Point of Fact too. They have made Answer for him; so that I say, he hath been tried fairer than any Man ever was in Parliament, be it upon Bill or upon Impeachment, that is, as to the Matter of Precedent. Then it hath been said, This would not be good before the Judges. I must confess it; but the Evidence Captain Porter gave of his own Knowledge of Sir John Fenwick, every body will agree is what the Law will allow. But he is but a single Witness, and you ought not to proceed upon the Evidence of a single Witness. Let us for how the Law standeth upon the whole Matter: You have made an ACT of Parliament last Sessions, and I own the Law was before that. That there should be two Witnesses in a Case of Trefason; but all that goes no farther than to Trials in the King's Bench, and Commitments of Oyer and Terminer, and Goal-Delivery. And if you look upon those Acts, 'tis very plain; for they refer mostly unto the Judges, what they shall do in such and such Cases: But then you will see what is the Reason of making those Rules: I think there was good Reason that you should not pass those Rules before that you have in your selves: You give them Rules to proceed by, and they are to keep up strictly to them; you may act by other Rules. 'tis one Thing when I command my Servant to do such a thing, and another thing when I act my self. And there is a Difference when a Judicature is by few, and when 'tis by many; the Law puts a greater Confidence in many than in a few. The ordinary Trial is by twelve Jurors; but if it be a Matter of an high Nature, as an Attaint, then it shall be by Twenty-four; and you do prefer a great Number in every thing to a few. 'tis found, though a Judge do think in his Confidence a Person guilty, yet he ought not to make use of that private Knowledge, and a Case was quoted out of Hor. IV, but I think that Judge might have behaved himself something better than he did; and I am, now he would be blamed. I do not say, that a Judge upon his private Knowledge ought to judge; he ought not: but if a Judge upon the Bench knows any thing, whereby the Prisoner might be acquainted or convicted (not generally known) then I do not doubt it ought to be called from the Place where he fate, and go to the Bar and give Evidence of his Knowledge, and so the Judge in Hen. IV's Time ought to have done, and not to have suffered the Prisoner to have been convicted, and then get a Pardon for him; for a Pardon will not always do the Business; for there may be a Force which the King's Pardon doth not remove. But though we act as Judges here, do we act only as Judges? I thought we were as well Triers of the Fact as Judges. There is this Difference between the Judicature of the Bill and that of the Judges, they are to judge upon a Fact found by a Jury; but we act both the Part of a Jury in trying, and also of Judges in judging what the Fact amounts to: So that if a Jury-Man may make use of his private Knowledge to acquit a Prisoner, as (I think) no body doubts but 'tis his Duty to do; then every Gentleman in this House may make use of his private Knowledge to acquit the Prisoner, or convict him.

I confess, for my part, I am satisfied, that Sir John Fenwick is guilty of this Crime for which he stands accused. I do think this Crime is High-Treason: I think there is no danger of a Precedent in this Case, if you convict him, being convinced upon the Evidence you have heard, that he is guilty: I do own, if any Gentleman think he is not guilty of Meeting at the King's Head in Leedshall-street, or at Mrs. Moon's house, for the Purpose given in Evidence, he ought to be against the Bill; but I think, every Man that is of that Opinion ought to be for the Bill. I am one of those that think he is guilty, and therefore am for Committing the Bill.

Mr. Harcourt. I can readily agree with the Gentleman that spoke last, that High-Treason is the highest Crime in the Law; and further, That the Matter of the Indictment mentioned in the Recital of the Act is undoubtedly High-Treason; and I am sure he will agree with me in one Thing also, That the greater the Crime is, that a Person is accused of, the clearer the Proof ought to be by which he is convicted.

Some Gentlemen have begun their Discourse in relation to the Power; but 'tis no Argument, because I can do a Thing, therefore I will do it; because we have Power to repeal Magna Charta, and all other Subsequent Laws, which have been made in favour of Life and Liberty, and we are by the same Consequence we ought to do it: A better Reason must be given me before I consent to this Bill.

Then for the Precedents, 'tis plain, There have been many, and many have been mentioned; and if I thought it worth while, I would mention many more you have not heard of. As for Precedents in general, they are so far immutable as they are grounded upon true Reason, and agreeable to Justice; but I don't remember any one Precedent of this Nature, for a Person in Custody, forth coming, to be tried, yet to be Attainted without a Trial at Law, but what has been universally branded; and they all seem to be Re-proaches even to those ill Reigns in which they were usuallly made; and rather to be marked out as Rocks for us to avoid, than Patterns for our Imitation.

Before I particularly mention the Facts how they stand before you, I would beg leave to observe upon the general Method of your Proceedings, and tell you what that flanges me in it.

I have often heard this called a Trial, and that we are Judges; the Gentlemen that spoke last gave us another Title, and told us we were the Jury also. I know no Trial for Tresason but what is confirmed by Magna Charta, per Judicium Parium, by a Jury, which is every Englishman's Birth-right, and it is always esteemed one of our darkest Privileges; or per Legem Terra, which includes Impeachments in Parliament; but if it be a Trial, 'tis a pretty strange one, where the Per- son that stands upon his Trial hath a Chance to be hanged, but none to be saved. I can't tell what Character to confirme our selves, whether we are Judges or Jury-Men: I never heard of a Judge, I am sure not of a Jury-Man, before, but he was always upon his Oath: I never heard yet of a Judge, but had Power to examine Wit- nesses upon Oath, to come to a clear Sight and Knowledge of the Fact: I never heard of a Judge, but if a Prisoner came before him, the Prisoner was always told, he stood upon his Deliverance, and had not a Power to condemn the Guilty, but to save the Innocent. Have we this Power? Suppose upon such a Trial as this (if it must be called so), it should happen, that a Person that comes before us, should be the Innocent man in the World; what Judgment is it that we can give,
for so much as such a Perfon hath made his Inno-
cency fully appear? Is the Speaker, by his War-rant, to send him back again to Newgate? You
can't dispose of him otherwife, though you were
satisfied of his Innocency; But in fuch a Cafe, the
Parly muft undergo a double Trial, which is con-trary
to all the Rules I have heard of. If I am a
Judge in the Cafe, I beg leave to tell you, for
my own Jufification only, what a Definition I have
met with of a Judge's Difcretion. My Lord Chief-
Justice Coke lays, 'tis discretion per leges; and
by that Difcretion I urge leave to confider this Cafe:
If Judges make the Law their Rule, they can
never err; but if the uncertain arbitrarl Dilates
of their own Fancies, which my Lord Coke calls
the crooked Cord of Difcretion, be the Rules they
go by, endless Errors muft be the Efl efect of fuch
Judgments.

As to this particular Cafe, I did expect from
the Gentleman that fpoke laft, that he would have
told you there was a plain Evidence, why you
ought to go on to the Paffing of this Bill; but
in ftead of that, I am surprized to hear a Thing
mentioned, That in Parliamentary Proceedings a
Man may be injured by one Witnefs; certainly
that is not to be taken for granted.

As to this particular Cafe, I would take Captain
Porter as upon his Oath, for Supposition: You
have one Witnefs again Sir John Forwick of High-
Treason, and, with your leave, I defire to examine
what you have more in this Cafe.

Yesterday you voted a Paper to be read, God-
mans's Narrative or Examination; 'tis a different
Cafe now you have it before you to determine upon.
Yesterday the Question was only for hear-
ing; but Gentleman now confider how far they
ought to believe it, and the other Evidence we
heared. And firl, there is some Evidence that
Clayton tampered with Porter, and gave him a Sum
of 300l. and so they would infer, because Porter
was tampered with to be gone, therefore God-
mans was. It was told us further (and I defire I
may be informed if I am mistaken) That Clayton
said, he came from Sir John Forwick, and after-
wards my Lady Mary Forwick bid the would make
good what Clayton had faid; and from those Ar-
guments they presume, that Sir John Forwick knew
of it. Give me leave to tell you a Rule I never
heard contradicted; That Prefumption is to be
made in favour of Life; but to prefume a Man gu-
itly because Porter was tampered with by another,
because he faid it was by Sir John Forwick's Order;
Shall we premise Sir John Forwick did it? Is Efer-
fity to be Evidence? Or is a Man to be had to the
Follows upon Prefumption? How often, and with
how much fecret, have we been called upon to form
Judgments upon Prefumptions, Innuendoes, con-
structive and accumulative Treafon? &c.

Gentlemen, there is fome further Evidence;
and that is, of what was sworn at Cook's Trial, and
some Gentleman thought fit to have the Re-
cord read, and an Examination of what was sworn
there. I can never go so far as to think it rea-
ftionable, That what Evidence hath been given in
one Cafe should affect another Man; but all this
is to be anwer'd, by calling it Parliamentary
Proceedings. We doubt 'tis no Evidence in the
Corps below, but they are mentioned with some
kind of Diffaim, as very inconfiderable. In this
Cafe, I beg leave to fay this in their Vindication,
That whatever the Rules in Wofingham Hall are,
'tis not therefore Reafon because 'tis a Rule; but
because 'tis Reason, and Reafon approved of by
long Experience, therefore 'tis a Rule; and if
they make their Rules for that Caufe, I hope
that is a Caufe why we should imitate them: But
I would not have those Rules thought Matters of
Form, but Subtance, or more properly Part of
the Law it felf.

Upon the whole Matter; if no Gentleman will
give us the Reafon why this is Evidence, but one
Witnefs, and that not upon Oath; and if we are
to come to our Parliamentary Difcretion to supply
that Defeat, the Want of the other, 'tis a Difrec-
tion I will declaim all the Days of my Life. And
I hope you will reject the Bill.

Lord Cuff. If, Sir, the Gentleman that fpoke
laft had been speaking to Wofingham-Hall, I
would think that he had fhewed a great deal of
Reafon, and fpoke with a great deal of Judgment;
but since I think you are here upon a quite dif-
fierent Foot; I fhall not follow him (because I will
not unnecessarily detain you) to answer every Par-
ticular.

I remember, when the Council for the Prisoner
first fpoke, they took notice to you, That Prece-
dents were recreative, and overbear another; and
they are apt to multiply; therefore I do think,
'tis of the higheft Moment to you, what Prece-
dent you make to Night: And if any Gentleman
can be fatisfied, That the Precedent of paffing
this Bill, will be of worse Confequence than the
Precedent of not paffing it, I fhall humbly submit,
I do think, Sir, the Matter before you is of the
higheft Importance; and I must confefs, 'tis with
a great deal of Satisfaction to my felf, that I do
fee Gentlemen feem to apply themselves with a
great deal of Seroiusnefs to this Debate. Sir, I
fhall not pretend to make a particular Anwer to
what the Council for the Prisoner did fay; as to
the Precedents of Acts of Parliament, I think this
Anwer is fufficient at preffent for that; That if
we have no Precedent we are under a Nefcefity of
making one. It is told us, That all of the Prece-
dents none will juflify us in this Proceeding; but
at the fame Time it muft be confidered, That we
are in a Cafe, the like to which never yet happen-
et in England.

The firft Thing I fhall apply my felf to, is the
Jurifdiction of Parliaments; and truly, I think,
it will be very neceffary to fay a little upon that,
I have heard none call this Power in question, the
Thing fppeaks it felf; 'tis the Legislative Power,
and the Etymology of the Word tells you what it
is: 'Tis a Power that can make Laws, and abo-
lift them; a Power that is superior to all other
Powers whatsoever, and we are part of that Legi-
slative Power; and therefore I fhall not go more
to that, it being a Matter agreed, That we have a
Power to proceed in this Matter. Now I will
take leave to offerfomething as to the particul-
ar Cafe before you.

Though a Gentleman that fpoke fome Time
fince, did fpake to you of the Nature of the Crime;
yet, with Submission, I think there remains
something to be added to what he faid. The
Conspiracy of which Sir John Forwick to me ap-
ppears guilty, is not only against the Life of the
King, not only to depofe the King, not only a
Conspiracy to raife a Rebellion, but at the fame
Time to contrive an Invasion from France, and
bring in a foreign Power. I know not what bet-
ter Explication to tell my Thoughts in, than by
using a Term which Physicidan use in fom, depie-

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rate Cæses; they tell you, there is a Complication of Dilemmap, and I think this is a Complication of Treason: This is the highest Crime, and it is attended with all the aggravating Circumstances this Crime can admit of. Now, in giving our Opinion, and putting our Judgment upon this Matter, I think there are two Confessions ought to guide us: There is a Confession we owe to the Prisoner that is brought before us, and another Confession which we owe to the Commonwealth, to the Defence of them. As I say of the first of these, it being a Matter of Blood, wherein the Life of an Englishman, the Life of a Man of his Quality and Figure is at stake, we ought to proceed with all the Caution that is possible; and I do agree, if there was nothing but Preoccupation, that ought to be in favour of Life. But pray let us consider how this Matter stands; and let me define those Gentlemen that are of Opinion we ought to have no Tenderness for the Prisoner, to lay before them another Scene, and Sort of Consideration, at the same Time. I do confess the Handicap (if I may use that Expression) of putting this Sentence; I do not imagine we had it on our Stay that the Contrainv that was laid had taken Effect; that is the weightiest Part of the Matter before you: And tho' it was disappoinied then, I know not how far off 'tis at present; this ought really to weigh with you. And I hope I may take leave, upon this Occasion, to obvieve to you, what one of the wisest and best of the Roman laid upon an Occasion of this Nature; he tells you, That a Man that would consider his Duty aright, must consider the Matter in all its Parts and Circumstances; and when that is done, must act adequate, as well to the Community, as to himself and his Neighbour. As to the Public Cafe, I would define those Gentlemen that ex- press so much Tenderness in this Cafe, to have some for the Government, and themselves.

It was told you, That the Prisoner before you does not stand convicted of any Crime: It was told you at the Bar, That the most we ought to pretend to, is no further than to have him in the Condition we found him: I think, with Submission, the Prisonerstands Convicted of High Treason, with the highest Conviction upon Earth, and that is, the general Confent of all Mankind; for I will be bold to say, I do verily believe, that there is no better Guard within these Walls, nor that walks the Streets, nor a living Soul, that does not bear his name. But, Sir, I would put this Matter yet further; I am not only satisfied in my own Conscience and Reason, of the Justice of your Proceedings, which ought indeed to be the Foundation of every Man's Opinion; but I am satisfied, that in this Way, there is no Hardship imposed upon Sir John Fenwick; if he will be his own Friend: For I doubt not, upon what has past in this Proceeding, that before Things are brought to the last Extremity, if Sir John Fenwick be his own Friend, if he be so much a Penitent and Friend to the Government, and to the Policy, to tell Truth, and leave off his Dilemm想像, and he pleads I doubt not but he will find Favour. Now, Sir, I would beg leave only to answer one or two Objections; for some Things that have been laid against the Paffage of this Bill, I do not think material.

One Objection that seems to me to carry the greatest Appearance of Weight, was made by one of the Counsel for the Prisoner: He said, It would look frangile in after Ages, that the same Parliament should pass the Bill for regulating of Trials in Treason, and this Bill of Attainder, Sir, I defire you will please to observe how this Matter stands; and in the first Place, as previous to that, I take leave to observe a few Things: 'Tis a Pro- position generally agreed to, and not to be denied, that which is designed for the Preservation of any Creature, ought not to be made use of to their Destruction. I say, for your Preservation, for your own, for your Preservation, to secure you against the Danger of arbitrary Power, and the Malice of false Witnefs; and this Bill of Attainder is brought to secure both you and the Government from your Enemies, both abroad and at home. And I think the Treason-Bill is no Objection upon these Considerations: Besides, the Treason-Bill was only made to be a Rule to inferior Courts. The learned Gentleman that spoke last, told you, The Rules of Privy-Council-Hall were not Rules, because they were observed there, but because they were ground upon Reason. Why, Sir, in an- swer to that, I will only take leave to tell him, that I think, too, that the Rules of Privy-Council-Hall, does not carry the same Weight here. I think that Matter was as well explained by the learned Gentleman at the Bar, that there need nothing be added to it. He told you very well, 'Tis one Thing what I truth to do by my Servant, and another Thing what I do by my self. It is very obvious to any Man's Understanding, if this Power were lodged in the Judges, what Uf might make of this unlimited Power; but no Gentleman can misinterpret any Thing that shall be done by this House.

Another Objection that was made by the Coun- sel for the Prisoner, was, says he, This is Evidence, or it is no Evidence; if it be Evidence, then, says he, Why do you not try him at Law? If it be no Evidence, Why do you admit it here? Now, Sir, with Submission, this carries the Face and Form of an Argument, but if you take it to pieces, I think there is no convincing Weight in it: For, Sir, the Reason why this Matter comes before you, is, because by the Absence of one of the Witnefses, according to the formal Part of the Law, Sir John Fenwick will be acquitted; but it is generally agreed, that the Consequence of so great a Crime going unpunished, may be dangerous to your Policy. This Bill of Attainder is brought into the House, that you may supply that Want of Form, you being convinced of the Reality of his Crime.

Another Objection made by the Counsel at the Bar, was as to Capt. Porter, whom he relected upon; says he, Shall a Man that hath owned himself guilty of such a Villany as the Murder of the King, of a sudden have such Credit as to sway with you? I would take leave upon this Occasion, to repeat to you what my Lord Chief-Ju- dge uttered upon the Bench did observe at Cramond's Trial: This lane Thing was urged and pressed home by Cramond; and my Lord Chief-Judge was pleased to take notice, that it conflicted with the Wisdom and Justice of all States and Governments to allow of such Evidence, because without it they could never come to the Knowledge of any Treason or Conspiracy: For he added, Whom will you have an Account of these Things from, but the Actors of them?

And therefore when they are penitent, and willing to atone for their Crime, by doing all
the Service they can to the State, and Justice to Mankind, we ought not only to receive, but encourage them.

When the Danger the Government would be in, if you did not pass this Bill, was urged; it was answered, But what Danger will you and your Posterity run in not passing of it? I think the Maker appears so plain and clear before you, that when all the other Parts of the Question are passed over, I should think it a Reflection upon the House, to enter upon, In particular Answer to it. But what have I said, that I think any Part decisive, but to clear my self to the World for the Opinion I am going to give; and perhaps what I have said, may give occasion to some others to say something that may be much more to the purpose; but for the Reasons I have given, I am for the Bill.

Mr. Shawe, Sir, I as little care for meddling in Matters of Blood, as any Man, and should be glad to avoid giving my Opinion in this Cafe; but I think 'tis incumbent upon every Gentleman that hath the Honour to sit here, in Point of Truth, I think 'tis his Duty to them whom he represents, to the King, and in general, to give his Opinion when he is clear and familiar in it; and if I was in the least diffusified, I should venture the Displeasure of the House to absent; but upon the whole Cafe, and the Proof that hath been given, I am very clear that Sir John Ernwick is guilty of this Treason that he is accused of; and that it is Treason without any strain, and well warranted by Precedents.

I would first take notice of what is said to your Jurisdiction in general; I remember it was said this was an Incroachment upon Magna Charta; for by that, no Person is to be tried for his Life, but by the Judgment of his Peers. Those Gentlemen that have made that Objection, have entirely forgotten the other part, which is the next Sentence: Non saperi iocos, nec saperi enim misitius, nisi per regolare Judicium partum aurem vel per Legem Terrae. What do they make that to be? 'Tis true, in the ordinary Course of Justice, Persons must be tried, by a Commoner by a Commons, and a Peer by a Peer; but there are several sorts of Trials and Laws in the Land: And when you come to consider what is meant by per Legem Terrae, you have the Commons Lex Terrae; you have the Statute Law, and Lex Locii, the Laws of particular Mannors: and there are several sorts of Trials delides that by Jury; there are Trials by Battle; The Defendant in the Cafe of a Person may try it by Battle, and he that is killed for the Cause. Then there is a Law above all these Laws, and that is the Law of Parliament, which my Lord Coke calls Lex Parliamenti, and Lex Parliamentaria in another Place, which he says, is ob omnibus inquirendae, but a pauci nota; and 'tis not fit it should be known how far they can go (and so 'tis in Canonery) and that is a Law that is unlimited, and that is one of the Laws saved by Magna Charta. I say, therefore, that without any Incroachment upon Magna Charta, or any Law whatsoever, you enter regularly upon his Trial.

I would answer another Thing that was said against a Trial in Parliament; and I must confess, I did wonder to hear it from that Honourable Member. That if he was to be tried, he should rather crave to be tried in Waghmiister-Hall. Why, Sir, before I should have given fo-scheiden a Judgment as that, I would have considered what my Cafe was: If I had had such a Cafe as Count Cuming's, a bad Cafe and a great deal of Money, I would rather be tried there; or if I could be tried as Sir George White- man was; but if I had a good Cafe, and would use no Corruption, instead of twelve Men that might be corrupted, I had rather be tried by four or five hundred Gentlemen that are beyond it. You see how Trials went before, the Trial of my Lady Life, that could neither fee nor hear; and there came a Person to her Houfe: that was proved to be in Monmouth's Rebellion, and he was burned for it.

Then as to the Cafe before you, I would offer my Reasons why I believe this Gentleman to be guilty; here is Capt. Porter, he hath positively sworn, that he had another Meeting at Mrs. Munny's, and there they did confide, and agree to send Carningock over to France; and Carningock was directed to go with a Message to invite a foreign Power over here. Now the Question is, Whether he is to be believed? And I would go upon the same Reasons for believing a Winefe, as they do; and I think we will go upon the same Reason as far along with those Gentlemen, as to the Creditibility of a Winefe: But if he be to be credited in Waghmiister-Hall, why is he not so here? And therefore, if they had brought any Testimony against his Credit, as made him guilty of Perjury, or Forgery, it had been an Objection against his Testimony; but it was so far from that, That they did not offer to prove one Word of that; but what was said was said from the Counfel, and that is to go for no Evidence. The Counfel did indeed allege against his Credit several Things, but did not prove any; and if they had, they would not have taken away his Testimony in Waghmiister-Hall; That is, that he was concerned in the late intended Affair, and Treason: This was the same Objection that was made below; and they brought Winafe to prove that and some other Things, but they did not weigh any Thing; for it should be an Objection that he was in the Conspiracy, then you can have no Evidence of any Villany, for they will never trust honest Men with it. Therefore I do take it, That Porter stands before you as a very credible good Winefe, without any Imputation whatsoever. Then, Sir, say they, he is not upon his Oath; that is an Objection to your Jurisdiction; and though they say they own your Jurisdiction, yet when they say so, they speak against your Jurisdiction; and by the same Reason you can go upon no Impeachment whatsoever; for you can in no Cafe give an Oath. Then, Sir, they tell you, he is but one Winefe, and that 'tis in the Cafe of Treason, and there ought to be two Winefes; and therefore you have Jurisdiction to do any Thing whatsoever, yet you have no Jurisdiction to go upon this Cafe. Now, Sir, because this seems to be the most formidable Objection that is infited on against the Proceedings in this Cafe, I beg your leave that I may fully answer it.

And taking it to be true, that the Fact is proved but one Winefe, I conceive we may proceed in this Cafe though they can't in Waghmiister-Hall; and I do take it, that there is a great deal of difference between one and the other; and I do not take your Proceedings upon this Bill, being there is but one Winefe, to be any Strain, but
but what you may extend the Legislative to, without going beyond what hath been done. I therefore beg you to consider what the Law originally was as to Treason, and how it came to be altered. Before the Statute of 25 Ed. III. it was certain what was Treason, and what was not; then the Statute came and reduced it, that as to all inferior Courts, there are your Treasons, and no other shall be adjudged so; but the Parliament referred to themselves a Power, that if any Cause should happen like them, they were to determine it themselves. So, Sir, that at that Time, and after that Time, one Witnes was good in the Cause of Treason; as now 'tis at this Day for Robbing, Felony, or any other Fault but Treason. And till 1 Educ. VI. one Witnes was good in all Treasons; Then comes two Statutes in Educ. VI.'s Time, and the first takes notice, That since the 25 Ed. III. by several Statutes Treasons had been made which were unmeetable, and therefore repeal them, and makes several new Treasons: Then comes a Proviso at the end of it, a Proviso always, that no Peron whatsoever, after the First of February then next coming, shall be indicted, arraigned, condemned or convicted for any Offence not of Treason, &c. unless the Offender be accused by two sufficient and lawful Witnesse, or shall willingly, without Violence, confess the same. Now that Proviso relates only to the Treasons particularly mentioned in that Statute. Then comes the next Statute 5 Educ. VI. and purifies the same Words: But now this did not mean any Faults whatsoever that were left to the Judgment of the Parliament, because those Faults were not within their Cognizance. They are not parliamentary Words; indicted, arraigned, convicted, but only under the Laws below the Court. By, Sir, if it be so that one Witnes is sufficient, here you have not only one credible Witnes, but he is prop up extremely well by collateral Circumstances; and though I do not allow that below they can proceed upon one Witnes with pregnant Circumstances; yet for the Reasons given, considering how this Evidence is prop up, I think it is sufficient before you: For there was another Witnes against him, and it hath been proved what that Witnes could have said if he was here; and 'tis plain that no one has only died without the same Testimony. I must confess, when I was for reading of Godman's Examination, &c. I was not for reading them as conclusive Evidence, nor do I think them so in any sort, either the Conviction of Cook, or Godman's Examination before a Justice of Peace; but it is a stronger Evidence in this Case than any other, because the Witneses is not dead, nor is he withdrawn by the means of any Body but the Prisoner, or his Friends; which, as I have said, appears upon the Evidence: and if so, I think it comes to the Case. That if any one gets my Deeds, if he will not produce them, they shall be prejudice to be what I say they are. I must confess, the Acting of his Wife or any Agent might not be Evidence, if it appeared they did it officiously without his Knowledge; but being Clancy fake he came from Sir John Fenwick, and it was for Sir John Fenwick's Advantage, I will believe it was by his Privicy: And for my self, I think it is no Strain, if in this Case we take him to be a good Second to Captain Porter, though it ought not to be admitted by Judges—Hall.

Then 'tis faid, That you have no Jurisdiction to proceed by Attainer in this Case, where the Person does appear; and he is in the Hands of the Law, why cannot they take his Trial: I quoted you an Instance the other Day, 12 Car. II. where they attainted Perons that were dead, without examining one Witnes; and I have viewed all the Books since, and there's nothing appears, but the Bill ordered to be brought in, one Reading, and another, and some Petitions for making of Saviouns: There is one Rank of People that were dead; a second Rank, which, as you were told from the Bar, were the King's Judges: some of which, it is true, were tried by the Law; but how? Not by the Direction of the Parliament: It was by the hands of the Parliament, and the Parliament takes notice they had been tried. There was another Sort that was never tried, but absented; and though they might have come into the Hands of the Law and been Out-lawd, the Parliament took cognizance of them, and attainted them of Treason. Sir, I do take notice, that there was a forth Sort of People convicted at that Time (for if we were confined to the Rules of Woffington-Hall, no doubt we could not give a better Judgment than that for Treason;) there were the Lords, the Judges, and the Extraordinary, and the Statute recites, That they were concerned in the Murder of the King; yet in regard so many had actually suffered, they did not give them the Judgment of Treason, but to forfeit their Eittates, &c. This is to shew you the Jurisdiction the Parliament have over Offences, and how they can alleviate the Punishment according to the Circumstances as they appear before them; therefore I think this is a plain Proof that we have a Jurisdiction to go on with the Bill; and at the same Time, I say this, I would put it out of the Case, whether the Prisoner be a little Man or a great Man, that is now in Judgment before us; and I would put it out of the Case, what a good Thing his Discovery would be; I do not think that a good Argument; neither do I think any Argument if this Man escape, what Danger we shall be in: But I do give my Judgment from the Argument of his Guilt, and our Jurisdiction.

Mr. Pelham Sir, the learned Gentleman that speak'd, seemed very clear in his Opinion, and he went on to say that I was in the right. I would have given me and every Body Satisfaction in this great Point, especially when he began with Magna Charta, which says, That every Man shall be tried by his Peers, or by the Law of the Land: I do take it to be Part of the Law of the Land, that no Man should be condemned for Treason without two Witnesse; but after that he did lay his Finger upon the Sore, he told you, the great Objection was, That the Courts of Woffington-Hall are so governed and try'd down, that they can't pass any Sentence for Treason, but upon two Witnesse: and he told you, they ought not to be try'd so: Indeed he did say we were not try'd so: But I own you, he did not give me any satisfactory Reason why he should not be try'd so: 'Tis said, we are not try'd, 'tis impellable we should, for no Act can tie the Legislative Power; and several Gentlemen have said, That though there are several Statutes that declare there shall be two Witnesse in Cases of Treason, yet they do say, that in Case of Attainder by Parliament, one Witnes may be sufficient. W'y may it not be thought, that these Acts extend to the Legislative,
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as well as the Statute of Edw. III, by which it is precluded, that the Parliament may proceed up
on one Winefs: And I can affirm, that there being no such Hint, 'tis a Preumption that the
Lex Terrae does create an Observation of it by the
legislative Power.

I did presume Yesterdai to tell you, That
Mr. Agreements Sidney did stand upon it as his na-
tural Right, that they could not proceed against
him, there being but one Winefs: I did not
bring his Case as parallel to this, or think that
his Authority should influence you; but he was a
Man that had that Love to Liberty, and the
Good of his Country, that he would not have paid
so, even to save his Life, if he had thought it
inconsistent with either of them: But I have looked
upon his Trial since, and there he does declare,
That the being condemned by two Winefes, is
the Law of God, and the Law of Man; the just
Law that is observed by all Men, and in all
Places; 'tis certain he reached even by these
Words, the Power of Parliament: When I do
mean Power. I do not mean, but that when such a
Law is passed, all are bound by it; but in some
Sence we may say, you cannot do what is not just
for you to do: You can do but what is just and
agreeable to the Truth reposed in you.

The Gentleman says, he thinks it a strange Opia-
nion of him that said, He had rather be try'd by
a Jury than the House of Commons: Indeed, if
he could be sure of such a House of Commons as
this, he might retract what he had said: But I
have seen that done in the House of Commons,
which hath not made me extremely fond of that
Trial. I have sat here when six or seven Noble-
men have been declared Enemies to the Kingdom
without any Evidence at all, and the Revolution
was made. I have sat here when six or seven
Noblemen were found to be Enemies to the
People; and if any Disturbance had been, they
had been expefed to the Fury of the People:
And though we are sure of this House of Com-
mons, and may be of all in this Reign, yet I
know not how Facts may arise, and what Parlia-
ments we may have, and upon that Account I
am very unwilling a Precedent should be made,
at least contrary to the Usage in all manner of
Cases whatsoever.

Sir Thomas Littleton, Sir, I shall not trouble you
long in this Debate, that hath taken up so much
of your Time already, in the Consideration of
such Matters as we have been upon; though I did
think your Time not very regularly spent, till
this Occasion offered it self: I hope therefore,
now it will take up less of your Time. I see the
great Matter that was inflitfed on before, is inflit-
ed upon all; and I do think we may say it
among our selves, though we would not let the
Counsel, That we are try'd up in this Cafe by the
Rules of Winifhnger-Hall; but I believe if that
was the Cafe, and the Question was no other
wise, than, Whether or no we are try'd up by the
Rules of Winifhnger-Hall? I believe it would receive a De-
termination, that we are not bound up to those Rules,
but I will take leave to tell you what I think is
proper for us to ground our Judgment on: I think the
great Reason, even the Reason against the Precedent, why they did admit Sir John Pen-
wick to have Counsel, and to examine Winefes, if
he had any, and to cross-examine the Winefes,
and why they were willing to hear Evidence on
both Sides in the Nature of a Trial; the great
Reason was, because that in a Cafe of so great
Consequence as this is, they would have the best
Information they could obtain. Why did they
defe to be informed, but that afterwards they
could lay their Hands upon their Hearts, and
give their Judgment upon their private Opinion,
Whether he was guilty or no? They say, we are
to give our Judgment upon our private Opin-
iom; I always will. (It was not long ago we
were not to have our Religion upon our private
Opinion neither): And when I am justified in
that, I will rely upon it. Whether this be strictly
legal Evidence, I do not lay so much Weight up-
on it, as whether it hath satisfied my Confidence;
and I believe there is not a Man in the House but
is so (upon what he hath heard) and doth believe
that Sir John Penwick is guilty; and if we believe
he is guilty, I would be glad to know by what
Rules in the World any Man can give his Vore
against this Bill, being of that Belief. And I tell
you why I think every Man believes so; because
every Man in the Kingdom that hath not heard
so much as we have heard, does believe him to be
so; and I can't think that their Representatives
only should be of another Opinion.

What Evidence have you had? You have had
Captain Parker's Evidence, and that would be good
even in inferior Courts; and becalfs that, you
have the Evidence of what Godman did swear
before the Grand-Jury; you have heard what he
did sware, and the Grand-Jury did believe him;
you have heard like wise what he did swear in an-
other Cause to the Petit-Jury, and they believed
him, and convicted the Prisoner upon it: And
though this be not legal Evidence, yet, speaking,
will any Body say that I have Reafon to suppose
this Man, and think he hath sworn false?

Ay, but here is but one Winefes, Gentlemen
tell you. I will put you a Cafe where I believe
this House would attain a Man without any Win-
nefs. Suppose two Perions had seen Sir John
Penwick kill the King; (I believe we should not
have pulled him in Pieces in a barbarous Manner,
but he would have had a Trial) and supposo
before his Trial they had been conveyed away, if
before they had sworn this to a Grand-Jury, and
they had found the Bill, I believe this House
would have attained him for it.

Sir, I do not think that we should fland upon
these little Niceties, nor be bound by the little
formal Proceedings of other Courts, when the
Government is at Stake. We are not hither to
take care that the publick Safety be not suffered by
Mischief from the Enemies of it: We have had
Plot upon Plot; and I have heard so much said on
behalf of the Lancashire Plot without Doors, that
I wish we do not get an ill Name upon our selves
before we have done. We have this Power to
exert upon extraordinary Occasions; and here is a
Man that hath endeavoured to subvert the Go-
vernment, and Well-being of them that sent you
hither. Thope you will use it now; and if they knew
who were not of that Opinion, I believe those that
sent them would hardly fend them any more.

Mr. Hen. Sir, as to the Argument, that if it
was known how we gave our Opinion, those that
are against this Bill, the People would not chufe
them again: I am not afraid of that; I have
been told so often, and yet I find the People I
live
live amongst, use me better and better every Day; and I believe, Sir, they will desire to use me, when they will lay other Men aside. I must in some measure support what seemed to be reflected on an honourable Gentleman, in that he said, he had rather be tried by 12 than 400. I am of his Opinion, and this is my Reason for it; I have my lawful Challenge in cafe of the 12; and if there be any on the Fane I have offended, I can defend myself be withdrawn, and that can’t be done in any Cafe here.

But Gentlemen put the Strees of their Argument upon that which no Body denies, and proves it handomely; and well they may; for it is self-evident, the Power of Parliament they insist on, when no Body pretends but we have a Power to do what we please: But I must say of their Power what Braken says of the King’s Power, hoc tam non paristi facere, good non paristi fugi facere. It is a sad, We are not at to’d up to the Rules of Wijnimger-Hall; we are not so; but I beg leave to tell them, That what is Reason and Justice, is so every where. And I do put in particular Points we speak of, to be grounded upon Reas and Justice, and so far we are to pursue them.

Two Evidences was not given as a Refinement upon Wijnimger-Hall, for fear they should do something that is ill, for they are answerable for every thing they do; but they were allowed to the People of England, that they might have a fair Trial; and it was thought conformable to the Laws of God, the Law of Reason, and the Law of all Countries, That no Man’s Life shall be taken upon any particular Occasion.

And for to say, That a Man’s Life may be taken away by two Witnesses in one Place, and by one in another, is to say, That there is no certain Rule to prove a Man guilty of a Crime that may forfeit his Life, which is not admitted in any Country whatever.

But truly, Sir, we are going a little further; for the Gentleman before told you, there was no need of two Witnesses, one would serve; but now they go a little further, for they will tell you, there needs never a one at all: For I do say, if every Gentleman here is to be guided by his private Opinion, there is no Man but before he heard this Caufe did conceive in their Opinion some Judgment of his Guilt. And, Sir, I think no Man but would have told you, that would have been an unjust Judgment.

But they do say, That the Bill of Treason that was made last Sezions of Parliament was to limit Wijnimger-Hall, and that I will trull that with my self, while I will not trull with my Servant. Why truly, if I, or my Servant, was to commit an Error, or a great Crime, I had rather my Servant did it, than my self: But I do not think that my Servant should be bound up from doing an unjust Thing, and my self should have the Liberty to do it. Another Thing that Law provided against was, that People should not be hang’d without sufficient Evidence, and these Things have been long complicated of: But I never thought that the Evidence of oneWitness, and no Witnesses would be supported in these Days.

But, Sir, what have you done? We have prevented People being executed by an arbitrary Power, and in an unlawful Way in Wijnimger-Hall; but if you give this Example, you have brought the same Proceedings into this House, and that they may be perpetually executed here, and so the Subject will be never the safer for the Bill of Treason.

And I do believe likewise, That it is better that a very heinous Fault, or a Misake, should be committed in Wijnimger-Hall for ten Years together, than once perpetrated in this House: And my Reason is this. Because Wijnimger-Hall have a Law to be tried by, if they transgress that Law; and there is a Way by turning out of Judges, and other Things; and this House hath no superior Power when they do a Thing, they make it a Law: So that this House (as it hath often been observed) can make this Nation unhappy, because this House can only establish arbitrary Power and Misery upon this Nation by a Law.

Sir, as to the Evidence, to say something to it, since every Body hath spoke to it; for my Part, I do confide to you, the longer I sit here, and the more I have heard of this Trial, the less I have been convinced within my self, that these Witnesses can know any thing of Sir John Fenwick’s Guilt. I have heard Captain Porter give his Evidence; but that is no Form of Proof to me: I have heard what Evidence Goodman did give to the Grand-Jury; but whether they did ask such Questions as I should, if I had been of the Grand-Jury; or whether they did confound him with Evidence, I can’t tell. Therefore the Grand-Jury was convinced by it, it is no Reason to convince us; because we might not be convinced by the same Evidence.

But to go further: There is very great Reason to believe that Goodman was not then at this Place, and that not one Word that Goodman says is true. I have such Reason for what I say, that if Cok’s Trial had been before this House, (nor to arrange Wijnimger-Hall, though I think we are a superior Power, and I may say what I please of that Trial;) I say, if Cok’s Trial had been before this House, and what I have heard be true, I do think they would hardly have found Cok guilty upon Goodman’s Evidence: For there were three or more Evidences as could be, that he was not at the Place where he swore he was, and I observe a little Failure in Captain Porter’s Evidence in that Point; but I don’t think it is proved by Captain Porter, that Goodman was by when this Dicourse was: For he says, he spake of this Thing at Mrs. Maudry’s, and dined there.

Members, No, no: It was at the King’s Head. Mr. How, Well, there was but one Place where it was. Now whether Captain Porter heard them talk of it before Goodman came in, or whether Goodman be a good Witness, he having been there but the latter Part of the Time, which seemed to me to be the Time they should have given over the Talk of the Bulines, they having been so long together before; But it does not appear to me that Goodman can be a good Witness. But I take it, That it is not just nor reasonable to find a Man guilty upon one Witness, and circumstantial Evidence. I did mention a Case where there was a positive Witness, and a circumstantial Witness, it was in my Lord Dela- mure’s Trials; and yet that was not thought a convincing Argument by the Lords to find him guilty; and I hope no Concloration will oblige us to do that, which I am sure we should blame them for doing.

The Consequence of this, Gentlemen say they do not fear. I believe, if Sir John Fenwick had been
been told, when he was Major-General of King James's Army, that he should come here to fit up on his Life, he would have haggled at it, and thought it impious; but the contrary has happened: And I have seen Parliaments meeting together with such Violence, I suppose God may we keep from it; I do not know; we are all concerned in the Measure, it having been the Unhappiness of this Nation, that at one Time or another every Body hath been concerned, that they may have a Proceeding of this Sort against them; and this furnishes all that at present Gentlemen can do; for it extends beyond all Parliards, and will reach beyond the Act of Indemnity. God knows who may be served fo, notwithstanding all the Act of Indemnity.

Sir, there is one Thing that is said further, which the Gentlemen at the Bar conclude with as a fulsome Argument, That we do not aim at Sir John Fonseck's Blood, (God forbid we should) but at his Conscience: You will here read the Bill once, and twice, will commit and pass the Bill, (Sir John Fonseck not confessing) and fill this is not to aim at his Blood: But it happens perhaps that this Man knows no more of this Matter; and this Man is rak'd in a manner to Death, from Reading to Reading, because he does not confess; and at last he comes to be hanged, drawn and quartered (instead of High-Treason) for not confessing it.

This I take to be the dangerous Part of all the Arguments that have been urged: For this I must tell you, That according to my private Opinion, I do believe that Sir John Fonseck does know of no more Perilons concerned (nor do I believe that he knows all that he fears) than he tells you. He hath not been a Man that hath kept Company with Great Men: He hath generally relieved the poor Yeomanry Officers: There are Five People, as I take it, he hath told you he did confess with: I would vain know in what Plot any Man confesses with above Five of the Plotters? There may be a Plot that may be most dangerous, and yet a Perilon that knows of this Plot, may not know above two or three others that are concerned in it.

But the great Argument is, Take care of your Government. In the first Place, they must suppose the Safety of the Government depends upon his Execution; or why do they use it as an Argument? But I wish they would think the Government would be one Penny the worse, if this Bill does not pass. Do you want Examples of Punishment to deter Men? No; you have had lawful Proof against four or five Perilons, and they have been executed: Here are Examples made, that no Body for the future may presume to plot together, and not to be executed. What is the Reason of this Bill then? Why, there is a Plot going on; Sir John Fonseck hath been imprisoned this six Months or more; and will you hang him because there is a Plot now going on? What Consequence is that? Do you think that he knows anything of it, or that he can discover it? It hath been flared since his Confinement, it may be, and he knows nothing of it; So that as to what is proved of his Confinement, I know no one Thing would be gained by it, that could be useful to the Government; for I believe all hath been discovered already that he knows, and that Plot hath been utterly disappointed, and they have been fain to make a new one. Will you proceed in a Bill of Attainder, unless the Matter be of the greatest Consequence? The Preamble of the Bill for Attaining the Duke of Monmouth, gave a fulsome Reason for it; That he was in Arms, and could not be brought to Justice. That implied, That if he could have been brought to Justice, they would not have Attained him.

I think I need not give you more Arguments in this Matter; I wish I could hear those that have been given, well answered. I shall say no more; but I know this, that my private Opinion shall never guide me in this Cafe. 'Tis not the same Thing with the Cafe my worthy Countryman put in: In the Cafe of Religion, my private Opinion does not affect other Perilons; indeed it does the Papils, where they will murder others that are not of that Religion.

Mr. Norris. This is a very solemn Debate, and 'tis upon a very solemn Occasion. 'Tis a Cafe of Blood, 'tis a Cafe that in my Life-time, I thank God, I never had to do with yet; and in this Matter wherein I am now to be a Judge, I will use as much Caution as any Gentleman within these Walls.

I am so conscious to my own Inability in what I have to say, that I can't expect to convince any Body; but what I say, is to discharge my own Duty, and satisfy my Conscience in that.

I doubt not, but every Gentleman considers the Station that he is in, and the Truth reported in him by those that sent him hither: We are intrusted with the Lives, Liberties, and Properties of every Man in England; and we are answerable for them to those that sent us hither, to our Posterity, and to God. In this Matter, many Things of great Weight and Importance are before you; here is the Life of a Man, the Preservation of the King and Government, and the Power of Parliament to be considered. Sir, as I shall be cautious of taking away the Life of a Man, so I shall be careful of the Preservation of the King and Government, and the Power of Parliament; and though I do not think it requisite, nor never will give my Consent to support the Government, or Honour of this House, at the Expense of innocent Blood; yet I shall not be afraid of giving my Opinion in this Matter, to bring a Criminal to Punishment: Besides, the Treason he hath committed, he hath Crimes of a Nature almost equal to Treason; and for which, because he hath evaded the Conscience of Westminster-Hall, he is now brought before you; and there are several Infiances, where this House hath taken notice of Offences of a less Nature, and for a less Reason, than this is brought before you.

To quote Precedents, is a little dry Subject; but however, I will inculcate in one, that (I think) does affect the Power of Parliament in this Cafe, which has not been mentioned yet; and that was (as I remember) in the 3 Rich. II. of an Agent that came from Germany, who was, by a Misfortune, killed upon a Quarel that happened in the Streets; he that killed him was brought to his Trial; it could not be brought within the Statue of Treason, and he was brought to his Trial, and it was found only &c. &c.; but he being a Publick Minister, it was thought fit that the Nation should take more Notice of it, and he was Attained afterwards by Parliament, and there is a Record of it: They did not think...
think fit to make a general Law, but they made an Example of the Man that committed this Fact.

A great many Gentlemen have suppofed this, and fuppofed that, and what ought not to be fuppofed; but I will make an easy Supposition; I will fuppofe that we are the Commons of England in Parliament affembled; and if fo, Sir, we have a diferentary Power to do whatsoever we fee is for the Good of the Kingdom; and if we are to be circumferibed by the Rules of Wofminfter-Hall, and we are to do nothing but what they require, I will propofe to myfelf what they require we do fit here? If we are enthrall'd with this Power, and may exerit, I think there is a fit Occafion for you to exerit this Authority.

Sir, give me leave to take notice, That the Trial of Argument that was ufed fome Years ago, is very much altered by the fame Gentleman; I will mention it. I think it was in 175, when the Bill of Exclusion was brought within their Walls; the Argument ran then (for I have feen them in Print) that he was that againft that Bill. What will you do? say they. Will you do this Thing? That is a Judgment against a Man without hearing of him? Hath he been brought to your Bar, to anfwer what you have to fay againft him? How do you underftand that he is guilty of the Crimes you accuse him of? And they did not ufe tho'ces Arguments againft them that were for difhonoring the Duke of York: But the Anfwer then was, Do you difpute the Power of Parliament? Is there not a diferentary Power in the Parliament? I do take notice, That tho' the Gentleman that ufed that Argument for the Bill of Exclusion, now ufe it, is a quite contrary Way, Sir, I think the Power of Parliament is not to be meddled with.

It hath been urged and faid, a little while ago, by a Gentleman, That he does not believe Captain Porter is a good Witness. I will give you a good Reafon why I do think he is a very good one, and they at the Bar think to, becaufe they would have given a great Reward to have taken him off; and for the fame Reafon, I believe Gofman to be a good Witness: Sir John Fenwicke, of that Gentleman did know how far he was concern'd, and he hath been pre- vailed with to be out of the Way.

Sir, here are a great many Circumftances that agree fo well together, that (I think) no Perfon can doubt of Sir John Fenwicke's Guilt; and (I think) 'tis in this Cafe in the Body politic, as in the Body natural, when a Man is almoft paff the Cure of Physicians, when a Man hath a Gangrene, a rotten Member, which the Physicians by the ordinary Means can't cure, the Remedy, the College of Physicians themselves in that Cafe would ufe, is, they would fay, Immediate bile afe recticoagium of.

I am of Opinion, that the Legislative hath this Power, and that this is a proper Occafion to exert it, and to compare small Things with great, 'tis like Thunder and Vengeance in the Hands of Providence, that is not ufed but upon extraordinary Occafions; and then it ought not to fail, for that makes a Man trifle with and defpise that Power, to use not effentially able to exert it till; and if the Sword of Justice be drawn, if they find it rufiy, and will not cut, they will have a mean Opinion of your Power for the future. Gentlemen are afraid of Precedents in this Cafe; for that Reafon I am for committing this Bill, becaufe I would make this a Precedent; and I will tell you why; Because it may happen in future Ages, that Minifters of State, and Perfons concern'd in the Government, may be faulty (I think I may fuppofe that) and as the Lawstands now, he is but a bungling Politician that can't ruin the Government, and yet not come within the Bill of Trefon to be hanged for it: And therefore for the keeping an Awe upon Minifters of State, and becaufe I would have this House always have it in their Power to punish future Offenders, as they shall fee Caufe, as well as this unfortunate Gentleman at the Bar, I am for committing this Bill.

Mr. Finch, Sir, the Queftion now before you, arises upon a Cafe wherein you have a Man accufed of High-Trefon, and for that there is but one Witness, which by the Rules of Wofminfter-Hall, is confider'd by every Gentleman, is not legal Evidence.

I remember the other Day, when this Evidence was offered, and an Objection made to the Anfwer was, That we ought to hear it (though in Wofminfter-Hall, they could not do it) because we fitt here as Judges, and we can diftinguish what is legal Evidence, and what is not legal Evidence, and can give its just Weight to every Part of it. I do obferve now, in this Debate, some Part of the Evidence, which no Man can fay could have been given according to the Rules of Law, is infufet upon, and Weight laid upon it.

And here they have taken into Consideration the Power of Parliament, and the Method of Parliament has been infufet upon. As to the Power of Parliament, Whether the Parliament can do it? And whether if the Parliament pleafes to do it, they are tied up (as Gentlemen are pleased to oppref{ it) to the Rules of Wofminfter-Hall? That the Parliament can do it, 'tis a hard Matter to gainfay, That any thing is out of the reach of the supreme Power of a Nation; the Legislative Authority can do every thing; Yet, though Gentlemen have faid this, and others have obferved, That there was no Authority to prove this, being Self-evident, yet give me leave to infue in some Particulars in this Cafe, with the Authority of the Judges upon it, where the Parliament have proceeded according to the Rules of Wofminfter-Hall.

We read in Hen. VII's Time, that the Lord Gonawel, Earl of Effes, was Attaintead in Parliament; and Hiftory tells us, That he was Attaintead by a Law of his own making. Now, fays, my Lord Cals, That feeds strange; but enquiring of an ancient Perfon that lived in those Days, he told him the Meaning of it; That Lord had confulted with the Judges, Whether or no, if a Man was Attaintead by Parliament, and was not brought to be heard, fuch Attaintead would be good in Law? The Judges fent at the Queftion, but could give no other Anfwer than this; Truly, if fuch Attaintead be made, we know no Law to find Fault with it, for 'tis done by the Legislative Authority. It fell out, That the Infufce of confiding a Perfon in Parliament (not according to the Rules of Wofminfter-Hall) fell out to be the Noblemans Cafe; for he himself was to Attaintead immediately after.
1696. Parl. upon a Bill of Attainder for High-Treason. 107

Give me leave to instance in another kind of Authority, the Authority of Parliament touching their Attainders, and what has been the Consequence of them: If you will look into the Record of Rich. II's Time, I do not mean the Record that hath been quoted, nor the Case of John Jasperfield, for killing the German Ambassadour, which was declared Treason in Parliament, Ten Years after the Man had been tried in Wingham-Hall for it; but I mean the 11 Rich. II, how many were attainted by the Proceedings of those Times; I do not mean by Acts of Parliament, but those Attainders were in an extraordinary Manner, not according to the Rules of Wingham-Hall: And 21 Rich. II. the whole Parliament, and its whole Proceedings were reversed, and the Parliament annulled: In that Year were the Prefectors of the 11th Year themselves attainted: And 21st Year of Rich. II. the Act that repealed that Parliament, repealed the Pardon too; but in order to come to the Attainder of those Persons: That being done, was not enough; for the Lord Arundel had a Pardon the 17th of Rich. II. Upon that they made a Law to repeal his Pardon by Patent, that they might come to the Attainder of that Lord; and that Lord was Attained by Act of Parliament. But I must observe one Thing a little further, That that very Parliament, that doubtless knew their own Power well enough, and that their Attainders were firm, being made by the Legislative Power, yet they had a little Jealousy themselves of their Proceedings; for they passed an Act to make it capital to go about to reverse any of those Laws; and another Act, that all the Lords and Bishops should be ftrown. Now see what fell out after; Rich. II. was deposed, for contending to those Laws; and Henry IVth, in the first Year of his Reign, abrogated the whole Parliament, and repealed all those Laws. These Turnes have been upon those extraordinary Proceedings of Parliaments.

Give me leave to give you another Instance, and that in another Case, as obvious as possible could be. In the Murder of Edow. II, there was Roger Mortimer attained in the first Year of Edward III. and the Record says, That it was notorious to them all: And what then? They adjudged him to be attainted in Parliament. When Time had a little worn off that extraordinary Zeal (which truly was commendable, though it had transported them a little too far beyond the Rules of Justice) and they came to consider what precedent they had made for Persecution, it had another Face; for in 28 Edow. III. was that Attainder reversed, because he was not brought to answer as he ought to have been. There was also an Act for attainting the Earl of Arundel, which in the fame 28 Edow. III. was reversed, because he was not brought to Judgment by due Process of Law.

But now we are told, we are not tied here to the Rules of Wingham-Hall. Gentlemen do not enough distinguish in this Matter; the Forms of Wingham-Hall, Lay some; the Rules, lay others; and others say, there is no Difference between the Form of Proceedings, and the Rules, of Wingham-Hall: But I hope no Gentlemen do think but the Parliament, though they have a Power to act as they think fit (as Instances have been given) yet the Parliament itself are tied by the Rules of common Justice. Now I would have Gentle-
It is told you, That Porter, here before you, is not a good Evidence, because he is not sworn; and that you are to go by the Rules of Westminster-Hall. Says the Gentleman that spake last, you are to go by their Rules, but not by their Forms: I must confesse there is a great Difference between them two: for a Form is only the Manner and Method by which things are done; as in The Trials, but the Rule is the Foundation we are not to err from; but I can't agree we are upon the same Rules as Westminster-Hall is: The Rules of Westminster-Hall are, when a Man is brought upon his Trial, the Jury are all to be upon their Oaths; by which Oath they are to make a true Judgment according to Law. This is not the Cafe here; if I was a Jury-Man, and was to try a Man, and one Witnesse swore against this Man, and no other Witnesse, though I did in my Conscience believe him to be guilty, yet in that Cafe my Conscience is discharged, and I must find him not guilty: But no Man can say this is the Cafe here.

What are we now doing? Here is a Bill to attain Sir John Fenwick of High-Treason: If I reject the Bill, I do declare him not guilty; and if I do think him guilty, I do declare against my own Judgment; for my Judgment here, is not bound up as a Man's Judgment upon a Jury; for his Judgment is bound up to Proof, according to Law; and my Judgment is bound up by my own Belief: This is the Proof I must go by; and I think every Man is bound in Justice and Duty to his Country, as he believes Sir John Fenwick to be guilty, to be for the Commitment of this Bill; and till any Gentleman will convince me, that this is not a Rule I am to go by, I must continue in this Opinion.

Mr. Bowie. The Disorder that worthy Gentleman was in, makes me the more concerned for fear of falling into it myself.

I hope in this Debate, Gentlemen will be very cautious of using it as an Argument, what Application Votes shall have without Doors, and with those who are represent, when we are to give Judgment, as far as in us lies, for the Life and Death of a Man: And therefore I must observe, that the Eagernefs that is justifiable upon Impeachments, may not look so well now as we are Judges upon a Bill of Attainder. You have gone over the whole Course of the Evidence, and I believe that this Debate will shew you pretty plainly, what is to be the Fate of this Bill; for I believe all the Arguments will now be used that can be: As to what hath been said of extorting Confession, I take it to be quite out of the Cafe.

I am sorry to be engaged one way or another: I would not, if I could help it, out of the House, be upon a Jury of Life and Death; yet in that Cafe, I should know the Law, or be told it by the Judges: But in this Cafe, we are both Jury-Men, and Judges, and know not what Rules we are to go by; but let us a Court of Equity which hath no Bounds, but our own Consciences.

As to Sir John Fenwick, I know him not; as to his Cause, I am sure, I am against it; but how far I think him guilty or not, I think is not the Single Point to be considered: I must confesse, there have been several People accus'd of this Conspiracy, and have been named by the Evidence at the Trials; and I believe they are much alike guilty, being upon the same Evidence; but as to all that hath been opened before you, and proved, it can amount to no more than this: There is but one Evidence, which by the Law would not be a good Evidence to convict him in another Place; and therefore I do agree with the Gentleman that spake under the Gallery, that this is a very extraordinary Cafe; for one Witnesse is not sufficient at Law to convict him, and the Law would be very different here. I am to judge according to my own Conscience, and not by the Rules prescribed by the Law; but though this Proceeding is not strictly according to the Law of the Land, yet if it was such an extraordinary Cafe that required you to dispense with those Forms, and come to this extraordinary Manner of Proceeding; I think, for my own Part, it might be supported by the Necessity of it; for 'tis impossible that it should be otherwise in Practice: Thus when the Government is at Stake, and nothing will prevent it, but the breaking through the settled Forms, then the Government will break through them; and whatever Rule you prescribe, it will always happen to.

There is a very extraordinary Cafe, and that was in the Conspiracy of the State of Venice, above a hundred Years ago, I think, set on foot by the Spaniards: Then the State, to get the whole Matter out, promis'd a Pardon to as many as were concerned in it; and after they had promis'd it, and treated with them about it, they thought it necessary, for the Preservation of the Whole, to break their Faith, and they were all put to Death. This was upon Point of Preservation of the Government.

But, Sir, as to Precedents, give me leave to say, I do not give that Authority to them unless I know all the Springs and secret Hibernies and Traditions that were their Guide in making those Precedents; and as to Precedents that have been quoted, when the Parliament has declared what was Treason, and what was not Treason, or have declared Conspiracie Treason, they may be grounded upon the Statute of 25 Ed. III. But I think there is no Statute upon which they can ground the Condemnation of a Man upon one Witnesse.

In the Cafe of my Lord Strafford, upon conspiracie Treasons, it was there laid, That it was a Fire that had lain hid for 250 Years, and that it never broke out before, but to confine him, and his Poffery. It was answered by Prov, If that was the Cafe, it was not for want of Law to justify such a Proceeding, but all that Time had not produced such an Officer.

I do not doubt, but if any one will consider the late Conspiracy; and if that was the Quaffion, but it was as extraordinary as any Thing can happen; for it was both their Country to a foreign Power, which is very extraordinary, and several Persons were concerned in it: But there is one extraordinary Part which I do not remember this Gentleman is accused of; and that is, the Affiliation. Treason it self is a very extraordinary Crime; but give me leave to say, that extraordinary Part is not alleged against this Gentleman, and this Bill does not seem to be brought in for that, wherein he is concerned in common with some others, but for the subsequent Matter alleged in the Bill. This Bill is grounded not so much upon him that he is guilty, as a great many more are, as upon several Circumstances which have happened to no Body else. Give me leave to influence in a Cafe, now in my Head (I beg your Pardon that I ramble, 'tis from the Awe I have upon me from this Assembly) in Catanell's Conspiracy; and if that was our Cafe, no doubt there would be ano-
ther fort of Argument for it; there they con-
cluded what to do with Cæsar, and the other
Conservatives; he was at the Head of an Army,
which only expected his Orders to lay Rome in
Ashes; the Question was, Whether they should
break the Perseverance; and for the Safety of
the Senate they were put to Death before the Assem-
byly role.

Now to come to this part of it: Though Sir John
Ffrench is a great Offender, yet I think his Cafe
is not so extraordinary, as to make you proceed up-
on this Bill. I do take his living or dying not to
be of that Confiscation as this Bill of Attainder.
I know not how he comes to be so confidencible when
in Hold; for when he walked about Town, I never
heard he was feared or regarded at that Time.

But to come to the Allegations in your Bill, upon
which they are to ground your Judgement: The
first Part is a new Confiscation, that is, for intend-
ing to create a Jealousy between the King and
their noble Perfons. As to them, you have alrea-
dy pass a Vote in their Jütticitation; and I think
their Actions may justify them to the World, as
much as any Vote of the House of Commons; but
whatever that may be, I think it was a foolish
piece of Confiscation, as well as an ill one; for
one, when he was in danger of being hang'd for
one Plot, to venture upon another; and I think,
there was at that Time two Witnesses to bring him
to his Trial, and that is an Allegation in the Bill.
And as to the Prosecuting of his Trial, it is
natural, and so justifiable, whether innocent or
no, and what ever Body attempts; and no Body can
wonder at it; but in one Cafe or the other it can be no
sufficient Ground to attain him.

The next Thing that is said is, That he hath
been the Occasion of the withdrawing of the Evице-
ence. Now I must observe, that is not alluded in
the Bill, and is proved but by Hear-fay: But
suppose it was true, and alluded; if any Man
concerned in Trefon shall endeavour, by Friends,
or otherwise, to get off an Evidence, can that
amount to that which is designed to be punished
by this Bill, or High-Trefon? 'Tis the Part of
tifics that are intrusted with those Matters, to be
in Expectation of such Practises. What are
Gods for, but to keep them in Custody? And the
People employed in tificsBufoilles are to take care
of it. Are we to supply a Detail of what ought to
have been done in another Place?

So that I do say, That a precedent in an extra-
ordinary Cafe is no Precedent to be used in a
little Cafe. It may be urged, but 'tis but a Pre-
ecessory, when you have pass'd this Bill, which is
the Record, the Matter will appear no other-wise
than are the Suggestions of your Bill. A Man
 hath atterfed great Perfons, which is a great Fault
indeed, (for he is not charged with the withdrawing
of the Evidence) therefore attest him upon
one Evidence. I think by this Bill you will open
a Door for a Precedent of all Trefons of the fame
Nature. Sir, there have been many Precedents
mentioned; I will trouble you with none, because
most Gentlemen have read the Argument of Mr.
St. John's in this Cafe. I must confefs, unless
there was that Necicity as is pretended, which I
do not fee, I do not fee how you can justify pass-
ing this Bill of Attainder, neither by the Law of
idol of Him, in any Nation allowed.
I must confefs, I have no manner of Concern
how this Question goes; what I have said is more
to satisfy my own Judgment, then work upon
other People. I am not satisfied there is that
Necicity that is pretended, and therefore as my
Judgment is now informed, I can't give my Vote
for Committing of this Bill.

Mr. Smith, Sir, I own my self to be very unfit
in such a Bill; but since I am to give my Vote in
a Matter of this Confiscation, I beg leave to give my Reason why I give my Vote, as I
intend to do. I know the Matter before us, both
in the Nature of the Crime and Punishment, as
well as the Confiscation of it, requires a very
deliberate Consideration; but at the same Time,
I do take the Hazard and Danger of this Gov-
ernment to be a Matter of great Confiscation
too.

Though there have been severa Precedents in-
flanced in relation to Attainders; and though I
have observed, that most have acknowledged,
That they might be justified upon extraordinary
Occasions; yet when they have affered that, they
have told you, they were upon a wrong Founda-
tion, and so were laid aside. Now I think it no
great Matter to say, That those Attainders that
were made in Rancour upon contended Titles,
were revered when the oppos'd Party got the
Power, no more than if any Action, be it never
so justifiable, should be revered when King James
comes again, which I hope will never be. Is it any
Argument, that when H.IV. came to the Crown,
and deposed King Richard, that he revered all the
Attainders in his Time? There might be Reacons
might fway with Perfons for revering particular
Acts of Parliament, which might be very good,
or might be not so; there was such a Change of
Government at that Time; but they take notice
it was made a particular Article against Richard II.
as if when the Power was come to other Hands,
they would not have deped him if they had not
had that Argument: Neither do I take that
Argument to be of any weight; That Attainders
have been revered, because the People have not
been heard; when this Gentleman hath had as full
a Hearing as ever any Person had upon any Bill of
Attainder, or Impeachment whatever; and he
had the Advantage of Council in this Cafe
(which, as has been told you, was excepted out of
the late Act of Parliament) and of the most able
Council too.

'Tis said this is a Matter of no great Confisc-
ance, because it concerns Sir John Ffrench's Life
ingly; and he is not thought to be so confidencible,
as by his Escape to bring the Publick in dan-
ger. Now it hath been always one Principle I
have holden, That Plot if Plott'd, and not thrupougly
prosecuted, it strengthens and grows upon you,
and to one it does not subvert the

Now, God be thanked, that we have prevent-
ed the Design upon the King's Person, and seve-
ral have been punished for it; but I think we are
not got to the Bottom of it, and that we ought
to provide against it in a much other Manner.
Can any one think that Sir William Parry, or
Sir John Ffrench, and the rest that are discovered,
were the only Perfons concerned in this Compli-
ency; I take it, that there have been much greater
Men in it, and when I fee such a Struggle both to
get People out of Goel, and send People out of
the Way, and all Arts used that can be, I must
suppose, when such extraordinary Courtes are ra-

ken, that there is something extraordinary still to be done; and I would not have Men by brawling of Winnefles think to secure themselves: It hath happened as an Argument to belitt the Matter, That this was a little after the Act of Indemnity. Can any Thing aggravate a thing more? Sir, these very Arguments turn against them.

We are told here, that we must not consult our own private Judgments in the Matter; and we are told at the same Time, if there were two Winnefles that we did not believe, we must not find him guilty. We are told of a Judge, that though he knew a Perfon to be not guilty, yet it was a commendable Action in him, that he condemned the Man: But that hath been very well answered already, and I shall not meddle with it further; only this I will say, that I never will in any Cafe be the Jury-Man or a Judge, where the Convictions of my own Conscience shall not govern me, but an Evidence that I do not believe. And because that Story was told you, I will tell you another, that I think more commendable: And that was a Man was try'd for a Murder, and there was positive Evidence against him. The Jury went out, and hey a great while: There was Eleven against One for finding him guilty; but at last the One almost forced them, and they brought the Man in not Guilty. The Judge sent for the Gentleman, and desired to know his Reasons for differing with the rest: And at last, you know, Affirmative of what hath been done to him, Why, says he, Would you have me find the Man guilty, when I was he that killed the Man, and he was innocent?

Then, Sir, if you take the Evidence as it is; I think, first, here is Capt. Porter; I do not find any Body excepts to him; and his Evidence hath been approved of by severall Juries, and se- veral Perfons executed upon it, and nothing ma- terial hath been objected against it. I will not say, That Sir John Fenwicke hath owned a great deal of this himself; he hath given every body Satisfaction how far he stands guilty in his Opinion; but it is brought to fo favor him, that there was Sir John Fenwicke's own Letter was to convey him abroad. Here hath been Attempts upon other Perfons, you hear what hath been done by the Solicitor. They say, he was not his Solicitor at that Time. Here are very pregnant Circumstances. One Gentleman said, you ought not to make use of Goodman's Evidence here; and yet he could make use of every Thing to disparage him; for he could say, there were three positive Wînnefles against him!

Now what his so notorious what Parties there are for King James, and we find Perfons plotting in every Part of the Kingdom: When you have an open Invasion before you, and when Des- igns are laid against the King's Life every Day; if this be not a Time to exert an extraordinary Power, I submit it to you.

Sir Rich. Temple. Sir, I shall not trouble you with any Thing that hath been offered to Day. That which calls me up, is the Danger of the Precedent you are about to make, and the Ar- guments that have been used to support it; which, I think, are more dangerous than that. I must confide to a new Doctrine to me, That the Laws that are made by the Parliament, are to be no Rule and Guide to this House. Sir, the Birth-right we have is in our Laws; and I did ever think till now, that the Laws were not only made for Westminster Hall, but for all the Subjects of England; and especially, that they were to be a Rule to the Parliament, that made them, till they should think fit to alter them.

Here have been great Mistakes between the Power of Parliament and the Jurisdiction of it; the Power of Parliament is to make any Law, but the Jurisdiction of Parliament is to govern it by the Law; and this, give me leave to say it to you, hath been the Opinion of all your Ancestors, and the Method they ever used. Shall we make a Law here in a particular Cafe against all the Laws of England? 'Ts ultimo remundus & polumus, you may use it in a Cafe of absolute Necessity, but otherwise it may be a Precedent to overturn all.

There are several Things in making this Pre- ceedent, that overthrow all the Laws and Liberties of England: First, you are paffing Judgment upon a Man upon one Withee. I have heard a strange Debate to Day, That there was but one Winnefie in Trefzon, before the Staute of Edoa, VI. You know, that in Cafe of Trefzon, there was by the Common Law required two Winnefes; for if there was but one, the Party might demand Trial by Battle, and that was the Common Law of England.

There is another Thing that is extraordinary: Here you are going to pass an Act without any Trial at all: For to say this is a Trial before you, the Common, is a Mistake. You must not as- sume a Jurisdiction of trying any Person, nor can you: You may for your own Information hear what can be offered, but 'ts not a Trial, where Winnefes are not upon their Oaths. There is no manner of Power or Jurisdiction can be pretended for you to try; in that is a second Thing. All the Bills of Attainder you have had, have been in three Cafes, where the Perfons have been either dead, or fled, or have been without the Courts of the Law, and could not be brought to answer: And you have had some Bills of Attainder after Trials had in Westminster Hall; but never of one Person, have been called Trials, but they have been generally executed, and for what? They tell you, That they have been executed by one Party and another Party; It was in the fame King's Reign, in Rich. II's Reign, they were forward and backward, as the Court Party or the Country Party were uppermost.

There is another Thing in this, that I think of a most dangerous Consequences; and that is, that you are for making way, for what I know, by this Precedent, for a Rack, for fo 'ts said; this is to force a Man to be an Evidence. Why, give me leave to say to you, 'ts a new Way not known in England, that you will hang a Man unles he will confess or give Evidence; but I think 'ts something more than a Rack, for here is hanging, drawing and quartering in the Cafe; and I do not think this Proceeding will make him an Ev-idence with any Credit or Reputation to this House; nor am I of Opinion, that he can discover any Thing worth such a Precedent.

Now give me leave to say one Thing as to the Jurisdiction of Parliament. It hath past here for current, That the Parliament hath a Power to declare what they will Trefzon, though fo by no other Law: 'Ts the greatst Mistake in the World: I heard a great Debate upon this, upon my Lord Charensaks's Cafe; and 'ts plain, this Statute relates only to Cafes brought from inferi-
Sir, I should be as tender in Point of Blood as any Man; but I do think, if the Safety of the King and Kingdom is concerned, 'tis not one private Man that we must have regard for, so as to let the Publick suffer by it. I do think, that upon this Occasion there have so extraordinary Things happened as have hardly happened in former Ages; that one who is known to be in a Conspiracy to bring over a French Power with a Poshaj Army, to destroy our Lives and Liberties, after his Trial has been deferred by his Evocations and Pretences to make a great Discovery; when he comes to make it out, he accuses the bell of your Friends; and this is only an Artifice to get Time 'till they could get the Evidence out of the Way; I think, if you do not take notice of it, and let the Legislative supply that Defect, it may be of ill Consequence, and may encourage any one to commit the worst of Mischiefs; upon hopes, that if they can get the Evidence out of the Way, they shall go unpunished.

Sir Francis Wtitington, I shall trouble you but a little while, it being late; but Gentlemen saying 'tis an extraordinary Case, I shall give my Reasons why this Bill ought not to be committed; for every Member here now is a Judge; and he must take the Blood of this Gentleman upon him in Judgment, either to condemn or acquit him; and I must confess, I have very much admired, to hear that Doctrine preach'd, That every Man, as he is partizan in his private Concerns, ought to judge this Man guilty. I desire to know by what Authority we sit here? We sit here and have a Legislative Authority, and 'tis by the King's Command we come together; but at this Time we are judicially trying this Man for his Life; and therefore I humbly conceive, that we ought to proceed jejunum allegata & probata; and for any Man in his private Opinion to say he is guilty, he does not act by the Commission he sits here. For to tell you of the Launc_resolve_Plot, or that a Man shall not be chosen hereafter, seems to be Arguments to enslave, but nothing to the Question.

Now, Sir, I will humbly offer to your Consideration, and the Judgment of the House, why I think we cannot judicially condemn this Man; for I think the Question of Commitment to be the same as of his Life and Death.

I do agree upon all the Precedents good and bad that have been cited, and doubt not but in extraordinary Cases, 'tis in the Legislative Power of the Parliament to look after the Safety of the Kingdom; but I shall offer why this does not come to that Case. I humbly conceive in this Case, for I will not speak to the Rules of Walthamsh-Hall, but upon the right Reason of the Thing; for if it be Reason in Walthamsh-Hall, it may be so here, and that ought to overcome every thing; But whereas Gentlemen say you have one Witnesse, I do not apprehend you have one good Witnesse, and I will give you my Reason for it; for you must take Capt. Porter upon his Parole, and consider what he says upon his Word; and then I do appeal, if you take what he says upon his Word, whether ever they did know that a Bill of Attainder proceeded against any Man unconvicted; and in that Case you should have turned it into an Impeachment, if the Thing looked probable, and then you had the Witnesse upon Oath; and the ancient Method of Bills of Attainder used to be first by the Impeachment of the Person, and then to turn it into a Bill of Attainder. Then
Then see what it is that is insisted on by the King's Councill, and recited in the Bill. That there is a Bill of Indictment found by the Oath of two Witnesses, that is, Porter and Goodman: Under Favour, I think they are not to be count ed as Witnesses in the Point; and I offer this as a Restor; and, I think, 'tis natural Justice in all Courts of the World, That if a Man be accused as a Malefactor, he hath the Liberty to cross-examine the Person that accuses him. Now we very well know, that in Cafe of Bills of Indictment, when they are found by the Grand-Jury, they never admit the Prisoner to put Cross-Questions, because the Bill of Indictment is but the Accusation; and if an Accusation be enough, who can be too innocent? Why, then if it be so, then this Oath that was given to the Grand-Jury, is not such an Oath upon which you can put such a Value.

Then, Sir, go to the Paper of Goodman, which you would read, and consider the Validity of that; Goodman being now absent, the Prisoner hath no Opportunity to cross-examine him; and I believe the House to consider the ill Consequence of it: Any Minister of State may come and get an Examination before a Justice of Peace, or Secretary of State, and the Man is conveyed away, and a Bill of Attainder is clipp'd upon his Back, and this ful Evidence against him: He is but half a Witness, and a Witness upon an Accusation, not upon a Trial.

Then come to Sir John Fenwick's particular Case. Sir John Fenwick is indicted, Iljie is joined, and he hath Notice of his Trial; and one of the Witnesses goes away, no Man can tell upon what Account he went: I may believe why, in my private Opinion, but that is not our judicial Knowledge: Then if that be so, was it ever known, that when any Man was indicted, and Iljie joined, because his Trial was deferred, therefore a Bill of Attainder must be brought against him? Hereare Plots against the Government, and it may be Forty may be taken up for it; and as to Twenty, there may be two Witnesses, and the others may have the good Luck to have a single Witness against them; will you have Acts of Attainder against all the rest? If this had been an extraordinary Cafe, wherein the Government had been particularly concerned, it might have weighed with you; for no Man can show me any Precedent of a Bill of Attainder, but where there was open Act of Hostility, or Men of great Relation and Power were concerned to falsify the Government. But what is Sir John Fenwick's Cafe? He is in Custody, and the Plot is detected: if he was run away, you might still suppose he was plotting against the Government, because he was fled from Justice. Gentlemen say the Government is concerned; so it is in every Felony and particular Traison; but must there therefore be a Bill of Attainder to punish it? When there is a Bill of Attainder, it must be from an immediate Danger that threatened the Government of the State, that such a Man is Attain'd. But I do not see that Sir John Fenwick was of any of these Circumstances. All Men agree, That this is an extraordinary Way of Proceeding; Then the Question is, Whether Sir John Fenwick's Cafe be extraordinary? or, Whether he be more than a common Malefactor that is in a wicked Conspiracy? I do not see that this Cafe of Sir John Fenwick's is extraordinary, that if he be not hanged, the Government must fail.

And, under Favour, a Precedent, when 'tis once nin, I know not what Time may produce from it; it may be, 'tis his Majesty, that came to relieve our Liberties, we may have wealthy Members, and Members chosen as in Hen. VIII's Time. It may be the Condition of every Subject in England. The Power of Parliament we must govern by Restor and common Justice; and if there be not to urgent Necessity to use this extraordinary Remedy, because it may be dangerous to Policy, therefore I am against this Bill. Sir Tho. Littleton. The worthy Gentleman took Notice, That the Longitude Plot, and some Words I used, were used only to inform: I can't go well with his Thoughts, but I have heard him several times bring his Wife and Children into his Speeches, to no Punish Power, all.

Sir Francis Wooton. I have a Wife and Children, and that Gentleman none; therefore I think I may make use of that Expulsion.

Sir Tho. Seymour. Mr. Speaker, I have attended your Delicate with the best Attention I can; and I have heard a great many Arguments, and some very wild ones too. I hope, how frightful fewer Things have been opened, they will not lead your Understanding out of the Methods and Rules of Justice. I will not take upon me to tell you, what is nothing to the Question, as, that Trafalgar is a very great Crime; or, that the Parliament hath an Authority that is not bounded, or limited as it is not tied to the Rules of Highlands-Hold; I think that is not Part of the Subject Matter before you. That nothing bounds or can limit the Parliament, is what every Body does admit; but 'tis the right Application of that Power which is now to be considered of: For you may judge the Prisoner, and others will judge you. The World will judge you, if you do not apply that Power aright.

For my part, I shall avoid as much as can be, the saying of anything that hath been said; and therefore I hope you will believe that my Dilator must be very short: But that which does move me in this Question, is in this: That I do not give my Judgment upon any Man otherwise than the Law directs how, and upon what Terms I must give it. If the Law hath said, That Trafalgar is not to be Trafalgar, unless it be proved by two Witnesses, I am never to give my Judgment in that Cafe, when there appears but one.

And this I take to be the State of the Cafe, not to enter into Matters of Precedent of Attainders; for those are only Influences of so many Fads that have been done. And in all those Influences that have been urged and quoted, when Times have been solate and quiet, Marks have been put upon them, as was hinted by a Gentleman that spoke very ingeniously upon this Subject at the beginning of this Debate. I find, Marks have been put upon them for you to avoid, but not to imitate. I take it, that the Law hath determined that there shall be two Witnesses to the Proof of Trafalgar, and there is no Trafalgar that hath not two Witnesses to it. There is but one Attainder that we meet withal in sacred History, and that is the Attainder of Naboth; he was Attain'd, and we know what induced that Attainder he had nothing to object as to the Formality of the Proceedings there was set up against him: And though Jezebel's Letter had disposed the Rules to deal by him as they did, yet there were two Witnesses that did appear against him.
I take it, that two Witnessses are requisite for the Knowledge of the Truth, that you may make a right Judgment whether they swear true or no. I will give you but one small Instance more: I must tell you, Sufennub had been but in a bad Condition, if one Witness or circumstantial Evidence would have made him guilty.

A Gentleman here says, 'tis Apocrypha: But that which weighs with me is, that there may be Inconveniencies on one Side, and there are no Inconveniencies on the other. I know not what may be the Consequence of this Precedent, nor where it may bring you: I know the Consequence, if Sir John Finchick be not executed upon a Bill of Attainder; for no Body will believe there is a Necessity for any extraordinary Remedy to be applied for an Office, a Year and half after he hath been indicted and arraigned for it, and they might have proceeded to his Trial; and I know not whether 'tis his Fault that they did not, for it was not in his Power to prevent it: And if you, upon every Occasion, come to supply the Defects of them that are remiss in the Government, it will make them more so.

As to the Matter of Precedents; Why, it may fall out, that by this Precedent an innocent Man may be punished, and then we that make this Precedent are guilty of his Blood; and if he suffer never so remotely, it will be required of us, if they proceed from this Precedent. Now, if Sir John Finchick be not executed, under a Legal Way, what is the Consequence of that? Is it that Sir John Finchick shall go unpunished? Though they be deprived of one Evidence, that would make it Treacon, he may be punished for a Misdemeanour, and imprisoned for his Life: And I had much rather he did languish in that Condition, and I am sure it is much fonder for you, for no Inconvenience can arise that Way; and I take it, that when those are our Guides dispute which is the Way, we are to take that which is safest.

The Learned have disputed, Whether this Matter, as now it is charged upon Sir John Finchick, be Treacon: I will not take upon me to determine it, they differ about it; and when they can't determine it, will you by a Question determine it absolutely?

Upon the whole, there hath been so much said by the Counsell for the Prisoner, and so little said by the Counsell against him, and so few Arguments urged against him, that I much hope we shall retain the Opinion I had, That there is not Evidence enough for you to proceed upon this Bill of Attainder.

Mr. Boscawen, Sir, I desire to give my Reasons for my Opinion in this Matter. I have no personal Difficult against Sir John Finchick. The great Argument for Sir John Finchick against this Bill is, that this is an extraordinary Proceeding, and therefore should be against an extraordinary Person; and in the next Place, that it is against the Rules of Law. The Rule of the Law is, That there must be two living Witnessses: As to that Matter, Gentlemen generally agree, that 'tis within the Law of Parliament to attain People by Bill of Attainder; but they say, they have been often too readily, which I do easily believe, because some have been attained, and have not been heard; and some have been attained in tumultuous Times: But this Gentleman had a fair Trial, and a Debate in this House: But I would fain know, though they confess Bills of Attainder may be, how it can possibly be, if the Lawyers at the Bar say true, That it must be upon Oath, and you give no Oath?

To say it may begin in the House of Lords: Under Favour, I take it, that a Bill against a Commoner can't begin in the House of Lords. And if you can't have Witnessses upon Oath, you must have as much Evidence as the Nature of the Thing will afford; that is, you must have Witnessses to confirm your Conferences in the Thing; for if all this great Assembly are satisfied in their Conferences, that he is guilty of inviting an Army of French to come into England, I am affirming to think, that you should not pass this Bill against him. I think, as to this Witsdon Ferber, they have botched their Cause to blind your Eyes; and their Argument seems to run more upon Goodman's not being present. I would know, if there are two Witnessses, and I do not believe them in my Conscience, whether I can pass this Bill? But I appeal in this Cafe, res ipsa loquitur; the Thing is so plain. How many have been attainted and suffer'd for the same Crime, that have acknowledged Sir John Finchick to have been present? There were several Members of the House sent to examine Sir John Finchick and Sir William Parkyns in Newgate; and they were sent with this Intention, That the House would intercede with the King for a Pardon for them, if they discovered the full of the Plot (it was not the Death of Sir William Parkyns and Sir John Finchick that was aimed at, but the Preservation of the Publick); and when they were examined, they did acknowledge, that they were privy to the calling in of the French, and that Sir William Parkyns and Sir John Finchick at Horne; there was to be 2000 Horse; but he would not redeem his own Life with the Blood of others. Now I do take it, that there is Evidence against Sir John Finchick sufficient, in a Parliamentary Way, to attain him.

The Gentleman says, the Consequence of throwing out this Bill, would be nothing, and that Sir John Finchick is a little Man: I agree he is, but 'tis the Consequence of bringing in a French Army that is to be considered. Would you pave the Way for them to come over, and make their Entrance easy? I hope the People of England are concerned in the Cafe, as well as their Wives and Children. If you let him go, what will be said? I have not heard one fact, that he believes he is not guilty; there is none but think him guilty; and yet will you let him escape? What Encouragement will this be to your Enemies? He hath not denied the Matter him self: Nay, he hath not brought one Gentleman to vindicate him, that he is a Man of a Behaviour not to be believed to be guilty of such a Thing, which was done in other Trials.

I defer you would consider what the French King said of his Brother King James How could he think to bring in Popery with a Protestant Army? I am sure the bringing in of a French Army must be for the Destruction of the People of England, and the Protestant Religion, and will bring your People to go in wooden Shoes. 'Tis the Example of this Thing you are to consider. It was said at the Destruction of Carthage, That the Commonwealth was always to be minded. I think you ought always to be mindful for the Preservation of England; and I believe he is guilty, and I am therefore for the Bill.
Lord Digby, I shall trouble you but with a Word or two. I suppose as long as we sit by the known Rules of Justice, and the Laws of our Land, we shall not need to fear any Censure in our own Kingdom, or any where else; but this is very uncertain. Thing for Gentlemen to be Judges in the Cafe of Life and Death, without any Rule to walk by, a great many will not allow us any Rule at all: I always took our Rule to be the Law of the Land, and that even our selves are bound by the Laws our Ancestors have made, till we think fit to repeal them; and I am confirmed in this Cafe by one particular Argument from the Bill of Treason that passed last Seffions, in which there is a Claque, That it should not extend to future Parliaments. The only Argument for exercising of this Power, is the extraordinary Cafe of this Gentleman. When a Gentleman speaks of the Power of Parliament, I take it to be the just Power of Parliament: I think a Man may say, a Parliament can't do what they can't justify. But all Gentlemen allow, that this Power ought not to be exercised but in an extraordinary Cafe, where in the Government is generally concerned. I believe very few but think, that it had not been for the Vindication of some particular Gentlemen, we never had had this Matter before us; and then I will leave it to Gentlemen to consider, if the Government can be in so much Danger if Sir John Fenwick does escape.

Mr. Brotherton. Mr. Speaker, I perceive the Question, whether this Bill shall be committed, arise very much upon a Supposition that seems to be granted, That there is no other Law to try this Person by; and it hath been objected, That before the Statute of Hen. VI. one Witnifs was sufficient: Now, if I flew you that here is a Law in being, and hath continued for several hundred Years, whereby a Man may be tried, and that by one Witnifs, I think it is something that hath not been spoke to yet.

Sir, I ground my Reason and Opinion upon the Authority of the Law, and upon the Historians of all Times, who agree in the Thing, and come down to my Lord Coke, which is printed by Author; and he is express, That there is but one Witnifs, (he treats of what Witniffes are necessary, and he tells you two Witniffes were required by the Common Law for Treason, if the Person was tried by a Jury;) but, says he, if there be but one Witnifs in cafe of Treason, he shall be tried before the Confiable and Marshal. And in treating of the Statute of Hen. VII, which does appoint how Treason beyond Sea shall be tried; say he, that is only where there are but two Witnifses; but if there is but one Witniffes, he shall be tried before the Confiable and Marshal; because, says he, the Statute of Hen. VIII. does not take away that Trial before the Confiable and Marshal; and for that, Sir, there are several Precedents in this Cafe, of Perffons that have been Attainted by a Court-Marshall, and if the Accused was vanquished, he was to be tried by the Jury. Judgment the Accused was if he was found guilty. I am upon a Gentleman's Life, and never was so before, and defice to be never to go again; there have been several Precedents, I say, in this Cafe, and my Lord Coke is express in the Point, and I defer any Gentleman to shew me any Law that hath repealed this.

In cafe of Murder, suppose a Man be wounded upon the Land, and die upon the Sea, and I could shew several Cafes where the Common Law can't try a Man for Jury, but he shall be tried by the Custorm of Merchants before the Statute of Ed. VI, If a Murder be wounded in one Country, and dies in another, he could not be tried. That which I aim at is, to shew you, that though the Common Law should fail, they need not come with a Bill in this Cafe. If two Englishmen beyond Sea fight, and one kill the other, it can't be tried by the Common Law; How then shall it be tried? It must be tried by the Court-Marshall. It was Sir John Anglesey's Cafe in Rief. 11th of Time; and Wnelly's Cafe, and Lord Herbert's Cafe, in L 1st of Time; who (there being but one Witnifs) was accused before the Confiable and Marshal.

Memorandum, [Mr. Brotherton was here interrupted by the great Noise the House made upon the Novelty of the Argument, and did not go on further with it.]

Mr. Papat. Sir, I attended to the Debate of this Day, and have not hitherto troubled you myself, because I did expect to be better informed by this Debate. I think the Substance of the Debate of this Day hath been, not so much to shew us by what Rule we are to go, as to shew us that we have no Rule to go by but our Judgments. Sir, I never had the Honour to sit in Parliament before this Time, and therefore can't quote Precedents of what hath been done in former Parliaments; others have taken a great deal of Pains to shew you, that it is in the Discretion of Gentlemen, and they are only to be satisfied in their Confidences. I am not fund to hear my self speak, and therefore I hope I shall be favourably heard at this Time, and do think I have the more Reason to speak at this Time, from something that fell from a very honourable Gentleman at the Bar: If I do not repeat, I hope he will excuse me, for I do not do it with an ill Design: But I think his Words were to this Effect, That he did not know, but if it was known in the Country, that Gentlemen did give their Judgment against paling of this Bill, it might hinder their Election in future Parliaments. Sir, since there seems to be so great Strefus upon our Determination in this Matter, I hope I may say to you my Reasons why I can't come up to agree in this Bill; and I shall submit it to them, whether they will do me the Honour to chuse me again. I must confess, I do think this is as nice a Cafe as I can pretend to give my Opinion in; and as it is so, I shall delire the best Assurance of the Truth of this Matter, before I give my Opinion for the paling of this Bill.

Sir, you have had before you one Evidence: I will admit him to be as much as a single Evidence can be: As to the Paper of Gordon's Examination, I have heard that and other Matters too, which I shall not repeat. But I do remember, that in the Debate of Yesterday, it was not inquired on to be Evidence: And if not so, I shall only take the Matter as depending before you upon one Evidence or ly.

Sir, it is true, I believe this House, as to its Legislative Proceeding, is not led by the Methods of inferior Courts: But I hope I shall be excused, if in the Methods of Prosecution and Conviction of Offenders, after they have been prescribed by the Wisdom of the Parliament, I hope I shall be excused, if I believe this House can't take away any Person's Life upon less Evidence than inferior Courts could do.

And, 
And, Sir, I shall not enter into any very long Vindication of my self, and my Zeal and Willingness to serve the Government; I never was employed in any other Office; and I think my Actions have been such, that no Body can in any one Thing that has looked otherwise; and when I have said this, I shall trouble you no further about that: But there hath been so much dirt laid upon this Bill, that whoever speaks against it, seems to speak against the Government; because it is said, the passing of it is so necessary for the Support of the Government. And I was the more willing to offer you my Reasons, because, as the Nature of this Debate has been, I can't satisfy my self where my Judgment and Opinion shall rest: For if it be so, that you are not tied to have as much Evidence as inferior Courts, and, as they say, one Evidence is enough, and my Judgment is to be guided by Papers; then they, without any Evidence, may be enough to satisfy: And if you take up with less Evidence than inferior Courts, I can't come to declare how little Evidence may take away a Man's Life.

As to the Prisoner, I know him not; but I think this Bill is for all that he hath to lose, and is for all the best Englishman can lose upon the like Occasion.

Sir, I shall be very tender in giving my Opinion for the Bill, unless it was very clear to me that it was reasonable. Truly I have heard very little of the whole Plot, or of this Matter that hath been examined, or for which others have been executed; my Life has been generally in the Country, and I have not had the Curiosity to buy the Trials; and as this is the first Perfon that hath been called before me, to give my Judgment on, I hope I may be excused for taking this Liberty, upon such Evidence as appears before us, to tell you, I can't give my Consent to this Bill.

Sir William Louther. Sir, you have had a very long Debate in this House, and long Difcourse from the Bar; and though the Council was directed that they should not displeasure the Privileges and Authority of this House, yet, as far as my Judgment carries me, their whole Difcourse was against it: And most of the Gentlemen that have spoke against the Bill, it hath been, because it hath not been adequate to the Proceedings in Wm. Penzler-Hall, because there hath been but one Witness. Sir, if there had been but two Witnesses, this House had not been troubled with it: It is a Cafe of a very extraordinary Nature, and fo required an extraordinary Proceeding.

It hath been questioned by some Gentlemen, whether one Witness be sufficient in this Cafe, or no? Which I wonder at, since a great many have been convicted upon his Evidence, and every one of them has confided; which shows it to be a notorious Truth.

There is another Inference they draw from the Proceedings here; Because a great many of those Precedents of Attainers have been revered, and those with Notes of Ignorancy. If they did consider the Times they were made in, and the Times they were revered in, there might be a great deal of Caufe for it: We find, that it was contrary Facts that revered them, and that makes it never the worfe. And truly, Sir, I do not know but where Circumstances are so notorious, but they are tantamount to a second Witness, as I have heard in Wm. Penzler-Hall, and in Cases of Life too. If a Man be murdered, and two in a Room, and one comes out with a bloody Sword, the Law does presume that Man murdered him, though there is no particular Evidence that he murdered him, but only this Circumstance; and yet the Man's Life is concerned in that Cafe. So that upon the whole, it appears to me that he is guilty, and, I think, nothing can be plainer.

There is another Circumstance, That he fled for it; and that is a Prefumption of a Man's Guilt: For a Man lores his Goods, if he flies for Felony.

Mr. Harley. It would be very unreasonable and impertinent to trouble you long after such a Debate; I shall avoid Repetition of what hath been suggested to you much better from other Persons, than would have been from me.

I own 'tis a Cafe of great Concern, and 'tis my Misfortune that I should ever sit upon a Thing of this Nature; but I will disclaim my Conscience always, and give what Arguments occur to me, why I am against this Bill.

Gentlemen have been pleaded in their Arguments to enter upon the Debate of your Power and Authority, and have made that a part of their Argument; but I think, with Submission, we need not dispute that at all: It is admitted, that there have been Bills of Attainder passed formerly, and your Authority is not under dispute; for the Legislative in all Nations have a Power lodged in them, for the Safety of the Whole.

But your proper Enquiry is, Whether this is such a Cafe as you ought to exercise this extraordinary Power; some regum fab gravitate regno: Though you have this absolute Authority, yet 'tis to be executed by the Rules of Reason, and by the Rules (for such there are) of eternal Justice; and I took upon this as one that is inviolable, That no Man can forfeit his Life, in such a Cafe as this is, without two Witnesses, many adhering to that, because I have heard nothing in this Debate that can make me quit that Maxim: And 'tis such an ancient Land-mark, that I will never draw a Caufe upon me, and my Polity, for removing of it. I beg leave that I speak with this Earnestness to you.

Gentlemen have been pleaded to make it part of their Arguments, The great Danger the Government is in, if this Bill does not succeed. I will not use many Words; but I think that Argument ought not to be taken in the gross, but to be examined, Whether this Argument, of the Hazard of the Government, is of equal Poize for you to break the eternal Rules of Justice. I won't quote the Cafe before; every Gentleman knows it, (though there was two Witnesses in that Cafe) to put an innocent Perfon to Death) where it is urged, the Roman will come and take our State and Nation: But with how much Reason that was urged, every Body knows; and how far the Government is now in Danger. Let us consider, Is this Gentleman out of your Power? Is the Government in Danger of a Man that is your Prisoner? Is he in open Rebellion against you? If this Law does not pass, if you have not your Hands in his Blood, is he not under the Power of the Law? Did not he tell you fo himself?

Every Gentleman ought to have a Zeal for the Government, and I wish it was visible in every Thing else; but if that be so, give us leave also to speak with Zeal for our Liberty, and ancient Constitution.
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fication. The Argument is turned two Ways: On one Side you are told, That this probably may make him confess something; and by others, he is to be made an Example of Punishment. This is the first beginning of a Bill of this Nature: But the same Reason that leads you to this, must lead you to all the rest: The same Reason that is urged for this Bill to make him confess, will lead you to bring in a Bill to make him a good Evidence: This every Body must allow to be the Consequence of it.

How does this Bill come before you? It comes before you upon a villainous, scandalous Aper- tion of some great Men; though I know them not all, yet have a great Value for them, and I would make me Cape de la Mer for they were the nearest Relations I had, I would again this Bill upon their Account; and let any one examine the Reason of it.

Sir, I won't run into Precedents; but only be- cause it hath been told you, That the Precedents were made in one Reign by one Faction, and then the Attainders were revered in another Reign by another Faction: There is one occurs to my Mind, which hath been touched at, and is at heart of Infraction to me. There was a Caesin Ed. Ill's Time; there was the Deposition of a King, a King barbarously murdered, and his Son upon the Throne; and there was the Norority of the Factions, for which a great Man was attained in his Son's Reign, and no different Title: and four Years after, a Bill was brought in against the Earl of March: And one of the Articles against him was, That he had procured that Attainder of that noble Lord, under Pretense of some Letter, or Paper, that was signed by him; which, if it was so, says the Record, was no Evidence.

I say this before, Gentlemen, to show them how Times have turned, and Precedents that have been made very unanimously; but in bad Times have been turned to shed the soft Blood in England. It grieves me to my Soul to hear of Mr. Cornb, whose Attainder you have revered, to hear that quoted as a Precedent in this House: 'Tis not whether two Witnisses be the Rule of Wilmingt-Hall, 'tis the Rule of right Reason; and 'tis a Maxim in your Law, Make what Law you will against the Law of God, 'tis void: And Cain is the Law of God, and right Reason.

You must provide for the Country, and when you can't do it by Course of Law, then Armies must do it, when the Courts are shut. I hope Gentlemen will not put a hard Construction upon what I have said; I have done it to discharge a good Confiance.

Mr. Chancellor of the Exchequer. Sir, I am for the Commitment of this Bill, because in my Confin- cence: I think Sir John Fenwick is guilty; and because I think the Power of Parliament may inter- venie in this Matter. And if they have such a Power, I think they may justly exercise it in this Cae.

Gentlemen say, they will not dispute the Power of Parliament; and yet in their Arguments they tell us, we are not to proceed otherwise than ac- cording to the Forms of inferior Courts. And if the Parliament is not to proceed without two Witnisses in the Cafe of Treacon, give me leave to say, there is no room left for a Bill of Attain- der, unless you like the Business in inferior Courts upon your selves: And I am confident, several Gentlemen, if there were two Witnisses, would use it as an Argument, What have you to do with it? Refer it to the ordinary Courts of Ju- tice; I am sure they would be very reasonable. But I do think that Parliament have that Power, and they have always used it; and I believe 'tis for the Advantage of your Constitution. The inferior Courts are to go by the Letter of the Law; and whoever can avoid that, is to escape Punishment there; but the Legislative is not to be cuddled with: And if the Offence be of that Nature, that inferior Courts can't reach it, they can go beyond all Forms to preserve the Government. They this have done, and upon that Principle you fit here. Was it by the Forms of common Jutice below, that you de- clared the Throne to be vacant, and King William to be lawful King? Is it upon the ordinary Rules of Wilmingt-Hall, that his Title does depend? No, it depends upon this Maxim, That the Parliament of England are intrusted for the Whole, and may constitute a Government for the Prefervation of the Whole. And upon the same right Principle that I gave you Vow to declare him rightful and Lawful King, by the same Principles I declare his Enemies to be Traitors.

You are told here, 'tis according to the Law of God and Nature, that there must be two Wit- nisses in Cakes of Treason: I do not pretend much in other Parts of the Law, but I think 'tis our particular Happiness to have this Way of Trial: I think in any other Part of the World, if he had dealt thus with the Government, he would have had another manner of Proceeding against him, than to be condemned by King, Lords, and Commons: But that is your Constitu- tion, but it does not hold in other Parts of the World.

Some Gentlemen lay the Steels of their Argument upon the ill Consequence it may have in another Reign; I would avoid ill Consequences in another Reign as much as I could, but our immediate Care is the preserving of the present Constitution.

But if Gentlemen are apprehensive, that by such an Example, if King James should return, others may be punished; if we may judge what he would do, by what he hath done, he would go another Way to work; if he came to London, he would pro- ceed as his Parry did at Dublis, and attaint all the Protestants in one common Bill; that is the Pre- ceedence he hath set, and he will follow. And therefore in order to prevent that, and in order to punish our Enemies, and to preserve our Constitu- tion and Prerogative of Parliament in all Points; and because I am convinced in my Conscience he is guilty, I shall give my Concurrence for Commit- ment of this Bill.

Col. Granville. Sir, I would not presume to trouble you at this Time of Night, was the Debate upon a less Subject than it is; but since you are going to pronounce Judgment in a Cafe of Life and Death, and that this House is above any Rules, and we have no Precedent for it, but every Gent- leman is to find our private Rules to walk by; the Rule that I shall take tois, That I would deal with Sir John Fenwick as I would have Mankind to deal with me, if I was in Sir John Fenwick's Place, and were indicted of High-Treazon, and were not allowed any Trial, nor the Benefit of making my Defence, according to the known Laws of the Land; I should think my Blood unjustly split, let me be never so guilty.

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The Laws are what are set up for the Defence of every Man: and when once we break through them, whatever our End may be at that Time, and 'tis in a manner seem to justify, as, because 'tis to come at an ill Man; yet pray consider, the bell of Men may be come at as easily as the worst of Men. And what makes me cautious is, That my Hands are guiltles of Blood yet, and I will take care how I begin to dip them in it. And that which will make me cautious in any Cafe of this Nature is, what I read in the Story of the Late Time. That when once a Set of People had begun to dip their Hands in the Blood of my Lord Strafford, nothing would quiet them till they had slain their Hands with Royal Blood. The Laws are the common Defence between the King and the People; but the King is safe when the Laws are most strictly observed.

I shall not pretend to talk of your Power, which hath no other Bounds but your Justice and discretion: and what you think for it, I hope, meet with approbation abroad. And in this Case I shall always be against what is called a trial to day: But I do not think it any; for I do think we are an unfit Court to determine this Matter. We sit in so many Capacities, 'tis hard to distinguish in what Capacity we are here; some are accused, 'tis hard to be accused, and to be a Judge at the same Time. I am sure I am as much concerned as if I was accused my self; and 'tis for my Innocence and Honour that I think my self bound to speak against this Bill. For as no Renunciation shall make me do any Thing that is unjust, so I fear nothing that he can say; and I will never go about to fling his Evidence, by crouning a Bill of Attainder down his Toes.

Besides, 'tis an unfit Thing for any Gentleman who is oblig'd to be of Council for the King; 'tis hard for him to be fo, an fit here. Judge: I think also to proceed in this Manner, is a disreputeful Thing to the King himself, for in this Cafe you turn the Throne of Mercy into the Seat of Judgment. The King, who should have all the Ways to ingratiate himself with his Subjects, you make him, by this Proceeding, to pronounce the Sentence upon himself of a Subject; and 'tis hard to offer a Bill to the King in such a Manner, by which you oblige him either to reject it (which was always look'd upon as an Hardship) or pass Sentence upon this Gentleman, which perhaps his gracious Temper, and his Mercy makes him averse to.

Sir, 'tis too late to give you other Arguments; you have heard a great many better than I can give: But I think this Bill is unjust in it self, and dangerous in its Consequences; and therefore I hope you will not commit it.

Sir, I have not thought to trouble you in this Debate, but only for the Arguments that have been used by some that spoke lately, who seem to say a great Load upon Men, according as they gave their Vote in this Matter, because 'tis in relation to the Blood of a Man. I have considered the Point, I hope, with as much Caution as any Man within these Walls, and hope to act with as strict a Conscience as any Man whatever, and shall be glad to be informed from some Gentlemen, that have laid the Streets so hard upon Religion, how they can flie me, that I do not as strictly, as to all Points of Religion, give my Vote for passing of this Bill, as they would ex-

cuese themselves from it. I must agree with those Gentlemen, that you are no ways bound or limited to the Rules of Hofhmaster-Hall; and therefore what was said upon that To, I did not think worth taking notice of; but when we are told, we are bound up by the Laws of Nature and Religion, and the Law of God, in this Matter, this touches me so nearly, that I must define those Gentlemen to flie me in Scripture the Law that they quote.

If it be the Law of Nature, and the Law of God, that every Man that dies must be convicted by two Witnresses, as an honourable Person observed, I wonder it is not observed by all Christian Nations and Governments, That they are not all governed by this Law; if there be any Direction from the Law of God, that no Man is to die for Treason without two Witnees, but he may suffer for Murder and Felony with one Witnee. Now, I say, I must define the Gentleman that affm's it, that he would be pleased to flie me it in Scripture, for then it will be entirely of his Opinion: But till I hear that very plainly proved, 'tis not within my Reading or Remembrance, and therefore I define it may have no weight. And now I am up, I shall give my Reasons, why I shall give my Vote for this Bill.

The Reason that governs me, is the Preferment of the Government, and the commonwealth under which I live; and which I think I am in the Station wherein I stand bound to prefer, by all the Rules of Justice imaginable. Now if your Law hath bounded inferior Courts, but hath not bounded you in this Matter, though you have paid inferior Courts shall not determine and give Judgment in such a Cafe; yet, I think, you are not bound up fo here: But if the Matter be proved to my Satisfaction, I may give my Judgment according to the Evidence that comes before me, without that Refriction.

But, Sir, this ought not to be done, 'tis said, but upon extraordinary Occasions. You were told, some Time former, of the Cafe of the Duke of Monmouth, but it was stated, that he was attainted because he was in Arms, and could not be come at otherwise: But I think this is a parallel Cafe to that, if not much stronger: for here is a Person that hath been accused, and fully proved to have been in Rebellion, and in treasonable Practices with your Enemies, to bring in an Invasian upon you, and to subvert your Government: and tho' he hath not been proved to have been in that single Act of the Affiasation, yet there is such a Correspondency between one and the other, that I do look upon him as equally guilty of both. Therefore this having been so fully proved, and the Person that stands accused being out of the reach of the common Course of the Law, what, Remedy have you, but to fly to your Legislative Power, to attain him upon the Grounds and Allegations of your Bill, that one Witnee, is withdrawn? And I am very well satisfied, and I think, we may presume 'tis by his own, or his Friends Encouragement and Procurement. And I do take this to be as reasonable a Ground for your Bill, as any Thing in the other Cafe; and I know not what is an extraordinary Cafe, if this, be not one: Is it not an extraordinary Cafe, for a Plot to be laid for the total Subversion of this Constitution, and our Religion for ever, and we can't come at it, to punish it another Way? But it hath been said, the Safety of the Government does
does not depend upon him: If we acquit him, we are to acquit every one alike: I hope the Government does not depend upon him alone; but if you clear him, there is the fame Right to clear any Criminal whatsoever. Sir, since I am brought up upon giving my Judgment in this Matter, (though I come as unwillingly as any body to it) I must go according to my Conscience; and till I can see something of the Law of God, that has been hinted at, made out, I must go according to the Law of my Reason; and that is, that I must be for the Bill.

Lord Norreys, I will not pretend to tell you what the Authority of this House is, 'tis what they please to make it; but I am sure they will ground it upon good Reason; but I think the Reason chiefly given for the Commitment of this Bill, leaves you a Latitude to do what you please, and give no Reason at all; for it is only to say, I am convinced in my Conscience this Man is guilty; no matter upon what Proof, no matter whether any Proof or not, you may believe it from his Life and Conversation, and the Company he keeps, or from his Interests; and that may be Argument enough to find a Man guilty. But till I know a Reason better grounded than this, I cannot be for the Commitment of this Bill.

Sir Christopher Malgrave. I am sure at this Time of Night I am unfit to speak in so great a Matter: I must confess I should not have troubled you, if it had not been in the Cafe of Blood. You have had a great Debate before you of the Power of Parliament, and that hath been sufficiently argued; and I have not Learning enough to give an Opinion on those Points that have not been already quoted: But every body does agree in this, That what Power you have of this kind, is not to be exercised but upon extraordinary Occasions. Now I would be glad to know, What this extraordinary Occasion is?

Every body allows, That Trafalgar is the greatest Crime a Man can be guilty of; and the Charge of this Gentleman is High-Treason: But therefore in this Cafe, must you exercise this Authority? Pray wherein does this Cafe differ from any other Cafe of High-Treason, that an other Person will be prejudicial against the Government? All the Difference I can make of it, consists in two Points; the one is, that he hath prevaricated with the Government; and the other, That Gentleman say he hath been a Means of Preventing his Trial, in which Time an Evidence hath made his Ectase. I will allow you, that 'tis a very great Crime for any one to apeer fo great Men as he hath done; but I would be glad to know, whether by being such an Ingredient, it be sufficient to attract him upon High-Treason upon that Account.

Then as to that of a Witness being gone, Gentlemen have said, They are apt to believe, and there is great Preumption that he hath been the Occasion of this Witness being gone. Is that an Ingredient sufficient, though at present it hath not been proved to you? But if it had been proved, I should not however think that is Trafalgar. Then if this be the only Difference between this Gentleman, and any other Person that shall be prejudicial to subvert the Government, I would know, if there be but one Witness against any Man, for Conspiring against the King, if they may not have recourse to this Precedent, to proceed against him by a Bill of Attainder? For the Argument is, Whoever is endeavouring to subvert the Government, provided there be but one Witness, you are obliged, by virtue of your Legislative Power, to bring a Bill of Attainder against him. And what then? Of what use is the great Care and Wisdom of your Ancestors, and your selves, that where a Crime is so great, and the Punishment so great, there should be two Witnesses?

I was mightily surprizd to hear Gentlemen tell you, That two Witnesses is a Form in your Law, and a Form in inferior Courts. I never could believe that was a Form for according to your Law, no Man shall be declared guilty of Trafalgar, unleas there be two Witnesses against him; so that it gives, in a manner, a Determination to the Crime; that I take to be the Cafe.

A Gentleman told you, That he was fully satisfied by the Proof, that this Gentleman is guilty: But how can a Man satisfy his own Conscience, to condemn any Man by a Law that is subsequent to the Fact? For that is the Cafe; and pray fee the Danger of Precedents: It now will appear upon your Journals, that you have caused to be read a Deposition of a Person that was absent, taken before a Justice of Peace, when the Person accused had no Opportunity to interrogate him; and likewise, that you have heard a Witness as to what a Man swore in the Trial of another Man: All this will appear upon your Books.

And truly, I would be glad to know, if another Age may not be apt to think, that you took these to make good the Defect of another Witness; and then had appeal to you, if you have not admitted of a Testimony, which according to no Law is admitted.

They say you are not tied to the Rules of Wigninger-Hall, not their Forms. Is there any Law in being, that says, a Judge may hear a Witness as to what was sworn upon the Trial of another Person, to condemn him that was not Party to that Trial? If there be no such Law, then the Rule is founded upon Justice and common Right, that nothing shall be brought against a Man when a Man was not a Party when the Oath was made, and he had no Opportunity to examine him.

I thought it my Duty to tell you, That when you have made this Precedent, if any Person shall be accused of Trafalgar but by one Witness, there will be the fame Reafon to proceed thus against him.

Then (being a little before Eleven o'Clock at Night) the Judge was put, Whether the Bill should be committed? And the House divided:

Ayes, 182.
Noes, 128.
So it proved in the Affirmative, and the Bill was committed to a Committee of the whole House.

Veneris 20 die Novembris, 1696.

The House refrained into a Committee of the whole House upon the said Bill, and several Words being added as Amendment to the said Bill, to signify Sir John Fenwick's being Guilty, at last the Words that were agreed on, were these [Of which Trafalgar the said Sir John Fenwick was accused].
1696. Parl. upon a Bill of Attainder for High-Treason. 119

is guilty: It was also proposed to the Consideration of the said Committee, Whether the Lords Spiritual should stand in the Defining Part? But upon looking into the several Acts of Attainder, it appeared they were unacquainted in all those Acts of Attainder, in the enacting Part; and so the Committee was satisfied in that Point, and they were left to stand in the Bill by general Consent; and the Bill was ordered to be reported to the House; and afterwards, upon the Report, the House agreed with the Committee in the above-said Amendment of the Words, importing Sir John Fenwick's being guilty.

Mersrovii 25 die Novembris, 1696.

The said Bill against Sir John Fenwick was read the third Time.

Mr. Methuen. Mr. Speaker, I have not troubled you in any of this long Debate, and do it unwillingly now; but I do think it every Man's Duty, in a Cafe of this great Importance, freely to own his Opinion, and give his Reasons for it.

The greatest part of the Debate hath run upon two Things: The Inconvenience of Bills of Attainder, and the having them too frequent; that it is necessary to have them sometimes, that any Person might not think they are not out of reach, if they could evade the Laws that were made to protect the People.

I think, in general, that this Bill, as every other, ought to have its Fate upon the particular Circumstances before you; and whoever gives his Affirmative to this Bill, ought to be convinced, That Sir John Fenwick is guilty of High-Treason; and also, That there are extraordinary Reasons why the Nation does prosecute him in so extraordinary Manner; and I do think one of these is not sufficient alone.

If between the Indictment and Arraignment, or Trial, Gosport, Falmouth, and Plymouth, there had been no other Reason for Attaining Sir John Fenwick, only the Defect of his Evidence, I should not have thought it a sufficient Reason, though we should have had an Opportunity of being informed of his particular Evidence, and believed him guilty; and if Sir John Fenwick does not appear guilty, I do not think any Reason of State, though he hath prevaricated, and behaved himself to the Distinction of every Body; therefore, I think, there must be both these.

You have heard the Evidence; I shall not repeat it, but rather come to these Things that did follow, and on which, Sir John Fenwick's Cafe; only thus, you have received the Evidence against Sir John Fenwick, and given him Liberty to make his Defence, and have fully heard him; which I think hath altered the Reason of a great many Precedents cited from my Lord Coke, and other Authors.

That which distinguishes this Cafe, is, the great Danger the Nation was in from this Conspicacy, and the Smile the Nation hath had of it; and I find, by the general Opinion of all Persons, this Danger is not at an end.

There seems likewise to be an Opinion as general, That Sir John Fenwick could have contributed to your Safety by a Discovery.

The next Circumstance, That Sir John Fenwick knowing of this, and the Expectation the Nation had from him, for that he could have contributed to your Safety, hath made use of that to put off his Trial; and at last, has made such a Paper, as does shew an Inclination to do you all the Prejudice he can, and tended to the creating of new Dangers; and by this Means Sir John Fenwick, against whom there was two Witnessses when he was indicted, hath delayed his Trial, so that now there is but one; and there is a violent Premature, That this Person is withdrawn by the Practice of Sir John Fenwick's Friends.

There remains yet with me as great a Consideration as any of these, the publick Restitution of the Nation for such his Behaviour is the only Means his Practice has left you; and it seems necessary for your Safety, to come the next balt Way to what he could have done.

Against the Evidence that hath been given there have been great Doubts raised; not so much whether it be such Evidence as may incline us to believe him to be guilty; but whether it be such as you should hear in the Capacity you are in; and, whether after it is found, such as it is, that is not such as would convict him upon another Trial. Whether you ought to credit it, and that should influence you to give your Vote for this Bill of Attainder; this is a Doubt that I find weighs generally with them that differ from me in Opinion about this Bill; and therefore I desire leave to speak to that Particular.

'Tis said, That you are trying of Sir John Fenwick; that you are Judges, and that you are both Judges and Jury; and that you are obliged to proceed according to the same Rule, though not the Methods, of Wemyss-Hall; Secundum allegata & probata.

But the State of the Matter, as it appears to me, is, That you are here in your Legislative Power, making a new Law for the Attaining of Sir John Fenwick; and for exempting his particular Cafe, and trying of it (if you will use that Word, though improperly), in which Case the Methods differ from what the Law requires in other Cafes; for this is never to be a Law for any other afterwards.

Methinks this being the State of the Cafe, it quite puts us out of the Method of Trials, and all the Laws that are for limiting Rules for Evidence at Trials in Wemyss-Hall, and other Judicatures; for it must be agreed, the same Rule of Evidence must be observed in other Places as well as Wemyss-Hall, I mean in Impeachments, and it has always been so taken.

This Nation of two Witnessses has so much gained upon some Gentlemen, that we have had some Gentlemen say, That this is required by the Law of Nature, the universal Law of Nature, nay, by the Law of God: And, I think, if it was fo, there would be no doubt but it will oblige us.

But therefore I go to the Bottom of the Matter: That any Man defers to be punished, is because he is Criminal: That this or that Man defers it, is because he is guilty of a Crime, lest his Crime be made evident any Way whatsoever; for whatsoever makes the Truth evident, is, and is accounted in all Laws to be Evidence.

Now
Now as to the Rules for examining any Person, whether he is guilty or not, and the Evidence that is allowed in all Nations, no two Nations agree in the same Evidence for the Trial of Criminals, nor in the Manner of giving the Evidence against them.

Your Trials differ from all other Nations; not only that you are tried by a Jury, which is particular to you, but that the Witnesses are to be produced Face to Face before the Offender; and you have made Laws, that there shall be two Witnesses in Cases of High-Treason; and herein you are the Envvy of all other Nations.

Sir, the Evidence that is to be given against Criminals, differs in the same Nation where the Offences differ; there is a Difference between the Evidence that will convict a Man of Felony, and the Evidence that is to convict a Man of Treason; and the Evidence to convict a Man of the same Crime, hath been different in the same Nation, according to the Reaon of the Law. No doubt, by the Common Law of England, that Evidence was sufficient, which was sufficient to incline the Jury to believe the Person guilty. This before the Statue of Edward VI, though that was made upon great Reaon, and appears to be for the public Good, by the general Approbation it hath received; but I don’t think in your Proceedings here, you are bound by it.

But, Sir, it is said, Shall we that are the Supreme Authority (as we are part of it) go upon our Evidences to satisfy our selves of Sir John Fenwick’s Guilt, than the other Courts? And shall we refer to this extraordinary Way in this Case?

Truly, if it did shacle the Manner of Trials below, I should be very unwilling to do it; but I do make it clear, that it cannot; but on the contrary, I think there is no stronger Argument for your referring to this extraordinary Way, like to that of the Caution which your Law hath provided for the Innocency of all Perons. For if we consider all those Laws that have been made, ’tis plain it must be in the View of our Ancestors, that Criminals might not escape; and the Laws are made for your ordinary Trials, and for those Things that happen unforseen; and your Government hath this Advantage, That they can keep to that which others cannot: For in a very wise Government (as was observed by a Person that sat in this House the last Time this was debated) the Ways of punishing Crimes of this Nature are extraordinary, when Perons are condemned: They are not only unheard, but they are condemned before they are accused; and that is thought necessarry there, which will not be endured here; and yet that Government hath continued so long, and no Endeavours have been to alter it, though so many noble Families have suffered by it, because they are convinced, as to their Constitution, ’tis necessary.

The next Argument is from the Precedent we are about to make; and whatever the other Precedents have been, what you do now will be a Precedent for you and your Perosity; and whiff that is used to make you cautious, and tends to make you consider well, whether it is according to the Duty to your Country to pass this Vote (which no doubt is the only Question before you) ’tis a good Argument.

Sir, if this Precedent shall appear to Pottersy to be a Precedent concerning an innocent Man, or a Person whose Guilt was doubted of, or whose Guilt did not appear, and this Bill should be carried by a prevailing Party, I do agree it was a very ill Precedent: But if the Cafe be, that this Precedent will appear to Pottersy, upon the Truth of the Thing, to be a Precedent made of a Man notoriously guilty; of a Man that had deferved this extraordinary Way of Proceeding, this extraordinary Refinement of the Nation; and that nothing could have hindered this Man from the common Justice of the Nation, but his having endeavoured to clude it in this Matter; and if it appears, that you would not be put off so, but made an Example of this Man, I shall not be sorry ’t should appear to Pottersy; but I believe Pottersy will (as I think they ought) thank you for it.

Sir, I do say for my own Particular, while I am Innocent, I should not think my Life in danger to be judged by 400 English Gentlemen, and the Peers of England, with the Royal Ailent; and when I reflect, I can’t be of Opinion, That the Government could have procured a Parliament to have passed this Bill of Attainder against my Lord Rugoff, or Mr. Cuthlidge, or Mr. Collidge, I don’t think all the Power of the Government could have prevailed with the Parliament to have done it; and here I see that a great many Gentlemen have opposed every Step of this Bill, for fear of making an ill Precedent; yet those Gentlemen do believe in their own private Confidences, that he is guilty; and I can’t think that any Person can be in danger by such a Bill, when Gentlemen oppose this Bill only upon the prudential Part, though they still confess him to be guilty.

All the Conclusion I make to my self is, That I do believe, I am convinced in my Confidence (which I think is sufficient, when I act in the Capacity I now do) that Sir John Fenwick is guilty: But there are Reasons so extraordinary to support this Bill of Attainder, that I do not see how any Person, that is so convinced, can refuse to give his Affirmative to this Bill.

Sir Geoffrey Cafe. Sir, I am very sensible a great deal hath been said upon this Subject; but I think there is something in Duty incumbent upon every Man, especially upon me, who can’t concur with the general Sense of the House, to give my Reasons for my Disagreement; and I will make no use of Arguments but such as I can’t answer my self. A great deal hath been said upon this Debate by Gentlemen learned in the Law; and many of those, though they have said they would not speak as to the Power of Parliament, yet the greatest Part of their Arguments have touched upon your Method of Proceeding, and to shew you how they interfere with the Rules of the House; for great is the Force of Custom and Education: But I acknowledge some have brought us Arguments quite of another frame.

This is a Matter of so extraordinary Importance, that I think it proper to consider what Rules we have to go by; but I raise the Punishment of Offenders and Criminals to be the necessary Support of all Governments whatsoever, without which no Government can continue; but all Societies of Men have fashioned to themselves some Rules, whereby it may be known, whether Offenders are guilty or no.
It is the Custom of our Nation, to have two positive Witnesses to prove Treason. Now it may be imagined, that I make use of this as an Argument, that we are tied up to these Rules: No, I am not of that Opinion, that we are bound by the Rules of any Society whatsoever. The Parliament have a Power to abrogate all Laws that they have passed, if they think good; and so certainly cannot be tied up by any Rules now in being. But, Sir, there are the eternal Rules of Equity, and Justice, and Right Reason, and Conscience; and these, I think, are unalterable, and never to be swerv'd from; and therefore I shall take the Liberty to see how far agreeable our Proceedings are to these Rules.

Sir, I do look upon it, that 'tis a Rule agreeable to what I speak of, that no Man shall be accused by him know not whom, and that no Man shall be accused, but that the Evidence against him, and he, should be confronted, and brought Face to Face. I am one of those that believe Sir John Fenwick to be guilty; and there is clear Proof of it by one Witness; and you have added this Inditement that is found: But I must needs own, that I think that to be so far from giving any Addition or Strength to the Evidence, that when that is brought in, I look upon the Scales to be lighter than they were before; for if any Record or Writing that is sworn to behind a Man's Back, shall be brought here to supply another Part of the Evidence (and if not so, why is it brought here?) And if that be to be interpreted to make up a Part of the Evidence, I do, by parallel Reason, argue, that the like may make up the Whole at one Time or another; and may be so far made use of, that any profligate Knave, that gives Information before a Juicife of Peace, or a Secretary of State, this may rife against any Man what is done by him, and is dangerous to the Government; or a Perfon may be accused for his good Service in this Reign, and this may be set up against him, and he run the Hazard of his Life.

Then, Sir, as to the Necessity of this Matter, I must confess, that tho' I think that brought this Matter before us, are much wiser than I; and therefore I will not examine what Reason they had to do it: But it is so little agreeable to me, I wish it had not come here. But is it to be suppos'd, that your Government is in hazard of any Man that is fall in Newgate? Can any Man think, that Sir John Fenwick can do any Thing in his Condi- tion to hazard it? Can you expect that a Man that hath been Six Months in Prison, and no Body came at him, that he may make such a Discovery as may be worthy your white? But suppose you had a Man of Invention, Practice, what a Spur do you put it to? May not a Man of Paris when he hath no other Way to save himself, may not he name such a Plot, as may make the best Subjects in England tremble?

Why then, Sir, I do say, by this you are in a very dangerous Way touffer by the Invention of any Man: And suppose he should be so ignorant, as to know nothing; or so great a Blockhead, to be able to invent nothing, would you hang him either for Ignorance or Intolliency? I must confess, I read the Conferments of this for the Nation in general, and for our Polity, 'Tis not Sir John Fenwick's Life I argue for, I do not think it worth a Debate in this House, nor the Confermen- tion of to granted an Assembly; but I do say, if this Method of Proceeding be warranted by an English Parliament, there is an End to the Defence of any Man living, be he never so innocent.

Sir, I remember I heard it mentioned on the other Side of the Way, by an honourable Perfon, who never lets any Argument want its Weight; That King James attainted a great Number of Perfons in a Catalogue, in a Lump. Sir, I am not afraid of what arbitrary Princes do, nor of an Irish Parliament; but I am afraid of what shall be done here: I am concerned for the Honour of your Proceedings, that it may not be a Precedent to a future Parliament in an ill Reign, which I am satisfied you would not do. I had some other Thoughts, which I cannot recollect.

Mr. Pleyd, the Speaker's Son, Sir, the worthy Gentleman that spoke first upon this Debate, calls me up: He said, that he thought in this Matter, every one ought to give the Reasons of his Opinion; And in giving the Reasons of my Opinion, I do solemnly protest, I do it with the same Sincerity as I would do, if I was upon my Oath, and of a Jury.

The worthy Gentleman said, That if there could be any Danger from this Precedent, that an innocent Man might lose his Life, he would not be for it. I desire that he would consider, whether there be almost any Influences of any innocent Men that have lost their Lives, but what has proceeded from Precedents that have begun upon guilty Men. The same Gentleman told you, that it is not possible that Sir John Fenwick be guilty, no other Consideration ought to move us to be for this Bill.

Now the Reason I am against this Bill is, because it does not appear to me, from the Evidence that hath been given at the Bar, that Sir John Fenwick is guilty. And I do think, that which is not legal Evidence is no Evidence; and I do think, that all the Lawyers that have spoke in this Matter, have allowed it to be no legal Evidence. And I define Gentlemen with it, if it has not been thought reasonable, that Men should be convicted upon such Evidence, why now it should be said to be necessary? I think the Saying of my Lord Strafford upon his Trial was this: If the Pilot was to direct a Ship in a dangerous Sea, and there was no Buoy to direct his Course, if he there split his Ship, it was excusable; but if there was a Buoy up, then he was accountable for it.

Now, comparing our Government to the Sea, there have been many Rocks and Sands, and many Men have lost their Lives by them; but the Treason Bill seems to be a Buoy to avoid that Mischiefe for the future. Now if we split upon these Rocks, I shall think we are but ill Pilots. Upon a former Debate we were told, we are not tied up to the Rules of Wigtunburgh, but it was sufficient to justify a Man in giving his Vote for this Bill, that he was satisfied that Sir John Fenwick was guilty. See the Consequences of that, in Things that I have as much believed as I do this, I have found my self mistaken.

When a Jury acts according to legal Evidence, that they have no Reason to mistrust: When a Jury finds according to legal Evidence, they are in no manner of blame: And if this Man be innocent, when you have taken away his Life, and his Estate, and ruined his Family, all that you have to say for it, is, That you have acted according to the best of your own Understandings, guided by your own private Opinion.

Were this the Case of Sir John Fenwick only, and I not to give my Vote, I reckon he is de-
slicable, and because I believe him to be a Traitor, and I think the worse of him for the Part he hath aforesaid since he was in Custody, I should not concern my self about it. But when I speak against this Bill, I speak on the Behalf of all those who may hereafter suffer by such a Precedent as this. If those precedents that have been urged, don't come near this Point. And though the Power of the Parliament is above that of other Courts, yet there hath been no Precedent that comes up to this. That we should pass a Bill to attain Sir John Fenwick, because he will not give Evidence, or there is no Evidence against him. If Sir John Fenwick be to be hang'd, because there is but one Evidence against him, any Man in the World may; and then I think every Man's Life depend upon it, whether this House do like him or not. Consider what a Reverse of Opinion this will be, one what former Parliaments have given in Cases of the like Nature. I think if this Bill does pass, every Man's Life will be as precarious as his Election.

We have been told, how much Danger the Government will be in, if this Bill does not pass. I have as much Zeal for this Government as any Man; but all the Government is concerned, is, That a Man that you think a Traitor should live. And I do think the Government is no more concerned in his Life, than in the Landing of any Jackestie in England. But on the other hand, I think the Lives and Liberties of the Subjects of England are concerned; and, by this Bill, you will make all their Lives and Liberties precarious.

I am not for bringing the Blood of Sir John Fenwick upon me, or my Pottency; nor can I consent to make a Precedent, that a Man may be hang'd without Evidence.

Lord Carlisle. The worthy Member that spake last, but one, told you, That he thought the Life of Sir John Fenwick was not worth the Consideration of this Assembly; I do differ from him in that. If the Scripture tells us, That the most insignificant Creature does not fall without God Almighty's Consideration, I think the Life of a Gentleman may be thought worth ours.

The worthy Gentleman that spake last, told us, That he did believe in his Confidence Sir John Fenwick to be a Traitor: But because he had found himself mistaken formerly, when he believed Things with the Name appearing Certainty, therefore he may be mistaken now. I hope Gentlemen will not pres a Argument upon our Judgments, from Precedents that are only Mistakes: I do agree, That any Man may be mistaken in a Thing which at that Time he thinks himself most certain of; but till that Mistake appears, I say, it ought not to make him doubt of any Thing that he does clearly and distinctly perceive. If otherwise, there is an End of all Religion and Law, and it vitiates the Foundation of the most certain Belief a Man can entertain.

As it appears to me, some Gentlemen seem to lay a greater Stress on some Things than they deserve, and are not pleased to answer some Arguments; and therefore I define leave to speak to two or three Points in short. I shall not say any Thing of the Authority of Parliaments, it speaks itself; nor of the different Precedents of our Proceedings, and of inferior Courts; that seems to be agreed: But I shall apply myself particularly to mention some Things upon Sir John Fenwick's Cafe, and in that take Care, as near as I can, not to trouble you with any Thing I have laid upon this Subject.

I can't but observe, That every Gentleman that speaks against this Bill, begins with an Introduction, but he believes it; but I believe not, what he saith from what amounteth to me: I hope they will explain that they are not only a loose Vanity, but a loose a little. But to the Point: As to Sir John Fenwick's Cafe, I did take the Liberty in a former Debate to observe, That it was not only a Conspiring the lawful King of England, and had such Parts in it, but also in bringing in a tyrannical and foreign Power upon you. But there is one Consideration I did not mention then, because I thought what I said carried so great Weight, it need not be so. I do, not only as a Christian, but as a Subject of this Government, against which I have committed a Crime, the highest Nature; but I will say, as a Man of Honour, that he hath acted contrary to the Rules of Honour. I think Sir John Fenwick had made a much better Figure, if he had appeared in Arms in Florida, where he might have charged this Prince at the Head of his Troops, than haughtily have contrived his Death in this Manner.

Sir, I have only one Thing more that I desire to speak to; for what I say is more for my own Information, than to define any Man's Opinion further than he agrees with it. I mean, that none but those who have likewis owned, That if they thought this an extraordinary Cafe, they would be for this Bill. I do say, as it appears to me, I do think, if ever there was an extraordinary Cafe, this is one; and if ever any Government was in Danger, this is, or may be, upon your Resolution to Day. A great deal of Stress has been laid upon this Argument, That Sir John Fenwick is in Hold: I take that to be nothing, for they keep a Combination together still. Why Rewards and Punishments that all Governments are supported. Robberies, that were so common in France, that you could not walk after it was dark, by Punishments they have been brought to that, that you may ride from one end of it to another with a Purse of Gold in your hand. And if you think it a trifling Matter, that wicked Men that have such Inclinations should escape, I don't doubt but you may have Plots every Day.

I don't doubt, but this Gentleman knows a great deal that he hath laid before you. I would not be thought to pres it as an Argument that he should be condemned, because he don't consider it; but I will be bold to lay it, if he does know of a great many Perfections that have been concerned in this Business, if he knows of a Rising that was designed, when this Conspiracy was to be executed (and it may be executed still, if Things shall be ripe for it); I say, though you keep him in Hold, it will be an Encouragement to them to go on in the Cause, in the owning of Arms, &c. I think the Matter before you is not the confines of England, and the Fate of Europe, and of all your Pottency: I am sure it is; And give me leave to lay it to you; one Thing that is Matter of Fact, There are those Stories inferred abroad, and those Matters of Fact attested, with regard to a Conspiring, and reviling this House, that are not fit for me to repeat. But your Enemies Left Year, before the breaking out of this Conspiracy, had the same fate of Meetings, and the same fate of Discourses, as they have now. I will end with protesting to you, That I deal with Sir John Fenwick with the same Candour and
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and Honour, as I shall always desire to be dealt with my self.

Sir Godfrey Copley. That noble Lord misunderstood what I said, as to the small Value I put up

on Sir John Fenwick: I did say, that Sir John Fenwick, confederated in his fingle Capacity, I did

not think it was worth the while of this House to act in their Legislative Capacity upon him.

Sir Charles Cartwright. I think this Bill is of very great Moment, and ought well to be considered before it passes; for when it is passed, it will be too late to retrieve the ill Consequences which may attend it: There are few of the Crimes in the World, I think it a hard Matter to arrive at the Truth.

"I'is not long ago there was a Plot contrived by one Young, and others, against the Bishop of Rochester; and so cunningly contrived, That if a Bill of Attainder had been brought in against the Bishop of Rochester, before the Truth had been discovered, I do not know whether or not that matter had been the Consequence of it. I suppose no body questions the Truth of this Plot; but God forbid that for the thy Soul hath been named for it should be guilty. It may be true, That there was such a Meeting at Sir John Fenwick is accused of being at, and yet Sir John Fenwick might not be there; and I do not think it sufficiently proved, and therefore I can't give my Consent to this Bill.

Mrs. Manley. Sir, I have, as well as I could, attended to this Debate in this Matter; and I did not trouble you in the last Debate, because I was willing to take all the Opportunities I could to inform my self.

'Tis to me an extraordinary Thing, not only for the Matter, but Manner of your Proceedings; which, considering all Circumstances, appears to me to be not only not common but unprecedented; and as we are in all this Matter Judges, so I hope we shall apply our selves to consider of it with that Temper, as may lead us to give a right Judgment. And I had never so great Obligations upon me, and Dependencies, though from the Crown, I would lay them by, at least they should not influence my Judgment in this Matter.

We are to pass Judgment in a Matter of Life and Death upon this Person; and 'tis urgent we should do it, because the common Court of Justice will not reach him for the Crime alleged against him, which is High-Treason; and the Species of that Treason, as it is laid in the Indictment, is, &c.

Sir, the Evidence that hath been given to support it, hath been the Affirmation of a single Witness at the Bar: Indeed other Things have been alleged in the Bill; but, as hath been said in "Wilmington-Hall" upon another Occasion, they look like Pepper and Salt to me; for in themselves they are not Crimes (I speak with Submission to your Judgments) at least to bear Company with an Accusation of High-Treason.

As to the Evidence; first, Captain Parter tells you, That Sir John Fenwick was at a Meeting at the King's Head, and at Mrs. Manleys afterwards, where there were very many Conferences, and Charles was directed to go into France; but the End of that is not proved; for the Witnesses that told you of those Meetings, did not tell you, as I observed, that Charles did go to France; and what he said upon other Occasions, is no Evidence to me. And though we are not tied up to the Rules of Wilmington-Hall, I am so young a Member, I know not what Methods are observed in Parliament, that I may in some measure make them a Rule to me.

The Law of England requires two Witnesses upon the greatest Reasone; and 'tis not only the Policy of England, but the general Confect (in this Case) of the whole World, and it is grounded upon the Law of God. It was objected by an honourable Gentleman the other Day, to a Gentleman, that he said the Law of God required two Witnesses. A Gentleman who is very near allied to one, from whom he might have learned this Information, if he had made a Care to enquire, to know where it was to be found; If he will look into "Handers and Dunsenatomy", there are three particular Texts very plain in it. The Reasone of this is illustrated in the Story of "Saffanub"; her Safety depended upon it: And the "Jesus", when they procured our Saviour, though they wanted no Malice, nor nothing to animate them, to put him to Death, yet St. Matthew tells us, at last there was two Witnesses found against him: And this being the Law of the Land, and the Law of God, must be my Rule; I must have this Matter proved against Sir John Fenwick, as full as the Law of the Land, and the Law of God requires. The other Evidence brought to maintain this Bill, is what is sworn by "Gentame" before a Justice of Peace, and the Account of the Evidence given by Godman to the Grand-Jury, which I must confess I declare I am very far from being convinced ought to have weight with us: But, I think, they ought lay a great weight upon it, who give their Vote for this Bill; or otherwise they must give their Vote upon the Testimony of one Witness.

The Reason for this extraordinary Proceeding is, 'tis urgent, There is a Necessity for it; the Plot will be lost else, say some; Sir John Fenwick, says others, will escape else. As for the Plot, I wish to God there was no such Thing; but 'tis probable the left Way of ending this Plot would be, if his Majesty in his Wisdom thought fit to interfere with his Mercy and Grace at this Time; and better than for the Legislative Power, in an extraordinary Manner, to take off a Person against whom there is not a legal Evidence. Gentlemen say, they are convinced in their Consciences; but I will appeal to their Consciences, whether there be legal Proof against him; and shall we then interfere in an extraordinary Manner, take away his Life?

No Man pretends to answer, but that this Proceeding may be dangerous to Popery; If he had any Security this might be done without that Danger, it might be some Encouragement to Gentlemen to come into it; but since it may be dangerous, are not we, who are intrusted by the People, to have an equal Care of the Liberty of the People? We are to take Care of his Majesty's Life and Government; and the Reason is, because upon him, and his Government, the publick Safety does depend. 'Tis Salus Populi, is the great Reason that the Law takes such Care of the King; and as we are to do nothing to the Detriment of the King, so we are to do nothing for the King, that may be of Detriment to the People. Therefore the Honourable Lord has been pleaded to say.

We are not yet out of Danger: I am forry to hear it, and could not think it, when so noble a Lord is so near the King, and hath to great a Share in taking Care of the publick Safety. But sure, nothing can happen from this Peron; there hath been Care taken he should have no Conversation.
with any body: If I thought there was a Hazard to the Government, or to the King, by any Way to secure us, but taking away this Gentleman, I think the Result here that would make me go counter to my own Reason and Judgment. But I can't be of Opinion, that a Man of Sir John Fortwicke's Fize, who in his last Circumstances indeed, is a Gentleman by Birth, and hath a Gentleman's Fortune, but is now in a great measure without his Eftate; so his Fortune can't do any hurt, and his Alliance I suppose is not considerable enough to do any neither.

Then as his Circumstances do not make him so considerable as to do us any hurt, let us take care, that we do not in any case, by his Blood, wound our fellowes.

Gentlemen lay but little Stress upon the Danger of the Proceeding; I do lay more; and this chiefly upon that Reason I can come up to be for this Bill. I would not that to so good a Parliament should lay the Foundation of any, by which, in after Ages, the best Men in England may suffer. 'Tis said, an ill Parliament will not want a Precedent, but will make use of their Power; but they will fall sooner into, if led by a good Parliament.

Sir, This is a Matter I would not have premised to have troubled you in; for I can't think any Thing here, that I have any weight with any one that is not my Opinion: But an Englishman, and as I have the Honour to be of this House, when a Thing of this Nature comes before us, and I am to give my Opinion as a Judge in it, I was willing to give my Reafon for my Opinion. I think this Bill is unprececedented; and you will give me leave to say, it appears to me to be unreasonable, I think it contrary to the fundamental Rules of Reafon and Justice; I doubt it may be dangerous to our Constitution; and I fear future Ages may have Reafon to repent what we do; and therefore I am against this Bill, and I hope it will not pass.

Sir William Strickland, Sir, I do affume you I shall not in any Thing of this Bill, or any Thing else, run counter to my Confeience or Judgment; but I dothink, and I think few deny it, I do think in my Confeience that Sir John Fortwicke is guilty; and thinking so, I ought to condemn him. I do think, if we should spare this Gentleman for want of Form, as they call it, now we are in our Legislative Capacity, and there should be any ill Effects of it; and other People, by thinking they might avoid Punishment by the Forms of Hofpitaler-Hall, should have the like Imaginations against his SECURITY, and they should take Effect; I think I should think myself in a great measure guilty of that Misfortune. I think the Kingdom is concerned, and the King's Preference, in this Bill, and I hope you will pas it.

Mr. Dolben. Mr. Speaker, I am against paffing of this Bill; and I shall, with as much brevity as I can, lay before you my Reasons, why I am against it; and probably I should not have troubled the House with them, but that I think it necessary to justify my Opinion in a Cafe of this importance.

I do not think that the Cafe is that charged upon Sir John Fortwicke in Over-Ac of High Treafon, within the 25th of Edw. III.; though I must take leave to fay, That a Judgment upon a Cafe, at leaft as strong as this, has lately been very much arraigned and controverted: But 'tis not my intent to dispute the Nature of this Cafe; for I am perjured, That to conftate how to procure an Indictment of this Kingdom with foreign Forces, is an Over-Ac of Compelling the Subjects of this Kingi, and I do think this Cafe does amount to such an Over-Ac. But I beg leave to recite, How far Over-Acs of this Nature, which fall directly within any Species of Treafon mentioned in the 25th of Edw. III. how far such Treafons are cognizable in Parliament, and with the Intent of that Statute: Indeed, that they are cognizable by the absolute Power of Parliament, there is no doubt.

Sir, That Statute doth first enumerate several Species or Branches of Fals, which it says shall be adjudged Treafon, that is, in the Courts of Judiciary, in order that it goes on, and says, If any other Cafe, Stipulated Treafon, not specified in that Act, doth happen before any Justice, the Juftices shall try it without any going to Judgment of the Treafon, till the Cause be fixed and declared before the King and his Parliament, whether it ought to be adjudged Treafon or Felony. Now, Sir, with Submission, this is a great Argument, that the Intention of those that made this Law, was, That these Treafons, which were directly under any of these Particulars enumerated by the Statute, that they should be left and be appropriated to the Deci- sion of the inferior Courts; but that Fals of another Nature, which did not come under the Particulars contained in the Cafe of high Treafon, Offences, and Misbehaviour of Magistrates and great Men, and the like; those indeed should be referred for the Consideration and Judgment of the Parliament, who are only a Match for powerful Offenders, whom the common Justice of the Kingdom can't grapple with. And as this seems to be the Intention of the Makers of the A6, so I think the Intences generally have been preutant to that Institution; for I know of but one single Instance of any one that was attainted by Bill for any Treafon that was contained under any Species enumerated in the 25th Edw. III. 'Tis true, where Perfons have been out of the reach of the Law in open Treafon, or Bed from Juftice; in these Cases the Parliament have thought fit to attain them; as in the Cafe of Sir John Martineau, and others made an Efpae out of the Tower; and the Cafe of the Regicides; and likewise the Cafe of the Duke of Monmouth, who was in open Rebellion. But I say, that I have not found in my Readings, upon the left Search I could make, where any that were in Custody were attainted by Bill for any Treafon within 25 Edw. III. and that was the Cafe of Perhams; but I think there is no Precedent of any Man, who is not only in Custo- dy, but hath been indicted, arraigned, and tried, and hath put himself upon his Country for his Trials, and where Perhams against the Person accused, was to be convicted, or acquitted, by the Verdict of twelve Men; I never heard of any Instance, when all the Proceedings a Person was taken off from this Trial, and declar'd the Benefit of the Judge- ment of his Peer, and the Benefit of his Chal- lengers, and destroyed, and cut off unjustly by an Act made on purpose, or by false fears: I never met with any Instance like it, unless it be that of my Lord Strafford, and I believe no body will cite that, if it reliek upon the Preamble of the Act for recovering his Attainder. For in the Pro- mable, 'tis said, That the turbulent Party did at- tempt the procuring of that Act, on purpose to condemn him. This shows the Opinion of our
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Predecessors in relation to Proceedings of this sort; they oftentimes it contrary to the fundamental Rules of Justice and Right, which Parliaments, as well as other Courts, must be governed by.

Roger Mortimer was attainted, and afterwards his Attainder was reversed; and the Reason declared, because he was attainted against the good Laws and Customs of the Kingdom.

Forbears, that I mentioned before; and declared for the future, That it should be, &c.

Another Attainder there was of Sir Thomas Hay; but that was reversed, and declared to be against all Law. Then there are the Attainders of H. VIII’s Time; I shall not particularize them; but believe, that all the History of those Times, and all the Books, condemned them, as Proceedings against all Law and Justice. There is the Statute of 5 Edw. VI. c. 12, which directs directly levelled against those Attainders in the preceding Reign, for it says, That the Proceedings in King H. VIII’s Time, were grounded upon Laws that were extraneous, and absurd; and therefore, that there might be no Proceedings of that kind for the future, it reduces all Treasons to the ancient Standard of 25 Edw. III. and goes on, and enacts, That no Man shall be convicted or condemned for Treason, but upon the Testimony of two lawful Witnesses.

Now I take that to be a general Law, and to extend to all Convictions and Condemnations for Treason; and can’t but declare my Opinion of it; That it must extend to Bills of Attainder, since those are the principal and most powerful Convictions and Condemnations; and if that Statute does extend to Bills of Treason, then perhaps, whether a Bill of Attainder, if unbacked by such Evidence as the Statute requires? There was indeed one lawful Writs produced; but instead of the other, they have only produced a Record between Parties not concerned in this Bill, and the Depositions of a Person, whether living or dead was offered; and I believe no Body will lay those Depositions will be equivalent to a second Writs.

I do believe a great many Gentlemen are of Opinion, That those Rules of Evidence are not to guide you here: But I beg Pardon that I can’t possibly be of that Opinion; I rather incline to my Lord Chief Justice’s Opinion, That though we are not bound by the Forms of Law, yet we are bound by the Rules of Law; every Body allows we are bound as to the Nature of the Fact, every Body will take himself bound by the Statute of 25 Edw. III. to form his Judgment as to the Fact: Why are not we then bound by those Acts? Likewise as to the Evidence, and the Proof of the Fact? It 25 Edw. III. being, as to us, as to the Evidence of that Fact? But I say those Gentlemen, if there be not two Writs, that is from Sir John Pownall or his Agents. Sir, no Gentleman shall say, there has been any Proof of that; the very Bill does not charge him with it: But taking it for granted, what shall follow upon that? Shall it therefore follow, that Sir John Pownall shall immediately be put to Death? No, God forbid! I think there is no Party between the Crime of seducing away a Writs, and the Judgment of Death: But I think this a more reasonable and natural Inference to be made, That because Sir John Pownall had seduced away a Writs, therefore it is just to make a Law, that the Depositions of that Writs should be of as good Force and Effect, as if Goodman was here, to give it credit; for then you will not take from him the Benefit of his Trial, nor the Benefit of his Challenges, which is the Birthright of every Englishman.

And on this Thing I will say further: These Bills of Attainder are like Siphon’s Stone, they have rolled back upon those that have been the Promoters of them. ’Tis known, that my Lord Cran- well was the first Man that promoted them in H. VIII’s Time; and the Advice that he gave his Ma- ster for the Ruin of others, proved fatal to himself.

Sir, this is the last Time we shall have the Opportunity of considering this Matter; I must take leave to declare, That my Opinion is, That if I confer to the passing of this Bill against Sir John Pownall’s Life, upon any other Grounds than such as are entirely agreeable, and justifiable by the Laws of God and Man, I am guilty of the Death of Sir John Pownall. I am not satisfied that I can give a just Conquest to this Bill upon these Grounds, and therefore I beg leave to be against it.

Sir Edw. Seymour, Mr. Speaker, you all know I have borne my Testimony against this Bill, being not perjured that it is just: Now we are come to the finishing Part of it; and I shall lay before you theofe Reasons that prevail with me, and sub- mit them to the Judgment of the House; and if I am more tedious than I used to be, I hope the Occasion is such, that you will pardon me; for I will endeavour to contract my self into as near a Compass as I can.

I shall not trouble you with any Arguments that have been made before your Majestie; nor shall I enter into the Examination of Paragraphs; a great many have been laid before you, and a great many of them have been refrained, most of them; and the Reasons why they have been refrained, because the Pertons condemned have not had the due Benefit of the Law: And if that be a good Reason for reverting of such an Attainder, ’tis a good Reason why you should not do it.

I can’t but take Notice, That the Beginning of this Bill in the House of Commons is the first Step of this kind, that has been made in Parliament, except that of the Duke of Monmouth; and the Reason of it, I take to be this, because you hear not upon Oath; you condemn not upon Oath: You, nor the Party under Accusation have that Advantage against a forsworn Evidence, as there is in the other House; the Method has been to pass such Bills in the House of Lords, and trans- mit them hither, upon which you then judge.

I think, in this Cafe you have no Evidence; and instead of two Writs, you have no Writs at all; for as to Goodman, De non apparentibus & non existentibus cedam eum de ratione. As to Parter, he hath been examined: But when you consider, that he was a Peron engaged in this Conspiracy, and that he had no Repentance of his Crime till he was discovered, and then he comes to be an Evi- dence, how far that shall sway, every Man must allow, that every Man must submit to you: But thus much I may say, every Man shall allow me, that in far less Cafe no Man that does swear for himself, or upon his own Account, it is to be admitted as an Evidence. If a Rochbery be committed in an Hundred, though a Man be but to pay a Groat towards it, he shall not be an Evidence; how much more then in a Cafe, when a Man comes to swear to take away another Man’s Life to live his own; for he
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is not in the Condition of a Freeman, who gives his Evidence without check or control, but he is drudging on for his Pardon, as the Council told you, which depends according to the Evidence he does give or not give.

For my Part, I can't go so far as some Gentlemen have done, to say Sir John Fenwick is guilty: For where there is no Law, there is no Transgression; a Man that is guilty, must be guilty according to the Law: And the Law hath required and said, That there shall be no Treason but what is proved by two Witneces, and here it appears that you have not one. The same Law that calls it Treason, says it shall be so proved: Then if you pass this Bill, you make that Treason which before was not Treason, and that Law, the Law does require two Witneces, and there is divine Authority for it too: It hath been hinted at, the Place in Newberri, No Man is to die upon single Evidence; and it says, Those are the Statutes you shall observe throughout your Generations and Dwellings. But I will go a little further, because a worthy Gentleman declared, there was no such Law of God. He will find in the 15th of Deuteronony, a Cafe just as 'tis here; for the Cafe of High-Treason was Idolatry at that Time; and the Law says, Whosoever shall set up Idolatry, shall be flamed to Death. No Man shall be condemned to die by the Mouth of one Witneces, but by two or three Witneces he shall suffer: I think this is positi
tive enough. I shall not trouble you with more Influences, though I could repeat several.

Sir, the Law enjoins Forms strictly, even to the least Circumstance: If a Man be condemned to die, and after he is condemned to die, another take away the Life of that Man, 'tis Murder. I will go further: If the Officer that is to do Execution, if a Man be condemned to be hanged, drawn and quartered; if the Officer flout him, it is Murder in him; so that Men are not left to a discretionary Power to act according to their Consciences.

I take the Reason by which this Bill is support ed, to be destructive to all human Societies; for if that be admitted, that a Man shall act according to his Conscience, and not according to the Rules that are preferred him, I know not who is safe: For how can an innocent Man make his Defence upon that Principle? It is a safe Con
defence for a Man not to take upon him the Way of judging, because they are bound by no Rules; but what hath not that doth almost within Memo ry, Felton, that killed the Duke of Buckingham, what was his Justification, but he was perjured in Conscience he did well in so doing. Resitullas, that killed H. IV. in France, he justified the same by his Conscience, and said he had done a good Thing; and I may say this Argument of Con
science hath attacked all the Villainy of the late Age, and I am afraid has gone a great Way to disturb the Happiness of this.

For if this be a Rule to this House, How is the King bound? I thought he had been bound by Law; but if this shall be admitted as an Argument, 'tis enough to say, if this House be arbitrary, the King is. I do not reflect upon this Reign; but it will be enough to say, tho' he act against Law, and turn twenty Colleges out of Doors, his Con
science persuades him to it. We see how unbound Liberty the Lords take, is, they are become Masters of all our Libeties; and I would be very loath for my Estate to depend upon the feeble Tenure of a Lord's Conscience.

If then this be the Cafe, as it is, according to this Method, I desire to know into what Condition we shall bring our selves? You have been told, it is expected from you by your Country, that you would exert this Authority and Power: Sir, I would have been glad that in Cares more reasonable we had exerted this Authority and Power of Parliament; I wish it had gone to the preventing the debauching and abusing your Coin; I wish it could be exerted, that we might not see our selves cheated under Comme
nance of an Act of Parliament; but contrary to that, you are fond of being spiniptled with the Blood of Sir John Fenwick. As long as the Govern
ment is not in danger, I believe the Country is glad that their Blood might run loose in their Veins, and not be paid upon every Occa
sion to serve a turn: for if you break the Laws, what Man can promote himself Security?

We know the Consequence, if this Bill does not pass; Sir John Fenwick may live in Misery all his Time.

But what this Precedent may make, no Man can foresee. This Bill is against the Law of God; against the Law of the Land: it does contribute to the Subversion of the Constitution, and to the Subversion of all Government; for if there be Rules to be observed in all Governments, and no Government can be maintained among Men, if you believe these Rules, you destroy the Government; and therefore for these Conscriptions, no Body will think it strange, if I give my Negative to this Bill.

Mr. Chancellor of the Exchequer. Sir, the Gentleman that spake last, hath carried the Reason against this Bill a little further than some others for it seems now, we are not to reject the Bill for want of one Witneces that is legal in Westminster-Hall, but it seems there is no Evidence at all; and by Capt. Porter's not being paraded, and yet drudging for his Pardon; so as all that have been condemned upon his Testimony, he hath arranged the Evidence as not sufficient, and hopes that will be the Judgment of the House upon this Bill. I think if the House reject this Bill upon that Argument, it will go further than many mean that oppose it.

Another Thing he says, He compares the Con
ditions that I have upon my Judgment, and of every Body else that speaks from the Proofs that are made, that he is guilty, to the Whim of two or three mad Men; whereas we go according to the Evidence brought at the Bar; we don't go upon the Whim of Resitullas nor Felton, but upon the Proofs that have been made here; and though there are not two Witneces, yet upon what appears in Proof, I am convinced that he is guilty; and upon that Condition, I think, according to the Duty I owe my Country, and the Confi
dation of England, when a Bill does come to punish the Man whom I think guilty, I think I ought to be for the Bill. As to what is said of Deuteronony, That the Law of God was against it, if you will argue a Portari, 'tis literally true in the Cafe of Murder; but whether Murder or Treas
on, there is the Life of a Man concerned; and 'tis not the Punishment, whether to be hanged, or hanged, drawn, and quartered, that makes any great Difference; and give me leave to say, if you go to make Precedents from the precise Law, then I say, the Law of England is against that Law, in Cafe of Murder; and by the same Reason you may derive leave to bring in a Bill to repeal all those Laws. 2

Sir,
1696. Parl. upon a Bill of Attainder for High-Treason.

Sir, if this were the eternal Law of God and Man, where was this eternal Law in England before Edward VIth Time? If it be the eternal Law, that there must be two Witnesses, why does it not hold in England even in some Cafes of Treason to this Day? I mean the Treason of Clipping and Coining? So that if Gentlemen will argue, the Nature of these Faults are what the Law of every Country ordains, and that is the Law.

And the Way of Evidence and Proof too differs in every Country; and I may affirm, That there never was any Government in which there was not a Power lodged somewhere to be exercised upon extraordinary Occasions, beyond the legal Way of Procedure.

I don't care to travel into the several Countries to see how their Constitution is, but I believe there is not one Place in Europe in which it is Bstitially necessary there should be two Witnesses to take away the Life of a Man; but it is generally so as it is here in all ordinary Cafes, but this very Law, this Law does not go upon to a W Innes, but you have a Proviso in it does absolutely exempt Proceedings in Parliament: I do not infer from thence, that you should not have two Witnesses, if you proceed by way of Impeachment; I think you ought to, and so for having Wit- nesses upon Oath, &c. When these Proceedings are in Parliament, there is a direct Proviso, by which the Parliament is exempted from those Rules. Upon the whole Matter, I think this Man is guilty; I think the Proceedent would be more fatal, to say, that a Parliament can't proceed in such a Cause, than that a guilty Man should suffer. I think this Bill comes before you with more Circumstances and Reason to justify it, than any that has been brought here before; here is a Bill found against him by his Country, the Evidence of his Friends having tampered with one of the Witnesses, confirmed by a Jury, &c.

A learned Gentleman says, He would come up to make this Paper Evidence; but can't come up to make such a Law, by which every Man that is concerned in that Deposition would be affected: But here is something particular in this Cause, a Man that hath been abroad, and hath not used the like Artifice, I think you ought not to use the like Power to punish him that is not guilty of the like Crime. And therefore I shall conclude; but I must take notice of one Thing: It was said, That this was the first Proceedent of this kind begun in this House, but that of the Duke of Mon- moutier, that I believe, if this Bill of Attainder is not to be begun in this House, 'tis not to be brought in at all; for I believe there is a Statute, That the Life of a Commoner is never to be meddled with by the Lords originally. I will not trouble you any further: I do in my Conscience think that Sir John Fenwick is guilty, and therefore I am for this Bill.

Mr. Pelham. I did not think to have troubled you this Day: I did rather intend to have left it to others that can speak better, or have not spoken upon this Subject; but that which hath been mentioned by several, as if they did think that we who proceeded on the Law of God upon this Occasion, did it as if we did think the Law of God was binding to you at this Day: I never thought any such Thing otherwise than as to the Morality of it, so far forth as it is grounded upon Reston and Justice, and tends to the clearing of an innocent Man; and so far we and all Mankind are bound by it; and that Law having been afterwards confirmed in the New-Testament by our Saviour and his Apostles, at least approved of by them; and this having been confirmed by the Law of Eng- land likewise; I do not think this a fit Occasion for you to pass by so fundamental a Law as that is: And I conclude with this, That I can't satisfy my self in my Conscience, and should think it not from Misfortune might follow me and my Pollytary, if I passed Sentence upon Sir John Fenwick's Life, upon it's Evidence than the Law of England requires.

Sir H. Crofts. I shall endeavour as much as I can, to give you little trouble in this Matter: But because it hath been hinted and remarked to particularly upon me, I must beg leave to dis- charge my Duty, as well as my Conscience, as to what I said here the other Day.

Sir, I do very much forget my self, if I did affer, That there was no such Place in Scripture that required two Witnesses: The Thing that I said, was this, That if any Gentleman could shew me any Rule from Scripture that required two Witnesses, more in the Cause of Treason than in the Cause of Murder and Felony, I should be glad to see it. I do say that the Scripture shall be a Rule to me, as far as the Scripture requires; but I do take the Jewish Law not to be so absolutely literally binding upon us here. And as to the Text out of Numbers, that very Text of Scripture is particularly and literally applicable to Murder; and that if that binding now, we have been very much misguided by our Predecessors; and I think we are bound to take it in hand, to repeal all Laws that are against it.

Sir, he is pleased to deny us, in some measure, the Liberty of being guided by our Consciences: Truly, I don't know what he would have Gentle- men go by: Truly, let him go by what Rules he pleases, I will go by the Rule of my Conscience, and will not do any thing against it upon any Consideration or Consequence whatsoever; nor will I part from the Liberty and Power of Par- liaments, for any Rule or Law of inferior Courts whatsoever.

Sir, you are told, You ought to be guided by the Rules of Law, that is not the Forms of Law, but the Rules of Law. Sir, I say, if thefe Rules were made to bind Parliaments, it was reasonable they should be bound by them; but if they were made only to bind inferior Courts, they were far enough from being intended to put a Grain upon the Proceedings of Parliament; and if you shall subject your selves to them, you give the Law- yers such a Power, that I don't doubt, but their Books will be of greater Authority than your Journals: Therefore in Consideration of that, and because I would leave that which is the Right of Parliament to my Successors, I shall not submit to that.
Proceedings against Sir J. Fenwick, Bar. 8 Will. III.

Thing else: All those Men that deny the Right of your Government, have Conscience and Justice enough to subvert it, if they could; and therefore I do not so much wonder, that many Men without Doors have argued in that Nature.

But I say, my Conscience is the Rule I must go by; and to me the Question is, only whether Sir John Fenwick be guilty, or not guilty, and am called to give my Judgment in it; and I think I am bound by the Law of Nature, by the Law of the Nation, and I see nothing in the Law of God that prohibits me, to give my Judgment according to the Evidence, and the Opinion I have in my Conscience of the Truth of it.

If there be no such Rule, that requires two Witnesses binding upon me; if I may go upon one Witness, if I believe he speaks true, and that the Perjury is guilty; then I am bound to act for the Preservation of the Nation, and all our Purity.

They made that Attempt, made it upon your Purity for ever: 'Tis not to small a Matter as some represent it: 'tis not the Perfon, so much as the Nature of the Fact we are to consider; and we are not to let Men escape Punishment according to their Greatness or their Smallness, but according to the Nature of the Fact, and their Guilt. I think I have that Freedom, and I am so little bound by those Rules that have been used, that if both Witnesses were here, and gave Testimony against him, if I did not believe him to be guilty, I would lose my Life rather than vote him for but on the contrary, if there be sufficient Evidence to convince me, though not according to the Rules of inferior Courts, I will not subject the Freedom of Parliament to those Rules.

Sir, you have been told formerly, and I think it a Matter of that Weight, I beg leave to urge it again, because 'tis a great Reason that guides me in this Matter; if you lay it down for a Doctrine in this House (for a Resolution here taken is as much a Rule as a Law, for it shall be brought as a Proclamation), and therefore, if it shall be a Rule here, that you will never attain any Man, or find him guilty, but upon two Witnesses, I think the Government, and all you have, stand upon a tottering Foundation: He must be a very ordinary State-man, that can't lay his Plot so, as you shan't reach him by two Witnesses.

Therefore, I say, I think it becomes the Will of Nation, not to declare themselves bound in that respect; I would have them bound by Justice, but not by the common Rule of the Law.

Sir Robert Carteret, I find that Gentlemen do very much infilt in this Cafe, That if a Gentleman does believe that Sir John Fenwick is guilty, he must give his Vote for the passing of this Bill: If that be so, I am glad that Opinion did not take Place in the last Reign; if it had, I am of Opinion I should not have been here now, and I believe my Lord Warrington, who was very instrumental in promoting this Revolution, would not have died in his Bed. My Lord and I were accust of a Critic to believe, if proved by two Witnesses, had been Treaten. I have heard from Gentleman fay in this House, they did declare my Lord Warrington was guilty (though he was not guilty of the Fact as it was laid.) There was a Man swore, &c. and there was some corroborating Evidence; but as to Mr. Fly, and my self, there was none but this particular Perfon, and they indicted us of Misdemeanor; though it would have been Treafr, if there had been two Witneses. Now if the same Fact was Treafr when proved by two Witnesses, and but Misdemeanor when proved by one, methinks we are doing an extraordinary Thing; we are going, after the Fact committed, to make that which is but a Misdemeanor, to be Treafr. And for these and other Reasons, I can't agree to the passing of this Bill.

Lord Norresy, Sir, though I had always an Apprehension of the ill Consequence of this Bill, yet never fo much as now; for this Gentleman hath given Arguments that thall me more than all that I have heard before; for he says, there are a great many Men, if they may proceed according to their Consequences, will subvert this Government, and bring in King James and arbitrary Power: And he tells you, that every Precedent in this House, is equal to a Law, and will justify the like for the future. I am sure I am very unwilling to make a Precedent that shall justify Men in such ill Actions, in laying their Consequences prompted them to it.

Then a Question was put for bringing in Caudle, which passed in the Affect, and they were brought in.

Mr. Hanuall. I don't think the Power of Parliament in Question in this Cafe; but then, as all other Powers, it must be founded upon Justice, and never used but upon extraordinary Occasions, and when Criminals are not to be met with otherwise. The Power of Parliament is not limited, if this Bill does not pass: But the Question is, Whether this Power shall be exercised in this Cafe? What Gentlemen say of being guided by Conscience, hath no Weight with me, further than that is governed by the Law of the Land: If it be to be admitted in the Cafe of Life and Blood, why not in Mens & Women? Why was he brought to the Bar then, if, according to our private Judgment, we are to determine this Matter? No Man thought but he was guilty.

I beg leave to mention one Thing that is come to my Knowledge: After the Trial and Condemnation of Mr. Cook, I had an Order sent me, that I might see him; and I went to him by Virtue of that Order; and the greatest Part of the Time I spent with him, he took up in declaring against the Evidence of Goodman, and that he would receive the Sacrament upon it, and give it in Writing, as his dying Words. I saw also three profitable Witnesses for him at his Trial; and when I heard him say this, it weighed so much with me, that I have very great Ground of Supposition, that Goodman was perjur'd in the Cafe of Cook.

Here hath been popular Expressions of Plato, and Jacobites, that no Man can apply to this particular Cafe, or say, this is a Cafe wherein we ought to use this extraordinary Power: He was in the Hands of the Laws, and no Body can say, that the Government must sink, if he does not die. If we go from the Rules of Justice, I believe it will give a great Blow to the Government.

Mr. Veron. Sir, I rise up only upon what that worthy Gentleman hath offered unto you; for I did not think to trouble you with any Thing of that Nature. But if you will give me leave to acquaint you with what I believe, who have been later with him.
him than this Gentleman, and much ofer. Sir, he does tell me, that he is very far from denying what hath been sworn against Sir John Fenwick and himself, concerning the Confinement to bring over the French; nor doth he have a very particular Remembrance of it: And if that Gentleman was to speak with him now, he would satisfy him, I believe, in that Point. And since I am up, I think every Man that speaks upon this Occasion, should like-wfie give some Account of himself, in what Manner, and for what Reason, he discharges his Con-science here: I hope I may use that Word, since Gentlemen make use of Confidence for his Ac- quittal; and a Man ought to have a very good Confidence for his Condemnation.

As to Sir John Fenwick's Innocence, I wish I had given no Occasion to have it called in Ques- tion: And since he did fall under this Acquittal, I wish he had been as careful for him, would have taken some Pains to have made his Innocency appear: But I do not find the Question is, Whether Sir John Fenwick is guilty; But whether there be any Evidence of his Guilt? And I shall tell you, in short, my Opinion of that: I take the Proof of the Fact to be, in general, such a Demonstra-tion, as the Nature of the Thing is capable of; and that is sufficient, and capable to convince a reasonable, honest, unprejudiced Man, of the Truth of what is affected. And there is no man- ner of Doubt left, Whether it is fo or no; nor Appearance of any Possibility, that it could be otherwise. I think there hath been that Proof in this Case, and nothing attempted to disprove it, and nothing hath been proved on Sir John Fenwick's Behalf, that any Wrong hath been done him: And therefore in short, my Sense is, That whereas some Gentlemen think him guilty, but the Mat- ter not proved, I think him guilty, because 'ts proved; and there hath been no Offer made to disprove it.

Mr. Bramley-Warr. Some Gentlemen have spoken of the Power of Parliaments; but I shall say no- thing to their Power, which, I have learned from my Lord Coke, is fo transcendent and absolute, that it cannot be confined within any Bounds: But the more Just and Honourable it ought to be in its Proceedings, to give an Example to infer- ior Courts. And though their Power cannot be deny'd, yet the Exercice of it, hath been often confused and condemned; and Acts that have passed in one Parliament, have been in the same Reign repealed, and sometimes fiercely branded, Id paucissimi, quod jure paucissimi. Y's certain, here is a Defect of legal Evidence: We are not tied here to the Forms of Wiltminister-Hall; but cer-tainly, with Submission, we ought to tie our selves up to the Rules of Wiltminister-Hall, espe-cially when they are founded upon common Ju-dice, which is the same, is not mutable, and ought to be universal.

By the Law of the Land, no Person ought to be convicted in Cates of Treafon, but upon two Witnesse; the Law of God is the same. However, if you will pass this Bill, all Persons must acquiece; and there is no disputing of your Power afterwards. It hath been an Argument used to Day, That the Security of the Govern- ment requires the Paffing of this Bill, which I think to be a good one, too, if they can make it appear, that unless you proceed in this Way, the Government is in Danger: Though I must ob- serve, it was not that Confidence, but the Vin-

dication of an honourable Person's Reputation, that brought this Matter first before you.

It does not appear to me, that Sir John Fenwick's Life or Death can endanger the Government. You have been told of a Design that he hath been engaged in, and is carried on at this Time; That an Invasion from France seems to threaten us: The former Design hath been happily dis-covered and defeated; and 'ts not probable, that Sir John Fenwick should have any great Share in any that is carrying on at present: And as far as I can learn, he is not so considerable a Man, in his own Perfon or Interest, that we need fear him.

An honourable Perfon said, If we do not pas this Bill, they that sent us here, would give us no Thanks. 'Tis not a good Way of arguing; but I believe, if those look forward, they will be sensible of it. Sir, in the Act for declaring the Rights and Liberties of the People, you have it said, That the late King James, by the Affiliation of divers evil Counsellors, &c. has been made to pas, that we have never Attainted any of them; And if we are for proceeding in this Way of Attar-na, because it pleases them that sent us hither, I dare say, the Attaining one of those Men, would gratify those that sent us hither, more than the Attaining twenty such as Sir John Fenwick. It was pretty well known what Share some Gentlemen had in bringing in of Popery and Arbitrary Power; and I will take the Liberty to say, That there is never a Gentleman in this House, but believes them to be the worst of Crimi-nals.

Upon the whole Matter, I do not think you have any Occasion to exert a Power, that no bo- dy denies: I fee no Security this will be to the Government, and consequently, no Needness of it. I think you are making a most dange- rous Precedent, and that it will be of ill Con- sequence to you; and therefore I am against this Bill.

Mr. Smith. Sir, I will be as short as I can; and if it had not been for something in this Day's Debate, I should not have troubled you. As to what was said by the Gentleman that spake last, of making Examples of some that had been Criminal in the last Reign: How that came to happen, that no such Examples were made, I shall not now entertain you; but I believe most of the Gentlemen in the House know pretty well.

But I take the Matter before you is, What Evi-dence you have to prove Sir John Fenwick to be guilty? And Whether there be not an extraordinary Occasion at this Time to extend the Legis-la- tive Power.

I shall not enter into the Matter of Prece-dents, those are out of my Province, but I have read some: However, it shall not pass upon me for a Rule, because some Bills have been rever- sed, no others shall be brought in it is possible, that the reverting of them, may be worse than the first bringing of them in.

But to apply my self to the Evidence; I cannot but observe one Thing, that seems this Day extra- ordinary: We are told by some Gentlemen, they are against our Proceeding upon this Bill, be- cause it does not quadrate to the Rules of Wilt-minister-Hall; and at the same Time, Gentlemen take Liberty to make Exceptions here against that Evidence that Wiltminister-Hall has allowed: That
they should take Exceptions to that Evidence which the Law of England allows to be good! For it is notorious, it hath been admitted in Winck- mayer-Hall; and Gentlemen might as well have told you, That those Men that suffered, died inno- cent, as to have denied it. And I think there is a further strengthening of his Evidence; for there is not one Man, who hath died upon his Evidence, but hath acknowledged himself guilty of what he hath charged him with.

As to the Matter of the other Evidence, Sir, I do not say, that it is Evidence that will come at Winckmayer-Hall; but at the same time, give me leave to tell you, they seem to lay a little fire on it, when they tell you, they believe it was false Evidence, and instance in what Cost laid to a Gentleman of this House, after his Condem- nation; but I think thus far I may say, That when you sent some of your Members to examine Sir John Freind, he did own all those Perfons to be at that Place; and that is a much better Argument for the Validity of Gentleman's Testimony. But as to the Matter before you, some Gent- lemen have made it a Quetion, Whether Sir John Fenwick be so considerable a Man, as you should proceed in this extraordinary Manner with: This Man you may do it, yet at the same Time; they tell you, this was never put in Execution, but they were in the Wrong that did it.

Now, Sir, the Question is, Whether you should make use of this Power at this Time? Say some, The Plot is over: I wish it was: But when a Conspiracy hath been laid so deep and general as this was, 'tis not the hanging of one or two that will make us safe; when 'tis apparent to you, here is all the Artifice in the World, all the Endeavours in the World, by Sir John Fenwick's Friends, to remove Geadon out of the Way; 'tis some Argument that he had something to say to him: And when we see Priests broke open daily; we have known Perfons murdered in the Streets for giving Evidence. Very notori- ous is the Cafe of Dolfsworthe: You have Plots all about you; and yet can you think there is no Occasion to make use of this extraordinary Power?

I would have as great a Conviction upon my Conscience as I could; but 'tis very hard a Man must throw his Conscience aside in the Cafe: 'Tis very hard to believe, That if there be two Witneffs produced, though I don't believe the Witneffs, yet I am safe if I condemn the Man; and if there be but one Witneff, I am to acquit the Man, though I believe him to be guilty.

And though they go to Scripture, to tell you there must be two Witneffs, yet they don't go so far as to tell you there have been very extraordinary Things done, even by God himfelf, for the preferring a Community.

And there is the Reason of it, that one Wit- neff may take away a Man's Life in one Cafe, and not in another. There was a Thing said, that was one Thing that occasioned my standing up: A Gentleman said, truly, it seemed to him to be a better Way to put an End to the Plot, to have an Act of Indemnity, than the Con- viction; though they all say, you may do it, yet at the same Time; they tell you, this never was put in Execution, but they were in the Wrong that did it.

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And though they go to Scripture, to tell you there must be two Witnesses, yet they don't go so far as to tell you there have been very extraordinary Things done, even by God himself, for the preferring a Community.

And there is the Reason of it, that one Witness may take away a Man's Life in one Cafe, and not in another. There was a Thing said, that was one Thing that occasioned my standing up: A Gentleman said, truly, it seemed to him to be a better Way to put an End to the Plot, to have an Act of Indemnity, than the Conviction; though they all say, you may do it, yet at the same Time; they tell you, this never was put in Execution, but they were in the Wrong that did it.

Perfons own at your Bar, That the Fact was committed just after the Act of Indemnity. Sir, I do heartily, according to my Conscience, vote for this Bill.

Mr. Harcourt. Sir, I am sensible it is very diffi- cult to say anything, and not seem tenacious at this Time of Night; but I take it to be my Da- ly not to be silent in this Matter.

All the Arguments, that I remember have been made up of, in any former Debate, or in this Day's, may be reduced, in short, to these two Heads; The Danger of the Government, and Gentlemen's private Opinion.

Sir, as to the Danger of the Government, if any Body will convince me there is such Danger, I promise them, if it be worth his while to do it, I will be his Prosfylee, and vote for this Bill; but, to tell me the Government is in Danger, and that the Fate of England and Europe depends upon this Bill, is certainly rather offered to amuse, than to convince.

It hath been said, Can the Circumstances are, that Sir John Fenwick is in admittance of any Danger to the Government, which hath Power over his Liberty every Day, and may restrain him of his Liberty during his Life? A Man, by the Ac- count I have had of him, is not of an integrity, not worth Ninemense. (I have no Acquaintance with him, and so I may safely Mitake his Circumstances.) But, Sir, whatever his Circumstances are, he is in safe Custody, and no doubt there he will be kept; and to say the Government is in Danger by such a Man, sure, that cannot be thought by any Man living: And God forbid this should be the Cafe of the Government, that it cannot support it itself without taking away this unfortunate Gentleman's Life, contrary to the Rules of Law.

For the Argument of private Opinion, 'twas at- most as dangerous as the Precedent you are making. I will not argue it from the Cafe of the People, Entalligists and Madmen; but I will urge it in the Cafe of Men that are in Judgment. If Opinion to is justify the Condemnation of a Man, let us never more call the Verdict against Mr. Cornish, Mr. Sidney, Lord Kajfie, and others. Ask the Jury, no doubt none of them are so silly, but in his Opinion, they were guilty. But if Opinion may condemn a Man without Proof, why should I not acquit him as well, where there is Proof? Such a Practice, I am sure, would never be endured.

The proper Method, I think, was proposed by the Gentleman that began the Debate; and I beg Leave to follow the same Steps, to consider his Guilt, how it appears to us, and whether there be any Reason for this extraordinary Manner of Proceeding.

The Recital of that Bill are the Arguments for it; and those we fend up to the Houfe of Lords for the Pasling of this Bill. And first, it says, That Sir John Fenwick was induced by the Testimony of Porter and Geadon, &c. It says, that several Days were appointed for his Trial; and at one of those Days the Trial had come on, if it had not been for the Discovery that he pretend- ed to make; but it does not say it was put off at any other Days or Times, for that Reason: But it goes on, and says, He hath made several Re- futations, &c. instead of making an ingenious Discovery; and then it recites how that Geadon is withdrawn.
I would beg leave to put Gentlemen in mind of what was a great Inducement to bring this Bill in: It was said, That Sir John Fowneck and his Relations had done it; that they would prove that Commons was withdrawn by his Means. Give me leave to say, That there was no Proof of it, unless the Hearsay of Clancy, and the Actions of my Lady Fowneck, are to be Evidence, contrary to the known Laws of England, to effect this unhappy Gentleman in the Cafe of his Life: I say, if any Gentleman had been of another Opinion, no doubt, he would have offered that Amendment to the Committee.

As to the Discovery that Sir John Fowneck hath made, it does not appear, whether it be true or false: It is one Thing to give a Vote to clear a Gentleman’s Reputation, and another Thing to carry it so far, as to give Judgment, that the Perfon that made those Reflections shall die, and that before any Proof of their Fallhood. Here is an Indictment found, and here is an Evidence withdrawn; that is all I am satisfied in: And supposing the Perfon guilty, it is no manner of Inducement from these Arguments, to proceed in this extraordinary Manner.

But I would consider the Matter of the Amendment made at the Committee [Of which Reasons he the Last Sir John Fowneck is guilty.] I can’t say that; and therefore I can’t vote for the Bill. If he be guilty, it does not appear fo by legal Evidence; and therefore I am to justify him, as he appears to me, an innocent Man. The Law requires two Witnessess to convict a Man of this Crime. ’Tis the greatest Crime, and the Law is so merciful, that it won’t expose a Man to such great Penalties, without demonstrative Evidence.

The first Act of Parliament that requires two Witnessess is, 1 Edward VI. The next is 5 Edward VI. And upon that Act, give me leave to take notice, that Act goes a little further than the first; for the 5 Edward VI, does not only lay there shall be two Witnessess, but it goes on, and says, — which two Witnessess (they are there called Accusers, but mean the same Thing) shall be produced in Proof before the Jury at his Arraignment, and shall there, before his face, maintain and aver what they have to say. So the Parliament particularly provided, That there should not only be two Witnessess, but that they should appear in proper Person, in open Court, I beg leave to observe, That after the making of the first Act, in the 2 or 3 Year of Edward VI. there was an Attaker of Sir Thomas Seymour, in Parliament, without hearing of him; and that very felt-fame Parliament, within two Years afterwards, seems to have reasserted that Matter, that they made that Provocation, I have mentioned, it the 5 Edward VI. and to secure, that that ill Procedure should do no harm, they put in that Clause: If this Act puts, I wish we do not repeat it in left Time; than that Parliament did the Attacker of Sir Thomas Seymour. Let us be guided by the Reason, the Justice, and the Direction of that Act, though we are not bound in our Legislative Capacity, by the Power of it. I can’t but observe, that from the making of that Act, no Person has been attainted in any other manner, till the Duke of Monmouth: So great a Veneration has that Law always had in all Reigns, though a multitude of Conspiracies have happened in them all. I do not think it so material, that there should be two Witnessess, as that these Witnessess should be heard Face to Face, and cross-examined. It hath been told you, That ‘tis natural Justice and Reason that there should be two Witnessess. A Gentleman asked you, where that natural Justice was before the Statute of Ed. VI Sir, the Statute of 5 Ed. III. says, That every Person that is attainted, shall be Providentially attain’d; and somewhat may be from thence infer’d more than that the Crime should be provid’d, for so must every Crime. But as to the Proof required by that Act, and the Acts of Ed. VI. all those Acts, by very learned Opinions, have been thought declarative of the Common Law: But that’s scarce worth the Enquiry, since ‘tis certain how the Law stands at this Day.

An honourable Gentleman took notice, That such Evidence as we have had, and such Proceedings as thefe, would not be reasonable in Cafe of Impeachment; but distinguished between that Proceeding and this. But certainly, the Reason is the same. ’Tis true, the same Perons that accuse in one Cafe, give their Judgment in the other; but in each Cafe, such Privileges are as just and reasonable, ought to be allowed to the Party accused.

I shall add no more, but that we are making a Precedent, which can’t be made without breaking through all the Fences of the Law, and when ’tis made, we know not who may suffer by it. Sir Richard Temple. As to the Evidence you have before you, I appeal to any Man, Whether at the Common Law, if there was but One Witnessess against a Man, whether he was not at Liberty of demanding a Trial by Battle? Those Acts that have been made since, are made certainly to provide, That in no Cafe whatsoever, a Man should be so much as accused without two Witnessess of the Treaton.

As to what hath been said of the particular Evidence before you; what hath been observed here, is a good Objection in the Courts below. I do not say it does disable a Man from being an Evidence, because he is not pardoned; but he is not so good an Evidence as if he was pardoned: But that I stand upon this is: Shall you come here, and make a Precedent in this Place to condemn a Man to the highest Penalties, upon left Evidence than you will allow any Body else to do it? That is what was never done in Parliament before. Will you make a Precedent in Parliament, that at any Time they may bring in a Bill here, and judge a Man to Death for Treaton upon no Evidence?

As to this Bill it self, consider what a Precedent you will make: There is nothing that any Bill was condemned for in Parliament, that is not in this Bill. All Mankind must perceive, that you have but one Evidence, and such a one as I have told you: And whatever any Man’s private Per- fusion is, ’tis the Proof must govern you. Then this is a Law ex pvo Favo, and that hath always been condemned; you make that Evidence, that was not so before. Sir, this is, besides making a Law in a particular Cafe, against the Common Law of England, and the Right that every Subject has: Is making a Law to bring a Man to a Trial; ’tis making a Law here, that was introduced here upon a Pretence to make him an Evidence. Every one said, That they did not feel his bleed; and if that be the secret Inducement in this Cafe, ’tis a dangerous Precedent. The Earl of Exeter, when he brought the Rack into the Tower, every Body knows the Fate that came upon him afterwards.
Let any body flew me there was any Rea-
son for reverting any Act of Parliament; they are all against this Bill.

Then to the necessity of it; I can't imagine any
Thing that has been said to you upon that, is a
ground for this Bill. But if it be this way, how this
Matter stands now, it was for an honourable
Perfon's Vindication, and it was not transmitted to
you by the King, but by the honourable Secretary:
He told you, that if you had a mind to see the
Papers, and required it, he had Leave to let you
have them; but if it had been a Thing of this con-
sequence, that the Government had been in the
unwont Danger, would it have been transmitted only
at the Request of a private Gentleman, and let its
Use, whether you would proceed against it, or not?
But this is obvious, that the Plot may go to full:
Pray if this Gentleman be cut off, does that care
it? You are secure of him now, that he can't act
in it; so that I have not heard the least Ground to
convince me, that the Government would be in
the Danger if this Gentleman was cut off.
Sir, we are told here of going according to our
Conferences; give me Leave to lay to you what
was intimated in the other Day; That in the word
of Times, when they did not look at musketing of
the King; yet they fluck at this Act; this would not al-
low any man to fuller upon one Witwen; and they
did not admit of Depositions against my Lord
Mor-
dart, and my Lord Morland lived his Life by it.
You have deposed King James for breaking in
upon the Law; and did any body believe that Mr.
Harpsen was not guilty of the Treason he was
charged with? He owned it before this House; and
yet he was tried only for Misdemeanor, there
being more maleficts against him; and they that
frame all other Laws, fluck at this, and would not
violate this Law; so that I think there is no
Necessity for making such a Precedent, and I think
it would be the work of Precedents.

Mr. Bofaison, I have observed upon this Debate,
that some Persons deny that 'tis justifiable at any
Time, to proceed upon Bills of Attainder, and
yet they don't dispute the Power of Parliament;
but at the same Time say, they ought to go ac-
companying to the Rules of Writs of Error.
Another says, it is the same Thing whether we
proceed by Way of Impeachment, or Bill of Attai-
nder: I think him much out of the Way; for
in that Cafe, the Lords only are Judges, and you
are the Prosecutors; and you don't use your Le-
gislative Power in that.

A worthy Friend of mine said, He had often
been mistaken in his own Conferences, when he
thought himself very much in the Right. That
might be so; and if there was any room naturally to
suppose, that Sir John Fousick was not guilty,
I should be of Opinion to be of the more favour-
able Side; but I take it, there is no room for
any Man to believe but he is guilty.
Now I would examine what Grounds we have
to believe him guilty. Upon Trials, when they
charge a Jury with a Prisoner, one Part of their
Charge is to enquire, whether he fled for it or no.
'Tis an Argument of guilt that Sir John Fousick fled
for this, which is no small Argument of his guilt
Another is, that he was hear at the Bar, and did
not deny the Fact; if he had confesed it, no doubt
but you would have concluded him guilty; and
when he does not deny it, this is next door to it.
It hath been told you, many Bills of Attainder
have been reversed as unjust; it hath been ano-

mious, that the Verdicts of twelve Men, and when
Men have been tried by their Peers, have been
reversed too, I will instance in two or three. The
first I begin with, was that of the Duke of Somer-
set; but no body could lay but he was guilty of
the Fact, for he confessed it; but there was a
powerful Evidence, the Duke of Northumberland.
The next is, the Duke of Norfolk, who was attainted
in Queen Elizabeth's Time; and they were not by
Parliament, and yet both were reversed. And I
think, as this Matter stands now, some Gentlemen
are of Opinion, by the Evidence they have
heard, that he is guilty; but I think no body
hath said, that it appears to him, by the Evidence
he hath heard, that he is innocent. Now I de-
fer to know, whether every Man must not use his
Conscience to judge, whether there be sufficient
Evidence? I acknowledge there is no sufficient
Evidence to convict him in Whigshott-Hall; but
there is more to satisfy my Conscience, and the
World abroad, than if Godman was here; besides
his not denying it, you have the Evidence of the
Perfons that died, owned the same Thing:
And I mention that the rather, because they con-
fess it to Perfons sent from this House; and did
not only confess themselves to be guilty, but ac-
knowledge, that there was a Conspiracy; and Sir
William Parker acknowledges it in particular,
that he was to raise a Truppen of Harps, and that
the French were to be invited over: Is this no
thing for the Legislative Power, that is to secure
the Peace and Welfare of the Government?

Gentlemen say, there is a great deal of Danger
in this Matter: Some, if you acquit him; others,
if you condemn him. If you are satisfy'd he is
guilty, by this Bill you set up a Land-mark, that
others may follow; they do not come into this
Predisement: On the other hand, if you reject
this Bill, you will give Advantage to your En-
nemies, when they shall see a Man that is so notori-
ously concerned in calling in a French Army, the
work of your Enemies, to be Scot-free. If he be
guilty, what Danger is there of the Precedent?
When a Person in the like Nature, that hath fled
for it, that does not deny it; when living Perfons
confess it, and lying Perfons confirm it, then there
will be Danger in such a Person.

Upon the whole Matter, I think there into Man
that ever I heard, that do not believe him to be
guilty; and 'tis strange you should want Evidence,
and yet every one think him guilty; and I think
no Man must be acquitted or condemned, but re-
cording to a Man's Conscience.

An honourable Person said, Parker was no good
Witwen: If Godman was here, he would not be
so much; and yet we must acquit him because
Godman is not here: And therefore, upon the
whole, I think you will give your Enemies a great
Advantage, if you acquit him; and if you con-
demn him, you will do your selves Right.

Mr. Cooper, Sir, being concerned in Protestati-
on of this Nature without Doores, I have hitherto
depended concerning my self in any Debate of this
Evidence, though unconcern'd in the Conduct of
the Evidence against Sir John Fousick; but being
to give my Opinion and Vote as a Judge, I shall
leave Leave to give my Sent of this Matter.
I would beg Leave, in the first Place, to make use
of a Difficult, with which, I think, will serve to
answer several of the Arguments that have been
made use of: I think there are two Things to be
consider'd; First, his Crime and the Proof of

that
that Crime, and then the other Matters done by him sub sequent, &c. The Crime and Proof of it that hath been given against him at your Bar, is the Ground by which, I think, before God and Man I ought to give my Affirmation to this Bill, by which you judge him for the Crime. What he hath done subseq uent, convinces me in my Judgment, that we are here in a proper Method and Course of Proceeding against him; therefore let no Man say, That you have condemn ed him because he hath prostrated his Trial: No, you have condemned him for having been guilty of High-Treason, manifestly proved against him: Then let them not say on the other hand, Will you condemn any Man that is at any Time guilty of High-Treason? No; but when a Man is guilty of the worst of Treasons, and this would have been manifestly proved against him in the ordinary Course of Proceedings, but that he undertaking to atone for his Crime, and serve his Country, hath prostrated his Trial till one of the Evidence is gone; and then, though he pretended to have a Referee, which he would make known to the publick, his true kingdome is out of the ordinary Realm of Justice, he fells the Justice of his Country at defiance. These are Grounds, not why he is to die, but to justify our Proceedings in this Manner.

Sir, I would beg leave, in a few Words, to take notice of a few Things said in this Matter: Gentlemen are afraid, that this will be made use of by Pedantry to the Disadvantage of honest Men; And you have been told, That Precedents have begun with the Punishment of the Guilty, and then have been carried on to the Punishment of those that have not been so. 'Tis true, there hath been a very bad Use made of very just Acts in relation to the Publick: But what do Gentlemen infer from that? Muft we have no Fuch Things as Justice? Muft not the Guilty be pun nished, because the same Methods may be made use of for the punishing of honest Men? I am not afraid of what will be made use of of it; if there come Times of Violence when there are no Parliaments, they will not want this Precedent; there are others that have been cited, that will much more justify those Proceedings; may, this may protect the Innocent. If a Bill come to be proceeded in against another, he may say, Sir John Fawcett was heard personall, and by his Counsel; that the Evidence was produced before him, and confronted with him. An innocent Man may say, There was that extraordinary in his Crime, which is not in mine; he would have introduced a foreign Army, and afterwards have aggravated his Crime, by endeavouring to abase the King, and creating a Jealousy between the King and his Ministers.

So in the next place it is said, That here is not legal Evidence; which I think is a Mistake: And, say some, Though here is an Evidence, that really convinces them in her Confessions (I am not ashamed to make use of that Word) yet they are not for putting this Bill, because there is not a legal Evidence. With sublimation, that is a Mistake; before 1 Ed. VI, one Witnes was a good Evidence in High-Treason; but there was Variety of Opinions touching Treason before that Time; but neither the 1st nor 5th Ed. VI, in the penning or wording of them, nor in the Reason of them, were intended to extend to the High Court of Parliament; so that, for ought that hath been said, though one Witnes corroborated by Circum stances, as this Case is, and the Confession of the Party, would not be legal Evidence below; yet, with sublimation, it is a legal Evidence in Parliament, even according to the first Rules of Law; because no Law hath made two Witneses requisite in this Case; so that 'tis a convincing Evidence: I think it may be justified to be a legal Evidence; and as it convinces me, that I can't refit the Belief of it, I must be for this Bill, notwithstanding what some Gentlemen have said, by way of endeavouring to explode Confesse as a Rule not to walk by in this Case. One Instance given against it was, because a Hangman has not a discretion ary Power to execute a Man according to his Confi dence, and put him to what fort of Death he pleases; as if we had not a better, and more legal, and deferentary Power in the High Court of Parliament than the Hangman has.

But we are told of several Instances, where mad, and hair-brain'd Men have made use of their Confidence to palliate their Extravagancies. No doubt it hath, and let me tell you, Religion hath been much of an accessory to the worst of Villanies in all Ages; and yet I hope they will not argue, that there ought to be no Religion neither, for a Guide to Men's Actions.

When Men come to be Judges, I would know what Rule they can have better than a fede rate, well-informed Confidence? Below, when a legal Evidence is given, yet the Jury are not bound to go by that legal Evidence; they are, when they have heard it, Judges of the Fact, and are to go by no other Rule, than what is ridiculed here, even the Rule of their own Confidence.

It was said early in the Debate by a Member of great Reputation, that this (except Munnatis's Cafe) is the first Precedent of a Bill of Attainder that began in this House. It seems the ancient Way was, for the Lords to give the Witneses their Oaths, and when they thought fit, they sent down a Bill, and the Commons were to proceed upon it: But I think, with sublimation, this is a much better Way; and I had much rather give my Consent upon hearing convincing Evidence, and not the Party has nothing to say for himself, than upon any Bill transmitted from the Lords, and no other Evidence, than that they thought fit to pass it.

Some Gentlemen have set a great Weight, or rather mistaken the Argument: Say they, Sir John Fawcett is not a Man so considerable as to endanger the Government. Admit that those that have spoke for the Bill, have not made that use of the Argument; but this is that I lay my Finger upon in particular; 'tis plain he was to be General, and knew a great many of the Officers. I am satisfied he hath not made that Atonement to his injured Country, that he ought to have done. I am satisfied, that unless this Bill proceed steadily against him, you will have none of that Discovery—

[Here he was interrupted by the Noise of some Gentlemen, showing Disatisfaction at this Way of arguing.]

Mr. Cooper proceeds. Don't let Gentlemen per vert this Argument, and say, Will you hang a Man if he don't confess? No; but when I have heard Proof, that he is guilty of the worst of Treasons, and hath aggravated his Crime in that manner which he hath done, he deferves to die; unless
unless he will merit his Life by a Discovery of what he knows. I think it of the highest Importance to you, that you shall come to the further Knowledge of the other Branch of the Conspiracy; the Meeting of the French King's Forces in England. I think you are in a proper Method, and perhaps may have a better Life of this Bill than his Death; But if not, he will pay the Debt, which he owes to the Justice of his Country.

Mr. Paget. Sir, I can't believe but I shall be heard, as to the little I have to say, with more Unanimity; for I am a long a Debate. But, Sir, if I did take the Liberty to give my Opinion, why I was against this Bill before; I think it as reasonable to give you our Reasons, why I don't stand convinced by the Arguments I have yet heard. And that I may the better give you my Reasons, I shall, as well as I can remember, repeat some of the Arguments that have been urged for the Failing of it.

If I mistake not, some of the Arguments have run upon the Power and Prerogative of Parliament; some upon what was proper Evidence in this High Court of Parliament, other than what would be in other Places; others upon the Extraordinary of the Occasion.

As to the fifth of these Arguments, since Gentlemen much more experienced in Rules of Parliament, do not think fit to deliver their private Opinion, what Rules Parliament may in Reason be supposed to have, I shall not say any Thing to that.

As to the Arguments, of what Evidence shall be sufficient to adjudge a Man to Death in this House; I confess, I shall at all Times be very careful, how I give my Opinion in Matters of Life and Death; because I think the greatest Caution is to be used in that Case: And for this Reason, I can't consent to give my Opinion in one Case, that I shall think fit to retract in any Case afterwards.

If I understand the Meaning of the House, 'tis not in favour to Sir John Fenwick himself, that Gentlemen oppose this Bill, but for fear of suffering in a Precedent, that may be made use of against a better Man.

I confess, here is a worthy Member that spake last, said something in his Argument that hath some Weight with me. I did apprehend by the general Debate of the House, that the Parliament had no Rules at all, but what they would fix to themselves; but I have a great Regard for his Opinion: But if he says true, the Evidence before you is not Legal Evidence in Writs-Injunct-Hurt, but 'tis legal Evidence according to the Rules of Proceeding in the High Court of Parliament; But I think, if they may be presumed to have any Rules to go by, nothing is so proper to me, as that a Rule of their own of so late Date, as the Act for regulating Trials in Cases of Treason, should be a Rule to them: And 'tis said in that Act, That after such a Day no Person shall be brought to Trial in any Case of Treason, &c. but he shall be condemned upon the Evidence of two Wimmes; and I must needs say, that Act that was passed last Session, is so much for the Liberty of the People of England, that I think it will be very hard to repeal that Substantial Part of the Law so soon after it was made.

As to the Extraordinary of the Cafe, I am sensible what Strefs hath been laid on that Argument, as if the Strength of this Government did in some measure depend upon your Disposal of this Matter one Way or the other: And since that is the Cafe, I shall speak tenderly of it; for I was much abhor Treason against the Government, and as any Man that hath spoke for this Bill; I think, as the Crime is to be distinguished from all others, as being a more than ordinary Crime, so I think the Perfon that is concerned, must be extraordinary: And I think, with submission, there is some difference between Principals and Seconds in an Act of Treason. When you can't come at a Man being at the Head of a Rebellion, it may be reasonable to proceed by Bill of Attainder; but I think 'tis not to be treated of in any other Case, or when you may come at a Perfon another Way; which, I think, is the Cafe of this Gentleman. I am of Opinion, that there does not depend more upon Sir John Fenwick now, than when he was first taken. Why he was not tried, I shall not examine the Cafe; I supposed it was because he gave some Alliance of his Confession: Truly, I have heard no other Reason for proceeding against him now, but those Papers which have been adjudged scandalous, and are to all Intents and Purposes, I do think truly: But the Liberty of the People of England is very much concerned in the Revocation of that Act, which was promted for the Liberty of the People; and none of the Arguments that have been used can convince me, That I ought to give Judgment upon those Evidence that is produced by that Act.

Mr. Smales. Sir, I hardly thought I should have needed to have troubled you with my Thoughts in this Matter, but that this honourable Gentleman that spake last, has gone so far in his Reason, as to speak to Matter of Law: He seems to extenuate the Fault of Sir John Fenwick; and gives it as a Reason why he should not be attained by this Bill, for that he was none of the Principals, but only an Accesary: There is no Gentleman of the Crown will but tell you, that there is no Accesaries in Cases of Treason, but they are all Principals, and equally guilty; and there is no Evidence in this Cafe to make him Accesary, but he is either Principal or nothing.

When I have made this Observation, give me leave to tell you my own Thoughts: As every Man is to be saved by his own Faith, so may my Salvation depend upon my Opinion, according to my Confidence in this Matter, which is for passing this Bill.

The last Time, I gave you my Reasons why I was for this Bill; and yet I have not heard them answered, though a Gentleman said I answered my self: But I will state the Cafe, and define him to reply to me. I did say then, Sir, and do so again, That I do not think these scandalous Papers any Reason to provoke you to pass this Bill; and I do think, if he should be threatened, it would be a Breach upon his Confession. Another Thing I put out of the Cafe, That he is a Man too dangerous to the Government, that if he escape, we are all undone. I do take him, that in his Perfon, Intercreet and Friends, he is not to; and would not have that be a Motive for the passing of this Bill: But take it upon the Evidence that is before us, and in the Nature of our Proceedings; then I will say, we have great Reason to proceed upon this Bill, for the Preservation of the Government, and for this Reason: Whereas it is inflicted on one side, that here are the Laws and Liberties of England at Stake, and no Body knows how
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who's Cafe it may be next. Sir, if we don't go upon good Grounds and Reasons, that we don't fear any Body's following. God forbid we should make this a Precedent! But pray turn the Tables on the other side, and see what the Cafe will be; that here is a Gentleman that every Body of the House does believe guilty; that he hath been in a Conspiracy to bring in the French, and depose the King; and the Man came before us, and we had no Power to reach him; What will the Precedent on the other Side? It will be easy to take off one of the Witwessses, of Men of great Billoats, and then they'll be no coming at them, even by the Parliament themselves: This Parliament was of Opinion, That they could not come at Sir John Frewick, though they were of Opinion he was guilty.

But now, Sir, to that which is the Question: 'Tis allowed by every Body, you may do what you please; but without training your Legislative Power, I shall offer my Thoughts and Reasons for it, upon these three Points: That the Fact is Treason; That he is plainly guilty; and That we have a plain Jurisdiction in this Cafe, in the ordinary Methods and Proceedings of Parliament.

Sir, the Fact is Treason, the Meeting at several Times, and conspiring, and confuting to bring in a French Power to depose the King. You have been told by several Persons, and the Council at the Bar, That such Meetings, without some other overt Act, is not Treason; but I affirm the contrary, for that is an Overt Act of conspiring the Death of the King: And Sir Bartholomew Scatter, who did inflict upon it at the Bar, did otherwise act his Part upon it at the Trial of Mr. Cook; for he offered it at first, but afterwards he disavowed it, as a Thing he could not stand upon; for 'tis the Opinion of all the Judges, upon a late Resolution.

Then, Sir, the Fact being Treason, is no Act ex post facto. We are not making out that Treason which was not so, but we are only judging of the Fact that was Treason before; though if it was a Doubt whether it was Treason or no, the Parliament hath a Power, by 25. Edw. III. to judge that Treason, that the Courts below have no Power of.

The next Thing is, Whether there be sufficient Evidence of his Treason before us? If it will put out of the Cafe, as no conclusive Evidence at all, what Goodman hath said upon his Oath (farther than that there was such a Witwesse that did and could swear such a Thing, and that he was examined before the Jury); and this I will take upon me to say (and I will give my Reason for my Opinion) That the Parliament is not obliged to Two Witwesses by any Law now in being.

It hath been told you, That from the Time of Ed. III. one Witwesse was sufficient till the Statute of Ed. VI. Now I will prove to you, from the Statutes of Phil. and Mary, That the Common Law, and all the Time between the Reign of Ed. III. and Ed. VI. one Witwesse was sufficient for this Treason. For that Statute of Phil. and Mary does say, that any Person that shall bring from beyond Sea, any false and counterfeitt Coin, or be convicted of any Offence concerning the Impairing of the Coin, or Forgery of any Coin current within this Realm, shall, and may be indicted, arraigned, convicted, or attainted by such like Evidence, and in such-like Manner as was accustomed before the first Year of K.

Ed. VI. Now, what was the Reason of that Statute before the Statute of Ed. VI? Those Counterfeitters were to be tried by one Witwesse: and therefore at this Day all the Counterfeiters, and Utterers of false Coin, have been Attainted by one Witwesse. 'Tis said again, That there is the Law of Nations, and the Law of God, to the contrary. Gentleman, I have said several times already, That in Murder and Felony, one Witwesse is sufficient; which, having some little Parts of the Judgment as to the forfeiture and Attaining of the Blood, is the same Penalties. We are not in the Land where that Law was in Force; for by that Law, as to common Felons, there was a Restitution only: But I would put a Gentleman that sits by the Bar this Cafe; By the same Law of Deceit and Numbers, that he hath quoted, Adultery is Death: Will you be convinced that that should be so here? They are either all of them in Force, or none of them in Force.

I do say, That by the Statute of Ed. III. and ever after, till the Statute of Ed. VI. one Witwesse was sufficient to convict any Man of Treason. And I do say, That the Statutes of Ed. VI. do not preclude the Parliament from any Method of Proceedings.

The Statute says, That no Man shall be indicted, or shall they proceed upon such Indictment, From which Words in the Statute, I do plainly make it appear to any Gentleman that will read it, 'tis confined only to the Courts of Wigsmiter-Hall: For certainly, you can't call a Bill of Attainder, to be a Proceeding upon an Indictment, What I say, is only to dischage my own Conscience, and to save the tender Consciencnes of them that hear me; and therefore, I decite them never to say, That there ought to be Two Witwesses, before they answer what I have said upon that Statute.

Then, Sir, you have need but of one Witwesse, and you have had Captain Porter before you; who, I think, notwithstanding all that hath been said, is a credible Witwesse. A Gentleman made some Objections to his Credit, and told you, he was not to be believed, because he was in the same Conspiracy, and had been in such a villainous Action: But, Sir, the same Gentleman hath often confined you, and the Rules of Wigsmiter-Hall, and he hath told you, 'Tis a wrong Place here, and that a Man has not so good a Trial here, as in Wigsmiter-Hall. Why? The Thing that was spoke of, of his being concerned in the Affiliation, and of his being a Fellow-Consipirator with them, which is now urged as an Objection before you, is no Objection in Wigsmiter-Hall.

I would only take notice of another Objection this Gentleman made to the Witwesse, which he said he had from the Bar; which was, That Captain Porter was not pardoned, and he was now drudging for his Pardon: But that is so far from what ought to be quoted, that he that said it, ought to be reprimanded for it.

He made another Objection against his being a good Witwesse, and compared it to the Cafe of an Hundred; but he did not remember, that the Man that was robbed is a good Witwesse, and the Reason is, because of the necessity of the Thing, and that no others could be, and the Defendant in an Hundred can't be a Witwesse, because there may be others; and that is the Reason of this Cafe.
And for the Precedents in Richard III's and Henry IVth's Time, no Gentleman can infill upon them, considering the Differences of the Crown, and the one Attainted the other; and they were not revered upon the Point of Jurisdiction, but because of the different Rights of the Kings; and no body had pretended to answer the Case of the Logicians; they were not left to the Law, I mean such as were actually tried before the Parliament; but the Parliament passed different Judgments on them; and some of them were in Custody. What was told you of Crownwell's Case and others, they go upon the same Reason, that they were not heard, though they were in Custody.

Col. Warton. A Gentleman lately told you, We had lately passed an Act for Trials in Cales of Treason, and how are we in this Proceeding, about doing something that is contrary to it? That is a Thing that would tickle with me, if I could not answer it; but I appeal to every Gentleman in this House, whether that Act hath any force of relation to Trials in Parliament; for that is only to direct the Courts in Woffinsig-Hall.

I have only this to say, I think the Evidence very full before you. I think you have had one very good Witness, and the Council for the Prisoner had Liberty to confront him: If he had not been guilty, the Prisoner at the Bar would have denied it: I am convinced of the Truth of it, and my Confidence is to make a Judgment upon it, and that is all we can go by here.

Mr. Jefferys. A worthy Gentleman of the Long Robe hath taken Pains to find out Precedents to justify our Proceedings; and another says, there is no Act to circumcise our Proceedings. But since Gentlemen differ so much, it gives me a great deal of Caution. This I know, there is a Law of the Land, by which PERs ought to be governed: I take this to be an extraordinary Method of Proceeding, and I hope the Lords will take more Care of the Matter than the Commons.

Mr. Edward Harley. Sir, I cannot satisfy my self to be for this Bill; and in a few Words, I shall give my Reason for it. It hath been said, That the Parliament is unlimited. I do agree, that we are not tied to the Rules of Woffinsig-Hall. I shall only mention the Reason why two Witnesses are required in Cales of High-Treason. If any will look into the History of England, they will find it hath been often the Deign of the Crown to trump up Plots upon the Subject; and therefore these Acts took particular Care there should be two Witnesses to prove the Fact: This is the Reason of the Law, and, I think, upon it the Liberty of the Subject is founded; and therefore I can't be for this Bill.

Then the Question for passing this Bill was put, and the House divided.

Ayes, 189. Noes, 156.

The Writ for Executing Sir John Fenwick, being under the whole Broad-Scal, and inclosed in it.


minl. biueri(um) duci Octobris. Anno Regi
nori et avo, per prerogationem test Edit. de abi
di(um) periam periam. & cum(um) atit.

fide, & execr(bium) fidei adone adone prae(um) &
qua pro certis causijs & confederacionibus vos ertis.

cler. merebatur. Estam, ex Solicitatione. Adiuv(um)
proel. fidei. Df. Johanne Fenwick, posteri(um)
putationem Capitis, fui, emittit solvitur; alios prae-
genius cuibus & per praestat proferent infor g(um)

C H U T E.

The Label, Vic. Com. Lond. & Maxde, de executione

C H U T E.

All the Penitence being remitted but Reconciling, it was brought to a Committee erected on Tower-Hill, where he delivered this Paper to the Sheriffs.

Speaking nor Writing was never my Talent: I shall therefore give a very short, but Faithful Account, first, of my Religion, and next, what I suffer most innocently for, to avoid the Calumnies I may reasonably expect my Enemies will cast upon me when dead; since they have most falsly and maliciously apered me, whilst under my Misfortunes.

As for my Religion, I was brought up in the Church of England, as it is established by Law, and have ever professed it, though I confess I have been an unworthy Member of it, in not living up to the strict and excellent Rules thereof; for which I take Shame to my self, and humbly ask Forgiveing of God. I come now to die in that Communion, trudging, as an humble and hearty Penitent, to be receive'd by the Mercy of God, through the Merits of Jesus Christ my Saviour.

My Religion taught me my Loyalty, which I bless God is unannounced; and I have ever endeavored in the Station wherein I have been placed, to be true to my Power, to support the Crown of England in the true and lineal Course of Defendant, without Interrup-

As for what I am now to die, I call God to witness, I went not to that Meeting in London-

street with any such Intention as to involve King James by Force to invade this Nation; nor was I my self provided with either Horse or Arms, or engaged for any Number of Men, nor gave particular Content for any such Invasion, as is most falsly sworn against me.

I do also declare, in the Presence of God, That I know nothing of King James's coming to Calais, nor of any Invasion intended from thence, till it was publicly known: And the only Notion I had, that something might be attempted, was from the Brounlow Fleet coming to Breif.
1696. Parl. upon a Bill of Attainder for High-Treason. 137

I also call God to witness that I receiv'd the Knowledge of what is contain'd in those Papers that I gave to a great Man, that came to me in the Tower, both from Letters and Missages that came from France; and he told me, when I read them to him, that the Prince of Orange had been acquainted with most of those Things before.

I might have expected Mercy from that Prince, because I wasInstrumental in saving his Life: For when, about April, 1695, an Attempt form'd against him came to my Knowledge, I did, partly by Disclosures, and partly by Delays, prevent that Design; which, I suppose, was the Reason that the last villainous Project was conceal'd from me.

If there be any Persons whom I have injur'd in Word or Deed, I heartily pray their Pardon, and beg of God to pardon those who have injur'd me; particularly those who with great Zeal have fought my Life, and brought the Guilt of my innocent Blood upon this Nation, no Treson being prov'd upon me.

I return my most hearty Thanks to those noble and worthy Persons who gave me their Assistance, by opposing this Bill of Attainder, without which, it had been impossible I could have fallen under the Sentence of Death. God bless them and their Posterity; though I am fully satisfy'd they pleased their own Cause, while they defended mine.

I pray God to bless my true and lawful Sovereign King James, the Queen, and Prince of Wales, and refor me him and his Posterity to this Throne again, for the Peace and Prosperity of this Nation; which is impossible to prosper till the Government is settled upon a right Foot.

And now, O God! I do with all humble Devotion commend my Soul into thy Hands, the great Maker and Preserver of Men, and Lover of Souls, beseeching thee that it may be always dear and precious in thy Sight, through the Merits of my Saviour Jesus Christ. Amen.

John Fenwick.

Then he submitted to the Block, and the Executioner sever'd his Head from his Body.

CLXIV. The TRIAL of Edward Earl of Warwick and Holland, before the House of Lords, for the Murder of Richard Coote, Esq; March 28, 1699. IT Will. III.

About Eleven of the Clock the Lords came from their own House into the Court erected in Westminster-Hall, for the Trials of Edward Earl of Warwick and Holland, and Charles Lord Jersey, in the Manner following.

The Lord High Steward's Gentlemen Attendants, two and two.

The Clerks of the House of Lords, with two Clerks of the Crown in the Courts of Chancery and King's Bench.

The Matters in Chancery, two and two. Then the Judges.

The Peers eldest Sons, and Peers Minors, two and two. Four Serjeants at Arms with their Maces, two and two.

The Yeoman Usher of the House. Then the Peers, two and two, beginning with the youngest Barons. Then four Serjeants at Arms, with their Maces.

Then one of the Heralds, attending in the Room of Carter, who by Reason of his Infirmity could not be present.

And the Gentleman Usher of the Black-Rod, carrying the White-Staff before the Lord High Steward.

Then the Lord Chancellor, Lord High Steward of England alone.

When the Lords were seated on their proper Benches, and the Lord High Steward upon the Woolsack.

Then the two Clerks of the Crown in the Courts of Chancery and King's Bench, standing before the Clerk's Table with their Faces towards the Suits; Vol. V.

The Clerk of the Crown in Chancery having his Majesty's Commission to the Lord High Steward in his Hands, made three Reverences towards the Lord High Steward, and the Clerk of the Crown in Chancery on his Knees presented the Commission to the Lord High Steward, who delivered it to the Clerk of the Crown in the King's Bench, (then likewise kneeling before his Grace) in order to be opened and read; and then the two Clerks of the Crown making those Reverences, went down to the Table; and the Clerk of the Crown in the Court of King's Bench commanded the Serjeant at Arms to make Proclamation of Silence; which he did in this Manner.

Serjeant at Arms. O Yes, O Yes, O Yes, My Lord High Steward his Grace does strictly charge and command all manner of Persons here present, to keep Silence; and hear the King's Majesty's Commission to his Grace my Lord High Steward of England directed, openly read, upon Pain of Imprisonment.

Then the Lord High Steward stood up, and spoke to the Peers.

Lord High Steward. Your Lordships will be pleased to stand up, and be uncovered, while the King's Commission is reading.

All the Peers stood up, and were uncovered, while the Commission was read.

Clerk of the Crown.
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Per ipsum Regem proprio Manu Sigeat. Serjeant at arms. God save the King.

Then the Herald and the Gentleman-Usher of the Black Rod, after three Reverences, kneeling, presented the White Staff to his Grace, and his Grace removed from the Wool-pack to the Chair, which was placed upon an Acent just before the uppermost Step of the Throne, and seated himself in the Chair.

Clerk of the Crown. Serjeant at Arms, make Proclamation.

Serjeant at Arms. O yes, O yes, O yes, my Lord High Steward of England, his Grace, does strictly Charge and Command all manner of Persons here present, to be uncovered upon pain of Imprisonment.

Then the Judges and Masters in Chancery sat down in their Places upon the Wool-packs, uncovered.

Then the Clerk of the Crown read the Return of the Certifier in his own words.


& in prael. prouctor. quaud dux Dof. & ad influent. ceteroram Dof. J. Holz.

Virtute cuju brevitas mih. & alia direct. Indictante. & Inquisitions, infra nominat. necesse Record. convocation. infra nominat. Rict. French, Roger James & Georgii Deckera, pro felon. & bonum, unde in- dicat, & eipertindus per quoad 34 E 9. Pris. comissi. except. cum omnibus ex tanget. eno Doun. Regre in-
[Then the Earl of Warwick was brought to the Bar (by the Deputy-Governor of the Tower of London, having the ch carried before him by the Gentleman usher, who stood with it at the Bar, on the Right Hand of the Prisoner, turning his back towards the Prisoner at his Approach to the Bar making three bows, one to his Grace the Lord High Steward, the other to the Peers on each hand, and his Grace and the Peers returned the Salute.)]

Lord High Steward. My Lord of Warwick, your Lordship is brought before this great Judicature, in order to your Trial. You flind intituled by the grand Inquest for the County of Middlesex, as guilty of the Murder of one of the King's Subjects, for whole Blood Justice requires a strict Inquisition should be made.

Your Lordship is call'd to answer this Charge before the whole Body of the House of Peers assembled in Parliament. It is a great Misfortune to be accused of so heinous an Offence, and it is an Addition to that Misfortune, to be brought to answer as a Criminal before such an Assembly, in Defence of your Estate, your Life, and Honour. But it ought to be a Support to your Mind, sufficiently to keep you from flinching under the Weight of such a Conflagration, that you are to be try'd before so noble, discerning, and equal Judges, that nothing but your own Guilt can hurt you. No Evidence will be received, but what is warranted by Law; no Weight will be laid upon the Evidence, but what is agreeable to Justice; no Advantage will be taken of your Lordship's little Experience in Proceedings of this Nature; nor will it turn to your Prejudice, that you have not the Assistance of Council in your Defence, as to the Fact, (which cannot be allowed by Law) and your Counsel have already affixed you Council, if any Matters of Law should arise.

Your Lordship, throughout your whole Trial, may affur'dly promise your self, to find all the Candor and Complaisance which is consistent with impartial Justice; beyond that nothing is to be expected: Their Lordships can never so far forget themselves, as to depart from what is right, and to draw the Guilt of Blood upon their own Heads; but if your Lordship is innocent you are safe.

My Lord, it will be requisite for you to recoll yourself upon this Occasion, in the best manner you can. You ought to hear with Tempor, what the King's Council have to say, without interrupting them, and to hearken carefully to the Witness produced against you, that you may be ready to cross-examine them if you find Cause, and to make your Observations upon the Evidence when the proper Time comes for your Lordship to make your Defence; of which I will not fail to give you Notice; and when that Time does come, your Lordship may be assured, your self and your Witnesses will be heard with great Patience and Attention; and when my Lords have heard and considered the whole Matter, the Judgment will unquestionably be according to the Rules of Justice, and such as will become the Honour of this High Court.

Read the Indictment to my Lord.
Clerk of the Crown. God send your Lordship a good Deliverance.

Then at the Motion of some Lords who sat towards the upper End of the House, and by Reason of the Distance could not distinctly hear the Clerk, the Indictment was read again, the Clerk standing near the upper End of the House.

C. of the Crown. Serjeant at Arms, make an O Yes.

Serjeant at Arms. O Yes, O Yes, O Yes, If any one will give Evidence on behalf of our Sovereign Lord the King, against Edward Earl of Warwick and Holland, of the Felony and Murder whereof he stands indicted, let them come forth, and they shall be heard; for now he stands at the Bar upon his Deliverance.

L. H. St. Will your Lordships give me leave to go down to the Wool-pack, that I may hear the better.

Lords. Ay, ay.

Then his Grace removed to the Wool-pack, and delivered the White Staff to be held by the Gentlemen of the Black Rod, who during the whole Trial always received and delivered back the White Staff upon his Knees.

L. H. St. Mr. Attorney, are you ready to proceed?

* Mr. Att. Gen. Yes, my Lord.

L. H. St. Then begin, Sir.  
* Sir Thomas Mr. Serj. Wright. May it please your Lordships.

L. H. St. Pray, Mr. Serjeant, raise your Voice as much as possible you can, that my Lords towards the upper end of the House may hear.

Mr. Serj. Wright. May it please your Lordships, this noble Lord Edward Earl of Warwick and Holland, the Prisoner at the Bar, stands indicted for the felonious Killing and Murder of one Richard Cotes, Esq. and the Indictment sets forth, That upon the 30th Day of October, in the tenth Year of his Majesty's Reign, at the Parish of St. Martin in the Fields, in the County of Middlesex, the Prisoner on the Bar, the Earl of Warwick, together with Charles Lord Mohun Baron of Okehampton, Richard French, Roger James, and George Dockwra, Gent. feloniously, voluntarily, and of their Malice aforethought, did make an Assault upon the said Richard Cotes, in the Indictment named; and the Indictment chargeth, that the Earl of Warwick, at the same Time and Place, with a Sword, feloniously, voluntarily, and of his Malice aforethought, did give unto the said Richard Cotes, in or upon the left Part of the Breast of him the said Richard Cotes, near the Collar Bone of him the said Richard Cotes, one mortal Wound of the Breadth of half an Inch, and of the Depth of five Inches, of which said Wound the aforesaid Richard Cotes then and there instantly died: And that the aforesaid Charles Lord Mohun, Richard French, Roger James, and George Dockwra, then and there feloniously, voluntarily, and of their Malice aforethought, were present, aiding, assisting, comforting, aiding, and maintaining the said Edward Earl of Warwick and Holland, the said Richard Cotes, in Manner and Form aforesaid, feloniously, wilfully, and of their Malice aforethought, to kill and murder; and for the said Edward Earl of Warwick and Holland, and the said Charles Lord Mohun, Richard French, Roger James, and George Dockwra, the aforesaid Richard Cotes, in Manner and Form aforesaid, feloniously, voluntarily, and of their Malice aforethought, did kill and murder, against the Peace of our Sovereign Lord the King, that now is, his Crown and Dignity, &c.

How say you, Edward Earl of Warwick and Holland, are you guilty of this Felony and Murder whereof you stand indicted, or not guilty?  

Earl of Warwick. Not guilty.

Clerk of the Crown. Culprit, How will your Lordship be tried?  

Earl of Warwick. By God, and my Pears.
The Trial of Edward E. of Warwick, 11 Will. III.

aforesaid, did kill and murder, against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Indictment this noble Lord the Prisoner at the Bar, Edward Earl of Warwick and Holland, did plead not guilty, and for his Trial hath put himself upon my noble Lords his Peers here present: We shall call our Evidence, and if we prove this Fact for the King, we do not doubt but your Lordships will give such Judgment for the same as shall be just.

Mr. Att. Gen. May it please your Lordships, I am of Counsel in this Cause for the King against this noble Lord Edward Earl of Warwick and Holland, the Prisoner at the Bar, who stands indicted by the grand Jury of the County of Middlesex, has been arraigned, and is now to be tried before your Lordships for the felonious killing and murdering of Mr. Cote, in the Indictment named; the Evidence to make good this Charge against this noble Lord, it comes to my turn to open to your Lordships.

My Lords, the Case, as to the Fact, according to my Instructions, is this: Upon Saturday the 29th of October last, at Night, my Lord of Warwick, my Lord Mabons, Mr. French, Mr. Dockwra, and Mr. Cote, the unfortunate Gentleman who was killed, met together at one Lauck's, who kept the Greyhound Tavern in the Strand, at about twelve of the Clock at Night, or thereabouts, a Messenger was sent by the Company to fetch another Gentleman, Mr. James; and Mr. James coming to them, in what Condition your Lordships will be told by the Witneses; about one of the Clock in the Morning, on Sunday the 30th of October, they all came down out of the Room where they had been to late, to the Bar of the Houfe, and there, as the Witneses will tell your Lordships, Swords were drawn, and Chairs were called for, and two Chairs which were nearest at hand came, and two of the Company went into those Chairs; who they were, and what pass at that Time, the Witneses will tell your Lordships; those that got in to those Chairs came out again, and more Chairs were called for. But I must acquaint your Lordships, that my Lord Mabon, when the two Gentlemen that went into the Chairs ordered the Chairmen to take them up, and carry them away, spoke to them to stop and go no further, for there should be no quarrelling that Night, and that he would fend for the Guards and secure them; and after this they came out of the Chairs again; it will appear there were Swords drawn amongst all of them, and some Wounds given: More Chairs being called for, andb rought, this noble Lord that is here at the Bar, my Lord of Warwick, my Lord Mabon, and the other four Gentlemen, went all into the Chairs, and gave the Chairmen Directions whither they should carry them, at last the Foremost had Directions given them, and the Bell was to follow them; it was a very dark Night, but all their lights were put off: and they were set down a little on this Side the Rails of the Square, and when the Chairmen had set them down they went away; but immediately some of them heard my Lord of Warwick calling for a Chair again, who came towards the Rails, and there they found two of the Gentlemen that had been carried in some of the other Chairs, holding up Mr. Cote between them, and would have had the Chairmen carried him away to a Surgeon's, but they found he was dying, and to would not meddle with him; afterwards my Lord of Warwick and Mr. French were carried by two of the Chairmen to Mr. An's, the Surgeon at the Bagpits in Long-acre, where Mr. French being wounded, was taken care of particularly by the Recommendation of my Lord of Warwick, and the Master of the Houfe was called up, it being very late, Mr. Cote's Sword was brought to that Place, but by whom it was brought we cannot exactly say. While my Lord of Warwick and Capt. French were there, and my Lord of Warwick had given Orders for the denying of himself, and forbid the opening of the Door; there came the other two Gentlemen, Mr. James and Mr. Dockwra, and upon their knock at the Door they were let in by my Lord's Order, after he had discovered who they were, looking through the Wicket. Mr. James had his Sword drawn, but it was broken. My Lord of Warwick's Hand was slightly wounded, and his Sword bloody up to the Hilt when he came in, as will be proved by the Testimony of the Servants in the Houfe. There was a Discourse between my Lord, Mr. James, and Mr. Dockwra, about going into the Country; but before they went, the Swords were all called for to be brought to them, and upon Enquiry, there was no Blood found upon Mr. French's Sword; but a great deal upon my Lord of Warwick's, of which great Notice was taken at that Time. Mr. Cote, who was killed, had received one Wound in the left Side of his Breast, half an Inch wide, and five deep, near the Collar Bone; he had likewise another Wound upon the left Side of his Body; both which your Lordships will hear, in the Judgment of the Surgeon, were mortal Wounds, and the Evidence will declare the Nature of them.

My Lords, the Evidence does chiefly consist of, and depend on Circumstances, the Fact being done in the Night, and none but the Parties concerned being present at it; we shall lay by the Evidence before your Lordships, as it is, for your Judgment, and call what Witneses we have on behalf of the King, against this noble Peer the Prisoner at the Bar, and take up your Lordships Time no further in opening; and we shall begin with Samuel Cawburne; he is a Drawer at the Tavern where those Lords and Gentlemen were together, and he will give you an Account of the Time they came there, how long they stayed, what happened in the Houfe during their being there, and what Time they went away.

L. L. St. Give him his Oath. (Whabstbe Clerk did.)

Mr. Att. Gen. My Lords, I doubt the Witneses is so far off, that it will be difficult for him to hear the Questions that we are to ask him, unless we could have him nearer to us.

L. H. St. My Lord, Attorney, My Lords seem to be of Opinion, that it will be more for your Advantage and theirs, that the Witneses stand at the Distance they do; which will oblige you to raise your Voice to load, that they may hear the Witnesse without you.


Mr. Att. Gen. Well, pray you acquaint my Lords with the Time when my Lord of Warwick, my
my Lord Mohun and Mr. Cote were at that House, how long they stayed, what happened while they were there, and when they went away?

Cavendish. It was Saturday Night the 29th of October last.

Mr. Att. Gen. Pray tell my Lords the whole of your Knowledge in the Matter.

Cavendish. There came my Lord of Warwick, my Lord Mohun, Capt. Cooke, Capt. French, and Capt. Devereux, the 29th of October last, in the Evening, to my Master’s House at the Greyhound Tavern in the Strand.

Mr. Att. Gen. How long were they there, and what time of Night came they in?

Cavendish. About Eight a Clock at Night, my Lord Warwick, my Lord Mohun, Capt. French, and Capt. Cooke, came in.

Mr. Att. Gen. What Day do you say it was?

Cavendish. Saturday, the nine and twentieth Day of October last.

Mr. Att. Gen. How long did they stay there?

Cavendish. It was between One and Two the next Morning before they went away.

Mr. Att. Gen. Was any Body sent for to come to them there?

Cavendish. Yes, Mr. James.

Mr. Att. Gen. What Time was that?

Cavendish. About Twelve of the Clock.

Mr. Att. Gen. Did he stay with them till they went away?

Cavendish. Yes.

Mr. Att. Gen. What did you observe past in the Company while they were there?

Cavendish. I did not observe any Thing of Quarrel, nor so much as an angry Word amongst them, till they came down to the Bar and were going away; when they came down to the Bar, they ordered me to call them Chairs, or Coaches, and there were no Coaches to be had, and so I went for Chairs, and two Chairs came; for the Porter that went to call the Coaches was a great while before he came back; and as I said, I going for Chairs, there came two, but that they said was not enough; so more Chairs were called for, and at length there were more Chairs gotten; in the first three Chairs, my Lord of Warwick, my Lord Mohun, and Capt. Cooke went away in; and my Lord Warwick and my Lord Mohun bid the Chairmen carry them home.

Mr. Att. Gen. Were there then any other Chairs at the Door?

Cavendish. There were two more Chairs at the Door, and another was called for.

Mr. Att. Gen. Did you hear any Directions given where they should carry them?

Cavendish. My Lord Warwick and my Lord Mohun bid them carry them home.

Mr. Att. Gen. Did you hear my Lord Warwick or my Lord Mohun particularly, and which, say whether they were carried?

Cavendish. I did hear my Lord Mohun say Capt. Cooke should go and lie with him, or he would go and lie with Capt. Cooke that Night, for there should be no quarrelling.

Mr. Att. Gen. Did they upon that go away?

Cavendish. Mr. French and Mr. Cote were in Chairs before my Lord Mohun or my Lord Warwick, or any of the rest.

Mr. Att. Gen. What then happen’d upon their going into the Chairs?

Cavendish. My Lord Mohun came out to them and swore there should be no Quarrel that Night, but he would send for the Guards and secure them.

Mr. Att. Gen. What happen’d then?

Cavendish. Upon that, both of them came out of their Chairs and came into the House, and there they came to the Bar, three of them in the Piazza by the Bar, and three of them behind that Piazza.

Mr. Att. Gen. Pray will you tell what did really pass throughout the whole Transaction? What was done after they came in again into the House?

Cavendish. After that, I was bid to call for six Chairs, if I could get no Coaches, and so I did, and when I had brought what Chairs I could get, and returned to the Bar, I heard the Swords clat; when the Swords were drawn, I cannot say, nor by whom, it might be by all the six, for ought I know, because I was in the Street to call the Chairs, and when I came back to the House, I was in hopes all had been quieted, for their Swords were putting up: And when they went away in the Chairs, I did hope they went away friendly.

Mr. Att. Gen. Pray how did they go away, who went together?

Cavendish. My Lord of Warwick, my Lord Mohun, and Capt. Cooke went in the first three Chairs, them three together, and bid the Chair-men go home; the fourth Chair was not then come.

Mr. Att. Gen. When that Chair came, pray what Directions were given to it?

Cavendish. I did not hear them give the Chairmen any Directions at all.

Mr. Att. Gen. Do you know any thing more that you were to tell this Time?

Cavendish. No, my Lords, not after they went away; after I returned with the Chairs, it was in two Minutes time that they went away.

Mr. Att. Gen. My Lords, I suppose he knows no more of the matter.

L. H. St. Will you then ask him no more Questions, Mr. Attorney?

Mr. Att. Gen. No, my Lords, unless this noble Lord shall ask him any Questions, upon which we shall have occasion to examine him.

L. H. St. My Lord, has your Lordship any Questions to ask this Witness? For now is your Time, the King’s Council having done examining him.

E. of War. I desire to ask him whether I did not bid the Chair-men go home?

L. H. St. Do your Lordship please to propound your Question to me, I will require an Answer to it from the Witness, and it will be the better heard by my Lords.

Earl of Warwick. My Lord, I desire to know of this Man, whether, when I went away in the Chair from his Master’s House, I did not bid the Chair-men go home.

L. H. St. Witness, you hear my Lord’s Question, what say you to it?

Cavendish. Yes: My Lord of Warwick did bid the Chair-men go home.

E. of Warwick. My Lord, I have another Question to ask him, Whether he knows of any Quarrel there was between me and Mr. Cote at that Time, or any other Time, because we both used to frequent that House?

Cavendish. No, my Lords, I never heard any angry Words between my Lord Warwick and Mr. Cote in my Life.
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[Then the Lords towards the upper End of the House complaining that they did not hear his Grace, the Lord High Steward was pleased to repeat the Question thus]

L. H. St. When my Lord of Warwick bid the Chairmen go home, or at any other time, did you observe that there had been any Quarrel between his Lordship and Mr. Cotte?  
E. of Warwick. My Lord, I desire he may be asked, since we both used that Houfe, Whether that Night when I went away, or before or after, I had any Quarrel with Mr. Cotte?  
L. H. St. The Question my Lord directs you that the Witnifs to answer, is, Whether you did hear any Quarrelling or angry Words to pass between my Lord Warwick and Mr. Cotte that Night before or after they came down, or when they went away, or at any other time?  
Cawthorne. No, my Lord, I never heard any angry Words pass between them then, nor ever at any time in my Life, but I always looked upon them to be very good Friends.  
E. of Warwick. I desire he may be asked, Whether Mr. Cotte did not come to that House in my Company, and whether he did not frequently come to that Houfe?  
Cawthorne. Yes, they us'd to be there every Day almost, and they came that Night together in Company.  
E. of Warwick. I desire he may be asked, Whether I have not been frequently in his Company there?  
Cawthorne. Yes, I say very frequently, every Day almost, sometimes twice a Day.  
L. H. St. Would your Lordship ask him any other Question?  
E. of Warwick. My Lord, I desire he may be asked this Question, Whether he knows of any particular Kindness between Mr. Cotte and me?  
L. H. St. Do you know of any particular Kindness between my Lord Warwick and Mr. Cotte, the Gentleman that was killed?  
Cawthorne. Yes, my Lord, there was always a great Kindness between them as I observed, it ever was so, and I never heard angry Words pass between them, but they were very good Friends constantly; I waited upon them generally when they were at my Master's Houfe, which was every Day almost.  
E. of Warwick. I desire to know of this Witness, Whether he does not remember, or can name any particular Kindnese that passed between Mr. Cotte and me?  
L. H. St. Can you specify any particular Instances of Kindness that passed between my Lord Warwick and Mr. Cotte?  
Cawthorne. Yes, my Lord of Warwick used generally to pay the Reckoning for Mr. Cotte, and he did so at this Time.  
E. of Warwick. My Lord, I desire he may be asked, between whom he apprehended the Quarrel to be at this Time.  
L. H. St. You say, Friend, there were Swords drawn, and a Quarelling at the Bar; Can you tell between whom the Quarrel was?  
Cawthorne. My Lord Warwick, my Lord Maban, and Capt. Cotte, were all on one Side, and the other three were on the other Side.  
E. of Warwick. Who were the two Persons that it was apprehended the Quarrel was between? I desire he may be asked.  
L. H. St. You say, there were Thrice on the one Side, and Thrice on the other; pray, between whom did you apprehend the Quarrel to be?  
Cawthorne. I believe the Quarrel was between Mr. Cotte and Mr. French.  
E. of Warwick. My Lord, I desire to know of this Witness, what Words he heard Mr. Cotte say, after he and Mr. French returned into the Houfe and came out of the Chair.  
L. H. St. What do you say to the Question my Lord propounds?  
Cawthorne. I heard Mr. Cotte say, He would laugh when he pleaded, and he would frown when he pleaded, God damn him.  
E. of Warwick. My Lord, I desire to know who he thinks those Words were addressed to.  
L. H. St. To whom did Mr. Cotte speak these Words?  
Cawthorne. Whether he spoke them particular to Mr. French, or to the other two Gentlemen who were on the other Side of the Bar, I cannot directly tell.  
E. of Warwick. I desire to know of him, Whether Mr. Cotte was not One of the Three that was on the outside of the Bar?  
Cawthorne. Yes, my Lord of Warwick, my Lord Maban, and Capt. Cotte, were of the outside of the Bar.  
E. of Warwick. Was Capt. Cotte with me in the beginning of the Night at that Houfe?  
Cawthorne. Yes, he came at the beginning of the Night with my Lord Warwick.  
E. of Peterb. My Lords, I desire to ask this Witness one Question.  
L. H. St. I think it is proper, my Lords, in Point of Method, to let both Sides have done before any Questions be asked by any of my noble Lords.  
E. of Peterb. I did apprehend my Lord of Warwick had done.  
L. H. St. No, my Lord, not as yet; pray, my Lord Warwick, what other Questions has your Lordship to ask of this Witness?  
E. of Warwick. My Lord, I desire he may be asked particularly this Question, Whether he perceived any Quarrel particularly between me and Capt. Cotte when we went out of the Houfe?  
L. H. St. You hear the Question, Did you perceive any Quarrel between my Lord Warwick and Mr. Cotte before they went out of the Houfe?  
Cawthorne. No, I did not, nor ever saw any Quarrel between them in my Life.  
E. of Warwick. I desire to know who paid the Reckoning that Night?  
Cawthorne. The Reckoning was called for before I came in to take it; and tho' I think my Lord of Warwick paid for Mr. Cotte, yet I cannot so directly tell, because it was collected before I came into the Room to receive it.  
L. H. St. My Lord, have you any Thing more to ask this Witness?  
E. of Warwick. No, my Lord, at present, that I think of.  
L. H. St. My Lord Petworth, your Lordship desired to ask a Question, will you please to propose it now?  
E. of Peterb. My Lord, this Witness seems to take notice of two Sides, who were on the one Side, and who were on the other, and that Mr. Cotte and my Lord of Warwick were on one Side; I desire to know one Thing of him, what reason he had to apprehend that they two were of a Side?
L. H. St. Friend, you hear that noble Lord's Question; you seem to say, there were three and three of a Side. What reason had you to apprehend, that my Lord Warwicke and Mr. Coote were of one Side? You must explain to my Lords how you come to make that Judgment, what Reason you had to think so.

Cæcubium. They three my Lord Malmes, my Lord Warwicke, and Mr. Coote, were on the one Side of the Bar; and Capt. James, Capt. French, and Capt. Dockworth, were on the other Side of the Bar.

L. H. St. So you said before; but the Question which my noble Lord desires to be satisfied in, is this. How you come to speak as if there was a Quarrel between three and three? What Reason had you to think, that there were three on one Side, and three on the other?

Cæcubium. Their Swords were all drawn, and they stood three on one Side of the Bar, and three on the other.

E. of Recreation. My Lords, I desire to ask this Witness one Question; I think he told you your Lordships at first, that he did not perceive any angry Words among them; afterwards he comes to talk of Swords drawn amongst them all, three on the outside, and three on the inside of the Bar; I desire to know what was the Occasion of those Swords being drawn on the one Side or the other?

Cæcubium. Whatever Quarrel there was, was amongst themselves above Stairs, and I know no angry Words that passed between them when they came down to the Bar.

L. H. St. See what you say? How confident one Part of it is with another! You said at first, you did not hear of any angry Words that passed between them, and yet you say, all their Swords were drawn, and three were on the one Side and three on the other: And when you were examined upon the Motion of that noble Lord, what you must be three on the one Side, and three on the other, you said, my Lord Malmes, my Lord Warwicke, and Mr. Coote, were on the one side; Mr. James, Mr. French, and Mr. Dockworth, were on the other Side: How could there be two Sides, unless there was a Quarrel?

Cæcubium. I said, I did not hear any angry Words pass between them before they came to the Bar, or while they were above Stairs; but there were three on the one Side of the Bar, and three on the other.

L. H. St. But you have not given a satisfactory Answer to that Question which the noble Lord, my Lord Petersburg, asked you, What Reason you had to apprehend, that the noble Lord, the Prisoner at the Bar, and Capt. Coote were of a Side?

Cæcubium. My Lord Malmes came to the Chair side, when Capt. Coote and Capt. French were got into the two first Chairs, and told Capt. Coote, that there should be no Quarrel that Night, but that they three, my Lord Warwicke, my Lord Malmes, and he, should go home together; and I took them three to be of a Side, because they were on the outside of the Bar together, and when they all went away, their three Chairs went away first, all three together.

L. H. St. Is that all the Reason you can give why you say, they were three and three of a Side?

Cæcubium. Yes, my Lord, I did apprehend it so.