and the Duke at my Lord Mayor's Feast in the Hall, or in their Return home, in *Paul's Church-yard*, or at *Ludgate*; and Mr. *Ferguson* did likewise tell me the same thing, but the King not dining there, the thing was wholly disappointed. Another way that he propos'd was, that they should do it as the King and the Duke went down the River, they should lie behind some small Ships within a Hoy, or some such thing, and so overrun their Barge; and if that fail'd, they should break a Plank with their Blunderbusses, and so sink them. Another way was at the *Play-house*, and that was to be done in this manner; there should be 40 or 50 Men got into the Pit with Pocket-blunderbusses, or Hand-blunderbusses, and Pistols and Swords; and when the Musick struck up between the Acts, they should fire upon the Box; but this they thought was hazardous, and therefore they thought it better to do it as he came back, and pitched upon *Covent-Garden* under *Bedford Garden* Wall, because there was a Convenience for a great many Men to walk in the *Piazza*, and there might be another Parcel of Men planted at *Covent-Garden* Church-Porch, and within the Rails, where Horses could not come; and while the Men within the Rails fired, the Men in the *Piazza* might engage the Guards, and they in