

urged, is, That the King may chuse his Court, and they compared it with the other Courts: But there is the Mistake that runs all along in this Case. 'Tis no doubt, the King may chuse his Court for his own Action and Suit; but the Impeachment is an Impeachment of the Commons, and their Suit is to be try'd no where else but in Parliament. And the Case that was the other Day cited by Mr. Attorney, for this Purpose, is true of the Person that was arraigned for Treason, and hath been indicted and arraigned in *Ireland*, and he may be arraigned and tried here, there is no Question of it; but to say, therefore, that this is a Consequence from that Rule, that therefore he will chuse whether he will proceed in Parliament upon the Commons Impeachment, and put a Stop to the Proceeding of the Parliament, by proceeding in this Court, I take to be a great *non sequitur*.

My Lord, I have offered these Reasons, as to the Form of the Plea to maintain it. Now as to the Precedents, I would a little speak what hath been done in the like Case, where this Court hath taken hold of Causes, and the Prosecution of the Court hath been stopp'd by Pleas to the Jurisdiction, and what hath been done upon those Pleas. What Doom they have had, I will hint some of them to you.

There was a Case mentioned by your Lordship the other Day, the Bishop of *Winchester's* Case, 3 *Ed. III.* I dare not say I have looked upon the Parliament-Roll; but my Lord *Coke* tells us, he hath recited the Record, *de verbo in verbum*: In the 2d Institute, *Fol. 15.* there are all the Proceedings. It was not an Indictment, for my Lord *Coke* contradicts that, and says, it was a Declaration: There the Record at large sets forth, that the Bishop of *Winchester* was attached to answer the King; for that whereas at a Parliament held at *Sarum*, it was ordained, *per ipsum Regem ne quis ad dom. Parliament. summonitus ab eodem recederet sine licentia Regis.* And that this Bishop, in Contempt of the King, *recessit*, without leave of the King; I think, 'tis rather an Action than a Criminal Proceeding: What says the Bishop to this? He comes, and says, *Si quis deliquerit erga Dominum Regem in Parlamento aliquo, in Parlamento debet corrigi & emendari, & non alibi in minore Curia quam in Parlamento, &c.* What becomes of this Plea? 'Tis strange there should be such an Inhibition, that no Man should depart without leave of the King, and the Bishop be punished for it; we do not find any Judgment was given, nor would they venture to do it. My Lord *Coke* hath a Mark upon it; for this very Reason, it looked as if there was a Design to weaken the Parliaments, by bringing their Proceedings into *Westminster-Hall*, but they would not do it; they would give no Judgment for the King; but for ought appears, the Plea stood.

Then there is the other Case of Mr. *Plowden*, and many more in *primo & secundo Phil. & Mar.* where a great many of them, some whereof were Burgesses, and they submitted, but he did not. The Information there is this, that these Persons were summoned to the Parliament, and departed from thence without the leave of the King and Queen, though it was prohibited by them that any should depart: Most of them submit to a Fine; and if it had rested there, it might have turned to the Prejudice of the Commons as an Example.

But Mr. *Plowden*, he pleads as one that under-

stood himself, and the Power of Parliaments, and their Proceedings very well, and considers the Time to have pleaded in: Says he, I continued in the Parliament from the Beginning to the End of the Parliament; but he relies not there; but he brings a Traverse full of Pregnancy; and if our Plea be faulty, theirs was an hundred times as faulty, *absque hoc*, That he the said *Edmund Plowden*, the said Day and Year, during the said Parliament, without Licence of the said King and Queen, and the Court aforesaid, did contemptuously depart, in Contempt of the said King and Queen, and their Commandment and Inhibition, and to the great Detriment of the Common-Weal and State of this Kingdom, &c. All these Things he pleads, which your Lordship knows to be a very ill Traverse; and yet this Case continued all the time of that Queen, and the Court would never give Judgment in it. This was in *primo & secundo*; and yet it appearing upon the Face of the Information, that it was a Case that concerned the Commons, the Court would not give Judgment for or against the Commons as long as the King and Queen lived.

There is a later Case, and that is *Elliot's Case*, 5 *Car.* There is an Information against my Lord *Hollis*, Sir *John Elliot*, and many more; and there is a Plea put in to the Jurisdiction of the Court; I have a Copy of my Lord *Hollis's* Plea, and 'tis in a manner as faulty as *Plowden's* Plea: but the Court in that Case does not go upon the Insufficiency of the Plea, but gives Judgment generally that this Court had a Jurisdiction; the Assault happened in Parliament, and the Words were spoken there; and upon the Demurrer, they gave Judgment upon the whole Matter. What became of that Judgment? We know very well it was reversed, 19 of this King; and pray observe the Proceedings in the Reversal of that Judgment. Judgment was given against my Lord *Hollis* and the rest of the Gentlemen of the House of Commons, though there was no Prospect of a Parliament, yet they were obstinate, and would not plead; for they thought the Judgment to be a very hard Judgment, and this being a Plea in Abatement, Judgment was given for want of a Plea over. It may fall out in this Case; that this Person may be obstinate, and not plead over, if you should give your Judgment against this Plea. In *Elliot's Case* they were fined severely, and they continued under this Judgment in Prison, and in Execution for the Fine a great while; and they were delivered by what I cannot indeed justify in all it's Proceedings, I mean the long Parliament; but what was done in 19 of this King, I think is good Authority, which none can say but was a Parliament as useful to the King and Kingdom as ever could be. In that Parliament the Commons examined this Judgment, I speak because I have it in my printed Book; 'tis in *Croke Car.* I confess, it is not in the first Impression; but it is in the Second Edition, which I have, and these are the Expressions in it.

L. C. J. What Case is that?

Mr. *Williams.* It is in *Croke Car.* 181. 604. but the Reversal was in 19 of this King.

L. C. J. Was the Judgment given, do you say, 19 of this King? Can a Case of that Time be reported in *Croke*?

Mr. *Williams.* I don't say so absurd a Thing. If your Lordship will have Patience to hear me, I'll tell you what I say. My Book, which is the 2d

Impression

Impression of *Croke*, reflecting upon that Case in *5 Caroli*, does publish the Votes of the House of Commons about, and the Reversal of the Judgment, in the 19th of this King. There the Proceeding is this; Information is given to the House of Commons, that there was such a Case published, which did derogate much from the Privilege of Parliament, invading the Liberty of Speech; and the House of Commons considering the Consequence, ordered the Book to be sent for and read, and taken into Consideration and debated; and upon Debate, the House came to this Resolution, That the Judgment against *Elliot* and others is an illegal Judgment, and against the Freedom and Liberty of Speech: And this Vote they send up to the Lords, where it is confirmed and resolved in Agreement with the Vote of the Commons: And by the Way, in Answer to a Paper that is commonly spread about by the Name of the *Observer*; I say, the Commons came to a Resolution, and pass a Vote, which is not indeed a Law; and when they have done that, they may transmit their Opinions to the Lords, and desire them to concur: Then the Lords and Commons have a Conference upon it, and at the Conference the Commons Reasons are delivered, which the Lords take up with them to their House, and debate them. Then they come to a Resolution to agree with the Commons. Afterwards, upon this Resolution of both Houses, they go regularly to work, by Writ of Error to reverse the Judgment. And if it should fall out in this Case, that your Lordship should give Judgment against the Plea, and this Person should be obstinate, and not plead over, and thereupon your Lordship give Judgment of Death upon him; it may come to be a very hard Case, if a Writ of Error should be brought in Parliament, to reverse this Judgment: and it should be reversed when the Party is dead. Therefore it will be of great Consequence in this particular.

My Lord, I'll mind you of one old Case, it was *20 Ric. II.* A Person * there presents a Petition to the Commons in Parliament; and it seems there was something suggested in the Petition, which did amount to High-Treason, as there may be some Petition or some Complaint against a great Minister that may contain an Insinuation, as it were of High-Treason; he was indicted out of Parliament for High-Treason, and was found Guilty, and by the Grace of the Prince he was pardoned: But because the Commons would not lie under that Precedent of an Invasion of their Privilege, though he was a Person without Doors that prepared that Petition, and no more Hurt done to him but the Prosecution, he being pardoned, the Judgment was voided.

L. C. J. Where is that Authority?

Mr. Williams. *20 Ric. II. Ro. Parl. 12.* And you will find it in the Argument of *Selden's Case*, published in *Rushworth's Collections*, Appendix to Vol. I. Fol. 47, and 48.

And now, my Lord, I have done with the Substance of the Case, with my Reasons for the Matter and for the Form. In this Case here is the Life of a Person before you, here is the Right of the Commons to impeach in Parliament, before you; here is the Judicature of the Lords to determine that Impeachment, before you; here are the Method and Proceedings of Parliament before you; and how far you will lay your Hands upon this Case, thus circumstantiated, we must submit to

you: But I hope you will proceed no further on the Indictment.

L. C. J. Pray, Gentlemen, let us a little direct you not to spend our Time about that which is not to the Purpose, or that is not in the Case: Here is nothing of the Commons Right to impeach in Parliament before us, nor of the Lords Jurisdiction, nor the Methods of Parliament in this Case: They are Things quite foreign to the Case and the Matter in hand; which is, whether this Plea, as thus pleaded, be sufficient to protect the Prisoner from being questioned in this Court, for the treasonable Matter in this Indictment before us. Therefore you ought not to spend Time in Things that are not before us to be considered, being out of the Case; for we have nothing to do with any Privilege of Parliament, or of either of the Houses here at this Time.

Mr. Just. Jones. And, Gentlemen, there is nothing at all here of any Fact done in Parliament that can be insisted on here; nor is there any Complaint against *Mr. Fitz-Harris* for any thing he hath done in Parliament. All *Mr. Williams's* Precedents run to that; but this is for a Thing done without Doors.

L. C. J. We speak to you to come to the Point, which is the Duty of all Courts to keep Counsel to the Points before them. The sole Matter before us is, whether this be a good Plea to ouste this Court of a Jurisdiction, which otherwise unquestionably we have of this Matter.

Mr. Williams. It is a hard Matter for the Bar to answer the Bench, my Lord.

Sir Fran. Wining. My Lord, I shall pursue your Direction as well as my Understanding will give me leave, and save your Time as much as I can; but the Court having assigned us of Counsel, you will give us leave to use our Discretion, keeping as near as we can to the Points of the Case, and to the Pleading. But if upon the Reasoning of this Case, other Parliament-Cases fall in, I hope you will give me leave to cite them for maintaining our Plea. The Plea here is to the Jurisdiction, and consists of two Parts. First, Matter of Record, which is, that an Impeachment is depending in the House of Lords (for so it must be taken upon the Pleading, as I shall manifestly prove;) The second is Matter in *pais* (*viz.*) the Averment, that the Impeachment and Indictment are for one and the same Treason; and the Plea is made up of these two Parts, together with an Averment, that the Person is the same. The King's Attorney hath been pleased to demur generally to us, and I am sure that if our Plea be well and formally pleaded, all the Matter of Fact is confessed by the Demurrer.

Mr. Attorney did, to my Apprehension, make but one Objection the other Day, and he still insists upon it, that here is a Record too generally pleaded, and they compare it to the common Case of an *auter foitz acquit*, upon another Indictment; but I hope to make it evidently appear, that it is in no sort a parallel Case. The Matter which I conceive is confessed by the Demurrer, is, that there is an Impeachment by the Commons of *England* of High-Treason against *Fitz-Harris* lodged in the House of Lords, *secundum legem & consuetudinem Parliamenti*: And that the Treason for which he was impeached, is the same Treason contained in the Indictment, to which the Prisoner hath now pleaded. Upon this Matter of Fact, so agreed, the general Question is,

Whether

* *Thomas Hackfey.*

Whether an Impeachment for Treason, by the House of Commons, and still depending, be a sufficient Matter to ouste the Court from proceeding upon an Indictment for the same Offence. My Method will be shortly to speak to these Things.

L. C. J. Pray let us give you some Direction; that is not the Question, nor can come in question in the Case: You mistake the Points of the Case.

Sir Fran. Wining. Why, my Lord?

L. C. J. The Question is, Whether you have pleaded sufficient Matter here to ouste us of our Jurisdiction. It is to no purpose to put Questions in the Case, that are not in it.

Sir Fran. Wining. My Lord, I know the Case is very nice and tender on all Sides, and therefore may very well bear an Interruption; however I express my self, my Meaning is the same with your Lordship's. The Method that I shall proceed in, will be this; I will suppose the Case before you had been of an Impeachment, containing the special Treason for which he is now indicted. I will shew in the next place, that as it is now pleaded, it is as available as if the Impeachment in the House of Lords had mention'd the particular Treason. I shall then give some Reasons why it is so, and mention one or two Precedents that have not yet been cited. Two of the King's Counsel did agree, that they would not make a Doubt of the Plea, if there had been a particular Impeachment; and therefore I would, by considering what would be the Reason of that Case, apply it particularly to the present Case. The House of Lords is a Superior Court to this; and is agreed to be the highest Court of Record in the Kingdom, *Plowden* 389. *Co. Lit.* 109, 110. 9 *Co. in Prefat.* And then I am within the common Rule of Pleading, according to the Differences taken in *Sparrie's* Case, 5 *Co.* 61, and 62. That a Suit first commenced in an Inferior Court, cannot stop a Suit in a Superior Court, though subsequent; but a Suit in a Superior Court may be pleaded, to stop the Proceedings of one that is Inferior. And though it may be objected here, that the Parliament is determined and dissolved, and so there would be a Failure of Justice; yet this Objection is of no Force: For if once the Suit be well commenced in the Superior Court, it cannot after go down to the Inferior. And what is begun in one Parliament may be determined in another; so is the Case 4 *Edward III.* n. 16. of the Lord *Berkeley*, and those that were accused for the Death of *Edward II.* And though it was objected there, as hath been here, that by this Means there might be a Stop of Justice, by the Dissolution of the Parliament; yet the short and true Answer is, That it is in Law to be presumed, Parliaments will be called frequently, to consider of the Business of the Kingdom, and redress Grievances, according to the several Statutes made for that Purpose, 4 *Ed. III.* cap. 14. 36 *Ed. III.* cap. 10. I shall labour this no farther; but taking it as the common Rule of Pleading, that a Record in a Superior Court may be pleaded to stop a Proceeding in an Inferior; I shall come to prove that this Record is well pleaded, and could not be otherwise, unless Mr. Attorney would have had us plead what is false, this being the Truth of the Case. For the Commons did impeach Mr. *Fitz-Harris* generally of Treason, as it is the Course of Parliaments for them to do; and in our very Plea we alledge, that he was impeached *secundum legem & consuetudinem Parliamenti*; and so Mr. Attorney hath confessed

by the Demurrer: And if they may prefer an Impeachment in general, according to the Law and Custom of Parliament; why then so far it must be allow'd, that we have pleaded well that he was impeached of Treason. It is very true, my Lord, if a Man will plead generally that he was indicted of High-Treason, it would be ill; because the Court cannot take it otherwise than he pleaded it; and such a general Indictment would be altogether void, and therefore no Averment could make it good, or supply that Generality and Uncertainty.

But an Impeachment generally for Treason, is good and warranted by the Law and Course of Parliament, and so confessed by the Demurrer. And so your Lordship will take it to be, and will give Credit, that all is regular in the Proceedings of that High Court. You will presume, even in the Ecclesiastical Courts (as my Lord *Coke* says, in the 4th Report) that all Things are rightly done, when they have a Jurisdiction; *à fortiori* you will believe the greatest Court in the Kingdom does proceed regularly. My Lord *Coke* in the 4th Inst. Fol. 14, and 15, does say, what the Law and Course of Parliament is, the Judges will never intermeddle with. They always leave it to the Parliament, who are the superior Judges, and are to determine the Matters before them. For they take notice, that the Course of a Court, is the Law of a Court, as it is in *Lane's* Case in the 2d Report in the Case of the Exchequer. And therefore if a general Impeachment is *secundum legem & consuetudinem*, which is confessed by the Demurrer in this Case, then you must take it for granted, that the Parliament proceed rightly, and that such a general Impeachment is sufficient in Law. There is a famous Case that strengthens what I say, 11 *Ri. II. di. Rot. Parl. par. 2.* the Case of the Lords Appellants. You will find it also cited in *Rushworth's* Col. Part 1. in the Appendix, Fol. 51. *Tresilian* and others were appealed against for Treason, and both the Judges of the Common and of the Civil Law were by Direction of the King called to advise of that Matter. And they did all declare, that the Proceedings in that Case were neither agreeable to Common Law, nor Civil Law. But the Lords in Parliament said, it did not belong to the Judges of the Common Law, or Civil Law to guide them; but that they ought to proceed according to the Course and Law of Parliaments (which are the Words of our Plea) and that therefore no Opinion of theirs should out them of their Jurisdiction, or alter the Course and Method of their Proceedings. My Lord, this Case is very remarkable; but I will go a little farther; the Judges in all Ages have been so far from taking upon them to judge of the Laws and Customs of Parliament, that they have denied to answer when their Advice has been demanded, and insisted upon it, that they were not proper Judges of such Matters, as in 31 *Hen. VI. Rot. Par. N. 26.* For there, among other Things, the Judges were demanded, whether the Speaker of the House, during the Adjournment of Parliament, might be arrested: They desired to be excused from giving any Opinion: For, said they, in this great Matter they ought not to interpose, it being a Matter of Parliament.

In the Great Council *primo & secundo Jacobi*, about the Union of both Kingdoms, the Judges refused to give their Opinions upon several Questions put to them; desiring to be excused, for that such Things did not belong to them, but were

Matters fit for Parliament only. My Meaning is, to infer from hence, that since it is pleaded here to be according to the Law and Course of Parliaments, and Mr. Attorney hath acknowledged it, that now your Lordship is foreclosed from further meddling with this Case, it appearing upon Record to be a Matter whereof you cannot judge.

But the Objection is, that admit the Impeachment should be taken to be according to the Course of Parliament, yet it is so general, that the Court cannot judge upon it: I answer, that it is evident the Impeachment was not for nothing; it is most certainly to be presumed, that such a Body of Men as the House of Commons would not impeach a Man for no Crime. *Fitz-Harris* avers by his Plea, that it was for the same Treason, for which the Jury have found this Bill against him. Now this Averment makes the Matter as clear to the Court, as if the Impeachment had mentioned the particular Treason.

Every Day's Experience shews, that Averments, which are consistent with the Record, are good, and are of Necessity to clear the Fact to the Court; so that the Judges may give a Judgment upon it. If the Defendant will plead a Recovery in a formal Action, in bar to an Action of Debt, or other Action; it is not enough for him to set out the Record; he must aver also, that the Causes of the Action are the same, and that it is the same Person who is mentioned in one Record, and in the other Records; and this shews, that the most special and particular are of no Use without Averments.

My Lord, there is a Case that I find directly to this Purpose, which goes further than the Case I did but now put, and that is, 26 *Affiz. pl. 15.* It is also mentioned in *Stamf. Pla. Cor. 105.* where a Man was indicted for the Murder of *J. S.* and he pleads a Record of Acquittal, where he was indicted for the Murder of *J. N.* But he avers, that *J. S.* in this Indictment, is the same Person with *J. N.* in the other Indictment; and that was adjudged a good Plea, and the Party was acquitted, though the Averment there seemed to be a Contradiction to the Record. This makes it clear, that if an Averment may consist with the Record, the Law will allow it. In *More's Rep. 823. Pl. 1112.* the King against *Howard*, it is said, that if an Act of Parliament be certified into Chancery, no Averment lies to say this is no Act of Parliament, because the Commons did not assent to it; but if it appears in the Body of the Act, that the Commons did not assent, as if it was ordained by the King and Lords, and without mentioning any Assent of the Commons; there it may be averr'd to be no Act; for this being a Matter consistent with the Record, is averrable: And so it is agreed in 33 *H. VI. Fol. 18. Pilkinton's Case.*

Now Mr. Attorney has his Election here (as it is in all such Cases) either to plead *Null. tiel Record.* and then we must have produced it; and if we had fail'd, it had been against us, as to the whole Plea. Or if he would not deny the Record (as indeed he could not) he might have taken Issue upon our Averment, that it was not for one and the same Offence; but he has demurred, and thereby confessed there is such a Record, and confessed the Averment to be true, that he was impeached for the same Crime, and that he is the same Person. And now it is plain to your Lordship, that I stated the Question right at first.

My Lord, I shall cite you one Precedent out of *Rast. Ent. Fol. 384, and 385.* where a Man was

indicted and acquitted before certain Justices, and being indicted *de novo.*—

L. C. J. It is Title *Gaol-Delivery*, is it not?

Sir F. Win. Yes, my Lord, it is. And he pleads that he was indicted *coram aliis Justiciariis*, for the same Felony, and upon this Plea the Entry is made, *Quia testatum est hic in Cur. in prefatos Justiciarios*, that the said Party was acquitted of the Felony, in Manner and Form as he had alledged in his Plea. Therefore it is adjudged, that he should be discharged, and go without Delay. My Lord, I do not altogether rely upon this Precedent for Law; but I find it in that Book.

Now, my Lord, I shall offer some Reasons in general. First, that when once the Commons in Parliament, in the Name of themselves, and of all the Commons of *England*, have lodg'd an Impeachment against any Man, it seems to me against natural Justice, that ever any Commoners should afterwards come to try or judge that Man for that Fact. I speak this, because every Man in *England* that is a Commoner, is a Party to the Accusation; and so we have pleaded by such an Impeachment, a Man is subjected to another Sort of Trial: *Magna Charta* says, that every Man shall be tried by his Peers, or by the Law of the Land. And by the Law of the Land, there are several Sorts of Trial, some by Juries, others not by Juries. This is one of those Sorts where the Trial is by the Law of the Land, but not by his Peers: For it would be hard that any Man should come to try or give Judgment upon a Person, who hath been his Accuser before; and in Effect hath already given his Judgment that he is guilty, by the Accusation of him, and so stands not indifferent. By this Means the Trial by Jury is gone; and the Lords, who are the Peers of the Realm, are Judges in Point of Fact, as well as Law. Here is an enormous Offence, against which all the Nation cries, for so they do in the Impeachment. Then, says the Law, it is not fit that you should try him, who are Parties; but the Lords are the proper Judges, they shall try him *per testes*, and the Commoners may come in as Witnesses, but not as Judges.

My Lord, another Reason is this, that if an Appeal of Death, or any other Appeal were depending before the Statute of 3 *H. VII. cap. 1.* the King could not proceed upon an Indictment for the same Fact; because the King, as the common Parent, does only take Care that such Offenders should not go away with Impunity; but the Preference was given to the Person more particularly concerned, and the King's Indictment must stay till the Year and Day were out, to see whether they will proceed in their Suits. And so says my Lord Chief Justice *Hales*, in his Pleas of the Crown, 2442, 45. Then *à minori ad majus*, does the Law so regard the Interest of the Wife or the Heir, &c. in their Suit, and has it no regard to the Suit of all the Commons of *England*? For manifestly, an Impeachment is the Suit of the People, and not the King's Suit.

That's the 2d Reason; another Reason I shall urge, is that which was touched by Mr. *Williams*. Suppose this Man should be try'd here, and be acquitted; is it to be presum'd that he can plead this Acquittal in bar to the Impeachment before the Lords? My Lord, I believe there is no considering Man in *England*, that has regard either to the Jurisdiction of Parliament, or to the Nature of the Suit, will affirm, that it would be a good

Plea; and that he could bar the great Court of the Kingdom from proceeding against him, by saying he was acquitted by a Jury in *Westminster-Hall*, after the Suit was first well commenced in that Court.

My Lord, I say, with Reverence to the Court, that should you proceed in this Trial, it may fall out, that contrary to a fundamental Rule of Law, a Man shall be twice put in Danger of his Life for one Offence, which by the Law he cannot be; and therefore I urge that as a Reason, why you cannot proceed here on this Indictment.

My Lord, I will now mention two or three Precedents, which will prove that this Impeachment is according to the Course and Law of Parliaments, though it may seem needless, after the King's learned Counsel have agreed to it.

My Lord, I shall first mention the Case of *Michael de la Poole*, *Rot. Par.* 18 or 28 H. VI. n. 18. He was a very great Man, and came to the House of Lords voluntarily, and said, there was a Rumour that he was guilty of horrible Things.

L. C. J. Where did you take this Case, out of *Cotton*? It is mentioned there; but I have seen a Copy of the Roll.

Sir Fran. Win. Yes, my Lord: Thereupon the Commons pray he may be committed upon his own Confession; and that the thing being debated in the House, the Lords said, We know not what was meant by those Words, *horrible Things*; it may import only Misdemeanours: If it had been said Treason, we had known how to have proceeded thereupon: And thereupon within a few Days after, the Commons came and accused him of Treason. And there it is said, that the Course of Parliament is to find out the Truth by Circumstances, and such Degrees as the Nature of the Thing will bear, and they are not confined to the strict Rules of other Courts. I will not cite any more ancient Cases, though there are many to be found of general Impeachments: For we are not disputing what is the Right and Course of Impeachments, which is confessed, upon the pleading: But we have had several Cases of late; the Earl of *Clarendon* was impeached generally, and the Commons took Time to bring in their Articles; and I have had the Experience in three or four Parliaments, wherein we have been pretty well busied with Impeachments, though we have had no great Success in them, that though the Commons may, if they please, carry up particular Articles at first; yet the Law and Course is, for the Lords to receive the general Impeachment, and the Commons say, that in due time they will bring in their Articles. So it was done in the Case of the five Popish Lords; some particular Member was appointed to go up, and impeach them of High-Treason in general; and in that Case, though the Parliament was dissolved before any Articles were sent up, yet afterwards, in the next Parliament, the Articles upon the former Impeachments were sent up, and received, and my Lord *Stafford* since executed, upon his Conviction upon that Impeachment: Yet Indictments were exhibited against them, before ever any Impeachment was sent up by the Commons, and Preparations were made for their Trials. But from that Day to this, there hath been no Attempt to try them upon their Indictments, though there have been several Intervals of Parliament.

Our Case is stronger than that of the Lords: For in the Case at the Bar, the first Suit was in the House of Lords by the Commons, whilst in the other Case the first was the Suit of the King, by In-

dictment; and yet by a subsequent Impeachment that was stopped, and the Lords continue yet Prisoners in the *Tower*. Our Time hath been so short, that we could not see the Copies of Orders, which we might otherwise have made Use of, for maintaining this Plea: We sent to the House of Lords, but the Officers were out of Town, and we could come at the Sight of nothing there. We have been told the Opinion of the Judges was delivered at Council concerning these very Lords, that the Impeachments being lodged in Parliament, no other Prosecution could be against them, till the Prosecution of the Commons was determined. So far the Courts below have always been from meddling with the Jurisdiction of Parliament, that even many times in Questions upon Acts of Parliament, they have gone up to the Parliament, to know what was meant by it. And I remember it was said by the Court in that Case of my Lord of *Shaftesbury*, where it was agreed by all, that the Commitment was too general, for it was only for a Contempt, whereas the Crime ought particularly to appear in the Warrant; that it being in a Case of Commitment by the Parliament (at least while that Parliament was continuing) they ought not to meddle with it, nor could they enquire into the Formality of the Warrant.

My Lord, I must mention one Thing touching the Case of my Lord *Hollis*, which was cited by Mr. *Williams*, and I have but a Word to add: It is in the Appendix to the first Part of *Rushworth's* Coll. and also in *Croke, Car. fol.* 181. It was there pleaded to the Jurisdiction of this Court, that it was a Matter done in Parliament: In our Case it is pleaded that an Impeachment is depending in Parliament; that was but a Prosecution for a Misdemeanor, this is a Case of High-Treason. It fell out in that Case, the Court here did adjudge, that the Information did lie; but upon a Writ of Error it was agreed by the Lords unanimously, that the Judgment was erroneous, and that the Parties should be restored to all which they had lost, by reason of it: But if this Man should lose his Life by your Judgment, what Help would there be upon a Writ of Error? The Danger of such a Thing requires great Consideration; and it would be of fatal Consequence, if the Lords should hereafter adjudge that this Court had no Jurisdiction.

As for Mr. Attorney's Objection to day, that we have not set forth actually, that there was any Impeachment; I do confess I was a little startled at it; for the Words of the Plea are, That *Edward Fitz-Harris*, by the Knights, Citizens and Burgesses, was impeached; which Impeachment is in Force. I do not know how in the World we could have thought of more express Words, than to say, he was impeached; and that that Impeachment is in full Force, as appears by the Record.

For the other Objection, the other Day (for we would mention all, how little soever they deserve an Answer) that the King may chuse in what Court he will sue; it is agreed, when it is at his own Suit: But this is not so, but at the Commons Suit, and can be no where else prosecuted, than where it now depends. This is the Method and Course of Parliaments, we say; and that the Method and Course of Parliaments is the Law of the Land, your Lordship will take Notice that it is so.

To conclude, as this Plea now stands, the Demurrer confessing the Matter of it, it cannot be over-ruled, without deciding whether the Lords can proceed upon such general Impeachments,
and

and whether the Commons can impeach in such a general Way. We submit the whole to your Judgment: It is a Case deserves great Consideration, as being of great Weight and Moment; and highly concerns the Jurisdiction of the Lords, the Privileges of the Commons, and the Rights of all the People of *England*.

M. *Wallop*. May it please your Lordship, there are in this Plea three principal Parts upon which it turns, which are expressly alledged. First, That *Fitz-Harris* before the Indictment was according to the Law and Custom of Parliament impeached of High-Treason, and this I humbly conceive is confessed by Mr. Attorney upon the Demurrer. The second Thing is, That this Impeachment, be it as it will, general or particular, does remain in full Force and Virtue. This is plainly alledged and demurred to, and so confessed by Mr. Attorney; for all Things well alledged and pleaded, are confessed by the Demurrer. The third great Point and Hinge upon which it turns, is this, That the High-Treason mentioned in the Indictment, and the High-Treason for which he was impeached in the House of Lords, is one and the same Treason. This we have plainly averred, and this Mr. Attorney hath likewise by his Demurrer plainly confessed, as we humbly conceive.

For the two former Points there is no Difficulty in them, and therefore I shall pass them over. 'Tis this third Matter which I take to be the only Point in the Case; and if we have well averred it, and can by Law be let into such an Averment; then I hope your Lordship and this Court will not pretend to go on in this Case. They object, and say, because he is impeached of High Treason generally, without naming any particular Treason, that cannot be averred to be the same, and a Demurrer does never confess the Truth of that which by Law cannot be said; but if it may be said, and is said plainly, then the Demurrer confesses it.

My Lord, I humbly conceive this Matter is well averrable, and we have taken a good Averment. I grant that a repugnant and an impossible Averment cannot be taken, as to aver a Horse to be a Sheep, which is apparently repugnant and impossible; and in that Case a Demurrer can never confess the Truth of that which appears impossible to be true. But, my Lord, if there be no Impossibility nor Repugnancy, nor Contradiction in the Averment between the Matters that are averred to be the same, as there is not between that which is but generally expressed, and that which is more especially alledged; where all may well stand together, and the one includes the other, and needs only some farther Explanation; it is not only allowable to aver it, but most proper, and in such Case only necessary. For, *quod constat clarè non debet verificari*, in this Case it is not necessary that it should appear to the Court upon the View of the Indictment and Impeachment, that the Matter contained in both, is the same; but it is sufficient, that it be proveable upon an Issue to be taken. And so much is admitted by the Judges in *Sparry's Case* Co. 5. Rep. 51. That if there be convenient Certainty which may be put in Issue, it is sufficient, and consequently not necessary to appear at the first, but upon the Event of the Issue afterwards to be tried. And if they intend it otherwise, I confess I understand them not. It is true, it must appear to the Court, either at the first opening, or upon an Issue subsequent to be found. And, my Lord, if this Mat-

ter may appear at first or at last, and the Thing is possible to be proved, then we are well enough. In *Corbet and Barne's Case*, in the first *Croke*, Fol. 520. a Battery supposed to be in *London*, and a Battery supposed to be in *Herefordshire*, were averred to be one and the same Battery, which naturally is impossible; yet being transitory, and therefore supposed to be done in any County, such an Averment is allowable, though it seem'd contradictory, and could not appear to the Court by comparing the several Declarations to be any way the same. And there being a Demurrer for that Cause in that Case, the Truth of the Averment was rul'd to be confess'd by the Demurrer. And so here by the Demurrer, the Truth of the Suggestion, that the Treason in the Impeachment, and the Treason in the Indictment, is one and the same, is confess'd.

By taking this Averment, we offer them here a fair Issue, an Issue of Fact triable by a Jury, wherein the Attorney-General might have join'd with us, if he had pleas'd; but refusing that, and having demurr'd, and thereby confess'd what we have alledg'd, it must be taken to be true, as if found by a Jury. And, my Lord, that this Matter is properly averrable and triable, I think, it is plain; it being a Question of Fact, which is properly triable by the Country: And if they had taken Issue upon that, we might have gone to a Jury, where the Matter would have been easily prov'd. For upon Evidence given, the Jury might fairly take into Consideration the reading of this very numerical Libel set forth in the Indictment, and the particular and special Debates of the House of Commons thereupon. And that upon those very Debates the House voted that *Fitz-Harris* should be impeach'd for Matters contain'd in that Libel. And that upon those Votes the Impeachment was carry'd up to the Lords. This is Evidence sufficient, that the House of Commons did intend to accuse him of the same Treason contain'd in the Indictment; which proves the Issue, that is, that the Treason contain'd in the Impeachment, is the same with that contain'd in the Indictment. Neither is this to put the Intention of the Mind, or secret Thoughts of the Heart in Issue, which is against the Rules of Law; but to put them into a Way of Proof, which well stands with the Rules of Law, which upon the general, or other collateral Issue, may well be enquir'd of by the Jury. As in an Action, *quare canem mordacem defendens scienter retinuit*. Here [*Scienter*] is not directly issuable, but it is proveable, and must be prov'd upon the general Issue. So in the present Case, the Intention of the Commons upon the Issue offered by us, and refused by the Attorney-General, might, and ought, and would have been proved; and, without Doubt, found by the Jury. Neither is this general Impeachment such a notional Thing as the other Side would pretend; but it is as if they should say, We do charge him to have committed certain Crimes that are Treason. Now whether the Crimes they say he had committed, and for which they impeach'd him, are the same with those for which he is indicted, is a good and proper Issue. And if it appears to the Court to be the same, you will certainly your selves take off your Hands from those Proceedings. This is all I shall say as to the Averment. And if we can well get over that, I take it, all the rest is well enough.

But again, they say, the Impeachment is too general, and no Man shall be put to answer to such a general Accusation.

And I say so too, neither shall *Fitz-Harris* be put to answer to it without special Articles; yet he cannot quash the Impeachment for this Cause, as he might the Indictment; which shews the Difference betwixt an Impeachment and an Indictment, which always contains the special Matter, and without which it might be quash'd and made no Record. But here by the Law of Parliament such general Impeachments are held good: and Articles are usually brought in afterwards, and after those additional Articles, which cannot be in the Course and Way of Indictment; and therefore we must take the Impeachment as we find it; and since it stands against us as a Record, though 'tis general, we may, and must plead it in the same Generality; having no Way to make it on Record, as we have in case of such a general Indictment.

So then this being an Impeachment according to the Course of Parliament; it is well lodg'd in the House of Lords, where it only ought to be tried, and we must plead it as we may, and as we find the Case to be. And having averred the Crimes to be the same, we have done what we could, and therefore enough.

And that a general Impeachment without Articles is a Bar to any Indictment for the same Matter, was resolv'd by all the Judges, as I am informed in the Case of the Lords in the *Tower*, who were all indicted for Treason, either in the King's-Bench, or before Commissioners of *Oyer and Terminer*. And afterwards [5 Dec. 78.] generally impeached before the Lords in Parliament; and no Articles exhibited till 3 April 79. And yet in the mean time it was resolv'd at the Council-Table by all the Judges there attending, that after the general Impeachment, before Articles, they could not be proceeded against upon those Indictments, though the Parliament wherein they were impeached was dissolved.

And that was a stronger Case than this of *Fitz-Harris*: for there the inferior Court was first possessed of the Cause, and yet the general Impeachment closed up the Hands of the Court. But in this Case, the superior Court, the Parliament, was first possess'd of the Cause, which cannot be taken out of their Hands by the inferior Court.

There is a farther Difference betwixt an Impeachment in Parliament, and an Indictment; that in an Indictment which is always as particular as Articles upon an Impeachment, you cannot plead *autre foitz* arraigned; but you must plead either *autre foitz* convict or acquit, as appears in Sir *William Wisbipole's* Case, *Chron* 1. 105. But in an Impeachment in Parliament, the other Side will acknowledge, that after Articles exhibited, there can be no Proceedings upon an Indictment for the same Offence, although the Defendant in the Impeachment be neither convict, nor acquit. Otherwise you may bring back all the Lords in the *Tower* to the King's-Bench to be tried, which Mr. Attorney will not, I suppose, attempt.

And it is observable in the Case of Sir *William Wisbipole*, That to avoid the Doubt that the Party there should not be questioned, both upon the Coroner's Inquest, and the Indictment of Murder; it was ruled by the Court, that the first should be quash'd as insufficient: So careful were the Judges to avoid the double Vexation, in a Case, compared with this, of no great Import.

I shall say no more to the Case, but only observe how scrupulous the Judges have been to touch upon a Case, where they had the least Suspicion of Jealousy that the Parliament had, or pretended to have a Jurisdiction, or were possess'd of the Cause. I am sure I could never get any thing by any Labours of mine in those Cases. But upon all such Motions they were so aware of what might be the Consequence, that they would always worship afar off, and would never come near the Mount, they would ever retire when they came but near the Brink of this Gulf.

Now, my Lord, if you retain this Cause, in Consequence you charge yourselves with the Blood of this Man; wherein, if you proceed regularly, and according to Law, all is well. But however, by over-ruling his Plea, you take upon you his Blood one way or other; through which you must wade to come at the Cause. And whether it be advisable to come at it upon these Terms, I leave it to your Lordship's Wisdom to consider.

Mr. *Pollexfen*. My Lord, I shall not make any long Argument, there hath been so much said before me. But I would fain come to the Question if I could; for I must confess, after all, I cannot see what the other Side make the Question. Mr. Attorney was pleas'd to say, that both for the Matter and Form he objected against our Plea. But if for the Matter it be admitted to me, that an Impeachment in Parliament for the same Matter will out this Court of Jurisdiction; I will say nothing at all of it, for I apprehend that is not then in Question.

L. C. J. No, not at all.

Mr. *Pollexfen*. Then the Matter seems to be agreed, and only the Manner and Form of the Plea are now in question. And for the Manner, they except to it in these Particulars. First, they say, it is not alledged that there is any Impeachment upon Record; now I confess, Form is a subtil Matter in itself, and it is easy for any Man that reads other Mens Words and Writings, if he will, to make what Construction he will of them, even *Nolumus* to be *Volumus*; but I know the Court will not do so. But for an Answer to the Objection, I think it is as strongly and closely penned as I can tell how to pen any thing, he was impeached, *Quæ quidem Impetitio, &c.* What can that *Quæ quidem* signify, but the Impeachment that was just mentioned before? But what they mean by this, to say, this is not the same Impeachment, when the Words are positive that it is the same, I must confess I cannot fathom.

My Lord, there was another Thing spoken the last Day, but they have not mentioned it now; if there be any thing stirr'd in it, I hope your Lordship will be pleas'd to hear us before you give your Judgment in it, That it was not said to be *sub pede sigilli*; but I know they won't insist upon it, therefore I say nothing to that.

But the great Question now is, whether or no this be not too general, the alledging that he was impeached in Parliament, and not saying how or for what Crime; though there be an Averment afterwards, that it is for the said Crime? Whether this be not so general, as that therefore this Plea should be naught?

First, For this of the Averment, I take it with Submission, let the Crimes be never so particularly specified in the Record that is pleaded, and in that upon which the Party is brought in Judicature, yet always there must be an Averment; and that

that Averment is so much the substantial Part of the Plea, that let the Matter never so much appear to be the same without an Averment, it would be naught; and it must come to be tried *per pais*, whether the Offence be the same or not: For if a Man plead one Indictment for the Murder of J. S. to another Indictment for the Murder of J. S. though they bear the same Name, he must aver they are one and the same Person. For else *non constat* to the Court; but there may be two J. S.'s. Therefore all Averments are still the Substance of the Plea, to bring the *Identity* of the Matter into Judgment, and are to be tried by the Country: So then the Objection to the Generality is not an Objection to the Substance, but rather an Objection to the Form on their Side; because the Substance is alledged in the Plea, that it is for the same Treason: Which Substance, if Mr. Attorney had thought not fit to have demurred to, but taken Issue on, must have been tried *per pais*.

Having thus spoken to the Averment, my Lord, let me speak to the general Allegation that he was impeached for Treason, and not saying particularly what the Fact was.

My Lord, if they admit the Law, that an Impeachment in Parliament does suspend or take away the Jurisdiction of this Court, then they have admitted a great Part of the Fact, and then the Matter in question will be, what Impeachment in Parliament it is that will take away the Jurisdiction of the Court, and there can be but two sorts; the one at large, where the whole Offence is specified; the other not at large, but only in general Words, The Knights, Citizens, and Burgeses, in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, do impeach such an one of High-Treason. Now, my Lord, if so be such Impeachment in Parliament be a good Impeachment, then have we, I think, the most plain Case pleaded that can be, as plain as the Fact, that this is an Impeachment in Parliament; and then this Court is outed of its Jurisdiction.

They that have gone before, have said, which I must pray your Lordship to remember, that the Court and we are to take notice of the Proceedings in other Courts, as other Courts are bound to take notice of the Proceedings of this; then I would suppose in other familiar Cases, there is generally (as it is true in *Sperry's* Case) the Writ or Declaration, which does in all civil Causes set forth the Particularity of the Thing in question, yet in some Cases we are sure it does not do so; but the Course and Practice of some Courts admit general Proceedings. Now wherever that is so, the Party cannot mend himself by making their Course otherwise than it is: For he must not say it is more particular than the Course of the Court does make it. Therefore he hath no other Way by the Law to bring his Matter on, and help himself, but by an Averment that it is the same. I will suppose a Case of such a Nature as this; A Man brings an Account in *London* upon *Concessit solvere*, and he does not particularize in the Court any Thing what or how his Debt did arise; but after he brings another Account or Delivery, a special Declaration in an Account of Debt: shall not I, because the first Declaration is in general Words, aver that this is the same Matter that he sued for by the *Concessit solvere*, which he now sues for in this particular Declaration? Or, suppose a Man in this

Court does bring an Account for divers Wares and Merchandizes sold, and does not express any Particulars, but that he was indebted, in general Words, for Wares sold; and afterwards he comes and brings another Account, and says, it is for such and such Wares; so much for Cloth, so much for Wine, &c. though his first Declaration be in general, not expressing what the Wares were, and the last is particular; shall not I come and plead in Abatement to the second Declaration, that the first and second were for one and the same Thing? Suppose again an Indictment of Barretry be found against a Man, which is an Offence that is only general, and hath no Particulars alledged in the Indictment; should not a Man that is the second Time indicted, come and say, this is one and the same? My Lord, under favour, in all these and such like Cases, the Law must be governed by its own Proceedings, and take notice of the Nature of the Things depending before the Court. And if so be, upon Consideration of the Nature of the Thing, there is as much of Certainty set forth as the Case will admit, and is possible to be had, we must permit the Party to plead as he can, and help himself by the Averment.

Then, my Lord, the Question is, whether an Impeachment generally in Parliament, without particularly setting forth for what, be a good Impeachment there or no. If they say it is not, then the Bottom of the Plea is naught, and all is quite gone; but if they say it is, then I have pleaded my Matter as it is. For I cannot say, that that is particular, or make that particular that is not; and I have done all that is possible for me to do in my Case. I have pleaded what is in the Record; and as it is in the Record, from which my Plea must not vary, and I have averred it is for the same Matter, and you have confessed it by the Demurrer.

My Lord, I would not intangle the Question; but I must confess, I cannot see how they can extricate themselves out of this *Dilemma*, if they do admit a general Impeachment is a good Impeachment. Then there are fresh Instances of this considerable in the Case, as that which hath been particularized of the Lords in the *Tower*, and of the Opinion in *February* of the Judges in their Case. For in the Beginning of *December* were those Lords indicted; and after, on the 5th of *December*, the House of Commons taking it into their Consideration, that there was a Commission going out for an High-Steward, with an Intent to bring them to Trial before the Peers; they purposely to have the Carriage and Prosecution of this great and horrid Treason, and take off the Prosecution upon the Indictment, do impeach the same Lords, and there the Impeachment is just the same as this in our Plea of High-Treason; but not of any particular Fact, adding, only of other Crimes and Misdemeanors, which is as general as can be. Now, my Lord, the Judges did take so much Notice of it, that though the Parliament was dissolved before the particular Articles were carried up to set forth the particular Offence; yet in *February* following (some of the Judges are here, and they will rectify me if I be mistaken) their Opinions being asked about it at the Council-Board, upon the Petition of the Lords, to be either bailed or tried; they were of Opinion, that this Impeachment, though thus general, was so depending in Parliament, that they could not be tried. So that I think the Proceedings in Parliament are of that Nature, that if you will meddle with what they do,

you will take Notice, of their Method of Proceedings, as you do of other Courts.

Why then, my Lord, if this be so, how is it possible for us to do better? We have pleaded as our Fact is an Impeachment of High-Treason, what would they have had us to do, or wherein is our Fault? What would they have had us said? We were impeached of any High-Treason, so and so particularizing, how can that be? There is no such Thing. Then they would have said, *Nul. Tiel. Record*; and we must have been condemned for failing in our Record: Then indeed we had been where they would have had us. But having done according to our Fact, if that Fact be such as in Law will out this Court of Jurisdiction, I see not how it is possible we should plead otherwise, or what Answer they will give to it.

My Lord, I will meddle as little as I can with what hath been said, they have mentioned that it is a Case of an high Nature, and this Impeachment in Parliament they will look upon it as the Suit of all the People of *England*; why then, my Lord, this must needs be agreed to me, if this Impeachment in Parliament be in the Nature of an Appeal, surely an Appeal does suspend the Proceedings upon an Indictment for that Fact: Which is the Case expressly in my Lord *Dyer*, *Fol. 296*. *Stanley* was indicted of Murder, and convicted; after he was convicted, and before any Judgment, the Wife of the Party murdered brought her Appeal; then came they and moved for Judgment: No, said the Court, here is an Appeal brought, and they could not go to Judgment till that Appeal was determined. So the *Stat. of 3 H. VII. Cap. 1.* and *Vaux's Case 4 Report, Fol. 39*. An Appeal of Murder the Party convicted before Judgment, the Petitioner in the Appeal did die. Then an Indictment brought, and this Conviction pleaded in Bar of that Indictment, and adjudged to be a good Plea; but then there was a Fault found in the Appeal, upon which the Conviction on the Appeal was void in Law, and they went on upon the Indictment. This is to shew, that if this be of the Nature of an Appeal, then ought this Suit first to have it's Course and Determination, before your Lordship proceed on this Indictment.

But, my Lord, whether it be of this Nature or no, is a Matter we know were under great Controversy; and whether your Lordship will interpose in that great Question, or whether it comes in Judgment under this Question, you will do well to consider: For it is a Matter of Parliament, and determinable among themselves, not in the Courts below, nor have ever inferior Courts taken upon them to meddle with the Actions of the superior Courts, but leave them to proceed according to their Laws: And if that be done in any Case, there will be as much Regard had in this great Cause to the Court of Parliament, as in others.

Besides the Authorities cited out of my Lord *Coke* and others, I would cite one more, and that is *Cotton's Records, 5 H. IV. Fol. 426*. the Earl of *Northumberland's* Case. He comes and confesses himself to be guilty of an Offence against his Allegiance, the King delivered his Petition to the Justices, and would have them to consider of it; no, said the Parliament, it is matter of Parliament, and the Judges have nothing to do with it: the Lords make a Protestation to this Purpose, and then they went on themselves, and adjudged it to be no Treason. There is only that one Record

more which has been often cited, and that is, *Rot. Parliamenti 11 R. II. Pars 1. N. 6.* in this Parliament the Lords Spiritual and Temporal claimed the same Privilege. My Lord, I only offer these Things, with what my Lord *Coke* says hath been formerly thought Prudence in the Judges to do.

So that I hope, that if the Matter be good, the Form is as good as the Matter can be put into, and therefore we hope you will allow us the Benefit of it.

Mr. *Attorney*. May it please your Lordship, I am of Counsel in this Case for the King, and notwithstanding what hath been said, I take it, with Submission, that this Plea is a naughty Plea, as a Plea to your Jurisdiction, and there is no Matter disclosed therein that we can take a good Issue upon.

The great Substance of the Arguments of these Gentlemen assigned of Counsel for the Prisoner, is against the Prisoner. For the great Matter of their Arguments was, lest this Gentleman should escape (which Arguments in several Instances they have used to support the Plea) but the Prisoner pleads this Plea to the Purpose that he might escape. Therefore if these Gentlemen had taken Instructions from him, surely they would have used Arguments to the same Purpose that he might escape.

My Lord, they object we have admitted here that there is an Impeachment depending, that we have admitted it is for the same Matter, and that we have admitted the Parliament to be in being; but no Fact is admitted that is not well pleaded. Indeed if that be admitted that the Parliament is still in being, then it goes very hard with us; and if not so admitted, the whole Force of Mr. *Williams's* Argument falls to the Ground. But I say, my Lord, with Submission, to this Matter, that the Beginning, Continuance, Prorogation, Adjournments, and Dissolution of Parliaments, are of publick Cognizance, and the Court *ex Officio* will take Notice of them, so that they need not be averred. And so is the 41 of the Queen, the Bishop of *Norwich's* Case. A private Act of Parliament was pleaded, and the Day of the Parliament mistaken; there was a general Demurrer, and it was resolved that it was naught, and Judgment given against the Bishop, though no Exception was taken in particular, because the Days of the Beginning and Ending of Parliaments are of publick Notice; and the Judges take Notice, when a Parliament is in being, and when not. That's a sufficient Answer to that Matter.

Then for those many Cautions that have been given you, what a difficult Thing it is for two Jurisdictions to interfere, Mr. *Fitz-Harris* is much concerned in that Matter, who hath forfeited his Life to the Law as a most notorious Offender that certainly deserves nothing but Punishment; yet he would fain live a little longer, and is much concerned that the Judicature of Parliament should be preserved. If it be not Law, he shall not be oppressed in it; but if it be Law, *fiat Justitia*. Certainly no Consideration whatsoever ought to put Courts of Justice out of their steady Course; but they ought to proceed according to the Laws of the Land.

My Lord, I observe it is an unusual Plea, and perhaps they had some Reason to put it so. It concludes, *si curia procedere vult*, I wonder they did not put in *aut debeat*, that is the usual Form of such Pleas; for you have no Will but the Law, and if you cannot give Judgment, you ought not

to be pressed in it; but it being according to Law that great Offenders and Malefactors should be brought to condign Punishment, we must press it, whatsoever the Consequences are. And if we did not take it to be the Interest of all the Kingdom, and of the Commons too as well as of the King, my Lord, I should not press it; but it is all their Interest that so notorious a Malefactor that hath certainly been guilty of Treason in the highest Degree; and that for the utmost Advancement of the late Popish Plot, should not escape, or the Truth be stifled, but brought into Examination in the Face of the Sun, that all Men may see what a villainous Thing hath been attempted to raise up the whole Kingdom against the King: But they say, if it be not Law, you will not proceed, it ties your Hands. But, with Submission, they have not given you one Instance to make good what they say. Many Things have been, that a Plea depending in a superior Court is pleadable to the Jurisdiction of an inferior Court: for, my Lord, that is it we put upon them to shew: If it had been pleaded in Abatement, it would have had its Weight, and been considered of, as in *Sperry's* Case, where it was no Plea to the Jurisdiction.

Put the Case it had been a good Impeachment, and he had been arraigned upon it and acquitted; if he had afterwards come to be indicted in this Court, and the Prisoner will not plead this in Bar but to the Jurisdiction of the Court, it would not have been a good Plea; but he had lost his Advantage by mispleading. If then an Arraignment, and an Acquittal, or Conviction thereupon, is not a good Plea to the Jurisdiction; then certainly an Impeachment depending singly cannot be a good Plea to the Jurisdiction. This Court hath a full Jurisdiction of this Case, and of this Person, both of the Crime and of the Party, who is a Commoner; and not only to find the Indictment, but to proceed to Justice; and this you had at the Time of the Fact committed. For certainly, we need not put Cases for to prove that the *King's Bench*, especially since the Statute for trying Treason beyond the Seas, hath an universal Jurisdiction of all Persons and Offences. Pray then what is it that must out this Court of their Jurisdiction? For all the Cases that have been, or can be put about Matters which are not originally examinable in this Court, make not to the Matter in question: there, it is true, the Court may be by Plea outed of it's Jurisdiction; as at Common-Law, where a Fact is done *super altum mare*, and so pleaded, that puts it out of the Court's Jurisdiction; and that was my Lord *Hollis's* and Sir *J. Elliot's* Case, and so that was my Lord *Shaftesbury's* Case too, the Fact was done out of their Jurisdiction, and that may be pleaded to the Jurisdiction, because they had no original Jurisdiction of the Fact; but where the Crime and the Person were absolutely within the Jurisdiction of the Court, and the Court may originally take Cognizance of it, as this Court had of the present Case, I would fain know what can out that Jurisdiction less than an Act of Parliament: I will be bold to say, the King by his Great-Seal cannot do it; nor can an Act of either House, or both Houses together without the King, out the Jurisdiction. To say, their Proceedings ought to be a Bar, that is another Case, the Party hath his Advantage, and may plead it in Abatement or Bar, as the Case requires: For if there had been an Acquittal or Conviction, the Party could not plead it to the Jurisdiction.

Therefore for those Cases they put, when you come to examine the Reason of them, you see how they stand, *viz.* that the Court had no original Jurisdiction.

My Lord *Shaftesbury* was committed by the Lords for a Crime in that House, a Contempt to that House; he is brought here, and it appears to be a Commitment in Execution. My Lord, that was out of your Jurisdiction; and if you had bailed him, what would you have done? would you have bailed him to be tried here? No, you could not do it, and therefore you proceeded not in that Case. And so in the other Cases: for there is not one of their Cases that have been cited of the other Side, but where it was out of the Jurisdiction of the Court originally, and not at all within it. As for the Case of the five Lords in the *Tower*, because they say it will have a mighty influence upon them, and they put the Case, that there was in *December* an Indictment, and afterwards an Impeachment from the Commons; and they cite some Opinion, given at the Council-board, which I hope these Gentlemen will not say was a judicial Opinion, or any way affects this Cause: But for that, my Lord, I observe, the Lords took care that these Indictments should be all removed into the Lord's House; so they did foresee that the King might have proceeded upon the Indictments, if they had not been removed thither. But our Case now is quite another Thing: For those Lords were not fully within your Jurisdiction. You cannot try a Peer of the Realm for Treason; and besides, the Lords have pleaded in full Parliament, where, by the Law of Parliament, all the Peers are to be their Judges; and so you cannot out them of that Right. And the Reason is plain, because thereby you must do them an apparent Prejudice; they having pleaded there, all the whole Peerage are their Triers. But upon Trial before Commissioners, they must have but a select Number of Peers to be their Triers. But in none of those Cases hath any Judicial Opinion been given: For the Case of *11 R. II.* first cited by Sir *Fran. Winnington*, and then by Mr. *Pollexfen*, a Declaration in Parliament, That they proceeded according to the Law of Parliament, and not according to the Common-Law, nor according to the Practice of inferior Courts; that will be nothing to our purpose at all, that was in Case of the Lords Appellants. A Proceeding contrary to *Magna Charta*, contrary to the Statute of *Edw. III.* and the known Privilege of the Subject. But those Proceedings had a Countenance in Parliament: for there was an Oath taken by all the Lords in Parliament, that they would stand by the Lords Appellants. And thereupon they would be controuled by none, and they would not be advised by the Judges, but proceed to the trying of Peers and Commoners according to their own Will and Pleasure. And between that Time of *11 R. II.* and *1 H. IV.* see what Havock they made by those illegal Proceedings; and in *1 H. IV.* you will see, that these very Lords were sentenced, except one or two of them who were pardoned; and then it was expressly resolved (by Act of Parliament, that no more Appeals of that Nature, nor any Appeals whatsoever, should be any more in Parliament. And if so, these Gentlemen had best consider how they make an Impeachment like an Appeal: For in that Statute, it is said, there shall be no more Appeals. And the Petition upon which this Act is founded, runs thus: They pray that no Impeachment or Appeal may be in Parli-

ment. But when the King came to make the Grant, he grants only for Appeals, and principally to out those Lords Appellants who were condemned by that very Parliament. So that it is a very pretty Matter at this Time of Day to liken an Impeachment to an Appeal.

But, my Lord, the other great Point is this. There is nothing at all certainly disclosed to you by this Plea; therefore there is nothing confessed by us, only the Fact that is well pleaded: therefore I shall come to consider what is said by them, as to the Form of it. They say, my Lord, that they have pleaded it to be *secundum Legem & Consuetudinem Parliamenti*; and if that be sufficient, let them have said what they would, that would have healed all. But I say, my Lord, with Submission, they must disclose to you what is the Law and Custom of Parliament in such Case, or else you must take it upon you upon your own Knowledge, or you cannot give Judgment. It is very well known what this *Lex & Consuetudo Parliamenti* is; no Person versed in the Records, but knows it, that by course of Parliament a Message goes up with a Declaration to impeach the Party generally; and then after there are Articles or a Bill of Impeachment produced. Now till that be produced, sure there is no Counsel of the other side will say, that ever the Party can be called to answer. And because these Gentlemen do pretend to urge their Knowledge herein, I would observe there are three Things to be considered of the Parliament; the Legislative Part, the Matters of Privilege, and the Judicial Part proper to this Case. For the Legislative Part, and Matters of Privilege, both Houses do proceed only *secundum Legem & Consuetudinem Parliamenti*; but for the Judicial Part, does any Man question, but that in all Times they have been guided and directed by the Statutes and Laws of the Land? And have been outed of a Jurisdiction in several Cases, as by the Statute of 4 *Edw. III.* and 1 *H. IV.* And the Lords in all Writs of Error, and all Matters of Judgment, proceed *secundum Legem Terræ*; and so for Life and Death. And there is not one Law in *Westminster-Hall*, as to Matters of Judgment, and another in the Court of the Lords above. But I will not trouble your Lordship any farther to pursue these Things. But it is not sufficiently disclosed to you, that there is any such Thing as an Impeachment depending there; it is only alledged, that he was impeached, and so much the News-Book told us, that he was impeached: but to infer from thence that there was an Impeachment carried up and lodged for the same High-Treason, is no Consequence. And then it is alledged, *Quæ quidem Impetitió*, when no Impeachment is before set forth, but only that he was impeached generally. And as I observed before, a Person might go up with a Message to impeach, but that cannot be said to be an Impeachment to which the Party is compelled to answer; it must be an Impeachment on Record, and appearing on the Face of the Record for what Crime it is; and so they ought to have set it forth.

Now that this is too general that is alledged here, I take it the Books are very full. When a Record is pleaded in Bar or in Abatement, the Crimes ought to be set out to appear the same, and so, my Lord, are all the Precedents of *Coke's Entries* 53, *Hoticroft's* and *Burgh's* Case, and *Watt's* and *Bray's* Case in 41 and 42 of *Queen Eliz. Coke's Ent.* 59. *Wrot's* and *Wigg's* Case, 4 *Rep.* 45. and in

Lewe's and *Scholastica's* Case, and *Dive's* and *Manning's* Case. The Record must be set out, that the Court may judge upon it; and the Record must not be tried *per pais*, but by itself. But for what they say, plead it never so certainly, there must be an Averment, it must be so it is true; but that is for another Purpose than they urge it. The Reason is, because if it be for another Fact that he hath committed, he may be indicted again, though it be of the same Nature; but whether of the same Nature or not of the same Nature, is the Thing must appear upon the Record pleaded, because the Court must be ascertained, that it was sufficient for the Party to answer to it; for if it were insufficient, he may be again proceeded against: As if an Indictment be pleaded which was insufficient, though the Party pleads an Acquittal or Conviction upon it, it will not avail him; for the Court will proceed on the other Indictment. And so is the Resolution in *Vaus's* Case, and in *Wigg's* Case; though there was a Judgment given of Acquittal, yet he was tried again. So that, my Lord, that is one great Reason why it must appear, that the Court may judge whether it be sufficient for the Party to answer: And you have now that here before you; if this be such an Impeachment as they have pleaded it, as this Person could not answer to by any Law of Parliament or other Court; then it is not sufficient to out you of your Jurisdiction. And I do think, that by no Law they are, or can be compellable to answer to a general Impeachment of High-Treason. And to give you Authority in that, there are many might be cited, as the Cases of my Lord *Stafford* and the other Lords in the *Tower*, and so is the ancient Course of Parliament: With Submission, I will be bold to say, the Impeachments are all so, that ever I met with. And it appears by them, that they all conclude *contra Coronam & Dignitatem Regis*, in the Form of Indictments, laying some Overt-Acts and the special particular Crimes for which the Person is impeached, as Overt-Acts for Treason required by the Statute of 25 *Edw. III.* And I hope they will not say, that without an Overt-Act laid in the Impeachment, the Impeachment can be good. If then this be so general that it cannot make the Crime appear to the Court, and is so insufficient, that the Court cannot give Judgment, I take it you will go on upon the Indictment, which chargeth him with a particular Crime.

My Lord, Mr. *Pollexfen* does put the Case of Barretry where such Averment is allowable; but that is a special, certain and particular Crime, but High-Treason is not so; there are Abundance of special Sorts of High-Treason, there is but one Sort of Barretry, and there are no Sub-divisions; therefore there is nothing to be averred but the special Fact that makes that Barretry.

Then there was another Authority out of the Book of Affizes cited by Sir *Fran. Winnington*, and greatly relied upon. A Man is indicted for the Murder of *J. S.* and afterwards for the Murder of *J. N.* the former was pleaded to the second, with an Averment that it is the same Person; that is but according to the common Form of Averments, to be of Matter of Fact. For if *J. S.* was known, as well by the Name of *J. N.* as of *J. S.* the Indictment was for the Murder of the same Person, and there it is pure Fact averred. But where it is essential, as this Case is, that the particular Treason do appear; to say, that it is the same particular Treason, and to say, that

Matter

Matter of Fact averred shall enlarge a Record, I think, is impossible to be found any where. And of all the Cases that I have seen or heard, I confess none of the Instances comes up to it. For the Case in *Moor, King, and Howard*, cited by Sir *Francis Winnington*, that is an Authority as expressly against him, that nothing can be more: For if there be an Indictment for Felony in such a particular Act, and then he is indicted again, he cannot come and plead a general Indictment of Felony, and then aver 'tis for the particular Felony, and so to make the Fact enlarge the Record, and put Matter of Record to be tried by a Jury.

Mr. *Wallop* was of opinion, that upon this Averment the Jury may try the Fact. What a pretty Case would it be, that a Jury should judge upon the whole Debates of the House of Commons, whether it be the same matter or no: For those Debates must be given in Evidence, if such an Issue be tried. I did Demur with all the care that I could, to bring nothing of that in question; but your Lordship knows if they have ever so much in particular against a Man, when they come to make good their Impeachment, they must ascertain it to a particular Crime; and the Overt-Acts must be alledged in the Impeachment, or else there is another way to hang a Subject than what is the King's Highway all over *England*. And admit there was an intimation of a purpose to impeach, a Message sent up, and any Judgment given thereupon, pray consider what may be the Consequence as to the Government; a very great Matter depends upon this: If there be any Record of that Parliament, then is the *French Act* gone: For so is the Resolution in 12 *Jacobi*, where the Journal-Book was full of Proceedings; yet because there was no Judgment passed, nor no Record of a Judgment in a Writ of Error, they adjudged it no Session; but if any Judgment had been given, then it had been otherwise. So that the Consequences of these things are not easily seen, when Men debate upon touchy Matters.

But that which is before your Lordship is this point upon the pleading, and, I conceive I have answered all the Precedents they have cited; therefore, my Lord, I take it, with Submission, there is nothing of that Matter before you concerning an Impeachment depending before the Parliament; but whatsoever was done, 'tis so imperfectly pleaded, that this Court cannot take any notice of it.

Mr. *Sol. Gen.* My Lord, I shall endeavour to be short, and shall confine myself (because I am tender of your time) to the Point in question; which is, whether this Plea be sufficient in point of Form. There have been many things said on the other side, which I must crave leave to take notice of, so far only as to shew they are not in question before you. Those are what relate to the Matter of the Plea; for they argue 'tis good both in Matter and Form: And from the Matter of the Plea they have taken occasion to debate, whether a Commoner may be impeached? Whether this Court hath Power to judge of the Privileges and Course of Parliament? None of which Questions will arise upon our Case now. Therefore I will not now debate whether *Magna Charta*, that hath ordained that every Man shall be tried by his Peers, and the Statute of 4 *Edw. III.* which says, that the Lords shall not be compelled, nor shall have power to give Judgment upon a Commoner, have sufficiently secured the Liberty of the

Subject from Impeachments. Nor is it the question before your Lordship, whether you shall judge of any matter that is a Right or Privilege of Parliament; here is nothing before you that was done in Parliament; but this is an Indictment for High-Treason, committed by *Fitz-Harris* in this County. Now, my Lord, as that is not the Question, neither will it be the Question, Whether an Impeachment depending in the House of Lords against a Commoner, by the House of Commons, will bar this Court of Jurisdiction? For though they have entered upon it, and debated it at large, and seemed to obviate the Objections made to that if it had been a Question; as by the saying that the King hath no Election, because this is not the Suit of the King, but the Suit of the Subject: I will not now *ex insituto* argue that Point; but I will humbly offer a few things to your Lordship's Consideration, and I shall take my hints from them. They say, the House of Commons are the grand Inquest of the Nation, to enquire of Treasons and other High Crimes, and they make these Presentments to the House of Lords. Now when such a Presentment is made, 'tis worthy Consideration whether it be not a Presentment for the King; for an Impeachment does not conclude as an Appeal does, but *contra Ligentiam suam Debitum, & Coronam & Dignitatem Domini Regis*; so far 'tis the King's Suit. In an Impeachment the Witnesses for the Prisoner are not sworn, the Prisoner hath not Council for his Life in Matter of Fact, as in Cases of Appeal, at the Suit of the Subject he hath. The King may pardon part of the Sentence, it was done so in *Rich. the II's* Time, and it was done so lately in my Lord *Stafford's* Case; but take it for a Supposition that it is the Suit of the People, yet that cannot preclude the King from his Suit neither; for at Common Law before the Statute of 3 *Hen. VII.* where a Man had an Appeal for Murder, the King had not his Hands tied up, not to proceed upon the Indictment: It had been used so, I do agree, and so 'tis recited, that it had been used so, in the Statute of 3 *Hen. VII.* but there was no positive Law for it, nor could it have been pleaded in bar or an Indictment, that the Indictment was within the Year, but the King used to stay out the Year in favour of that Suit. But since the Statute, the use is otherwise; and the reason why they proceed immediately is, because now an Acquittal or an Attainder upon the Indictment is no bar to the Appeal, but the Party may go on in his Appeal. I mention this, because the Consequence which they urge as such a dismal one, will be nothing; which is, What if he should be acquitted here, he could not plead *auter foitz acquit*, so would be twice brought in jeopardy for the same Offence. For it is the same in all Cases of Appeals, a Man comes in jeopardy twice if he be indicted within the Year, and attainted or acquitted within the Year; it is no bar to the Appeal. But this is not like the Case of an Appeal for Murder neither; for though it hath been used discretionarily in the Court to stay the Suit of the King, and to prefer the Suit of the Subject, it was then because the Subject had the first and nearest Concern, as the Son in the Death of his Father, and it did mostly concern him to prosecute it. The King is concerned as the Fountain of Justice only, to bring Offenders to condign Punishment; but the nearest damage, and the first to be prefer'd, was that of the Party who had lost his Relation. Now the reason of that

turns quite contrary here: For as in that Case the Subject had the nearest Concern in the Loss of his Father, and so was best intitled to the Suit; so in this Case that very reason will have the King's Suit to be prefer'd: for there is no Treason but against the King, and in Treason against himself, the King has the nearest Concern, and the Wrong is primarily and originally to himself. And the Subjects damage is but a Consequence of that, as all hurt to the King must needs hurt the People. So the King's Suit is to be prefer'd here, as the Subjects was in the other Case.

Now for the Objection that has been made, That if you try this Man, upon the same Reason you may try the Lords in the *Tower*. Their Case is different, as hath been already observed by Mr. Attorney; and that which has been done by the Lords in that Case, to me does rather seem to imply that this Trial may be in this Case. For if the Lords after an Impeachment brought up against the five Lords in the *Tower*, and after the special Manner in the Articles which does ascertain upon what they do proceed, have thought fit notwithstanding to remove the Indictment by *Certiorari* into Parliament, (for so it was in Fact) that no Prosecution might be upon them; then certainly they thought the King's Court might proceed without doing so.

My Lord, I will mention no more upon this matter, but leave it to your Lordship's Consideration: But as to the Form of the Plea, I do conceive, with Submission, 'tis not a formal Plea.

We know here of no Form of pleading an Indictment, but what does set forth the Indictment particular; the Precedents are so, 'tis so in *Vaulx's* Case, and all the Precedents that I have seen: so is the Precedent in *Raft*. Ent. where in an Appeal the Defendant waged Battel, the Plaintiff replies he was formerly indicted, he sets forth the Indictment particularly. All the Precedents are so, and the Law-Books resolve it must be so; as *Wrott* and *Wigg's* Case, where the Defendant in an Appeal of Murder by the Wife pleads, that he was indicted for Manslaughter before the Coroner of the Verge, and Coroner of the County, for killing the Husband at *Shepperton* in the County of *Middlesex*, and had his Clergy with reference to the Record, and the usual Averments; with this farther, that he averred that *Shipperton* at the time of the Indictment and Death was within the Verge. To which the Plaintiff demurred, and Judgment for the Plaintiff. Now two things are resolved by this Judgment.

1. That 'tis necessary to set forth the whole Record of the Indictment, or otherwise they ought not to have given Judgment for the Plaintiff, by reason the Indictment was sufficient, as 'twas pleaded, in that it did not say that *Shepperton* was within the Verge, which was necessary to entitle the Coroner of the Verge to a Jurisdiction, because being pleaded with reference to the Record upon *Nul tiel* Record pleaded, and the Record thereupon brought in, that Defect might have been cured.

2. That no Averment of Fact can supply that which should appear upon Record, therefore the Averment that *Shepperton* was within the Verge, did not mend the matter, though confest by the Demurrer as much as it is in this Case, that 'tis the same Treason.

But they say, there is a difference between this Case and those which I have put; for that 'tis the

Course of Parliament (of which your Lordships must take notice) to impeach general; so they could not have pleaded otherwise than they have done, unless they had pleaded it otherwise than the Cases were: this Reason holds rather the other way; for if in any Case such a general way of pleading with reference to the Record were to be admitted, it were in case of an Indictment, because the Court knows there is no Indictment but what does particularly set forth the Felony, which when produced, is capable of being applied: but here if the Record be brought in, 'twill no more ascertain the matter of the Impeachment, than the Plea does already. And whereas they say your Lordship is bound to take notice of the Course of Parliament, so your Lordship will take notice too, that 'tis not the Course of Parliaments to try any Man upon such a general Impeachment. I never heard of any Man (I speak it with submission to them that know better) that was brought to plead, Not Guilty, upon a general Impeachment of High-Treason; that is, upon the Commons bare saying, We do impeach such an one of High-Treason. I know none that ever was brought to answer that general Accusation.

And now, my Lord as the Plea is nought for not setting out the Record, so is the Averment, with Submission, insufficient too. For though he does aver that the Treason in the Indictment, and the Treason for which he was impeached, are one and the same, and not divers Affirmatively and Negatively; yet as this Case is, he ought to have said, that the Treason for which he is indicted, and the Treason mentioned in the Impeachment, is one and the same: For if he was impeached generally for High-Treason without mention of Particulars, it is impossible to be reduced to a Certainty: So 'tis an Averment of a Fact not capable to be tried.

First, because, with submission to these Gentlemen that have said it, the Debates of the House of Commons are not to be given in Evidence, and made publick to a Jury: Nay, they are not always possible to be reduced to a Certainty, as the Circumstances may be; for they do not always particularly resolve upon what Particulars they will accuse before they go up, but a general Allegation serves the turn: So that such Averment is not triable *per pais*, because as the Case may be, it may not be capable of any Certainty from the Debates of the House of Commons.

Another reason is, because by this way of pleading, Proceedings may be staid for Treason, though subsequent to the Impeachment, which no Man yet has pretended to say: For suppose now a general Impeachment lodg'd, and a Treason afterwards committed by the Party, I think no Man will say that the House of Commons when they bring up their special Matters, cannot make even this subsequent Treason an Article upon that Impeachment; neither can it be said that such Averment as this is, upon such Plea pleaded to an Indictment here below, would be repugnant, because there is no time at all laid in the Impeachment as 'tis here pleaded, nor no time when the Impeachment was brought up; so that it cannot appear to the Court whether the Treason in the Indictment be subsequent or not: The Consequence of which is, we must try whether the House of Commons upon this general Impeachment did intend to proceed to try him for a Fact committed after the Impeachment carry'd up. My Lord, this would

would be to affirm, that a Man once impeach'd in Parliament shall never be tried for any Offence; it would be like that *Privilegium Clericale*, which they made use of to exempt themselves from Punishment for all Offences.

But, my Lord, we do think upon the whole Matter, without entring upon the Debate, whether a particular Impeachment lodg'd in the House of Lords does preclude the King from his Proceedings, we have a good Case upon this Plea; for that is not a Question necessary to be resolv'd, though it be not granted by the King neither. But the Question is, Whether this be a formal Plea, and whether here be sufficient Matter set forth upon Record to bring that other Matter into question, and tie up the Hands of the Court?

Mr. Serj. *Jefferies*. My Lord, there hath been already enough spoken in this Case. I shall desire only to offer one Word to that single Point, *viz.* the Informality of the Plea; which I take to be the sole Question in this Case: For to argue whether because there was no Bill pass'd, or Decree made in the House of Lords (though the Articles had been carry'd up) the Impeachment did not fall to the Ground by the Dissolution, I conceive altogether improper; for I think it does not affect the Question: Though I desire to take Notice that Sir *Fr. Winnington*, Mr. *Williams*, and Mr. *Wallop* were all mistaken: For there were no such Concessions made by any of the King's Counsel the other Day, as they alledge; because we did not think it to be the Question, and therefore made no Discourses about it.

But, my Lord, I desire first to take Notice of a Case or two that hath been cited on the other Side; and then I shall apply myself to that which is the Question before you at this Time. They cite the Case of the Lords in the *Tower* as a Judgment for them, which seems to be a Judgment against them: For by the Lords granting a *Certiorari* to remove the Judgments into Parliament, they seem to be of Opinion, that notwithstanding they were impeach'd before the Lords, yet there might have been Proceedings below upon those Indictments, had they not been remov'd; and there they remain to this Day. Nay further, to those Impeachments they have pleaded to Issue, which is ready for a Trial: But in the Case at Bar, there only is an Accusation, without any further Proceeding thereupon.

And as to the Case of my Lord *Shaftesbury*, that makes strongly for us, as I conceive. Mr. Justice *Jones's* Opinion was taken Notice of by Sir *Fran. Winnington*, that they would not meddle by any Means with Matters depending in Parliament: But I must remember, he then gave this Reason for his Opinion, because the Parliament was then in being. And I must humbly put your Lordship in mind, that the whole Court did then declare, That if the Parliament had been dissolved, they would have said something more to that Case. I do not say, that they would have given such or such a Judgment; but I attended at the Bar at that Time, and I appeal to the Memory of the Court if the Court did not then make such a Declaration.

But now to the Question: Without all Peradventure, the Cases cited by Mr. *Pollexfen* are true. If I bring a general *Indebitatus assumpsit* for Wares, sold and delivered, and after bring a particular *Indebitatus assumpsit* for such and such Wares, naming the Particulars, the Party may come and

plead in Bar, and aver it is for the same Thing; and it is a good Averment, because there is sufficient Matter set forth in the Record to support such an Averment: For the Doubt is only, whether the particular Goods mentioned in the second, be not the same that were intended under those general Words (Goods and Merchandizes) in the first.

But suppose there had been only an Account brought, and no Declaration put in, could then the Defendant have pleaded such a Plea with such an Averment, when there was not sufficient Matter of Record set forth in their Pleading, whereby the Court might be able to give a Judgment, or put it into a way of Trial whether it was for the same or not?

And is it not so in this Case? there being but a bare Accusation: For I still keep to the Informality of the Pleading, and I take it not to be such a dangerous Case, as these Gentlemen of the other Side do pretend, for you to determine it. For I am sure it will be better for the Court to answer, if ever they shall be required, that they have performed their Duty, and done Justice according to their Consciences and their Oaths, than ever to be afraid of any Threats or Bugbears from the Bar.

For would not they, by this Manner of Pleading, put upon your Lordships a Difficulty to judge, without any thing contained in the Impeachment to guide your Judgment, whether the Prisoner be impeached for the same Thing for which he is indicted? May not the Treason intended in this Impeachment be for clipping or coining of Money? for it is generally said to be only for High-Treason. How comes this then to be help'd, so as to be any way issuable, and be tried? Shall it be by that Way which Mr. *Wallop* laid down, that if Mr. Attorney had taken Issue, the Jury must have tried the Question by having the Debates of the House of Commons given in Evidence? Certainly that cannot be, my Lord. If there were but one Sort of Treason, there might be some Colour for this Sort of Pleading; but there are divers Kinds of Treasons, and how is it capable to be tried? Who can prove the Intentions of the House of Commons, before they are come to a Resolution? and therefore cannot be given in Evidence, or be regularly brought into Judgment.

Therefore we rely upon the Informality and Uncertainty of the Pleading only, and meddle not with the Question, whether an Impeachment in the House of Lords supercedes an Indictment in the *Kings-Bench*; for we say, they have not pleaded it so substantially, as to enable the Court to judge upon the Question: And therefore we pray your Lordship's Judgment, that the Plea may be over-ruled.

Sir *Fran. Withins*. My Lord, there has been so much of your Time already taken up by those Gentlemen that have argued before me, that I shall be very short in what I have to say.

The Question is not at this Time, how far forth the Commons in Parliament may impeach or not impeach a Commoner, before the Lords in Parliament, or where the Lords may admit or not admit of such Impeachments; that is not the Case here, as I humbly conceive, nor will I meddle with it: I shall only speak to the Validity of the Plea according to Law. Now, I say, that this Plea of the Prisoner as thus pleaded, cannot be good to out this Court of Jurisdiction: For first, The Prisoner cannot be admitted to make the Aver-

ment in this Plea, that the Treason mentioned in the Impeachment in Parliament, and that contained in this Indictment, is the same; for if, as the Gentlemen that argued on the other Side, urg'd, that this Court must take Notice of the Proceedings and Law of Parliament, then you will take Notice that no Person is there tried upon a general Impeachment of Treason. Special Articles are always first exhibited: In this Case then either the House of Commons have carried up special Articles against the Prisoner to the Lords in Parliament, or not; if the House have done it, then the Plea might have been pleaded better by setting forth the Articles (which is part of what they say on the other Side, that it could be pleaded no better) for then it would have appeared plainly whether the Treason were the same or not. If the Articles are not carried up, shall it lie in the Mouth of any particular Person to say what Articles the Commons in Parliament would have carried up? Shall any single Person be admitted to say what the House would have done, before the House itself says it? In Cases of Impeachments, it lies in the Discretion and Judgment of the Commons upon Debate to exhibit what Articles they in their Wisdoms shall think fit; and sure it shall never come, that any particular Person shall limit them to this or that particular Treason beforehand; no surely.

Now suppose in such a Case as this, after such a Plea pleaded, the Commons upon Deliberation should carry up Articles quite different; such a Plea then would appear to be a stark Lie, and the pleading and allowing of it, an apparent Delay of Justice. So that I conceive, my Lord, the Prisoner shall by no Means be admitted (nor indeed can it be) to aver the Intention of the House of Commons, (which cannot be tried) before they have declared it themselves; and therefore I conceive the Plea to be naught for that Reason.

But, my Lord, I conceive that the Prisoner's Plea is ill for another Reason, because the Court in this Case, by any Thing expressed in this Plea, cannot discern nor take Notice whether it be the same Treason or not.

Now the Reason why the Record, as this Case is, ought to be alledged specially, is because the Matter contained in it may plainly appear to the Court, and then by that Means the Court might judge whether it be the same Treason or not. Now Treason generally alledged in the Impeachment, is the Genus, and the particular Treason mentioned in the Indictment is only a Species, and the Averment in the Plea is, that the Genus and the Species is the same; which is absurd, and if allowed, tends to hoodwink and blind the Court, instead of making the Matter plain for their Judgment.

Pleas ought to be plain and certain, because the Court, upon them alledged, is to judge either of Mens Estates or Lives; and for that Reason the Matter ought to come plainly and fairly before them, that Wrong may be done to neither Party by Reason of the Obscureness or Doubtfulness of the Allegation: If therefore the Hoodwink be brought instead of a Plea, it ought not to be allowed. And therefore for these Reasons (for what I have farther to say, has been already said by others) I conceive it ought to be over-ruled. I humbly submit it to the Court.

L. C. J. You have done your Arguments, Gentlemen, on all Sides?

Coun. Yes, my Lord.

L. C. J. Look you, Gentlemen, I'll tell you, you have taken up a great Part of our Time. We never intended, when we assigned four Counsel to Mr. *Fitz-Harris*, that they all should make formal Arguments in one Day, it is the first time that ever it was done; but because it is as you press it in a Case of Blood, we were willing to hear all you could say, that you might not afterwards say, but that you were fully heard on all Sides. But in Truth, I must tell you, you have started a great many Things that are not in the Case at all. We have nothing to do here, whether the Commons House at this Day can impeach for Treason any Commoner in the House of Lords; we have nothing to do with this, what the Lords Jurisdiction is, nor with this Point, whether an Impeachment in the Lords House (when the Lords are possessed fully of the Impeachment) does bar the bringing any Suit, or hinder the Proceeding in an inferior Court: But here we have a Case that rises upon the Pleadings; whether you have brought here before us a sufficient Plea to take away the Jurisdiction of the Court, as you have pleaded it, that will be the sole Point that is before us: And you have heard what Exceptions have been made to the Form, and to the Matter of your Pleading. We do ask you again, Whether you think you are able to mend your Pleading in any thing, for the Court will not catch you, if you have any thing wherein you can amend it, either in Matter or Form? If you will let us know it, we shall consider of it; but if you have not, if you abide by this Plea, then we do think it is not reasonable, nor will be expected of us in a Matter of this Consequence to give our Judgment concerning this Plea presently. All the Cases cited concerning Facts done in Parliament, and where they have endeavoured to have them examined here, are nothing to the Purpose at all. For plainly, we do not assume to ourselves a Jurisdiction to enquire of such Matters: For Words spoken, or Facts done in the Commons-House, or in the Lords, we call none to question here, nor for any Thing of that Nature, which takes off most of the Instances you have given; but our Question is barely upon the Pleading before us, Whether we have a sufficient Pleading of such an Impeachment as can foreclose the Hands of the Court? And as to that, we shall take some reasonable Time to consider of it; we will not precipitate in such a Case, but deliberate well upon it before we give our Judgment. Take back your Prisoner.

Mr. Att. Gen. Before he goes away, we hope you will let a reasonable Time, as short as you can, to have him come again, for your Judgment.

L. C. J. Mr. Attorney, we can send for him when we please, to come hither by Rule; you see this Business is come on in the busy Part of a Term, and it is impossible for the Court to attend nothing but this, we will take some reasonable Time.

[Then *Fitz-Harris* was carried back to the Tower.]

On Tuesday, May 10. Mr. Attorney moved the Court to appoint a Day for their Judgment on the Plea, and for *Fitz-Harris* to be brought up, which they appointed to be the next Morning.

And accordingly on Wednesday Morning, May 11, he was brought from the Tower to Westminster-Hall.

Mr. Att. Gen. My Lord, I pray that *Fitz-Harris* may be brought to the Bar.

L. C. J.

L. C. J. Where is the Lieutenant of the Tower? Bid him bring *Fitz-Harris* to the Bar, (which was done.)

Mr. Att. Gen. My Lord, I pray your Judgment on the Plea.

L. C. J. Mr. *Fitz-Harris*, you have been arraigned here for High-Treason, and it is for endeavouring and compassing the King's Death, and other Treasons, specially mentioned in this Indictment; you have pleaded here to the Jurisdiction of this Court, that there was an Impeachment against you by the Commons of *England* in Parliament, before the Lords, for the Crime of High-Treason; and you do say, that that Impeachment is yet in Force; and you do say, by way of Averment, that this Treason whereof you are now indicted, and the Treason whereof you were impeached by the Commons of *England*, before the Lords, are one and the same Treason. And upon this the Attorney-General for the King hath demurred, and you have joined in Demurrer: And we have heard the Arguments of your Counsel, whom we assigned to argue it for you; we have heard them at large, and have considered of your Case among our selves; and upon full Consideration and Deliberation concerning your Case, and all that hath been said by your Counsel, and upon Conference that we have had with some other of the Judges, we are three of us of Opinion, that your Plea is not sufficient to bar this Court of its Jurisdiction; my Brother *Jones*, my Brother *Raymond*, and myself, are of Opinion that your Plea is insufficient, my Brother *Dolben* not being resolved, but doubting concerning it. And therefore the Court does order and award, that you shall answer over to this Treason.

Cl. of Crown. *Edward Fitz-Harris*, hold up thy Hand.

Mr. Fitz-Harris. My Lord, I desire I may have Liberty to advise with my Counsel before I plead.

L. C. J. Mr. *Fitz-Harris*, when you proposed a Difficulty you had in a Matter of Law, the Court were willing to assign you Counsel; because it is known you cannot be a fitting Person to advise yourself concerning the Law. But as to this, we cannot assign you Counsel; it is only a Matter of Fact, whether you be guilty or not guilty. Therefore in this Case you can't have Counsel allowed to advise you.

Mr. Fitz-Harris. My Lord, I desire, before I plead, or do any thing of that Nature, that I may make an End of my Confession before your Lordship, and some of the Privy Council.

L. C. J. Look you, Sir, for that you have trifled with us already; you pretended you had some Scruples of Conscience, and that you were now become another Man, and would reveal and discover the whole of this Design and Plot, that you are said to be guilty of here: But you have trifled several Times concerning it, and we can say nothing concerning that now; we must now have your Plea: If afterwards you have a Mind to confess and be ingenuous, you may do it; but now you must either plead, or not plead.

Mr. Fitz-Harris. My Lord, I have some Witnesses a great way off, and I desire Time to have them ready for my Defence.

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand (which he did;) thou hast been indicted of High-Treason; upon that Indictment thou hast been arraigned, and hast pleaded to the Jurisdic-

tion of this Court. To which Plea his Majesty's Attorney-General hath demurred, and thou hast joined therein: And upon the whole Matter, this Court, upon mature and considerate Deliberation, is of Opinion, that thou oughtest to answer over. How sayest thou, art thou Guilty of the High-Treason whereof thou hast been indicted, and hast been arraign'd, or not Guilty?

Mr. Fitz-Harris. Not Guilty.

Cl. of Cr. Cl. Prist. &c. how wilt thou be tried?

Mr. Fitz-Harris. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

L. C. J. Now if you have any thing to move, do it. We could not hear your Motion till you had pleaded; for the Method of the Court must be observ'd.

Mr. Fitz-Harris. I have some Witnesses at a Distance, my Lord.

L. C. J. Where are your Witnesses?

Mr. Fitz-Harris. I have one Witness in *Holland*, a very material one; that I am much concerned to have for my Life.

Mr. Just. Jones. What is his Name?

Mr. Fitz-Harris. His Name is *Steward*, my Lord.

L. C. J. Look you, Mr. *Fitz-Harris*, I'll tell you, reasonable Time is allowed to all Men to make their Defence in; but when a Man is in *Holland*, I know not what Time you will take for that.

Mr. Fitz-Harris. What Time your Lordship thinks fit for a Man to return from thence hither.

L. C. J. Look you, Mr. Attorney, why should not we allow Mr. *Fitz-Harris* Time for his Trial till next Term?

Mr. Att. Gen. I think he hath not offered any thing to entitle him to it: He doth not tell us, and I would fain know what the Witnesses will prove.

Mr. Just. Dolben. It may be, Mr. Attorney, he will confess what it is that Witness can prove.

Mr. Att. Gen. For the whole Proof in a Case of Treason lies on our Side.

L. C. J. Commonly, and *prima facie*, it does so; but there may be some Things that the Prisoner may give in Evidence for himself, that may be material for him to urge for his Defence.

Mr. Fitz-Harris. My Lord, I know not whether it be safe for me to tell what he can say.

Mr. Just. Jones. Then you reserve it wholly in your own Judgment, whether he be a material Witness, or no?

Mr. Fitz-Harris. If my Lord Chief Justice pleases, I will acquaint him in private with it.

Mr. Att. Gen. I never saw any good Effect of these private Proceedings. If he have any thing to offer, he may do it publickly, in the Face of Justice: And therefore I desire he may be tried this Term; for he hath had a whole Term's Notice, and Time enough to consider what Persons are material Witnesses for him.

Mr. Just. Jones. Unless he do shew good Cause to the contrary, he must be tried this Term.

Mr. Att. Gen. And, my Lord, where it is in the same County where the Fact was committed, there is the less Reason to stay; Criminals in High-Treason, the Fact must be plain and evident against them.

L. C. J. Look you, Mr. Attorney, peradventure he hath been made to depend upon his Plea, and hath been advis'd so to do.

Mr. Fitz-Harris. Yes, my Lord, and have been close Prisoner, and not allowed to speak with any body.

L. C. J.

L. C. J. If so, then it may be a Surprize upon him.

Mr. Fitz-Harris. My Lord, I have been allowed nothing to prepare for my Defence.

Mr. Sol. Gen. My Lord, he ought to be provided for his Trial this Term. I do not know, my Lord, what Witnesses he can pretend to have; the Fact was done in *Middlesex* here, and the Proof of the Circumstances of that Fact do arise here; and I do not know what Surprize he can complain of. As to the Witness he tells you of, that is in *Holland*, he doth not tell you to what Purpose he is a Witness; so that you may know whether it be material or not. I know very well, my Lord, in the *Old-Baily*, when the Priests did urge it, that they had Witnesses beyond the Sea in other Countries, they were not suffered to delay their Trial upon such a Pretence. We must submit it to your Lordship's Discretion: But we suppose it will not be a precipitous Proceeding, he having Notice of his Trial all this Term.

L. C. J. Mr. Attorney, truly, since he pretends he is surpris'd, and hath depended upon his Plea, and hath Witnesses that require some Time to fetch, we think it reasonable that he should have till the next Term; and we will defer it till then. We are all of that Opinion, (especially it being such a little Delay) to enable him to have what Witnesses he doth pretend to have.

Mr. Att. Gen. My Lord, I never desired in this Case, nor in any other, nor ever shall do, that Justice be precipitated. I know these open and fair Trials proceed with such equal Steps to all Parties, that we need not be hasty; and therefore, if your Lordship be of that Opinion, I submit to it, so it be the first Week of the next Term.

L. C. J. The first Week it cannot be.

Mr. Att. Gen. Within the first seven Days, I mean.

L. C. J. The first *Thursday* in the Term. And take Notice, *Mr. Fitz-Harris*, that is the Day appointed for your Trial.

Mr. Fitz-Harris. I desire Liberty to see my Wife, and have a Solicitor in the mean time.

L. C. J. I will tell you, for that, *Mr. Fitz-Harris*, the Court would never deny any thing of that nature to any one in your Condition and Circumstances; but your Wife makes an ill use of the Liberty we granted her: And if she do make an ill use of it, then the Court must restrain her, and hold their hands over her. If we were satisfy'd she would use the Liberty lawfully, and not abuse it —

Mr. Fitz-Harris. My Lord, I am sure she will use it lawfully hereafter, and make no ill use of it.

L. C. J. Look you, upon her good usage of it, if she will fairly demean her self, and not abuse it again, we are willing to take off the last Rule, and she shall have the same Liberty she had before that Rule.

Mr. Sol. Gen. With this, if your Lordship please, we desire there may be some other Judge of her Prudence besides her self, and the Lieutenant of the *Tower* be by.

Mr. Fitz-Harris. My Lord, I desire I may have a Solicitor; for he was never allowed to come and speak to me, though I had a Rule for him.

L. C. J. Look you, as to your Counsel now, which was the main Reason why you prayed a

Solicitor, we cannot allow you them any more; for now we are come to a Matter of Fact only, and we cannot by the Rules of Law allow you Counsel. Therefore what need you have of a Solicitor, I cannot tell; his business before, was to go from you to the Council, and from them to you, which is ceased now. But this, Mr. Attorney, if he have a desire to see Papers, and would send for any Papers that concern his Defence, so as they contain no new Treasonable Matters and Contrivances, he ought sure to have them; and if he have Papers at his House, or any where else, which he desires to make use of in his own defence, being inspected by the Lieutenant, to see that there be no Matter of evil contained in them, he may have one to do that for him without any Danger.

Mr. Sol. Gen. I do not oppose it, my Lord; but I desire that all Caution may be us'd that can be; for this Solicitor of his is a Lawyer, and writes Tracts of Law: But any thing material for his Defence I am not against.

L. C. J. Mr. Attorney, you need not fear any harm will be that ways: For he is not to speak with him alone.

Mrs. Fitz-Harris. I hope his Solicitor may come to him to take Instructions how to send for his Witnesses.

Mr. Just. Jones. You can tell how to do that, surely, without a Solicitor.

L. C. J. Just as the last Rule was, let there be another Rule made: For he must have all just Advantages to enable him for his Defence.

Mr. Fitz-Harris. I hope I shall have a Rule of Court to make my Witnesses appear.

Mr. Just. Dolben. That you may have without a Motion.

L. C. J. We will give you any thing that will enable you to make a fair Defence.

Cl. of Cr. He shall have *Subpœna's* for his Witnesses.

L. C. J. Then, *Mr. Fitz-Harris*, you must expect no other Notice. You must take notice now, that upon the first *Thursday* in the next Term, you are to receive your Trial here. Take the Prisoner back.

Mr. Att. Gen. In order to his Trial, I desire the Sheriff may bring in the Freeholders Book to the Clerk of the Crown, to strike the Jury.

L. C. J. Mr. Attorney, we will consider of that, how far we can do that, and the Course of the Court shall be observed. But I doubt how we can.

Mr. Att. Gen. That is the Practice in Trials at the Bar.

L. C. J. In civil causes, but not in Criminal, that I know of.

Mr. Att. Gen. We have reason to desire it; because we are afraid of some Practice in this Cause, and fear there may be some odd Carriage in the Return of them.

Mr. Fitz-Harris. May I not see my Wife before I go hence?

L. C. J. With all our Hearts; she may go to you, and with you, Sir, if you please: We will not hinder you of her Company, so she carry her self fairly.

Then the Lieutenant took back his Prisoner.

*The Trial of Edward Fitz-Harris * at the King's Bench for High-Treason, June 9. 1681. Trin. 33 Car. II.*

ON Thursday 9 June 1681, Edward Fitz-Harris was brought to the Bar of the Court of King's Bench; and the Court being sat, proceeded thus:

Mr. Thompson. My Lord, I mov'd you the other day, that before *Mr. Fitz-Harris's* Trial, he might give such Evidence as he had to give against Sir *John Arundel* and Sir *Richard Beiling*, concerning the Death of Sir *Edmundbury Godfrey*, before he be convicted of Treason; and we understood that it was the direction of the Court, that we might move it this Morning before Conviction, that he might declare upon Oath here in Court what he knows of that Matter against those Gentlemen: For after he is convicted, I believe it will be too late for us to think of it. *Mr. Godfrey* hath a great deal of reason to desire what I now move, that his Brother's Murderers may be prosecuted; and we hope, all the favour that can be granted in such a Case, will be granted unto us: For there hath been a Design of late set on foot, to make it be believed, that Sir *Edmundbury Godfrey* murder'd himself, notwithstanding that clear Evidence that hath been already given of this matter, and notwithstanding that several Persons have been convicted and attainted upon that Evidence. So that these Gentlemen think themselves oblig'd to prosecute the Matter as far as they can, and beg of your Lordship, that what can be done for them may. And particularly, that he may perfect his Discovery against the two nam'd at his last Examination before the Grand-Jury; and that his Examination about them may now be taken by the Court.

L. C. J. Look you, *Mr. Thompson*, that that you mov'd before, had some reason in it, that he might be examin'd, and give Evidence to a Grand Jury, and we told you he should; but if there be never a Grand-Jury sworn yet, who can he give Evidence to? Would you have us take his Examination, and afterwards give it in Evidence to the Grand-Jury?

Mr. Thomp. My Lord, I only say, then 'tis our hard hap that he is not examin'd before a Grand-Jury.

L. C. J. But do you think it is fit for you to move this now?

M. Thomp. My Lord, I understood it was permitted me by the Court the other day, to move again; and I move by the direction of my Client, and I submit it to your Lordship.

L. C. J. You know it cannot be granted. Go on, and swear the Jury.

Fitz-Harris. My Lord, I beg that my Wife and Solicitor may be by, to help and assist my Memory.

L. C. J. Let your Wife be by you, if she please, and if you think 'tis any Advantage to you, with all our hearts; if she will, let her go down to you.

Cl. of Crown. Cryer, make an O Yes: Whoever can inform, &c.

Mr. Att. Gen. My Lord, I know not what the effect of this may be; if his Wife be instructed to instruct him, that ought not to be permitted, with Submission: Suppose she should come to prompt him (and for certain she is well documentiz'd) that your Lordship won't suffer.

Mr. Serj. Jeff. My Lord, she comes prepared with Papers in her Hand.

Mrs. Fitz-Harris. I won't shew them without my Lord's Permission.

L. C. J. If she brings any Papers that are drawn by Council, prepar'd for him, without doubt 'tis not to be allow'd.

Mrs. Fitz-Harris. No, no, 'tis only my own little Memorandums.

L. C. J. Whatsoever is written by her Husband, for help of his Memory in Matter of Fact, let her do it.

Fitz-Harris. My Lord, I humbly beg my Solicitor may be by me too.

L. C. J. We allow of no Solicitors in Cases of High-Treason.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand (which he did :) those good Men which thou shalt hear call'd, and personally appear, &c.

Fitz-Harris. My Lord, I desire they may be distinctly named as they are in the Pannel, that I may know how to make my Challenges.

Mr. Sol. Gen. My Lord, I must humbly offer it to your Lordship's Consideration, for the Precedent's sake, Whether any Person can assist the Prisoner as to Matter of Fact?

L. C. J. Yes, and 'tis always done to take Notes for him to help his Memory.

Mr. Serj. Jefferies. But, my Lord, I would acquaint your Lordship what is the thing we find in this Case; here is a particular Note given in to the Prisoner, of the Jury, pray be sure to challenge such and such, and don't challenge the rest. God forbid but his Memory should be help'd in Matters of Fact, as is usual in these Cases; but no Instructions ought to be given him, sure. And my Lord, the Example will go a great way; and therefore we are in your Lordship's directions about this matter.

Fitz-Harris. My Lord, I hope 'tis but just, for I have had all the Disadvantages in the World. I have been kept close Prisoner, and have not been permitted to have any one come to me, to help me in my preparation for my Trial.

Mr. Att. Gen. My Lord, I pray your Judgment in point of Law; I doubt not you will do the King right, as well as the Prisoner; I could not get a Copy of the Pannel, till last night about four a-Clock: Here is prepared a Copy with Crosses and Marks who he should challenge, and who not; and truly, my Lord, since I had the Pannel, upon looking over it, I do find the Sheriff hath returned three Anabaptist-Preachers, and I know not how many Fanaticks: And since there are such Practices as we find in this Case, we doubt there may be more; and therefore I pray she may be remov'd.

Mrs. Fitz-Harris. I will not be remov'd.

Fitz-Harris. Is it fit or reasonable for me, that I should stand here without any help?

Mr. Att. Gen. In Case you be guilty of this, you deserve no great Favour.

Mrs. Fitz-Harris. Surely the Court will never suffer the King's Council to take away a Man's Life at this rate.

L. C. J.

L. C. J. *Mrs Fitz-Harris*, you must give good Words: And if you will not be modest and civil, I promise you we will remove you presently.

Mrs Fitz-Harris. If you do remove me, that is the worst you can do to me: What should I come here for, without I may help my Husband?

L. C. J. If she do bring him Instructions to except against such and such Jury-men, she does misbehave her self, and must be remov'd.

Mr. *Att. Gen.* This Paper that we speak of is a Copy of the Pannel; and there are particular Marks, a great many.

Mr. *Sol. Gen.* A Woman hath a very great Privilege to protect her Husband; but I never yet knew that she had liberty to bring him Instructions ready drawn.

Mrs. Fitz-Harris. My Lord, the Lady Marchioness of *Winchester* did assist in the Case of my Lord *Stafford*, and took Notes, and gave him what Papers she pleas'd.

L. C. J. Sure 'tis no such huge matter to let a Man's Wife stand by him, if she will demean her self handsomly and fairly.

Mr. *Att. Gen.* It is not if that were all; but when she comes with Papers, instructed, and with particular Directions, that is the assigning him Counsel in point of Fact.

L. C. J. Let her stand by her Husband, if she be quiet: But if she be troublesome, we shall soon remove her.

Fitz-Harris. 'Tis impossible I should make my Defence without her.

Mr. *Serj. Jefferies*. I see it is a perfect formal Brief.

Mrs. Fitz-Harris. Must he have nothing to help himself?

Fitz-Harris. In short, the King's Council would take my Life away, without letting me make my Defence.

Mr. *Att. Gen.* I desire not to take any Papers from him, if they be such as are permitted by Law.

Mr. *Sol. Gen.* My Lord, his Innocency must make his Defence, and nothing else.

Mr. *Serj. Jeff.* My Lord, we are in your Lordship's Judgment, whether you will allow these Papers.

L. C. J. Let us see the Paper.

Fitz-Harris. My Lord, I will deliver them to my Wife again.

L. C. J. Let it be so.

Cl. of Cr. Call Sir *William Roberts* (who did not appear :) Sir *Michael Heneage*.

Sir *Michael Heneage*. My Lord, I am so ill, I cannot attend this Cause.

L. C. J. We cannot excuse you, Sir *Michael*; if there be not enough besides, 'tis not in our power to excuse you.

Sir *Michael Heneage*. I must suffer all things rather than lose my Health.

L. C. J. Well, stand by, till the rest are call'd.

Cl. of Cr. Sir *William Gulston*, *Nicholas Rainton*, *Charles Umprevile*, (they did not appear :) *John Wildman*.

Mr. *Att. Gen.* My Lord, I desire he may be ask'd, before he be call'd to the Book, whether he be a Free-holder in *Middlesex*?

Major Wildman. I am a Prosecutor of this Person; for I was a Parliament-Man in the last Parliament; and I dare not appear, my Lord, for fear of being questioned for Breach of the Privileges of the Commons.

Mr. *Att. Gen.* My Lord, I pray he may answer that Question, whether he be a Free-holder in *Middlesex*?

Major Wildman. I pray to be excused, upon a very good reason; I was one of them that voted the Impeachment against this Man.

Mr. *Att. Gen.* Are you a Free-holder in *Middlesex*, upon your Oath?

L. C. J. Look you, *Major Wildman*, you are return'd upon a Pannel here, you have appear'd, and your Appearance is recorded; you must answer such Questions as are put to you; 'tis not in your power to deny.

Major Wildman. I beg the excuse of the Court, I cannot serve upon this Jury.

L. C. J. If you be no Free-holder, the Law will excuse you.

Major Wildman. Perhaps there may be some Estates in my Name, that may be Free-holds; perhaps I may be some Trustee, or the like.

Mr. *Att. Gen.* Have you any Free-hold in your own Right in *Middlesex*?

Major Wildman. I don't know that I have; if it be in the Right of another, or as Trustee, I take not that to be a Free-hold.

Cl. of Cr. Call *Thomas Johnson*.

Mrs. Fitz-Harris. Let him be sworn, there is no Exception against him.

L. C. J. Hold your peace, or you go out of Court if you talk again.

Mrs. Fitz-Harris. I do not say any thing that is any harm, my Lord.

Cl. of Cr. Swear *Tho. Johnson*: You shall well and truly try, &c.

Fitz-Harris. My Lord, I pray the Clerk may not skip over the Names as they are return'd.

Cl. of Cr. Sir I call every one as they are in the Pannel; and don't do me wrong.

L. C. J. It may be he does not call them as they are mentioned and set down in the Pannel, for all have not appear'd; but calls those whose Appearance is recorded.

Cl. of Cr. I have call'd them as they are here set down.

L. C. J. Well, let them all be call'd for; may be they will appear now that did not appear before.

Cl. of Cr. *Maximilian Beard*.

Mr. *Beard*. My Lord, I desire to be excus'd, I am very infirm and very ancient, Threescore and fifteen Years of Age, at least.

L. C. J. Why did the Sheriff return you? If you be of that Age, you should be put out of the Free-holders Book. But stay you are here impannel'd, and have appear'd; if there be enough, we will excuse you.

Mr. *Just. Jones*. He ought to have Witnesses of his Age; and if he would not have appear'd, he might have had a Writ of Privilege for his Discharge in regard of his Age.

L. C. J. Well, we will set by him; if there be enough besides, we will spare him.

Cl. of Cr. *Isaac Honeywood*, (he did not appear :) *Lucy Knightley*, (who was sworn :) *Henry Baker*.

Mr. *Att. Gen.* My Lord, I challenge him for the King.

Fitz-Harris. My Lord, why should he challenge him? I desire to know the Law, whether the two Foremen should not try the Challenge, and not the Court or the Council.

Mr. *Serj. Maynard*. If the King Challenge, he hath time to shew cause till the Pannel be gone thro';

through; the Law will have the *minus suspecti*; but yet if there want any, the King must shew good Cause.

Cl. of Cr. Edward Probyn.

Mr. Att. Gen. I challenge him for the King.

Cl. of Cr. Edward Wilford (was sworn.)

Fitz-Harris. My Lord, must not Mr. Attorney shew his Cause now?

L. C. J. Look you, Mr. *Fitz-Harris*, either side may take their Exception to any Man; but the Cause need not be shewn till the Pannel is gone through, or the rest of the Jurors challenged*.

Cl. of Cr. John Kent of Stepney.

Mr. Kent. My Lord, I am no Free-holder.

L. C. J. Then you cannot be sworn here upon this Jury†.

Cl. of Cr. John Willmore.

Mr. Att. Gen. We challenge him for the King.

Fitz-Harris. For what Cause?

Mr. Serj. Jeff. We will shew you Reasons hereafter.

Cl. of Cr. Alexander Hossey (was sworn :) *Giles Sbute.*

Mr. Attor. Gen. Are you a Free-holder, Sir?

Mr. Sbute. No.

Mr. Att. Gen. Mr. *Whitaker* is got near him, and he tells him what he is to do, my Lord.

Fitz-Harris. Here is the Lieutenant of the Tower between me and him.

Mr. Serj. Jeff. But the Bar is no fit Place for Mr. *Whitaker*, he is not yet called to the Bar.

Cl. of Cr. Martin James.

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. James. Yes.

Mr. Att. Gen. Then swear him, (which was done.)

Cl. of Cr. Nathanael Grantbam.

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. Grantbam. No.

Cl. of Cr. Henry Beiling.

Mr. Att. Gen. Are you a Free-holder, Sir?

Mr. Beiling. Yes.

Fitz-Harris. Then I challenge him.

Cl. of Cr. Benjamin Dennis.

Mr. Att. Gen. Is he a Free-holder?

Mr. Dennis. No.

Mr. Att. Gen. My Lord, you see what Practices here are, most of the Jury are no Free-holders.

Cl. of Cr. John Preston, (did not appear :) *John Viner* of *White Chappel.*

Mr. Att. Gen. He hath fetched them from all Corners of the Town here, yet not all of them Free-holders neither.

Cl. of Cr. Swear Mr. *Viner*, (which was done.) *William Withers*, (was sworn :) *William Cleave*, (sworn :) *Thomas Goffe* (sworn :) *Abraham Greaves.*

Mr. Att. Gen. Ask him if he is a Free-holder?

Mr. Graves. No.

Cl. of Cr. Henry Jones.

Mr. Att. Gen. Is he a Free-holder?

Mr. Jones. No.

Cl. of Cr. Ralph Farr.

Mr. Att. Gen. Ask him the same Question.

Cryer. Are you a Free-holder, Sir?

Mr. Farr. Yes.

Cl. of Cr. Then swear him, (which was done.) *Samuel Freebody.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Freebody. Yes.

Mr. Att. Gen. Then swear him, (which was done.)

Cl. of Cr. Gilbert Urwin of *Covent-Garden* (did not appear.) *Edward Watts* of *Westminster.*

Mr. Att. Gen. Are you a Free-holder, Sir?

Watts. Yes.

Mr. Att. Gen. Then we challenge you for the King.

Cl. of Cr. John Bradshaw of *Holborn* (did not appear :) *Isaac Heath* of *Wapping* (no Free-holder :) *Edward Hutchins* of *Westminster.*

Mr. Att. Gen. We challenge him for the King.

Cl. of Cr. John Lockier of *Westminster.*

Mr. Att. Gen. Are you a Free-holder?

Mr. Lockier. Yes.

Mr. Att. Gen. Then swear him.

Cl. of Cr. Count these. *Thomas Johnson.*

Cryer. One, &c.

The Names of the Twelve sworn, are these :

<i>Thomas Johnson,</i>	<i>William Withers,</i>
<i>Lucy Knightley,</i>	<i>William Cleave,</i>
<i>Edward Wilford,</i>	<i>Thomas Goffe,</i>
<i>Alexander Hossey,</i>	<i>Ralph Farr,</i>
<i>Martin James,</i>	<i>Samuel Freebody, and</i>
<i>John Viner,</i>	<i>John Lockier.</i>

Cl. of Crown. Edward Fitz-Harris, hold up thy Hand. Gentlemen, you that are sworn, look upon the Prisoner, and hearken to your Charge.

Fitz-Harris. My Lord, I humbly beg, Pen, Ink, and Paper.

L. C. J. Let him have Pen, Ink, and Paper.

Cl. of Crown. You shall have them presently; (which were given him.)

HE stands indicted by the Name of Edward Fitz-Harris, late of the Parish of St. Martin's in the Fields, in the County of Middlesex, Gent. for that he as a false Traitor against the most illustrious, and most excellent Prince, our Sovereign Lord Charles the Second, by the Grace of God King of England, Scotland, France, and Ireland, his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil; the Love, and true due and natural Obedience, which a true and faithful Subject of our said Sovereign Lord the King, towards him our said Sovereign Lord the King, should, and of right ought to bear, wholly withdrawing; and with all his might intending the Peace and common Tranquillity within this Kingdom of England to disturb, and War and Rebellion against our said Sovereign Lord the King to stir up and move; and the Government of our said Sovereign Lord the King, within this Kingdom of England, to subvert; and our said Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of England to depose and deprive; and our said Sovereign Lord the King to Death and final Destruction to bring and put, the 22d Day of February, in the 33d Year of the Reign of our Sovereign Lord Charles the Second, now King of England, &c. and divers other Days and Times, as well before, as after, at the Parish of St. Martin's in the Fields, in the County of Middlesex, traiterously did compass, imagine, and intend the Killing, Death, and final Destruction of our said Sovereign Lord the King, and the ancient Government of this his Kingdom to change, and alter, and wholly to subvert, and him our said Sovereign Lord the King, that now is, from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of England to depose and deprive, and War and Rebellion against our said Sovereign Lord the

* Here the Chief Justice did not shew the same Favour to *Fitz-Harris*, which he afterwards shewed to Count *Coningmark*, in directing him how to make the King shew Cause, by challenging all the rest, Vol. III. p. 465.

† In Lord *Ruffel's* Trial No Free-hold was not allowed to be a Challenge; and several, though no Free-holders, were admitted to be sworn on the Jury. The like in Colonel *Sidney's* Case.

King, to stir up and levy within this Kingdom of England. And his said wicked Treasons and traitorous Compassings, Imaginations, and Purposes, aforesaid to fulfil and perfect, be the said Edward Fitz-Harris, as a false Traitor, together with one Edmond Everard, a Subject of our said Sovereign Lord the King, did then and there traiterously assemble himself, meet and consult, and the same his Treasons and traitorous Compassings, Imaginations, and Purposes, then and there to the said Edmund Everard, in the bearing of divers other Subjects of our said Sovereign Lord the King, openly, maliciously, traiterously, and advisedly speaking, did publish and declare: And to persuade and induce the said Edmund Everard, to be aiding and assisting in his said traitorous Compassings, Imaginations and Purposes, be the said Edward Fitz-Harris, as a false Traitor, maliciously, advisedly, and traiterously to the said Edmund Everard a great Reward then and there did offer, and promote to procure. And for the further complicating of his Treasons aforesaid, and to incite the Subjects of our said Sovereign Lord the King, as one Man, to rise, and open Rebellion and Insurrection within this Kingdom of England to raise, against our said Sovereign Lord the King, and our said Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of England to cast down and depose, be the said Edward Fitz-Harris, as a false Traitor, a certain most wicked and traitorous Libel, the Title of which is in these English Words following, The true Englishman speaking plain English, traiterously, maliciously, and advisedly, in Writing to be made and expressed, did then and there cause, procure and publish; in which said Libel the said most wicked Treason, and traitorous Compassings, Imaginations and Purposes aforesaid, of him the said Edward Fitz-Harris, to excite and persuade the Subjects of our said Sovereign Lord the King of this Kingdom of England, against our said Sovereign Lord the King to rise and rebel; and our said Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of this his Kingdom of England to deprive and depose, in writing are expressed and declared amongst other things, as followeth: *If James (meaning James Duke of York, the Brother of our said Sovereign Lord the King) be conscious and guilty, Ch. (meaning Charles II. now King of England) is so too, believe me (meaning himself the said Edward Fitz-Harris) both these (meaning our said Sovereign Lord the King, and the said James Duke of York) are Brethren in Iniquity, they (meaning our said Sovereign Lord the King and James Duke of York) are in Confederacy with Pope and French to introduce Popery and arbitrary Government, as their Actions (meaning the Actions of our said Sovereign Lord the King, and James Duke of York) demonstrate. The Parliament's Magna Charta and Liberty of the Subject are as heavy Yokes they'd as willingly cast off, for to make themselves (meaning our said Sovereign Lord the King, and the said Duke of York) as absolute as their Brother of France. And if this can be proved to be their Aim (meaning our said Sovereign Lord the King, and the aforesaid Duke of York) and main Endeavour, why should not every true Briton be a Quaker thus far, and let the English Spirit be up and move us, (meaning the Subjects of our said Sovereign Lord the King of this Kingdom of England) all as one Man to Self-Defence? Nay, and if need be, to open Action, and fling off those intolerable Riders? Meaning our said Sovereign Lord the King, and the said Duke of York.) And in another Place in the said*

most wicked traiterous Libel are contained, amongst other things, these false, seditious, and traiterous Sentences in these English Words following. J. and C. (meaning the said Charles our Sovereign Lord the King, and his said Brother James Duke of York) both Brethren in Iniquity, corrupt both in Root and Branch, as you (meaning the Subjects of our said Sovereign Lord the King) have seen, they (meaning our said Sovereign Lord the King, and the said Duke of York) study but to enslave you (meaning the Subjects of our said Sovereign Lord the King) to a Romish and French-like Yoke. Is it not plain? Have you (meaning the Subjects of our said Sovereign Lord the King) not Eyes, Sense or Feeling? Where is that old English noble Spirit? Are you (meaning the Subjects of our said Sovereign Lord the King) become French Asses, to suffer any Load to be laid upon you? And if you (meaning the Subjects of our said Sovereign Lord the King) can get no Remedy from this next Parliament, as certainly you (meaning again the Subjects of our said Sovereign Lord the King) will not; and that the K. (meaning our said Sovereign Lord the King that now is) repents not, complies not with their Advice, then up all (meaning the Subjects of our Sovereign Lord the King) as one Man. O brave Englishmen! Look to your own Defence ere it be too late, rouze up your Spirits. And in another Place in the said most wicked and traiterous Libel are contained, amongst other things, these false, seditious, and traiterous Sentences in these English Words following; to wit, I (meaning himself the said Edward Fitz-Harris) will only add, that as it is the undoubted Right of Parliaments to make a Law against a Popish Successor, who would prove destructive to our Laws and Liberties; so it is their undoubted Right to dethrone any Possessor that follows evil Counsellors to the Destruction of our Government, (meaning the Government of this Kingdom of England.) And in another Place in the said traiterous Libel, are contained these English Words following: Then let all (meaning the Subjects of our said Sovereign Lord the King that now is) be ready; then let the City of London stand by the Parliament with Offers of any Money for the maintaining of their Liberties and Religion in any extreme Way, if parliamentary Courtes be not complied with by the King; (meaning our said Sovereign Lord the King) against the Duty of their Allegiance, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c. and against the Form of the Statute in this Case made and provided.

Upon this Indictment he hath been arraigned, and thereunto hath pleaded, Not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are, &c.

Cryer, Make Proclamation. O yes, if any one will give Evidence, &c.

Mr. Heath. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment of High-Treason against *Edward Fitz-Harris*, the Prisoner at the Bar; and the Indictment sets forth, that the 21st of February, in the 33d Year of the King, at *St. Martin's in the Fields*, he did compass and imagine the Death of the King, and to raise War and Rebellion within this Kingdom. And the Indictment does set forth, that for the Accomplishment of this, he did meet and assemble with one *Edmond Everard*, and several others, and did discover this his traiterous Purpose to the said *Everard*, and did persuade him to aid and assist

assist therein ; and offered him great rewards if he would do so. It further sets forth, That for the further perfecting of this treasonable Imagination of the said *Edward Fitz-Harris*, he did frame and make a treasonable Libel, and the Title of the Libel is, *The true Englishman speaking plain English* ; and in that treasonable Libel, are these treasonable words contained, *If James be guilty* (meaning the Duke of York) *Charles* (meaning the King) *is so too*, &c. And the several words, that have been read to you in this Indictment, are contained in the said Libel, which I shall not repeat. To this Indictment he hath pleaded, Not guilty ; if we prove it upon him, you are to find him Guilty.

Mr. Serj. *Maynard*. May it please your Lordship, truly 'tis a sad thing to consider how many have been found guilty of Plotting against the King, but none have gone so far as the Prisoner at the Bar : For they designed only his Death ; but this Person would have carried on his Treason by a means to slander him while he was alive, and thereby to excite the People to such a Rebellion as you have heard. I shall add no further words ; the thing is not aggravatable, 'tis so great an Offence in itself ; but we will call our Witnesses, and go to our Proof.

Mr. *Attor. Gen.* My Lord, Yesterday you had here the Primate of *Ireland*, who was found guilty for a notable High-Treason in *Ireland* : You have now this Day before you one of his Emisaries, who is come over into *England*, and who has here committed one of the most execrable Treasons, that ever was brought into a Court of Justice ; I must needs say, that it will appear to all the Auditors this Day, that here is the highest Improvement of the Popish Plot, and aggravated with such Circumstances, as shew they have out-done themselves in it. Hitherto those Cases that have been brought into Judgment before you, have been the Attempts upon the Life of the King, in Instances of either Shooting, Stabbing, or Poisoning : I say, hitherto they have gone no further than to practise these Things, and that by Popish Hands, they have kept the Plot amongst themselves ; but now they have gone one step further, that is, by attempting to poison all the Protestants of *England* as much as in them lies, that they should by their own Hands destroy one another, and their lawful Prince ; that is the Treason now before you ; and I take it, with submission, they can go no further. For 'tis impossible to arise to a higher piece of Malice and Villiany than to set the Peoples Hearts against their Prince, and to set them together by the ears one against another. This we shall prove, in the Course of our Evidence, to be the Design of the Prisoner at the Bar. The general Design hath been opened to you out of the Indictment to kill and destroy the King, and to depose him from his Government ; and we shall charge him with all those several Overt-Acts, which I shall open to you : First, Several Meetings to consult about this Matter at *Gray's-Inn* and several other places ; which, my Lord, I think there is no question to be made, but is an Overt-Act to make High-Treason. We shall go further, and shew that these Designs he had to depose the King, and raise his People against him, he does declare openly to Mr. *Everard* ; which is another Overt-Act within the new Statute. We shall, my Lord, go further yet, and prove the great Rewards he hath offered to Mr. *Everard* for joining with him, and being assisting to him in this Affair,

part in ready Money, and part in annual Pension. And there your Lordship will find where the Spring is, from whence all these Mischiefs arise ; some foreign Power ; but the Papists, the Priests are at the Bottom of it, they are the Persons that set him on, and these must draw in a great Person beyond Sea, who must reward this Gentleman for being a Partner in this Plot. And we shall prove some Money paid in Hand. But then, my Lord, that which was the Effect of this Consult ; is the framing this pernicious Libel ; for so give me leave to call it.

My Lord, the Indictment is modest, but when you come to hear the Libel itself read, you will find it so ; and it was not Prudence, that so vile a thing should appear upon Record. And truly, I believe in a Protestant Kingdom 'tis the first Attempt of this nature that ever was : For ; my Lord, it is to defame the whole Royal Family, 'tis to stain their Blood, and to make them vile in the sight of the whole Kingdom, and of all Posterity. My Lord, this Libel in its Particulars chargeth that most excellent and innocent Person, our late and never to be forgotten Sovereign King *Charles I.* to be the Author of the *Irish* Rebellion ; it charges our present Prince with the Exercise of Arbitrary Government, to be a Papist, to be a Person that deprives his Subjects of all manner of Liberty, and Property ; in express Terms, it charges him with this, than which nothing can be more false : For there is none of his Subjects, I think, but must say, that our most gracious Prince, for the Time he hath reigned, may vie with the best 20 Years of any of his Predecessors, for the preserving the Liberty and Property of the People, for giving us Peace and Plenty all our Time, for the permitting and securing to them the free Current of the Law, and for securing their Civil and Religious Rights.

My Lord, when we have gone through the Evidence about the Contexture, and this Libel is read and produced, we shall prove the Design of it, and how it was framed, and the Eyes of the World will be opened, and you will see that this was no Intention, no Engine framed to trapan, or ensnare any private Person, or as it was secretly bruited abroad, to be put in such Mens Pockets ; but a piece of the greatest *Machiavellian Policy* that ever was invented and prepared for a publick Press, as a Catholick Poison to infect all the King's Subjects, and excite them one against another.

And we shall prove that this Person, in the several Methods that I have opened, hath proceeded to accomplish his traiterous Designs of de-throning the King : Nay, he hath said, 'tis resolved among them, now that nothing else will do it but the poisoning the Hearts of the People with Hatred to their King, and Malice against one another. And when we have proved the Matter fully, through all the Parts, we must leave it to the Jury, who, I question not, will do themselves, and all other Protestants Right, as well as their Prince. We shall now go to our Evidence, and first we will call Mr. *Everard* ; but, my Lord, I would only first observe to you, that this Gentleman, Mr. *Fitz-Harris*, and Mr. *Everard*, were both employed in the *French King's* Service, and there acquainted together. Mr. *Everard* came early off, and became a Protestant, leaving the *French King's* Service, because he found their several Plots and Designs upon *England*. Then comes Mr. *Fitz-Harris* to him, and because he looked up-

on Mr. *Everard* not to be rewarded according to his Merits, invites him over, with telling him those things that the Witness himself will tell you, back again to the *French* Interest.

Then Mr. Everard was sworn.

Fitz-Harris. Look me in the Face, Mr. *Everard*.
Mr. Everard. I will, Sir.

Mr. Attor. Gen. Will you acquaint my Lord, and the Jury, how you came first acquainted with the Prisoner, and then tell the several Passages between you.

Mr. Sol. Gen. Tell your whole Knowledge of this Matter.

Mr. Everard. My Lord, I came acquainted with Mr. *Fitz-Harris* beyond Seas, when we both were in the *French* King's Service, and upon Conference with him of late, especially about the beginning of *February* last, he renewed his Acquaintance, though at several Times before we had several Discourses, whereof I did not take much notice: But in those Meetings in *February* last, and in those Visits he paid me then, we had several Discourses tending to represent the Disadvantages and Sufferings I sustained, for adhering to the Protestant and *English* Interest; and besides comparing in the other Balance, what Advantages I might expect if I would re-ingratiate myself into their Interest.

L. C. J. What Interest.

Mr. Everard. The *French* and the Popish Interest. And there was an Opportunity in my Hands, wherein I might be serviceable to myself and others; and he told me there were several Persons, among whom were some Parliament-Men, that did adhere to the *French* Interest, and gave an Account to the *French* Ambassador of every Day's Proceedings: And as I was looked upon to be the Author of a Kind of Pamphlet, that was called, *An Answer to the King's Declaration, concerning the Duke of Monmouth*; therefore I should be fit to serve them, especially to make such another Pamphlet to reflect upon the King, and alienate him from his People, and his People from him. Whereupon I told him I would do any thing that was for my true Interest, but I did conceive with myself, that that was none of it. He appointed a Time when we should meet again; but I sent him a Note, I could not meet possibly that Day, which was Monday, as I remember the 21st of *February*: However he was impatient, and came to me, and told me he would give me Heads and Instructions tending to that Pamphlet I was to write, to scandalize the King, and raise a Rebellion, and alienate the Hearts of the Kingdom, and set the People together by the Ears. Upon this he gave me some Heads by word of Mouth: As soon as I parted from him, I met with one Mr. *Savile* of *Lincoln's-Inn*, and as soon as I met with him, I acquainted him with what was passed, and told him I wished rather than ten Pound I had met him sooner, half an Hour before. Why, what is the occasion, says he? Why, said I, there is a Person that hath had such and such Discourse with me, and one of his main Errands, amongst others, is for me to write a scandalous Libel reflecting upon his Majesty and the Government. And upon this I said, Mr. *Savile*, I shall not confer with him any further, unless I have Somebody by to witness what he says; he speaks most commonly *French*, and sometimes *English*, and therefore it must be one who understands both the Tongues well. So

we went into the City together that Afternoon to one Mr. *Crow's*, who is a Silkman in *Queen-street*; said we, Sir, you are a moderate impartial Man, and understand *French*, we desire you will be present to over-hear some Proposals that are made to me tending to set our Country together by the Ears, and he comes from a Popish Party. Mr. *Crow* said, he would be willing to undertake any thing to serve the Protestant *English* Interest, but he would not undertake to speak *French* so well as to be able to understand all nice Passages, and Words that might be proposed. And then Mr. *Savile* and I went to Mr. *Smith*, a *Durham*-Gentleman, and made him the same Proposal I had made to Mr. *Crow*, desiring him that he would come and over-hear our Discourse, and I would place him in a fit Place. Mr. *Smith* assented to the Propositions, and said he would. Mr. *Smith* asked me what Day and Time we were to meet; I told him, To-morrow at six or seven o'Clock at Night at my Chamber in *Gray's-Inn*: But further, he said, we must have other Witnesses, for one Witness would not be sufficient; so we went to the *Exchange* Coffee-house, and there we met with Sir *William Waller*, to whom we made the same Proposal, that since we must have some that understood *French*, and keep the thing secret, till it were time to have it come out, he would please to undertake it. Sir *William Waller* promised to come, but failed the first Meeting, which was to be on the Tuesday; then we went to another *French* Merchant, who was proposed by Mr. *Savile*, but he was not within: So then we must rely upon one Witness for that Meeting. Mr. *Fitz-Harris*, was to meet me about two o'Clock at my Chamber in *Gray's-Inn*, where Mr. *Smith* and Mr. *Savile* were to meet likewise, and they came first to the Tavern just at the Corner of *Fuller's-Rents*, which hath a Prospect into the Court: And from thence I saw Mr. *Fitz-Harris* in the Court pointing to another Gentleman that was with him, up to my Chamber, and he was walking suspiciously up and down. Then I went out of the Tavern, and came up to my Chamber, and after a little while Captain *Fitz-Harris* came up to my Room; I placed him in another Room, where my Wife was, and shut the Door to, whilst I sent word to Mr. *Smith* to come into the outer Room and shut himself into my Closet. There was Mr. *Smith* in the Closet, and there was an Hole or two for the purpose made through both the Planks of the Boards and Hangings, but the Hangings hung over the Hole that it might not be discerned by Mr. *Fitz-Harris*; and he could raise it, and then see who was in the Room, and hear their Words; for I placed my Chair towards the Closet, which had an Angle outwards, and now and then I did stand against the Hole, and now and then sat, to give Mr. *Smith* Advantage, and to give Mr. *Fitz-Harris* no Suspicion. When we were so placed, Mr. *Fitz-Harris* asked me what I had done as to the thing proposed, this Libel that I was to draw up; I said, I was busy, and had not been able to finish it; but here are some Heads of it, said I, and shewed him half a dozen Lines drawn up together; and when I had read them, Sir, said I, is this your Mind? Yes, said he, but I must add much more than this is to it. Then Mr. *Fitz-Harris* proceeded to give me further Instructions; and so repeated what Instructions he had given me before, that the King and all the Royal Family must be traduced to be popishly and arbitrarily inclined from the beginning,

beginning, that King *Charles I.* especially had an hand in the *Irish* Rebellion, and that likewise King *Charles II.* that now is, did countenance the same, as did appear by his promoting those very Officers that were in the *Irish* Rebellion, *Fitz-Gerald*, *Fitz-Patrick*, and *Mont-Garrat*, which should be named in the Libel. Besides that, the Act made at the King's coming in, forbidding any to call the King Papist, was meerly to stop Peoples Mouths, that they should not call him a Papist, when he should incline to further Popery, and did intend by his Actions so to do. And besides his adhering so closely to the Duke of *York's* Interest, was to be another Argument of it, his hindering the Duke of *York* from coming to his Trial, and to be proceeded against by the Parliament, and hindering the Officers that were put in by the Duke of *York* from being cast out. Another Argument was, because those Privy Counsellors and Justices of the Peace, that did adhere to the Protestant Interest, were turned out of all places of Trust; and besides, he said, it did appear to the People consequently, that the King was conscious to himself, that he was as guilty as his Brother, and was as much a Papist as his Brother, and it was in the Peoples power as well to depose a present Popish Possessor, as a Popish Successor; and that the People must be stirred up against him, and encouraged to blow the Trumpet, and especially that the City and Common Council must be encouraged to stand by the Parliament: And seeing the King was such, that no hopes was to be had of the Parliament at *Oxon*, they were bound to provide for themselves, and to advance some hundreds or thousands of Pounds to the Parliament to settle the Protestant Religion without the King, if Parliamentary Ways would not succeed. These were some of the Instructions.

Mr. Att. Gen. Did he say any thing that Day about a Reward you should have?

Mr. Everard. He spake in the general about a Reward, but he spoke more fully to that the Day after; he did not then come so much to Particulars: Then some part of those Instructions I writ in my Table-Book, which is produced here, and others of them in another Scroll of Paper. He then desired to know of me when the Scheme of this thing would be ready; said I, you may come to-morrow; I will, says he, come about six or seven a-clock in the Evening. In the mean time I writ a Letter to *Sir William Waller* in *French*, which I sent by a Porter, and therein I said, Sir, you have missed a great Opportunity of rendering a great Service to the King, by not coming to see me when you were expected; for the Person, the *French* Emissary whom I spoke of to you, hath proposed very scandalous seditious things to be written, and therefore I desire you not to fail, as you tender the King's Interest, to come to my Chamber at six a-clock at Night. *Sir William Waller* received my Letter, and came thither accordingly; I placed *Sir William Waller* in another Room, and I placed my own Chair at a narrow Table near the place where *Sir William Waller* was, and there through the Wainscot and Hangings we made a slit, whereby *Sir William Waller* might see into the next Room where *Mr. Fitz-Harris* and I sat: But before I placed him there, I shewed *Sir William Waller* two Copies of the Instructions for the Libel drawn up. Said I, Sir, here are two Copies which are both the same, and I desire you to counter-mark them, that

you may know them again, and thereby see what Alteration will be made; for here are no Blots now, and by that you will find the Alteration. *Sir William Waller*, while my Back was turned, counter-marked those Copies. I went into the next Room, and I had not been long there, but *Mr. Fitz-Harris* came in; I placed the Table near the Alcove, where *Sir William Waller* was, within his hearing and seeing. *Mr. Fitz-Harris* asked me what I had done in the business: Sir, said I, here are two Copies of it, pray, will you see how you like it? So he took one, and I took the other.

Mr. Serj. Jeff. My Lord, I must interrupt this Gentleman, for I see they continue to give the Prisoner Papers.

Fitz-Harris. 'Tis only a Paper of the Names of my Witnesses.

L. C. J. Go on, Sir.

Mr. Everard. My Lord, Captain *Fitz-Harris* did read one Copy of this Phamphlet, and did amend it; he did add some things, and struck out other things: Then said I, is this, Sir, according to your liking? Yes, says he, but I must add something, for it is not yet full enough; but says he, this must be fair copied out; for 'tis not fit for the *French* Ambassador's Confessor to read, who should present it to the Ambassador. Upon this I told him it should be done against the next Day; but in the mean time I told him, Sir, these are very treasonable Things, and this a very treasonable Project. Oh, said he, the more treasonable the better, and that will do the effect better. What is that, Sir, said I? That is, says he, to set these People together by the ears, and keep them clashing, and whilst they are so in clashing, and mistrusting one another, the *French* shall gain *Flanders*, and then, said he, we shall make no Bones to gain *England* too. But, Sir, said I, you spoke of some Recompence for me, what shall I have for venturing this? Why, says he, after this Libel is delivered up, and that hath gotten you their Confidence that you are trusty, then I will gain the *French* Confessor, who is very shy, and may so well be, because one of the Confessors of an Ambassador hath been already trapped upon such an occasion. Therefore he is very wary, but he must have an assurance under your hand, which he shall have by this Libel; and then in a few Days you shall have forty Guineas, and a monthly Pension, which shall be some thousand of Crowns; for my Matter the *French* King is not a Niggard as to these Things. The *Spanish* Ambassador is so very niggardly and penurious a Man, that he cannot keep a Table; but said he, you shall be well rewarded by the *French* King; and be not discouraged by the Danger, for I am in as great Danger as you. After some such Instructions, and Encouragements, that *Mr. Fitz-Harris* gave to go on in the Work, he departed; and I cannot well call any thing to mind of more Particulars; but upon Questions asked me, perhaps I may. But then at that time, or the next time, Captain *Fitz-Harris* gave me half a Sheet of Paper; for I told him I may chance to forget part of your Instructions, therefore pray write what is your Mind; and in that paper he writ down, that it was in the peoples power to depose a Popish Possessor, as it was to oppose a Popish Successor, and certain other treasonable Heads: The half Sheet of Paper is to be produced in the Court, under his own Hand, which he hath confessed, besides other treasonable Instructions, that he gave me by word of Mouth. But he at that time departed,

parted, and came the next Day to have a Copy of the treasonable Libel writ out fair, and promised me to meet at the *Boarded-House*, where we usually met in *Holborn* at *Mr. Fashion's*; and I did there come and deliver him a Copy of this treasonable Libel, and he said I should hear in a few Days from him, and should have a Recompence, and this should be but as an Entrance-Business; for I should be brought into the Cabal, where several Protestants and Parliament-Men came to give an account to the Embassador, how things were transacted: But to-morrow, said he, I cannot go to receive the Libel back again, for I am to go to *Knights-bridge*.

Fitz-Harris. Where there?

Mr. Everard. To my Lord *Howard's*; for, said he, you have seen his Son often with me. My Lord *Howard* is very civil to me, he was my Father's Lawyer.

Mr. Att. Gen. Will you ask him any Questions, *Mr. Fitz-Harris*?

Fitz-Harris. Did you write this Libel?

Mr. Everard. Yes, by your Instructions I did.

Fitz-Harris. Do you believe I had any traitorous Intention in it?

Mr. Everard. Yes.

Mr. Serj. Jefferies. You said, the more Treason, the better, *Mr. Fitz-Harris*.

Fitz-Harris. Were you put upon this to trapan others?

Mr. Att. Gen. 'Tis no Trapping to ask them to come, and hear you give him those Instructions, sure.

Fitz-Harris. But I ask him this Question, *Mr. Attorney*; Was he put upon it to trapan others?

Mr. Everard. Can you mention any Person that I was to trapan?

Fitz-Harris. Were you put upon it to trapan the Protestant Lords, and the House of Commons?

Mr. Everard. No, I was not.

Fitz-Harris. Is this the same Libel that was read in the House of Commons, upon which I was impeached.

Mr. Everard. Yes, I believe, *Mr. Fitz-Harris*, it was.

Mr. Att. Gen. *Mr. Everard*, because he puts you upon it, and to satisfy all the World, I ask you upon your Oath, Did any Person whatsoever put you upon this to trapan other Persons, or to put it into their Pockets, as 'tis reported?

Mr. Everard. I was put upon it by none but *Mr. Fitz-Harris*, of whom I asked, what will be the use of this? Said he, we shall disperse them, we know how.

Mr. Att. Gen. Did he tell you in what manner?

Mr. Everard. No, he did not tell how.

Mr. Att. Gen. To whom was it to be delivered?

Mr. Everard. I was to deliver it to *Fitz-Harris*, who was to deliver it to the *French* Confessor, and it was to be drawn in the Name of the *Non-conformists*, and put upon them.

Mr. Serj. Jefferies. What Religion is *Mr. Fitz-Harris* of?

Mr. Everard. He was always looked upon to be a Papist.

Fitz-Harris. When did you see me at *Mafs*?

Mr. Att. Gen. Hath he not owned himself so?

Mr. Everard. He hath owned himself at several times to be a Papist.

Mr. Sol. Gen. What did he say to you about your being a Protestant, and what cause you had to turn to the Popish Religion?

Mr. Everard. He said, I was under great disad-

vantages, and had much loss by leaving them, I had better have adhered to their Interest still. He had this Discourse with me at several Meetings, and gave me several Visits, some at my Chamber, some at *Gray's-Inn* Walks, sometimes at the house with black posts in where we talked of several things.

Mrs. Fitz-Harris. I am sorry he kept such a Rogue as you are Company.

L. C. J. Officers, take her away, if she can't hold her Tongue, and give better Language.

Fitz-Harris. She will speak no more, my Lord.

L. C. J. Stand still then, and be quiet.

Mr. Att. Gen. What was your Discourse at the Ale-House.

Mr. Everard. To give Instructions to set the People together by the ears; and one most effectual Means was by scandalizing and libelling the Government, and especially the King.

Mr. Jones. Did any body else assist you in drawing the Libel?

Mr. Everard. There is at the latter end of the Libel a Paragraph that was taken out of another Book; there was a scandalous Libel that was brought by the Woman that carries Paper-Books about, and out of that, to make short Work, and out of *The Character of a Popish Successor*, in which he said were many things material, he would have some of the Expressions of this Libel taken: So I copied some of the Queries out of that Paper, which was said to be a Letter intercepted to *Roger L'Esrange*, and that Day that I was under Examination before *Mr. Secretary Jenkins*, that Libel lay before him upon his Table. He asked me if I had seen that, I told him yes, for I had copied in that Paper that was the Libel, those Queries; and then, said he, here is a Warrant to be given out against *Curtis* for it.

Mr. Serj. Jefferies. After such time that you had carried him the Copy that *Sir William* had marked, and he amended it, did you shew it *Sir William Waller* presently?

Mr. Everard. Yes, immediately; and I asked him, Sir, says I, is there any Alteration? Yes, said he, I see Alterations, and shew'd them one. Do you know the Difference of Hands, said I? Yes, said he, I do, and suppose will give you an Account of it.

Mr. Johnson. My Lord, I humbly beg *Mr. Everard* may be asked who those Parliament-men were that were to concur with the *French* Embassador in this Design?

L. C. J. Did he name any Parliament-men?

Mr. Everard. No, he did not, he said, I should know them hereafter.

L. C. J. Then he did not name any?

Mr. Everard. No, he did not.

Mr. Att. Gen. Then swear *Mr. Smith*, (which was done.) Pray, Sir, will you look about, and give an Account what you know.

Mr. Smith. Will you have an Account how it came first to my knowledge?

Mr. Att. Gen. Yes, the whole, from the bottom to the top, from the beginning to the end.

Mr. Smith. I remember, about the 22d or the 21st of *Feb.* either one or the other, *Mr. Everard* and one *Mr. Savile* came to my chambers, and told me the same Design that *Mr. Everard* hath repeated before, and that there was an *Irish* Gent. an Officer of the *French* King's Army, that was to manage the thing; he was one that could speak *French* very well, and they desired me to be concerned

cerned in it, because I understood *French*. Upon this I told him, I would willingly undertake such a Business, if I thought there were any convenient place in the Room where I might hear, and see, undiscovered. After he had told me, as he has before told your Lordships, that it was to make a Difference between the King and his People, and to misrepresent the King, as I shall inform you by and by. I went to his Chamber after we had spoke to Mr. *Crow*, who would not undertake to speak *French* so well as to be capable of understanding all; but at last we met Sir *William Waller*, who undertook the Matter. I walked immediately after Dinner to the Chamber, and saw the Conveniences, and the next Night we expected Sir *W. Waller*; but he not coming that Night, I went into the Closet my self till *Fitz-Harris* came according to the Appointment. When *Fitz-Harris* came, there were two Chairs set, one Chair next the Closet where I stood, and another opposite against me; that opposite against me, was that where Mr. *Fitz-Harris* sat, and Mr. *Everard* was next close to me, and I looked out through the Hole, and I heard there were some little Discourses about the Business in hand. At last Mr. *Everard* stands up, and goes to the Side-board, and brings a piece of Paper, about half a Sheet, as I think, with him; and he read it, which was a seditious kind of Paper, which I shall tell you of by and by: And he asked him in *French*, whether this were agreeable or no; to which the Gent. answered, it was well, but something must be added to it. Upon this, Mr. *Everard* took out his Note-book, and read some things therein, and then Mr. *Everard* desired him to instance what Heads he would have more than were there. To which *Fitz-Harris* replied, that he would have him to represent the King as a Papist, which might be demonstrated by several Reasons: First, his adhering to the Duke of *York*, and peremptorily resolving to espouse that Interest. The second Reason was, the preferring such as were the Duke's Creatures, both at Sea and Land, and keeping in Office those that were preferred by the Duke, known Papists; and this was also another Reason to prove that Head of the Instructions, that the King after his Restoration procured an Act to be made, that it should be Treason for any to call him Papist; and this was only that he might the better, and with more ease, introduce Popery into *England*. He charged likewise King *Charles I.* to be a Promoter of the *Irish* Rebellion, and that *Charles II.* furthered and approved it; that is another Instance. That the Parliament at *Oxford* was only a Sham to delude the People, and that such a King was not to be trusted with such a People, neither as to their Lives, Liberties, or Religion; but that the People must provide for themselves in time, and blow the Trumpet boldly. Another Instance was, as it was the undoubted Right of the People to make laws against, and to oppose a Popish Successor, so they might depose a Popish Possessor. To this Effect was the Substance of what was said.

Mr. *Att. Gen.* Did he name a Reward that Mr. *Everard* was to have?

Mr. *Smith.* There was a Reward mentioned, but I don't remember any Particulars.

Mr. *Att. Gen.* Did he tell who set him on work?

Mr. *Smith.* He said, if they did but set *England* together by the Ears, the *French* would get *Flanders*, and at length prevail here, and Mr. *Everard* should get an Interest in the Common-

Council, and make it his Business that they should make a kind of an Address to the Parliament, and promise to stand by them with their Lives and Fortunes in opposing Popery, and Arbitrary Government, and if Parliament-ways failed, to assist in another way; and if the King hindred the Duke of *York* to come to a legal Trial, that then they should take other Courses.

Mr. *Att. Gen.* What did he desire from Mr. *Everard*, when he seemed to boggle at his Instructions?

Mr. *Smith.* Mr. *Everard* said, he would do these things, yet he was in great Danger; why, says Mr. *Fitz-Harris*, so am I, and a great many more. What other Conference was between them, I know not, for I never saw them together after.

Mr. *Serj. Jefferies.* Look you, Sir, is this the same Person?

Mr. *Smith.* Yes, I did know him to be the same Person that Night he was taken.

L. C. J. You could see him where you were?

Smith. My Lord, I saw him clear enough, there were three Candles-lighted, and I was as near to him as I am to your Lordship.

L. C. J. You were not in the Room?

Mr. *Smith.* I was in a little Closet close by.

Mr. *Att. Gen.* You know nothing of the Paper of Instructions?

Mr. *Smith.* I remember he told me of such an one, but I was not there the second Night.

Sir *Fran. Withins.* Mr. *Everard* said they were Treasonable things, what then said *Fitz-Harris*?

Mr. *Smith.* He said, the more Treason was in them, the better.

Mr. *Serj. Jefferies.* And the Particulars were to set the People together by the Ears, and to bring in the *French* King.

Mr. *Smith.* It is all one in Terms.

Mr. *Serj. Jefferies.* How was it?

Mr. *Smith.* That the King and the People should be set at variance, then the *French* King would fall upon *Flanders* and *Holland*, and afterwards would take *England* in his way, and make no bones of it.

Mr. *Serj. Jefferies.* Will you ask him any Questions, Mr. *Fitz-Harris*?

Fitz-Harris. Do you believe that I did it with a treasonable Intention?

Mr. *Smith.* Sir, I am not to judge of that, I am not of your Jury, nor to answer any such thing.

Fitz-Harris. What do you think, Sir, pray?

Mr. *Smith.* You could have no good Design to bring about by any such Matter (I think) as this Paper is.

Fitz-Harris. Is this the same Paper that was read in the House of Commons?

Mr. *Smith.* Sir, I was not of the House of Commons, I don't know what was read there.

Mr. *Johnson.* Mr. *Everard* did seem to hint at a Design amongst some Protestant Lords, and Parliament-Men, and others, Dissenters from the Church of *England*; I desire to know whether Mr. *Smith* heard those Words?

L. C. J. That was not the first Night.

Mr. *Smith.* I did not hear it.

L. C. J. Look you, Mr. *Johnson*, Mr. *Smith* was not present at the second Meeting, then Sir *Will. Waller* was there, it was only the first Night Mr. *Smith* was there, and he speaks to that. Therefore as to the Alteration of the Copy, and some other things, he tells you that was done the second Night, and then was the Discourse concerning

ing the *French Confessor*, and those other things which you mention.

Mr. Att. Gen. I believe the Jury misapprehend *Mr. Everard* in that too.

L. C. J. It was only what *Fitz-Harris* told him.

Mr. Att. Gen. But I see the thing sticks with the Jury; therefore, I would fain ask *Mr. Everard* this Question, Did you declare any such thing, or was it *Mr. Fitz-Harris* that told you?

Mr. Everard. *Mr. Fitz-Harris* told me, that several Parliament-men were joined with the *French* Embassador to give him an account of things, but he told me besides, that it must be drawn up as it were in the Name of the *Non-Conformists*, to fasten it upon them; yet when there was one word in it, Thou, as if it were in the *Quakers* Name, no, says he, it must not be so, but it must be under the Name of all the *Non-Conformists*, that it may be common to all the discontented Party.

L. C. J. So you must take the Sense of this right, Gent. It is not, *Mr. Everard* tells you, some Parliament-Men and Lords were engaged in this business, but *Mr. Fitz-Harris's* Design was to engage *Everard*, and he urged what he could to encourage him to it. So that the Arguments he used were, that some Lords and Parliament-Men were engaged in this, to encourage him to go on.

Mr. Johnson. 'Tis true, my Lord, so that here does appear there was some other Interest than the *French* Interest in this matter, if what *Mr. Fitz-Harris* said was true.

Mr. Att. Gen. *Fitz-Harris* said so, to engage him.

L. C. J. Look you, *Mr. Johnson*, we do all verily believe and hope, there was no such thing as that any Lord, or any of the Commons of *England* were so engaged; it was his Interest, as *Mr. Fitz-Harris* took it, to mention it so, to engage this Gentleman.

Mr. Everard. I did not say Lords.

L. C. J. What did you say then?

Mr. Everard. Parliament-Men in general.

Mr. Att. Gen. Then swear *Sir William Waller*, (which was done.)

Sir Fran. Withins. Pray, *Sir William*, will you give an account of what you know of this matter.

Sir Will. Waller. My Lord, the last time I was here in this Court, being summoned to give in my Evidence, I did make some difficulty of it, upon the account that this Person was impeached by the Commons of *England* in Parliament; but *Mr. Justice Jones* having declared the Law required me in such a Case to give in my Evidence, I am now ready to give it in, and shall do it as briefly as I can.

L. C. J. Well, Sir, pray go on.

Sir Will. Waller. My Lord, upon the 22d or 23d of *Feb.* last, *Mr. Everard* met me in the City, and told me, he had a business of very great concernment to discover to me; whereupon, my Lord, we went into a place where we might conveniently discourse together; and he told me, in short, that *Mr. Edw. Fitz-Harris*, that unfortunate Gentleman at the Bar, had been with him several times, and endeavoured to engage him in a Business, which would in effect turn all into Confusion in *England*, and render the King very odious in the sight of his Subjects. Many things he did there tell me, and earnestly pressed me to join in this Design, to endeavour the Discovery of it. I was indeed at the first shy of meddling with it, being no way in the Commission of the peace, and so not liable to engage in a Business of that Nature; but I was afraid to discourage *Mr. Smith*, who voluntarily

and ingenuously offered himself for the Service of his King and Country: But I did not go that Afternoon, being willing to hear whether the Business went on, and was likely to come to any thing. The next Morning *Mr. Everard* writ to me this Letter (*plucking out a Paper.*)

Mr. Just. Dolben. Read it, Sir.

Sir Will. Waller. My Lord, in effect it was this, to let me know, *Mr. Smith* had been with him the Night before, and that according as they had laid their business, *Mr. Fitz-Harris* did indeed come, and had some Discourse in the hearing of *Mr. Smith* several things beyond what they had acquainted me with, things of the highest nature imaginable; and therefore he earnestly pressed me, as I rendered the Welfare of my King and Country, that I would not fail to come that Afternoon to be an Ear-witness of the treasonable Practices that were in hand. I looked upon myself then obliged to go, and did, according to the Directions he gave me, go about three of the Clock in the Afternoon to a Tavern at the lower end of *Fuller's-Rents* near *Gray's-Inn*, and there we were to discourse further of the Business. I had not been there long, but I looked out of a back Window, and spied *Mr. Fitz-Harris* with another Gent. in a brown-coloured Suit, walking just before *Gray's-Inn* Door. I don't know the name of the Court, but there I saw them walking, but in their going, he frequently looked up at *Mr. Everard's* Chamber, and pointed at it. When he was gone, I told him, it may be *Mr. Fitz-Harris* may come sooner than the Hour appointed, therefore I think it will not be amiss to go without further delay to your Chamber, and see what Conveniency there may be to lie secret, where I may be both an Eye and an Ear-witness. I went to his Chamber, and when I came into the Room, there was a little Closet, which I thought not so convenient for me, and I rather chose to look about if I could find another place more convenient. In short, in the next Room I found by my Cane there was a Door, and Hangings over it. I turned up the Hangings there, and in the Door there was a Crevice, which I opened a little with my Knife, and ripped a Hole in the Hangings which looked into the Room where the Gent. was to be. And before *Mr. Fitz-Harris* came, *Mr. Everard* had given me a large Account, much after the same manner that he hath given in his Testimony here, and he shewed me two Papers. I took the two papers, and gave them a private Mark, that I might know them again; and withal we placed a Table and a Chair ready against *Mr. Fitz-Harris's* coming in, and agreed that he should be placed so, as that through the Hole I might have a full Sight of him: But lest by an Accident he should be removed from thence, I desired *Mr. Everard* to ask him three Questions. The 1st was, Whether he had not married a Daughter of one Captain *Finch*, whose Father was killed in his Majesty's Service. The 2d was, Whether, as he read over the Paper, it was drawn up according to his Instructions. And the 3d was, Who was the Person that should recompence *Mr. Everard* for running so great an Hazard. According to these Instructions, the Table being placed, and every thing in Order, about seven o'clock, or between six and seven, *Mr. Fitz-Harris* came in, and being sat down, he began to ask some Questions; amongst others—

[Then some Complaint was made by the King's Council, of Papers given to *Mr. Fitz-Harris.*]

Fitz-Harris. Pray, My Lord, I beg that Paper may be given to my Wife again.

Mr. Att. Gen. I pray it may be given to the Court.

Mr. Serj. Maynard. I pray it may be read.

Mr. Sol. Gen. 'Tis not the Duty of a Solicitor to bring Papers, he was only appointed by the Court to run of Errands; he is not to advise, or furnish with Matter of Defence.

Mr. Serj. Jefferies. My Lord, this is an Offence committed in the Face of the Court, therefore we pray the Person that hath done it may be committed.

Mr. Justice Dolben. It is nothing but the Resolutions of the House of Commons; give it him again.

L. C. J. If *Mr. Whitaker* lies there to trouble the Court, we shall find another Place for him.

Mr. Sol. Gen. My Lord, *Mr. Whitaker* hath done his Duty now, and what Service your Lordship appointed him; so I think he may be sent away, for here is no more Business for him.

Sir Will. Waller. *Mr. Fitz-Harris* came in, I think it was between six or seven o'Clock, and coming there, he sat himself down in the Chair prepared for him; and *Mr. Everard*, according to the Instructions I had given him, did ask him several Questions; but *Mr. Fitz-Harris* did ask him, first, whether he had finished the Paper according to some Instructions he had given him. *Mr. Everard* produced two Papers, the one was the Copy of the other, as I counted. *Mr. Fitz-Harris* had one given into his Hand, and the other *Mr. Everard* had. *Mr. Everard*, after he had read a little in it, did ask, whether this was drawn up according to the Instructions *Mr. Fitz-Harris* had given: He answered, it was exactly according to the Instructions he had given him. After he had read a little further, says *Mr. Everard* to him, This is a Business of very dangerous Consequence, what Reward shall I have for running so great a Hazard? He told him again thus: Sir, says he, I think I run an equal Hazard with you; for you have a Paper under my Hand, which will render me liable to danger. And then he went on and read further; and if *Mr. Attorney* will please to let me see the Paper, there is one particular Clause in it that I took special Notice of.

Mr. Att. Gen. Would you have the Libel, or the Paper, *Sir William*?

Sir Will. Waller. The Libel, Sir; (which was given him.) There was one Passage in it which I remember, and it was this (speaking of the King's preferring Persons that were engaged in the late *Irish* Rebellion) the Paper was first (prefers) but says *Mr. Fitz-Harris* in *French* it must be (has promoted :) Several Passages of this Nature I heard him alter, and I saw him alter with his Pen. For after such Time as *Mr. Fitz-Harris* was gone out of the Room, I went immediately into the Room where *Mr. Everard* was, and took Notice of the Paper, and the Ink upon the Paper was hardly dry.

Mr. Att. Gen. Look upon that, that is the Original, and the other the Counterpart.

Sir Will. Waller. Here is the Mark, (then pointing to the bottom of the Paper.) These two Papers I marked both together, and this is the Paper, Sir, was mended. I do remember it more particularly, for this Paper I had in my own Custody, and signed it afterwards.

L. C. J. Well, go on.

Sir Will. Waller. He was asking him, Pray Sir, said he, what Reward shall I have? Why, says *Mr. Fitz-Harris*, you shall be very well paid, you shall

not need to fear; you shall have all manner of Encouragement. This Business will bring a considerable Advantage to you, and you shall be otherwise preferred than what you were in the *French* King's Service. Says he, you cannot but know how you have been slighted and neglected, notwithstanding the Service you have done; and the *French* Ambassador is the Person that is to recompence you for your Pains; and he spoke of forty, but truly I did not hear whether it were Guineas, or what it was, that he should have for present Payment; and I heard him speak something of a Pension, he named three thousand Crowns, but whether annually, or how, I cannot tell. Pray, Sir, said he, what shall I do in this Case, for I do not know, I am but in a low Condition, and have occasion for Money? Why, says he, the *French* Ambassador will supply you, and you shall certainly, as soon as the Paper is perfected, have your Reward; and, says he, there are a great many more that we have employed in Businesses of this Nature, to create misunderstanding between the King and his People, by which Means the *French* will easily over-run *Flanders* and the *Low-Countries*, and then *England* will become an easy Morfel. And this is the Substance of what I remember.

Fitz-Harris. Do you believe I had any such Design as Treason in it?

Sir Will. Waller. I cannot say any thing to that, I only speak to Matter of Fact.

Mr. Att. Gen. Did he declare he had many more employed in the Service?

Sir Will. Waller. Yes, he did say so. And said he, there are two Parliament-Men that frequent my Lord *Shaftesbury's*, who my Lord does not suspect, that do come and sound him, and then go and acquaint the *French* Ambassador with all they can discover.

Fitz-Harris. Is this the same Paper, by the Oath you have taken, for which I was impeached by the Commons in Parliament?

Sir Will. Waller. Yes, 'tis a Copy of the same Paper, and that Paper I did read in the House.

Mr. Att. Gen. 'Tis the Original.

Mr. Johnson. My Lord, I desire to ask *Sir W. Waller* one Question: Sir, you have heard the Indictment read, then pray tell us whether this very Libel be expressed in the Indictment according to what was delivered in the House of Commons?

Mr. Attor. Gen. You shall hear that by and by yourselves. For you shall hear the Paper read to you with the Indictment.

Sir Will. Waller. This is a Copy of that Paper.

Mr. Johnson. (Foreman of the Jury.) Does *Mr. Fitz-Harris* stand impeached by the House of Commons upon the same Treasons mentioned in the Indictment?

Sir Will. Waller. Yes, Sir.

Mr. Att. Gen. Upon the same Treasons?

Sir Will. Waller. Upon this treasonable Paper he does. For as soon as ever I had communicated this Paper to the House, and I had made my Report of the treasonable Transactions of *Mr. Fitz-Harris*, the House immediately proceeded to the Impeachment.

Mr. Sol. Gen. Does the Impeachment mention that Paper; or what particular Treason he was impeached upon?

Sir Will. Waller. I know nothing of that. But upon this Paper that Impeachment was grounded, that is all I can say.

Mr. Sol. Gen. That this Libel was spoken of in

the House of Commons, is true; but it does not appear upon the Impeachment, that he was impeached for that Libel.

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

Mr. Att. Gen. Yes, we have to other Matters. But we desire to let them alone till the Libel be read.

Mr. Johnson. My Lord, we beg we may have the Comparison of the Libel with the Indictment.

Fitz-Harris. I would ask Sir *William Waller* one Question more upon his Oath, whether he had any Design of trepanning me, or any body else in this thing?

Mr. Sol. Gen. Had you any Design to trepan the Prisoner, or any body?

Sir Will. Waller. No, Mr. *Fitz-Harris*, indeed not I.

Fitz-Harris. I looked upon you always as a Person that was my Enemy.

Mr. Att. Gen. What, because you were a Papist?

Fitz-Harris. No, it was upon another account, I appeal to Mr. *Just. Dolben*.

Mr. Just. Dolben. What do you appeal to me for?

Mr. Serj. Jefferies. Have you known Mr. *Fitz-Harris* before, Sir *William*?

Sir Will. Waller. Yes, many Years.

Mr. Serj. Jeff. What Religion was he reputed to be of?

Sir Will. Waller. A Roman Catholick.

Fitz-Harris. I am not bound to continue so always.

Mr. Jones. Shew your Conversion.

Mr. Att. Gen. Pray let the Libel be read.

[*Then the Paper was produced.*]

Mr. Att. Gen. Sir *W. Waller*, and Mr. *Everard*, is that the Paper?

Mr. Everard. This is the Paper.

Mr. Att. Gen. Is it interlined with his own Hand?

Mr. Everard. Yes, for there are the Words (*have promoted*) that I said before, he altered.

L. C. J. Gentlemen, pray mark this now, you will hear the Clauses contained in the Indictment read, and you shall hear this Paper read, and then yourselves shall be Judges, whether it does contain them, yea, or no.

Mr. Johnson. We desire to see it at the Bar.

Mr. Att. Gen. Here is a Copy of these Clauses, you may examine it by that.

Mr. Serj. Maynard. 'Tis not the whole Libel, but only some Clauses of it he is indicted for.

L. C. J. Yes, Brother: But what they desire is only to see whether so much as is contained in the Indictment, is also in the Libel.

Mr. Att. Gen. Pray swear Mr. *Astrey* then; (which was done.)

L. C. J. Look you, Gentlemen, this is one that is intrusted with the Affairs of the Crown; he is now sworn, and I ask him this Question for your Satisfaction: Mr. *Astrey*, are the *English* Sentences that are in the Indictment also comprized in the Libel?

Mr. Astrey. My Lord, I did examine this Indictment with the Libel at Mr. Attorney General's Chamber as well as I could, and they are *in terminis* the same; the Words in the Indictment, and the Words in the Libel.

Mr. Johnson. My Lord, if all be not in the Indictment that is in the Libel, then perhaps there may be some Connexion with what is antecedent, something to explain those Clauses the Indictment mentions, so that they may bear another Construction. Therefore we would have all read.

Mr. Serj. Maynard. It must be all read to them.

L. C. J. Yes, Brother, it shall be wholly read them, though it need not be expressed *de verbo in verbum* in the Indictment; yet for their Satisfaction it shall be wholly read to them.

Mr. Sol. Gen. These Gentlemen are very cautious, I perceive.

L. C. J. Look you, Gentlemen, if you will attend the Court, we will give you what Satisfaction we can; pray, Mr. Solicitor, give them leave to speak to the Court: What you desire, Gentlemen, is reasonable enough, that you may hear the Libel, to see whether these are not Clauses taken out of a Paper, which may have another Import in the Paper than they have when they are taken out; that is your Meaning.

Mr. Johnson. Yes, my Lord.

L. C. J. To that Intent you shall hear the Libel read distinctly; you shall have the very Clauses of the Indictment by you, that you may look upon them.

Mr. Att. Gen. The other part of the Libel will do it.

L. C. J. Pray Mr. Attorney, don't direct me, they shall have the Indictment whilst Mr. *Astrey* reads the Libel, that they may see the Import of the Words. You do not apprehend it aright: Mr. *Johnson* does not desire to see whether Mr. *Astrey* read right, but whether those Clauses in the Indictment are of the same Import in the Indictment, that they are of in the Libel; therefore they must have a Copy of the Indictment whilst Mr. *Astrey* reads the Libel: And Mr. *Astrey*, pray mark those Clauses, when you come to them, for you will find they are dispersed up and down the Libel.

Mr. Astrey. I do not swear to that very Paper; but I believe you will find they are rightly taken out of the Libel in the Indictment.

Mr. Att. Gen. This is the Copy of the Indictment-Clauses.

Cl. of Cr. reads. *Friend, I thank thee for the Character of the Popish Successor—*

[*Then one of the Jury, having the Copy in his Hand, and not finding it exact, desired a true Copy.*]

Sir Will. Waller. Here is a true Copy of it, which I took my self, and read in the House.

[*Then the Libel was read through, which was as follows.*]

The true Englishman speaking plain English, in a Letter from a Friend to a Friend.

‘ I Thank you for the Character of a Popish
‘ Successor which you sent me, wherein our
‘ just Fears, and the Grounds of them, are justly
‘ set out. But I am in greater Fear of the present
‘ Possessor; why do we frighten ourselves about
‘ the Evil that is to come, not looking to that
‘ which is at hand? We would cut off the Bud-
‘ ding Weeds, and let the poisonous Root lie still;
‘ we would stop the Channel of our Evils, and
‘ let the Fountain still run: My meaning is this;
‘ can *Pylades* know and act all these bloody Con-
‘ spiracies, and not impart them to his dear *Orestes*?
‘ If *James* be conscious and guilty, *Charles* is so
‘ too: Believe me, these two Brethren in Iniquity,
‘ they are in Confederacy with Pope and *French*,
‘ to introduce Popery and arbitrary Government,
‘ as all their Actions demonstrate. The Parlia-
‘ ment, *Magna Charta*, and Liberty of the Sub-
‘ jects, are as heavy Yokes which they would cast off

to be as absolute as their Brother of *France*; and if this can be proved to be their only Aim and Endeavour, why should not every true *Briton* be a Quaker thus far? Let the *English* rise, and move as one Man to Self-Defence, to open Action, and sling off their intolerable Riders. Blow the Trumpet, stand on your Guard, and withstand them as Bears and Tygers. And since there can be no trust given to this goodly Couple of Popish Brethren, nor no Relief expected from a Parliament; trutt to your Swords in Defence of your Lives, Laws, Religion, and Properties, like the stout Earl of old, who told a King, that if he could not be defended by *Magna Charta*, he would be relieved by *Longa Spada*.

Yet to convince the World; that this *Scottish* Race is corrupt, Root and Branch, and Popish from the very beginning, be pleased to consider these Reasons following:

The Grand-Father of these Men, *James* the *Scot*, was of no Religion at the Bottom, but entered by a Pretence of a sham Plot of the Papists against his Life, whilst really he colloqued with the Popish Party under Hand; his Mother, his Kindred and Companions were *French*, and Papists; when come into *England*, he wrote to the Pope with great Submission, yet afterwards thinking it for his Purpose to cajole the Parliament, and write against the Pope and Cardinals, he sends a *Scots* Bird to blind the Eyes of the *Vatican* Keeper with Money, and to steal his Letters from off the *Roman* File, and then he crows as boldly as an unsuspected Harlot for the Protestant Religion and Interest.

That Man's Son *Charles* the First, held a secret Correspondency with the Pope, calling him his dear and holy Father, as is to be seen in his Letters recorded in *Rushworth's* Collections: Were not his Wife and Courtiers Papists? Did he not countenance and promote the Rebellion in *Ireland*? As the *Irish* Grandees and his very Commissions testify and declare, was there not a Popish Plot, and an universal Conspiracy of the Papists discovered to him and his Confessor *Laud*, and did they not piously stifle it, lest they should have discovered the Nakedness of their Mother Church? Whilst that goodly Protestant Prince pretended to relieve the poor besieged Protestants at *Rochel* by his Confident *Buckingham*, did he not hold Correspondency with the *French* Cardinal how to betray them for a Sum of Money, (which his Obstinacy with his Parliament made him stand in need of.) But they who so ill approved themselves to be Heads of the Protestant Church, *Charles* and *Laud*, did they not lose their own Heads by a manifest Judgment of God? And was not the false Heart of their Emissary *Buckingham*, found out by an Assassin's Knife?

But to come nearer to our Purpose, these two goodly Imps of our Days are stark Naught, arrived at the height of Wickedness, and of professed Arbitrariness and Popery.

As for *James* he was a Papist whilst he had a Regiment in the *French*, and afterwards in the *Spanish* Service beyond Seas. And as for *Charles*, he was reported, ere he came into *England*, to have been reconciled to the Church of *Rome* in one of the *French* King's Country-Houses; and since they came in, how have they wheedled and played fast and loose in their Profession of

Religion, as Occasion and their Affairs required? Have they not all along maintained secret Correspondency with *France* and *Rome*? As *Coleman's* Letters may sufficiently instruct such who have not seen more secret Memoirs.

But let us come to examine their Actions, which are a better Proof of their Hearts; were not the Duke's Servants and Confidents all Papists? Witness his *Talbots*, *Patricks*, and other *Irish* Teagues. Were not the Duke and such of his Creatures as were known Papists, promoted to all publick Offices of Trust, both at Sea and Land? Witness *Bellasis*, now a Traitor in the *Tower*. Did not *James*, by *Coleman*, *Throgmorton*, and others, hold open Correspondency with the Pope and Cardinals? And could *Charles* be ignorant of all this? Nay, he liked all so well, that he hardly employed any about him but Papists, as *Clifford*, whom he made Treasurer; or employed any abroad but Persons of the same Stamp. Witness *Godolphin*, whom he sent Embassador into *Spain*, as he did others elsewhere; what more obvious than that, though the Duke's Treachery against the Kingdom and Protestant Religion be fully made out, and the People and Parliament seek to bring him to a legal Trial, yet *Charles* obstructs Justice, and will not suffer it? How can this be, but that he is joined in Will and in Deed in all the Duke's Villainies, and that he is afraid to be discovered and found out to be a Papist, and a Betrayer of his People and the Protestant Religion? If he was heartily concerned for our Religion, would he not oppose a Popish Successor, who would infallibly overthrow it? Can there be any Thing more evident, than that he continues the Duke's Adherents, and those who were advanced by him in all Offices of Trust? And hath he not turned out of his Council the most zealous Protestants, such as *Shaftesbury*, *Effex*, and others, and introduced in their Rooms other mere Tools, or those that are popishly and arbitrarily affected? Hath he not modelled all the Sheriffs and Justices throughout *England*, in Subserviency to a popish Design? Was not Sir *William Waller*, and Dr. *Chamberlain*, and divers others, turned out of the Commission in and about *London*, merely for being zealous Prosecutors of Priests and Papists? Doth not *Charles* all he can to hinder the further Detection of the popish Plot? And doth he not to his utmost discountenance the Discoverers of it, and suffer them to want Bread? And doth he not in the mean Time plentifully encourage and reward *Fitzgerald* and all the sham Plotters? Whereas *Dangerfield* had 8*l.* a Week whilst a Forger of Plots against the Protestants, he is cast off with Scorn, and in Danger of his Life, since he laid open the popish Engineers. Is not *Charles* so much in Love with his popish *Irish* Rebels, (therein treading in his Father's Steps) that he promotes *Montgarret*, *Carlingford*, *Fitz-Patrick*, and others, who were the Heads of the Rebellion, to Honours and Preferment; though *Charles* took the Covenant and a Coronation Oath to preserve the protestant Religion, yet hath he not palpably broken them? He made large Promises and Protections at *Breda* for the allowing a perpetual Liberty of Conscience to Non-conforming Protestants, but he soon forgot them all: To what end was the Act, which was made soon after his Restoration, prohibiting any to

‘ call him Papist, or to say he was popishly inclined, and render such as should offend, guilty of a Premunire; but to stop the People’s Mouths whenever he should act any Thing in Favour of Popery, as he was then resolved to do?’

‘ Is it not manifest therefore, that *Scotch Oaths*, *Breda Promises*, Protestant Profession, Liberty of Conscience, War with *France*, saving of *Flanders*, is all in Jest to delude Protestant Subjects? Is it not apparent, that breaking of Leagues, *Dutch War*, *Smyrna Fleet*, *French Measures* to favour their Conquests, Loss of Ships, War in *Christendom*, Blood of Protestants, relieving of popish Traitors, is all in Earnest, and done in favour of Popery? And are not his fair Speeches, his true Protestant Love to Parliaments, just Rights, and *English Liberties*, his pretended Ignorance of the Plot, and his hanging of Traitors to serve a Turn but in mere Jest? Are not his great Debaucheries, his whoring Courtiers, popish Councils, cheating Rogues, hellish Plottings, his saving of Traitors, his *French Pensioners*, his Nests of Whores, and Swarms of Bastards, his Macks, his cut Throats, his horrid Murderers, his Burning of *London* and the Provost’s House too, his sham Plotting, his suborned Villains, his popish Officers by Sea and Land, his Strugglings for a popish Successor, his Agreements with *France*, his frequent Dissolutions of Parliaments, his buying of Voices, his false Returns, all of them Designs to ruin us in good earnest, and in favour of arbitrary Government? And is it not in order to this blessed End that you see none countenanced by *Charles* and *James*, but Church Papists, betraying Bishops, tantivy Abhorrrers, barking Touzers, popish Scribblers to deceive the People, and fix the popish Successor’s illegal Title? Are not Jesuits Counsels, *French Assistance* to conquer *Ireland*, subdue *Scotland*, win *Flanders*, beat the *Dutch*, get their Shipping, be Masters of the Seas? And are not facing a Rebellion, the letting the Plot go on, the endeavouring to retrieve the popish Cause by getting a popish Pensionary, abhorring Parliaments, who shall betray their Country, enslave Posterity, and destroy themselves at last, Means only to save a popish traiterous Successor, and a present popish Possessor? *James* and *Charles* are Brethren in Iniquity, corrupt both in Root and Branch, and who study to enslave *England* to a *French* and *Romish* Yoke, is not all this plain? Have you not Eyes, Sense, or Feeling? Where is the old *English* noble Spirit? Are you become *French* Asses, to suffer any Load to be laid upon you? And therefore if you can get no Remedy from this next Parliament, (as certainly you will not) and if *Charles* doth not repent and comply with it, then up all as one Man. O brave *Englishmen*, look to your own Defence ere it be too late; rouze up your Spirits, remember your Predecessors, remember how that the asserting of their Liberties, justified both by Success and Law, the War of the Barons against wicked Counsellors who misled the King. And will you now let that go which cost them so dear? How many oppressing Kings have been deposed in this Nation, as appears in Records referred unto in that worthy Patriot’s History of the Succession; were not *Richard II.* and *Henry VI.* both laid aside, not to mention others, and was there ever such a King as this of ours? Was

‘ not King *John* deposed for going about to embrace the *Mahometan* Religion, and for entering into a League with the King of *Morocco* to that Purpose? Though *Mahometism* and the King of *Morocco* were no such Enemies to our Rights and Liberties, as Popery and the *French* are. Is it not Time then that all should be ready? Let the City of *London* stand by the Parliament, for the maintaining of their Liberties and Religion in an extreme Way, if parliamentary Ways be not consented unto by the King, let the Counties be ready to enter into an Association, as the County of *York* did in *Henry* the Sixth’s Time.’

L. C. J. Gentlemen, now you have heard it read, and you may observe there is nothing in this Paper can extenuate or mitigate the Clauses, but abundance to make them more horrid and exceedingly aggravated.

Mr. Att. Gen. Then call *Mr. Saville*, who was the Person *Mr. Everard* did meet with, and acquainted with this Business; (but he did not appear.) Then call *Sir Philip Lloyd* and *Mr. Bridgman*. My Lord, the next Piece of Evidence we shall give, is this; *Sir William Waller* and *Mr. Everard* do both say, that he gave part of his Instructions under his own hand; we shall produce the Paper, and prove he acknowledged it to be his own Hand.

[Then the Paper was produced.]

Mr. Att. Gen. Who writ that, Sir?

Mr. Everard. *Mr. Fitz-Harris*.

Mr. Att. Gen. Are those the Instructions he gave you to frame this Libel?

Mr. Everard. These are part of the Instructions, my Lord; the other part I took in my Table-Book before *Mr. Smith*.

Mr. Att. Gen. We will prove it by other Witnesses, *Sir Philip Lloyd*, and *Mr. Bridgman*.

Mr. Bridgman sworn.

Mr. Att. Gen. Did the Prisoner acknowledge that to be all his own Hand-writing?

Mr. Bridgman. Yes, my Lord, *Mr. Fitz-Harris* did acknowledge it to be all writ with his own Hand.

Sir Philip Lloyd sworn.

Sir Fran. Withins. Look upon that Paper, Sir; (which he did.) Did *Mr. Fitz-Harris* acknowledge it was his hand-writing?

Sir Philip Lloyd. Yes he did; and that I might bear testimony of it the better, I writ with my own Hand on the back of it, that he did so.

Mr. Att. Gen. Read it.

Cl. of Cr. reads, *After this sham Meeting of the Parliament at Oxon, which no body expects any Good of, it will be necessary, &c.*

Mr. Sol. Gen. These Words are likewise in the Indictment.

L. C. J. When was that given to you, *Mr. Everard*? for—*Mr. Fitz-Harris* it seems owned it before the Lords in the Council, but *Mr. Everard* swears the Delivery of it; what time was it?

Mr. Everard. It was either *Monday* or *Tuesday*.

L. C. J. In *February*, was it not?

Mr. Everard. Yes, and I asked *Captain Fitz-Harris*, according to *Sir Will. Waller’s Queries*, whether he had given Instructions according to what he would have contained in the thing? Yes, said he; but have you not enough under my own Hand to do it by?

Mr. Serj. Maynard. My Lord, we have done our Evidence, we will leave it now to hear what the Prisoner will say for his Defence.

L. C. J. *Mr.*

L. C. J. Mr. *Fitz-Harris*, if you have any thing to say for your Defence, this is your time to do it.

Fitz-Harris. Yes, my Lord, Dr. *Oates*, I desire may be called.

Mr. Att. Gen. If you have any Witnesses, name them.

Mrs. Fitz-Harris. Yes, yes, Dr. *Oates*; and ask him what he heard Mr. *Everard* say.

L. C. J. What say you to Dr. *Oates*? here he is.

Fitz-Harris. Pray, Doctor, what have you heard Mr. *Everard* say about this Libel since I was taken?

Dr. Oates. My Lord, after this Business was talked of abroad, having heard that Sir *William Waller* and *Everard* had made the Discovery, I did discourse Mr. *Everard* about the Business, and about the Libel. He told me he wrote the Libel, and when I would not believe it, the Man was a little angry that I would not believe it: And then I told him he was a Man very unfortunate in speaking; for he spoke but badly. He said, though he was unfortunate in his Tongue, yet he was as fortunate in his Pen, and that he took a great deal out of the intercepted Letter to *Roger L'Estrange*: and I then asked him what the Design of it was, he told me, it was to be printed, and to be sent about by the Penny-Post to the protesting Lords, and the leading Men in the House of Commons, and they were to be taken up as soon as they had it, and to be searched, and to have it found about them. I then asked him if there were any other Persons concerned in it, besides those publicly talked of; he told me, the Court had a hand in it, and the King had given *Fitz-Harris* Money already, and would give him more if it had success. This he told me at *Oxford*, and before he went thither, and after.

Fitz-Harris. Mr. Sheriff *Cornish*, I do beg you say what his Majesty told you, when you came to from me, when I was in *Newgate*.

Mr. Sheriff. I do not know what you call me for, Mr. *Fitz-Harris*.

Fitz-Harris. I desire you to acquaint the Court what the King said to you when you came to him from *Newgate* from me.

Mr. Sheriff. My Lord, I shall desire your Lordship's Opinion in this Matter, whether it be seemly or decent for a Subject to declare what Discourse his Prince is pleased to have with him.

L. C. J. Look you, Sir, if you give any Evidence, give it. We are not to direct any Witness whether they shall give their Evidence, or not.

Mr. Att. Gen. Mr. Sheriff, you ought to do it openly, if you give any; therefore pray let us hear you.

Mr. Sheriff. My Lord, I cannot remember what was said relating to this particular Matter. There was a great deal his Majesty was pleased to discourse with me concerning things of several kinds and natures; my Memory may fail me; but if Mr. *Fitz-Harris* please to ask as to any particular Matter.

Fitz-Harris. What the King said when you came from *Newgate* to him, to acquaint him that I would make a Discovery: Did he say I was employ'd by him, and received any Money, and what for?

Mr. Sheriff. My Lord, I do remember something of that kind. When I was giving his Majesty an account that I found the Prisoner at the Bar in a Disposition to make a Discovery, his Majesty was pleased to tell me he had often had him before him

and his Secretaries upon Examination, and could make nothing at all of what he did say or discover to them; and his Majesty was pleased likewise to say, that he had for near three months before acquainted him, that he was in Pursuit of a Plot, a Matter that related much to his Majesty's Person and Government: And the King did say, in as much as he made great Protestations of his Zeal for his Service, he did countenance and give him some Money. I know nothing more.

Mr. Att. Gen. Did the King ever declare that he saw *Fitz-Harris* in his Life, or that he ever was in his Presence?

Mr. Sheriff. Yes.

Mr. Att. Gen. Ay, but before his appearing at the Council-Table, did the King ever say he saw him, or before he was arrested for this Fact?

Mr. Sheriff. Yes, his Majesty was pleased to say about three Months before, he came to him, and pretended he would discover a great Plot to him.

L. C. J. Have you any other Questions to ask Mr. Sheriff?

Fitz-Harris. No. Where is Colonel *Mansel*?

Dr. Oates. My Lord, I desire that if the Prisoner have any more Questions to ask me, he may do it; because the Croud is great, and I would go out.

Fitz-Harris. Sir, I have many more Questions to ask you, I desire you would please to stay.

L. C. J. You must stay if he have any more Questions to ask you. Here is Col. *Mansel*, what say you to him?

Fitz-Harris. Colonel, what did you hear Sir *William Waller* say, after this Discovery was made?

Col. Mansel. That which I heard Sir *William Waller* say, was this: I had occasion to speak with Sir *James Hayes*, and enquiring for him, I found he was at the *Dog-Tavern*; so I went up, and found in the Company Sir *William Waller*, and another Gentleman, one Mr. *Hunt*, and some more. After the rest of the Company were gone, and only Sir *James Hayes*, Mr. *Hunt*, myself, and Sir *William Waller* left, Sir *William* was giving an Account of this Business, and said, the King, when I had acquainted him with it, told me I had done him the greatest piece of Service that ever I had done him in my Life, and gave me a great many Thanks; but I was no sooner gone from thence, but two worthy Gentlemen gave me an account, that the King said, I had broken all his Measures, and he would have me taken off one way or another.

Fitz-Harris. Did he say any thing, that it was a Design to put the Libel upon the Protestant Lords and the House of Commons?

Col. Mansel. There was that said.

L. C. J. What was said? Don't come with your imperfect Discourses here; but if you give Evidence, tell what was said.

Col. Mansel. Sir *William Waller* said, that the Design was against the Protestant Lords, and the Protestant Party.

Mr. Serj. Maynard. I do not doubt that it was against the Protestant Party.

Mr. Att. Gen. Recollect yourself: Was it against the Protestant Lords, or the Protestant Party?

Col. Mansel. He said, the Protestant Party.

Mr. Att. Gen. So say we.

Fitz-Harris. Did he not say it was another sham Plot, Sir, against the Fanaticks, and the House of Commons? Where is Mr. *Hunt*?

[*Mr. Hunt appeared.*]

Mr. Hunt. What would you have with me, Mr.

Mr.

Mr. *Fitz-Harris*? I never had any Conversation with you in my Life.

Fitz-Harris. No, Sir; but what have you heard Sir *William Waller* say concerning my Business?

Mr. *Hunt*. My Lord, I would rather I had lost my Hearing for that Time, than have heard it to repeat it. Sir *William Waller* did tell me, at the *Dog-Tavern*, where was Sir *James Hayes*, and Colonel *Mansel* by, after he had read over the Libel to us, there was a great deal of Company more; but he only gave us the Curiosity to see what the Libel was: And when he had read it, he did tell us, that the King gave him particular Thanks for that good service he had done him in detecting *Fitz-Harris*; but he said he was told by two Gentlemen that had heard the King speak it, who were of undoubted Credit, that the King was in an extreme Passion, bestowed many hard Names on him, and said, he would give any thing in the World to take him out of the World; that he was an insufferable Vexation to him, and that he had broken all his Measures. And he said the same things again, in the Presence of Sir *Philip Harcourt*, and my Lord *Radnor's* Son Mr. *Roberts*, at Capt. *Hall's* Chamber, in *Pembroke-College* in *Oxon*.

Mr. *Att. Gen.* What did he say about the Prisoner?

Mr. *Hunt*. This was about the Libel of *Fitz-Harris*, that the King gave him particular Thanks about that Business: And afterwards the King did express great Passion, in some short Time after he was gone: And he did say he was informed by two Witnesses, that heard the King say it, he knew not what to do with him, he broke all his Measures.

Fitz-Harris. Did he not say, this was a Design against the Protestants?

Mr. *Hunt*. He did say it was a Design to contrive these Papers into the Hands of People, to make them Evidences of Rebellion; and that was his Apprehension of the Thing. And he said further (for I am a Witness here, and must speak all my Knowledge) that he had another Plot which he had traced near to a full Discovery, a more horrid Plot than this or *Dangerfield's*; for he said, this was the Counterpart of *Dangerfield's* Plot. I hope he will not deny it, if he be asked, here he is, and upon his Oath; I am not, and I desire not to take Credit unsworn, but am willing to give my Testimony on Oath.

Fitz-Harris. Where is Dr. *Cary*?

Mr. *Sh. Cornish*. Dr. *Cary* is not well, my Lord, and can't come.

Fitz-Harris. Then Mr. Sheriff *Bethell*.

Dr. *Oates*. My Lord, I pray I may be discharged.

L. C. J. Doctor, we have nothing to say to you, but the Prisoner hath more Questions to ask you. 'Tis not we that detain you, but you stay upon the Prisoner's account.

Fitz-Harris. Mr. Sheriff *Bethell*, I desire to know what you can say concerning Mr. *Everard*.

Mr. *Sh. Bethell*. My Lord, I know nothing of Mr. *Everard* as to his Business, save that he told me, he writ the Libel himself. And I confess, my Lord, further, that before ever he knew my Face, or before ever he heard me speak a Word in his Days, he put in an Information of Treason against me, at the Instigation of one that is known to be my mortal Enemy: And it was so groundless, that though it was three Years ago given in, yet I never heard a Word of it till Friday last, I can bring Witnesses of this, Persons that sent the Notice of it to me.

Fitz-Harris. Pray call Mrs. *Wall*; (who came down from her Seat.)

Fitz-Harris. Mrs. *Wall*, pray will you tell the Court, have not I conveyed some Libels and treasonable Papers to the King by your Means, and received Money upon that Account?

Mrs. *Wall*. Not as I know of.

Fitz-Harris. Did not you receive some of them from me to give to the King?

Mrs. *Wall*. No indeed not I.

Fitz-Harris. Is the Footman here that was by, when you paid me the Money?

Mrs. *Wall*. Yes, and the Porter too, though you have not subpoena'd them.

Fitz-Harris. How long ago is that?

Mrs. *Wall*. Two Years ago.

Fitz-Harris. Was it not about *Christmas* last was Twelve-month I gave you the Libel about the King and your Lady; and the King thanked me extremely, and I had 250 l. given me? Come, Mrs. *Wall*, don't think to trick me out of my Life in the Case, for I will not be tricked to. Pray tell the Court: Can you deny that I had the 250 l.?

Mrs. *Wall*. That was not the Question you asked me at first.

Fitz-Harris. But speak, had I it?

Mrs. *Wall*. There was 250 l. I think it was 200 or 150, or 250 l.

Fitz-Harris. What Use was it for? and upon what account?

Mrs. *Wall*. You do know it was not for any Libel.

Fitz-Harris. If you have any mind, tell it.

Mrs. *Wall*. There it is: (Delivering in a Paper to be read.)

Cl. of Cr. The humble Petition of *Edward Fitz-Harris*. —

Mrs. *Wall*. I really took him for as honest a Man as ever I knew in my Life; and had it been in my Power to have done him a Kindness, I should not have failed to have done it.

Mr. *Att. Gen.* Was he your Countryman, Madam?

Mrs. *Wall*. Yes, he is, and my Relation too. I knew him to be the Son of a very suffering, loyal Family; and while his Mother was in Town, he came often to our House; and when she went away, he left visiting the House a great while. And you, Mr. *Fitz-Harris*, did once tell me, you could bring in People to the King's Interest, that were very considerable. So I spoke to the Secretary of State about you, that there was one that had been with me, and told me, that he could bring in those to the King and Duke's Interest that were very considerable. The Secretary of State desired of me to know who they were; and then he named to me one *Thomas Merrey*, and another Person, who I desire to be excused from naming. The other Party he did name was thought considerable, both for Quality and Understanding; and the Secretary desired me to get him in, if I could.

Mr. *Att. Gen.* Pray, Madam, who was it?

Mrs. *Wall*. I desire Mr. *Fitz-Harris* may tell you.

Fitz-Harris. No, Mrs. *Wall*, pray do you tell it, since you have spoke of it.

Mrs. *Wall*. I say nothing but what I will take my Oath of.

Fitz-Harris. Then you will never swear that which is true. Pray, Mrs. *Wall*, speak, who was it?

Mrs. *Wall*. I desire I may not name him; but he may.

Mr.

Mr. Att. Gen. He will not.

Mrs. Wall. Truly I do not think it convenient for me to name such Persons as those are, upon such accounts.

Fitz-Harris. Pray, *Mrs. Wall*, name the Person that I would have brought into the King's Service.

Mrs. Wall. If the Court commands me, I will; otherwise I will not.

Fitz-Harris. Did you ever, upon any such account as this, receive any Money for me? Speak the Truth.

Mrs. Wall. God forbid your Blood should lie at my Door; I assure you, I should be sorry for it. He told me, these Persons were considerable for the King's Interest, and could do him extraordinary good Service. So, as I said, I spoke to the Secretary of State; and he would know who they were. And when he was told who they were, as for one of them, *Thomas Merrey*, he was not thought worth the looking after, for he was thought an inconsiderable Rascal; but as for the other Gentleman, he was thought a Man of Worth, and a Person, that, if he would, could really serve the King. Upon this, when you first came, I was never at rest for you; and therefore, after a while, before you came again, I gave the Porter Order to tell you, I was not at home; and I desired the Porter may be asked the Question. But when I next saw the Secretary, I desired that he would give them a positive Answer, one way or the other; and the next time I saw you, this was your Business, and I told the Secretary of State of it. You gave me this Paper, and desired me to solicit for your Quit-Rent in *Ireland*, for you were in great Misery, and had been a great Sufferer. So I spoke to the Dutchess of *Portsmouth*, and she spoke to the Secretary of State; that if this Man be so considerable a sufferer, 'tis convenient to give him something for his Encouragement: And if you will give him something, said I, give it him quickly. I was four, if not six Months; a-getting this Money.

Fitz-Harris. But will you say it was upon that account? When was that Money paid?

Mrs. Wall. I never thought I should be brought in for a Witness; or that you would have abused me thus for my Kindness.

Fitz-Harris. When were those Papers given you that you produced?

Mrs. Wall. I wish I may never see the Face of God, if I know any more than what I gave Evidence; there are the Papers, they will tell you the Time.

Fitz-Harris. Did I give them you?

Mrs. Wall. You or your Wife did; and I suppose your Wife's Condition was yours.

Fitz-Harris. Was not the Money received before ever those Papers were given you?

Mrs. Wall. Nay, *Mr. Fitz-Harris*, I will tell you more; send to *Mr. Henry Guy*, and let him tell you when he paid it you.

Fitz-Harris. Call the Porter, and the Footman if he be here.

L. C. J. If you would ask any more Questions of *Mrs. Wall*, do.

Fitz-Harris. Did not I come to you the Wednesday before I was taken, and told you, I desired to speak with the King, and that I had a Libel to present to him?

Mrs. Wall. No, so far from that, that it was the Thursday before you were taken, you came about nine o'Clock at Night to our Lodgings, and sent up to my Chamber; and I sent word that *Mr. Cowling* was there, for I did not care to see you:

But you sent word up, you had something of Consequence to tell me. So I came down, and you desired me to bring you to the Speech of the King, which was a thing you did never desire before: And you said thus, if you did but see the King, you believed you could say something to him that might do him Service.

Fitz-Harris. Did not I say, here is the Libel that I come to deliver to the King now?

Mrs. Wall. No, as I have a Soul to be saved.

Fitz-Harris. *Mrs. Wall*, I did, and this was what you said at the same time; That since my Lord *Sunderland* was gone, you could have no secret Service. I did desire to speak with the King privately, those were the Words; and you told me, you could not so easily do Business with the King, since my Lord *Sunderland's* time.

L. C. J. We must not let you hold a Dialogue between yourselves, you must speak that the Court may hear.

Mr. Att. Gen. Was not he a Roman Catholick?

Mrs. Wall. Yes, we looked upon him so, and upon that account we said it was dangerous for him to go near the King.

Mr. Att. Gen. Did you know that ever he was admitted to the King?

Mrs. Wall. Never; but he hath been talking with me in a Room as the King passed by.

Mr. Att. Gen. Did the King ever take any Notice of him, speak to him?

Mrs. Wall. The King never took Notice of him, nor spoke with him by my means, nor gave him Money, other than what I speak of, nor the Dutchess of *Portsmouth*.

L. C. J. Look you, *Mrs. Wall*, I think you do say, that there was some Money paid to *Mr. Fitz-Harris*; pray speak plain, upon what account was it paid?

Mrs. Wall. My Lord, it was for the bringing in of my Lord *Howard* of *Esrick*, who is there; since you press me to it, I must tell; I think my Lord will not deny it.

Ld. Howard. I will never deny the Truth.

Fitz-Harris. Where was my Lord *Howard* of *Esrick*?

Mrs. Wall. He was not so much for the King's Interest, or that which they call the King's Interest.

Fitz-Harris. How long is this since?

Mrs. Wall. Two years ago since he came first to me; but whether it be a Year and a half since my Lord met with the King, I cannot tell.

Fitz-Harris. When my Lord was admitted in to the King, I did wait on him to that purpose, to bring in my Lord *Howard*.

Mrs. Wall. I desire that my Lord *Howard* may be asked, whether he don't remember, when the King was coming, *Mr. Fitz-Harris* was put out of the Room first.

Fitz-Harris. You say, I never shewed any Libel to the King.

Mrs. Wall. I tell you what I said since to this Gentleman that is here; I wish you had shewn the Libel unto me, that I might have been in a Capacity of saving your Life.

Fitz-Harris. You said, that I had the 250 l. for bringing in my Lord *Howard*.

Mrs. Wall. I say, it was upon Promise to bring in Persons that would be useful and serviceable to the King.

L. C. J. She is your own Witness, and she tells you, two Persons you did undertake to bring in, and for that you had this Money:

Mrs. Wall.

Mrs. *Wall*. It was his Poverty, and this together.

Mr. Serj. *Jeff*. Mrs. *Wall*, I conceive he never discovered this Libel unto you; but pray, did he ever discourse with you about *Everard*? and what Character did he give him?

Mrs. *Wall*. Once he did, and he said he was an honest Man; and asked me if I would be acquainted with him? I told him, No, for he had a knavish Reputation: He was an Informer, and I cared for no Informers.

Fitz-Harris. Mrs. *Wall*, to let the World see how you shuffle about me, When did the King see my Lord *Howard* first, when I brought him?

Mrs. *Wall*. I don't know, ask my Lord *Howard*.

Fitz-Harris. Did not I speak to the King in the outer Room? And did not you get me to make a stand there?

Mrs. *Wall*. Mr. *Fitz-Harris*, don't make me tell that thing.

Fitz-Harris. Pray speak the Truth, Mrs. *Wall*.

Mrs. *Wall*. I defy you and all Mankind, to say I do otherwise. You did desire me to tell the Duke, that you would first bring my Lord to him, and then to the King; and I spoke to the Duke, and he said, you were a Rascal, and he would not meddle with you: This you know.

Fitz-Harris. Did not my lady *Portsmouth* tell me, the Duke was angry, &c.?

Mrs. *Wall*. Mr. *Fitz-Harris*, when you came to me upon such an Errand, was it reasonable that I should bring you, upon every Trifle, to the Speech of the King, and I should not bring you then? 'Tis without Sense and Reason.

L. C. J. You must not ask Questions, but answer. And Mr. *Fitz-Harris*, do you design to detect Mrs. *Wall* of Falshood? She is your own Witness, you consider not you can get nothing by that.

Fitz-Harris. My Lord, when you see the Papers produced, you will find it is upon another Account.

Mrs. *Wall*. Is this your Hand, Mr. *Fitz-Harris*? (*Shewing him a Paper.*)

Fitz-Harris. But is not this upon the Account of a Pension granted in *Ireland*? Pray let the Gentlemen of the Jury see, this is of another different Nature; I appeal to my Lord *Howard* of *Esrick*, whether he did not speak to my Lady about it.

Ld. *Howard*. I did so.

Mrs. *Wall*. My Lord did second my Lady, to get you some Charity.

Fitz-Harris. So that the Money received here was plainly upon another Account.

L. C. J. Look you, if you will have any Papers read, they shall be read. But the Gentlemen of the Jury must not see any Papers but what are read.

Then the Petition of Mrs. Fitz-Harris, and the King's Letter to the Duke of Ormonde, was read, about a Pension in Ireland.

Fitz-Harris. My Lord, if you please, I have something further to say to Mrs. *Wall*. But I desire to ask Mr. *Cowling* a Question, and that is, Sir, What Mrs. *Wall* said to you about my Business?

Mr. *Cowling*. My Lord, I think, the Day after this Man was examined in the Council, I came to Mrs. *Wall*, and she told me, that, the second or third Night before he was taken, he came to her to bring him to the King; but she sent down Stairs, that she would not let him come up. But asked him, why he did not go to one of the Secretaries of State? No, said he, I can't go thither, without being taken Notice of; but I'll tell you my Business. No, said she, if you will write down your

Business, and give it me in a Paper, I will carry it to the King; and if the King have a mind to speak with you, you shall be sent for. No, said he, I will not do that. Then, said she, I must beg your Pardon, if I don't bring you to the King. And Mrs. *Wall* said further to me, truly her Blood did chill when she said so, for she was afraid he was come to do the King a Mischief.

Mr. *Att. Gen.* This was three or four Nights before he was taken.

Fitz-Harris. Is Sir *Robert Thomas* here? (*He did not appear.*) Then I desire my Lord *Howard* to stand up.

Ld. *Howard*. Have you any thing to say to me, Mr. *Fitz-Harris*?

Fitz-Harris. Yes, my Lord, if you please. My Lord, I desire your Lordship will please to tell, what my Lady *Portsmouth* did express to you concerning me, at your coming thither; and whether I did not introduce your Lordship; and how civil she was to me upon that account; and how she undertook to get the Quit-Rent for me.

Ld. *Howard*. Sir, I shall answer as particularly as I can all your Questions; but it will be necessary to introduce my Evidence with the Relation of the whole Transaction. You know, about *October* last, about the beginning of the Month; for it was, as I take it, ten Days, or a Fortnight, before the sitting down of the Parliament; you did make Applications to me, in the Name of the King, whether with or without his Privy, I cannot say; but you did make several Invitations to me, of putting my self into the Possession of an Honour I was altogether unworthy of, of waiting upon the King. I gave you my Reasons why I thought my self unfit for that Honour, because I was not in any Capacity of doing the King any Service: And I looked upon the King as a Person too sacred, and whose Time was too precious to be trifled away upon one that had nothing to offer to him, and therefore I refused it. But notwithstanding, this was reinforced by you: and when I still persisted in the Denial of that which was an Honour I ought rather to have sought, but only because I thought my self incapable of deserving it; after several Applications, I did at last tell you, besides the Impertinency of it, I did also apprehend it might be the occasion of some Indecency; for perhaps I might thereby put my self upon declaring my self in some of my Sentiments, very much differing from those of his Majesty. And for me to seek an Opportunity to express my Contrariety to his Majesty's Thoughts, would be both Rudeness and Imprudence; and therefore I did then ultimately answer you, I would by no means be prevailed with. Then you did lower it, and said, it should suffice, if I would wait upon the Dutchess of *Portsmouth*. Truly, I told you, as to that too, you did me a great Honour, and greater than I could expect, for I had nothing (I was afraid) worthy her trouble; and therefore I desired to know what it might mean. In short, you did resolve it into this, That you did find the King under great Apprehension, that there was something deep in the Hearts of some, that stood at a Distance from his Majesty, and opposite to his Interest; and that the Parliament stood at an irreconcilable Difference with the King. Truly, said I, I am a Person not fit to speak in the Name of a Parliament, for in a little time they will speak for themselves; but if I were to speak, or should presume

presume to speak in the Name of the Parliament, or the whole Nation, I should say, I believed the King would find his Parliament meeting him with as great Affection, Duty, and Loyalty, as any Parliament ever met any King of *England*. You said, then you were confident, and you cited her Grace the Dutches of *Portsmouth* for it, that the King came to meet them with Inclinations to gratify them in any Thing they could desire. Then said I, to what End need I come there, for the Parliament will speak its own Sense speedily? Pray do me that Kindness, as to go and satisfy the Dutches of *Portsmouth*, and to let her know she may now have an Opportunity of declaring how willing she is to be a good Instrument between the King and his People. Said you, I can assure you, that she is altogether for the same Interest that you look towards; for you are very much mistaken if you think she is a Friend to the Duke of *York*. My Lord, in short, after much Intreaty, I did give myself that Honour, which I have no Cause to repent or be ashamed of, to go to *Whitehall*, humbly to kiss my Lady Dutches's Hand, and receive her Commands. But when I came there, I was surprized with a greater Honour of finding the King there, and I think it was an Opportunity, wherein my Time was not ill spent as to myself, but I am afraid this 250*l.* if it were given for the bringing me thither, his Majesty doth not think he hath deserved it at this Time.

Fitz-Harris. Your Lordship came there in *October* last.

Ld. Howard. Because I will do you all the right I can, it was, as I take it, the beginning of *October*, and about the 10th, because the Parliament sat down the 23d, and as I remember, it was a Fortnight before. This was the first Time that I owe you Thanks for the Honour of seeing the King. After that, a matter of ten Days, I had a second Opportunity, and by your Means also. This was the last Time I had the Honour to see the King, but in publick. After this, I must confess, when the Parliament was ended, I did then, willingly enough, invite myself to the Honour of waiting upon the Dutches, and give her Thanks, and tell her, I was sensible she had endeavoured, as much as in her lay, to persuade the King into a good Opinion of the Parliament, and to give them time of Setting, and thereby to give them Opportunity of explaining their Intentions for his Service and Advantage. This was also the last Time I had the Honour of seeing her. At last, parting from her, I did make it my humble Request to her, that she would be pleased to represent your Condition to the King, since by your Means I had the Honour to be shewed the Way to her Grace's Lodgings.

Fitz-Harris. My Lord, did not I come to you with a Message the Night before my Lord *Stafford* was condemned?

Lord Howard. You say right, and it was in my Thoughts, and yet I thought it too tender a Thing to speak of; and therefore I thought it so, because, I must confess, at that Time, (you must excuse me) I did believe you did not come with that Authority you pretended to make use of. After the Time that unfortunate Lord had had his Trial, and the House were preparing their Thoughts for the Sentence, I was indisposed, and came not to the House that Day, which provoked the House so much, that they were near committing me to the *Tower*; but truly, I was so ill in Body, and had so little a Mind to have my Vote

mixed with his Blood, that perhaps I should have run the Hazard of going to the *Tower* about it, if that had been all. But the Night before you came to me, and told me as a great Secret, That you did bring it as the Desire of the King, and as that which he would take as a great Instance of my Resignation to his Will and Pleasure, and that for which I might promise myself all the greatest Kindnesses possible for a Prince to shew to his Subjects, if I would go next Day and give my Vote for my Lord *Stafford*. Sir, said I, I have all the Obligations of Nature and Blood to dispose me, as much as can be, to favour my Lord *Stafford*, as far as can consist with the Integrity and Sincerity of a Judge: But though I was wavering in my own Thoughts the Day before, now by the Grace of God I will go, though I be carried on Men's Backs to the House; now I see there is so great an Account put upon it, for I see 'tis the Concerns, not only of my Lord *Stafford*, but the Protestant Cause; and then, said I, if all the Relations I have were melted down into my Lord *Stafford*, if I had but Breath enough to pronounce his Doom, he shall die.

Mr. Att. Gen. My Lord says, he did not think you came from the King, when you came with that Message.

Lord Howard. Sir, can I do any more Service? I shall be willing to do it if I can. I cannot deny, but I had by your Means, the Honour of waiting upon the King and the Dutches; but I had so little Reason to value my own Worth, that I cannot imagine how it should turn to the King's Service.

Dr. Oates. My Lord, I desire to have Liberty of going away, the Crowd is so great I cannot stand, and the Prisoner hath nothing to say to me.

Mr. Att. Gen. My Lord, that may be Part of the popish Plot, to keep *Dr. Oates* here, to kill him in the Crowd.

Fitz-Harris. Have you not something more to say, Doctor? Truly I forget, my Memory is so distracted.

Dr. Oates. I know not, if you have any Questions to ask me, I will speak Truth. (But he had none, so the Doctor went away.)

Mrs. Fitz-Harris. Call *Mr. Fanshawe*; (who did not appear.)

Fitz-Harris. My Lady Dutches of *Portsmouth*.
Mrs. Wall. She is not come, because the Court is very full; but if the Court will send for her, she will come presently.

Fitz-Harris. My Lord, I beg that my Lady Dutches of *Portsmouth* may be sent for.

Mrs. Wall. She gave me a Commission to say, if the Court would have her to come, she would so do.

L. C. J. We cannot send for her, if she please to come, so; we have no Occasion to send for her.

Mrs. Wall. I presume he can ask her no Questions but what I can answer.

L. C. J. We will not prejudice the Prisoner in his Questions, not send for her, unless she will come.

Fitz-Harris. Will you send one of your Footmen, *Mrs. Wall*? I am a Prisoner, and have no Body to send. In the mean Time, where is the Porter?

Mrs. Wall. Here he is.

Fitz-Harris. How long is it since you paid the Money to me, from my Lady *Portsmouth*?

Porter. I cannot tell indeed, 'tis so long since.

Fitz-Harris. Let him have his Oath.

L. C. J. No, that he can't have.

Fitz-Harris. Was it not *Christmas* last was *Twelve-month*?

Porter. I can't indeed tell what *Time* it was.

Fitz-Harris. You dare not speak the *Truth*.

Mr. Just. Dolben. You disparage your own *Witnesses*.

Mr. Serj. Jefferies. He hath no *Witnesses* can say any thing for him, and therefore he must find fault with what they say.

L. C. J. Have you any other *Witnesses*, *Mr. Fitz-Harris*?

Fitz-Harris. Yes, my Lord, my Lord of *Arran*.

L. C. J. What say you to my Lord?

Fitz-Harris. Did not my *Wife* shew you this *Libel* the *Sunday* that I was taken?

E. of Arran. I do not remember I ever heard it, till I heard it read in the *House*.

Fitz-Harris. Did you not read it, my Lord?

E. of Arran. No, not that I remember.

Fitz-Harris. Did not I tell you, I was carrying it to the *King*?

E. of Arran. Not that I know of.

Fitz-Harris. Was it not a *Dispute*, whether this was *Treason*, or not?

E. of Arran. You did shew me a *Libel*, but whether this, or no, I cannot say, perhaps it was this. I took him for an honest *Man*, my Lord; I have known him five *Years*, and knew his *Family* to be a good *Family*; I happened to be at *Dinner* with him the *Day* he was taken. After *Dinner* there were some *Papers* he pulled out, and I threw them away, I told you, you would do your self a mischief, some time or other, in meddling with such *Papers*. There we drank a *Bottle* or two of *Wine* together, and then we parted. As soon as I came home, I heard this *Gentleman* was seized on, and taken, which surprized me much. And this is all the *Account* I can give of the *Matter*.

Fitz-Harris. Then your *Lordship* did not read the *Paper*?

E. of Arran. No indeed not I.

Fitz-Harris. Did not I tell you, I had a *Promise* of a *Quit-Rent* for *Secret-Service*?

E. of Arran. I do not know particularly what he told me of the *Quit-Rent*; but I was willing to do him all the good I could, about a *Reversion* of a *Pension* that he had in the *Right* of his *Wife*; that was part of my *Business* that *Day*, thinking he very well deserved it. I am very sorry to see that his *Father's Son*, as the *Phrase* is in *Ireland*, should be accused of such a *Crime*.

Mr. Att. Gen. My Lord, before you go, I desire to ask you one *Question*: Did you observe ever that he was employed by the *French King*, or the *French Embassador's Confessor*?

E. of Arran. No, my Lord, never, as I heard of. He used to speak as honestly as any *Man*; I thought him of the best and loyalest *Principles* of any of his *Religion*.

Mr. Serj. Jefferies. What *Religion* did you take him to be of?

E. of Arran. He always owned himself a *Papist*, and he and I have had some *Disputes* about it.

Fitz-Harris. *Mr. Sec. Jenkins*, I desire to know of your *Honour*, what the *King* said of me?

Mr. Sec. Jenkins. I remember the *King* did conjure him, to declare who the *Author* of the *Libel* was.

Fitz-Harris. You are a *Man of Honour*, *Sir*; Did not the *King* own he had employed me?

Mr. Sec. Jenkins. I never remember the *King* did own he made use of him, by *Mrs. Wall's* means, or otherwise.

Fitz-Harris. My Lord *Conway*, don't you remember it?

E. of Conway. No, not upon my *Honour*. But I have heard him say, he did formerly employ you in some trifling *Things*.

Fitz-Harris. Did not the *King* declare in *Council*, that I had gotten *Money* of him?

E. of Conway. That was for my Lord *Howard* of *Eserick's Business*.

Mr. Serj. Jefferies. Now your *Lordship* is here, I would ask you; Did you ever hear the *King* declare when he first spoke with the *King*?

E. of Conway. The *King* never spoke with him till after he was taken; he was taken the 27th of *February*, and the *King* never spoke with him till the 28th, the *Day* after.

Fitz-Harris. Did not you tell me, if the *King* did put himself upon the *Parliament*, they would use him as his *Father* was used?

Mrs. Wall. I never told you any such thing. You promised me to bring in my Lord *Howard* of *Eserick*; but they found themselves mightily mistaken in what was promised he would do when he came in.

L. C. J. Why, *Mr. Fitz-Harris*, you cast any thing upon any body, to make a *Noise*.

Fitz-Harris. Where is *Mr. Peacock*?

Mrs. Fitz-Harris. I would know of her, what *Mr. Bulstrode* said.

L. C. J. That every body may see you are fairly dealt with, you shall have all the *Liberty* that can be given. You must not ask what another said, but call them themselves to say what they know. Here is *Mr. Bulstrode* himself.

Fitz-Harris. *Mr. Bulstrode*, then, what *Message* did you bring from the *King* to my *Wife*?

Mr. Bulstrode. No *Message* at all; but I'll tell you what I know. *Mrs. Fitz-Harris*, soon after her *Husband* came to be close confined, delivered a *Petition* to the *King* in the *Park*; and the *King* was pleased to give it to me, as he frequently does. *Mrs. Fitz-Harris* came to me, to tell her what the *King* said to it. Said I, the *King* hath given me no *Commands* at all in it, but this, Carry it to the *Secretary of State*, for I cannot say any thing to it. For the *King* generally tells me what he will have done with such a *Petition*. But she was so very importunate, I asked the *King* again; *Sir*, said I, *Mrs. Fitz-Harris* is very importunate, what is your *Majesty's Pleasure* in it? Said the *King*, If she have a mind to petition the *Council*, she may, I will neither meddle nor make with it. Afterwards I met her several times, and she said, her *Husband* was very severely and hardly used, and she was denied the *Liberty* of coming to him. Said I, I hear he is guilty of a very foul *Thing*, and there is no way to help him, but by discovering the *Author* of that villainous *Libel*. For she asked me, what I thought of her *Husband*; and she told me, she intended to try what she could do for him. I said, there was no way to do any good, but to make a full *Discovery* of the *Author*. Then, said she, if the *King* would but let me speak with him, I am sure I could do him *Service*, and prevail with him to discover the *Author*. So I told the *King* of it; and the *King* said, If she will come and be examined, with all my *Heart*. And as soon as ever I heard she was come to *Town*, I told her what the *King* said: And she told me, she would willingly come; and if the *King* would give her leave to speak with her *Husband*, she did not doubt to prevail with him. That *Night*, about *Midnight*,

Midnight, after I was in Bed, and had been in Bed two Hours, she came to my Door and knocked me up. So I rose, and put on my Night-Gown, and went down, and I heard a Voice which I thought was hers. So she came out of the Coach to me, and told me, said she, I am come to you to beg of you, that you would be secret, and not to let the Court know that I was to come to have any Conference with you; for if you do, I am undone and ruined; for there are some Persons, my Friends, that will not look upon me if they hear any such thing. The next Morning I went to her, and told her, the King had directed she should be examined in the Afternoon, and she should come down to be examined: Which she did; and as soon as the Council was up, I told his Majesty she was below. So he ordered some to examine her; but when I told her of it, said she, if the King will not speak alone with me, I will not speak a word, nor be examined. This is the Truth of it, I assure you, my Lord, upon my Salvation.

Fitz-Horris. Where is Mr. Peacock?

Mrs. Fitz-Harris. What did Mr. Bulstrode say to me?

L. C. J. Look you, Mrs. Fitz-Harris, and you Gentlewoman, you must not be heard to talk of Discourses among yourselves, and to examine what Discourse passed between Person and Person, up and down; that is not to be permitted in a Court; the Witness is here, ask him himself. What hath been said to her, will be no Evidence.

Mrs. Fitz-Harris. What Offer did you make me?

Mr. Bulstrode. None; I told you this would be the Way to ruin your Husband.

Fitz-Harris. My Lord, I beg of you, may not I ask what he did say?

L. C. J. No, 'tis no Evidence.

Fitz-Harris. Then call Mr. Henry Killigrew. (But he not appearing, the Prisoner would have asked what he had been heard to say, but it was not permitted.)

Mrs. Wall. Here is the Footman Richard Perrot.

Fitz-Harris. How long ago is it since you brought the Money to me from my Lady Portsmouth?

Perrot. I never brought any.

Fitz-Harris. Was it not he brought the Money?

Mrs. Wall. Ask him.

Fitz-Harris. Was my Lord Howard ever at your House before October last?

Perrot. I do not know.

L. C. J. What use do you make of that?

Fitz-Harris. Pray, my Lord, when did you go to my Lady Dutchess's? Was it before October last?

Ld. Howard. I think not, I take it as near as I can, it was just before the Session of Parliament.

Fitz-Harris. It was ten Days before the Session.

Then my Lady Dutchess of Portsmouth appeared, and a Chair was set for her.

Fitz-Harris. I am sorry to see your Grace come here upon any such account; but I hope your Grace will excuse me, 'tis for my Life. I desire to know of your Grace, Whether I was not employed to bring several Papers to the King, and among the rest, the Impeachment against your Grace: And thereupon your Grace was pleased to tell me, That it was a great piece of Service to bring those sort of

Papers; and if I could find out Men serviceable for that Purpose, I should do the King good Service: I told your Grace, I knew one Mr. Everard, who knew all the Intrigues, and all the Clubs in the City, and could tell all the Designs of my Lord of Shaftesbury, and all that Party. And your Grace did encourage me to go on, and I did, by your Grace's Direction, and by your Means I came to speak with the King about it.

Lady Dutchess. When must I speak?

Sir George Jefferies. Now, Madam; and will your Grace now be pleased to stand up?

Lady Dutchess. I have nothing at all to say to Mr. Fitz-Harris, nor was concerned in any Sort of Business with him. All I have to say, is, he desired me to give a Petition to the King to get his Estate in Ireland; and I did three or four Times speak to the King about it. But I have not any thing else to say to him; I never spoke to him about any thing else.

Fitz-Harris. Does not your Grace remember what Directions I received about my Lord Howard?

Lady Dutchess. I know nothing of that, I sent you not to my Lord Howard.

L. C. J. If you will ask any Questions of my Lady, do; but do not make any long Discourses.

Fitz-Harris. My Lord, my Lady may forget. Madam, does not your Grace remember you undertook, upon the account of those Papers I conveyed, that you would procure me my Quit-Rent?

Lady Dutchess. I never had any Papers.

Fitz-Harris. Not that Paper of the Impeachment against your Grace?

Lady Dutchess. No.

Fitz-Harris. Upon what Account then had I the Money I received?

Lady Dutchess. For Charity.

Fitz-Harris. I am sorry your Grace is so much under Mrs. Wall's Influence.

Lady Dutchess. I come not here to wrangle with you, Mr. Fitz-Harris; I am come here to say what I know, and will not say one Bit more.

Fitz-Harris. Have I had any Money of your Grace since you knew my Lord Howard?

Lady Dutchess. You never had, but that for Charity.

Fitz-Harris. When did your Grace ask it for me?

Lady Dutchess. I do not remember the Time. Mr. Fitz-Harris, if I had any thing in the World to do you good, I would do it; but I have it not, and so cannot see that I am any Ways more useful here. (Then her Grace went away.)

L. C. J. Mr. Fitz-Harris, have you any more Witnesses that you would have called?

Fitz-Harris. No, my Lord.

Mr. Serj. Maynard. Will you apply them you have called?

L. C. J. Well, have you any thing further to say?

Fitz-Harris. Yes, my Lord, I have something further to offer for myself: I will tell you what I know, since my Witnesses will not do me Justice. Gentlemen of the Jury, you are my Judges in point of Law as well as Fact, and my Blood will be required at your Hands, if you do not do me Right. My Lord, I cannot forbear complaining to the Court of the hard Usage I received in Prison, contrary to the Statute of the 31st of his Majesty's Reign; greater Oppression hath been done to me than to any before. My Lord Stafford, Sir Thomas Gascoign, and others, had all the

Liberty they could desire to enable them to make their Defence against their Trial ; which I have had denied me. But my Defence consists of two Heads, and I shall rely upon the Consciences of the Jury for the Issue : Though my Lady *Portsmouth*, and Mrs. *Wall*, and the rest, are pleased to say, that I was not employed, nor received Money for secret Services ; yet 'tis very well known I did so. As to Mr. *Everard*, when I met with him, though now he hath made a *French Story* ; yet if he would tell the truth, he knows that it was otherwise. He told me he was well acquainted with my Lord of *Sbastesbury* and my Lord *Howard*, and in several Clubs of the City he knew all their Intrigues ; and that Speech that went by the Name of my Lord *Sbastesbury's*, my Lord gave it him before it was printed, and he had several other Things of that Kind. So then I told him, it was a Business of the greatest Consequence that could be, if he would continue those Discoveries. And whereas he says, I would betray the People to the *French Interest*, it is very well known I was always an Enemy to the *French Interest* ; but I humoured him in his Discourse, and discoursed him to reduce the Paper that he accuses me of under some Heads ; and that Paper I no sooner had, but I came to *Whitehall* with it : And though he said, he was to have forty Guineas, and so said Sir *William Waller* too, yet it was only forty Shillings that he desired, for his Poverty, I would lend him. And as to what he talks of three thousand Crowns Pension, it is a very unlikely Business. When I came to *Whitehall*, I was advised to go to my Lord *Clarendon*, or Mr. *Hyde*. Accordingly I did shew it to a Gentleman who was to give it to my Lord *Clarendon*, but before he could get to him, I was taken. Now, my Lord, I hope what I did was with a Design to serve the King, in discovering what was designed against him, according as I was employed, though both the Secretaries are so unkind as not to declare it : When I know I am in the right, I am not ashamed to speak it, though my Life be losed upon it ; and I refer it to the Gentlemen of the Jury. I was taken before I could come to the Speech of my Lord *Clarendon*. Next, I hope, Gentlemen of the Jury, you will consider these are great Persons that I have to do with ; and where great State-matters are at the Bottom, it is hard to make them tell any thing but what is for their Advantage : And so I am left in a sad Condition. But, my Lord, in the next Place, I think 'tis impossible for any Jury to find me guilty, without prejudging of those Laws which are not to be judged by any Jury or inferior Court : For if they judge me and bring me in guilty, 'tis Murder in them ; and let the Bench tell them what they will, 'tis of that dangerous Consequence, that it overthrows the Government. My Lord, here is the Impeachment of the House of Commons, and here is a Copy of the Votes of the Commons thereupon ; and though they be not Laws, yet they are such Declarations of the Parliament, as that afterwards no other Court ought to meddle with that Matter ; and the inferior Courts do not use to meddle with Parliament-matters : And so, Gentlemen, you will lay at your own Doors what would lie at theirs, if you meddle not. For though the Court have over-ruled my Plea, yet the Matter is plain before you now who are my Judges, and my Blood will lie at your Doors, and you must answer it if you do me not Justice. And there is no Insufficiency

of a Plea as to Matter of Law will excuse you in point of Fact ; and you are obliged, as you will answer the contrary to God and your Consciences, to do me right. And I hope your Lordship and the Jury will take particular notice of this. I have been a close Prisoner, and had no manner of Help, nothing at all allowed me to refresh my Memory ; which if I had had Means to do as I ought, I could say a great deal more. But this I insist upon, if the Gentlemen of the Jury do bring me in guilty and convict me, they do shed my Blood, and overthrow the Law and Course of Parliaments. Whereas, if they bring me in not guilty, my Impeachment stands good still, and I am liable to answer that Impeachment before the Parliament : And I hope you will consider the Persons I have had to deal with ; and that it cannot be made so plain, as in Matters wherein we deal with common Persons. I submit to what you shall think fit.

L. C. J. You have done, Mr. *Fitz-Harris* ?

Fitz-Harris. My Lord, I have done ; only I would examine one Gentleman, if he were here, but he does not appear. But here's a Copy of the Impeachment and Votes of the House of Commons, I desire I may deliver them to the Jury.

L. C. J. No, no ; that can't be.

Fitz-Harris. Sir *William Waller* does declare upon Oath, that for this very thing I was impeached by the House of Commons, and that I desire them to take notice of.

Mr. Serj. *Jefferies*. Therefore you are not guilty : Is that the Consequence ?

Mr. Sol. Gen. May it please your Lordships, and you Gentlemen of the Jury, you have heard our Evidence, and what the Prisoner hath said. The Crime, for which he is accused, that is High-Treason, and 'tis Treason in conspiring the Death of the King, in endeavouring to raise a Rebellion here ; and that in order to destroy the King and the Liberty of all the People, to bring them under the Slavery of the King of *France*. This is the Treason that he was indicted for ; and the Proof of this Treason is very full : It is proved to you by three positive Witnesses, and all Men of Credit, of whom you cannot have the least Suspicion. They prove to you, that Mr. *Fitz-Harris* is the Man guilty of this Treason ; he was the Contriver of it, he was the Mover of it first to Mr. *Everard*, and he gave him those Instructions to pursue those Purposes of raising a Rebellion here, in order to destroy the King, by contriving a seditious Pamphlet to set the People together by the Ears ; and he came to him in order to perfect this Libel. This is proved by *Everard*, who upon the first Motion of it to him, did acquaint Mr. *Smith* immediately, and Sir *William Waller*, that such a Design was on Foot, and desired them to come and be Witnesses of it. They both came, and heard the Communication between the Prisoner and Mr. *Everard*, to contrive such a Libel as hath been opened to you, and they swear it positively. Now what Defence does the Prisoner make to it ? Truly I cannot say, whether it hath more of Folly or Impudence in it ; for 'tis a Defence of a strange Nature ; for it is inconsistent with itself, and shews what a Make he is of : And the latter Part is a pursuing the same Treason he stands indicted for, which is the rendering the King odious to his People, by those insinuations, that he did this by the King's Order. The first Part of his Defence is, I am not guilty, for Mr. *Everard* is the Man that

that did contrive it, and he is the Author, and it moves from him. Now pray consider the Parts of your Evidence, and see if there be any possibility for you to be induced to believe any thing like it. 'Tis proved by Mr. *Everard* positively, that he came to him first; and when you consider this Objection that is made by Mr. *Fitz Harris*, and consider on the other Side who were the Witnesses, and who is the Man that makes the Objection, you will then see no Cause in the World for you to give any Credit to it. The Prisoner says he was trepaned into it: For that, pray consider he is an *Irisb* Papist, one that hath all along made it his Business to defame the Proceedings about the popish Plot, to ridicule it, to deny that there was ever any such a Thing, and to laugh at the Justice that was executed upon the popish Offenders who died for the Plot. The Witnesses that prove it against him have been zealous Prosecutors of the Plot, Men that have discovered many of those who were guilty of it, and brought them to Justice; Men that have been material Evidences upon the Discovery. Mr. *Smith* is a Man that spoke materially in the Trial of my Lord *Stafford*, and for which Service, I believe, the Papists, and Mr. *Fitz-Harris* himself, owe him little thanks. As for Sir *William Waller*, all Men know how busy and active he hath been to bring in Men that were guilty of the Plot, and he hath suffered for it. Now if you can believe that Mr. *Smith* and Sir *William Waller* should be guilty of a Trepan that was to be put upon *Fitz-Harris*, a Man of that Persuasion you hear of, (and you must believe that, or you cannot believe the Defence the Prisoner makes) I leave it to you. Mr. *Everard* could do nothing alone; why then Sir *William Waller* must be guilty of this Contrivance, and of setting *Fitz-Harris* on work and *Everard* too. But this is so unlikely a Story, that if there were any to assert any such a Thing, you could not possibly give any credit to it. But when you consider what hath been proved, and what hath been shewed you under the Hand of *Fitz-Harris* himself, then there is no room I am sure to doubt. They do positively swear, both *Smith* and Sir *William Waller*, they heard him own that he had given Instructions to *Everard*. They prove to you that he mended this Libel in several Places, they not coming up to the Instructions he had before given. They prove Part of the Libel written with his own Hand, and that is Treason enough: For that is certainly Treason, that 'tis the undoubted Right of People to dethrone the King. I never heard of that Doctrine any where but among the Papists, and 'tis a Papist that preaches that Doctrine to you now. As this is an Evidence in a Matter beyond any Contradiction in the World, his own Hand-writing of part, and his owning the giving the Instructions; so there is no room in the World for you to believe that ever he was drawn into this by *Everard*; or that he was the Man that was the original Contriver of it, and trepanned him into it. But it appears plainly upon the Proof, that it moved originally from *Fitz-Harris*; that it was the Malice of his Heart that promoted it; and that the Contrivance was how to raise a Rebellion here. For when he had read part of the Libel, and *Everard* told him that it was Treason, why said he, I meant it so; and the more Treason, the better; the more odious you make the King to be, the more likely 'tis to raise the People into a Rebellion; and the sooner

you raise the People into a Rebellion, the more like you are to accomplish the Design of bringing the People into Slavery to the *French* King, and so at once to destroy all Liberty and Property, and all that is sacred. No body can believe but Mr. *Fitz-Harris* is guilty of this Libel and Contrivance to dethrone the King, and raise a Rebellion here, as the Witnesses have sworn. Now as you cannot possibly doubt but this moves from Mr. *Fitz-Harris*, so then consider the Inconsistency of the second Part of his Defence, and the Impudency of it too. For as before he pretended he was drawn into it by Mr. *Everard*, so now he would make you believe he did not do it out of a traiterous Design, for that he was employed about these Affairs; and this comes under the Title of secret Service: And he would fain have it that you should believe the King should hire him to raise a Rebellion against himself, to defame himself, and to incense the Minds of the People against him. And this must be the Service that he is put upon; he had no traiterous Intent in himself, but he was to trepan all the Lords that stood zealously up for the Protestant Religion and Property, and that by Direction from whom? From the King, whom *Fitz-Harris* would have all People to believe to be a Papist; and he would have People believe that he is an innocent Man, that he was only employed upon such a special piece of Service; that the King should be at great Pains to employ Mr. *Fitz-Harris* to destroy himself and the whole Nation, and to stain his whole Family: And upon what Reasons would he have you to believe it? As first, you observed how inconsistent it is with the former Part of his Defence, that he was trepan'd into it; now he did not do it from Mr. *Everard*, nor with a treasonable Intention. But certainly this is a Treason that nothing can be said to palliate or excuse, and I am sure he hath said nothing will do it. Yet all the Defence he hath made has tended that way. For though he hath not arrived to the Confidence to say such a Thing is, yet he hath insinuated, by the Method of his Proceedings, that he would fain have such a thing believed; and that the Man had no traiterous Design in it. Now what Evidence hath he produced for it? He hath produced to you Evidence that he hath had Money from the King, and hath been sometimes at the Dutches of *Portsmouth's*. That he had Money from the King is true, but it little became him to mention it; for it was Charity to relieve a Man in Necessity that was ready to starve, and was forced to go all the Ways to work he could to raise Compassion; he urged the Sufferings of his Wife's Father; you heard the Petition read as a ground for Supply; and he hath so far prevailed upon the King's Charity (which he hath abused) as to have a Sum of Money given him, and he hath had the Benefit of it: But he hath made a very ill Return for it; for the thanks he hath given to the King for this his Charity, is to fly in the Face of him, his Family, and the Government. He hath endeavoured to raise a Rebellion; and when he is brought to his Trial, he continues to defame the King, which is an Aggravation of his Treason, if possible. And now having no Proof in the World for these malicious Insinuations; and all the Witnesses that he hath called to make out what he would fain have believed, and dares not mention, (not proving any such thing) you will have little Reason, Gentlemen, to believe any thing that comes from him, especially

if you consider the Nature of the Libel itself, it is impossible this Man should ever be set on work to contrive such a thing as this, to defame the King and all his Family, to raise a Rebellion, to overthrow all Religion, Liberty, and the King himself; it is impossible to be believed. But I fear I press too much upon you, as if I did suspect there could be Men in this Kingdom so bad as to believe such a malicious Insinuation. Gentlemen, I leave it to you; you hear what our Evidence is, three Witnesses that positively swear this Treason against the Prisoner. Now as you have this positive Evidence on the one side, so you have no colour of Evidence on the contrary; and 'tis impossible for you to find him not guilty. It is to deny the Light of the Day; and 'tis a thing of that Consequence, that all Ages, when they hear of it, will say, that there is no Justice to be had, if an *English* Jury do not find a Verdict according to their Evidence: For what Security hath a Man for his Life and Estate, if twelve substantial Men of a Jury shall dare to go against plain and full Evidence: 'Tis all the Security an *Englishman* has for all he enjoys, that he is to pass through the hands of twelve honest Men of his own Country. And if it be possible for a Jury to go against Evidence so plain as this is, I say, no Man is safe in his Life or Estate.

Mr. Serj. *Jefferies*. Gentlemen, I desire to take Notice of what Mr. *Fitz-Harris* was pleased to conclude withal. He says, his Blood is to be required at your Hands, and therefore he would fain by that means insinuate you out of your Consciences. But I think if you consider the Circumstances that have been given, and all the Evidence, it will be impossible for Men that have any respect to their Credit and their Consciences, to acquit this Gentleman. In the first place, it is known, and it hath been given in Proof to induce the Probability of the Matter evidenced against the Prisoner at the Bar, that he is a known Roman Catholick; they are all Protestants, and good Protestants, and you are all Protestants too. And then the Case goes thus far further: You that are Protestants must take it upon your Oaths, that these Gentlemen have sworn false, and convict them of wilful Perjury; and if you do convict them, it must be upon the bare Allegation of a Papist: And I hope never to live to see the Day that Men that are of good Credit, and Protestants, shall by an Allegation (though never so confidently affirmed at the Bar) be presumed to be guilty of Perjury. So that I say, my Lord, besides the Baseness and Venom of this impudent Libel, which certainly no honest Man in the World will give the least Countenance to, here is Evidence enough from himself. And you cannot believe it proceeds from any Direction from the Crown, (as this Man would insinuate) and therefore he hath given us the greatest Evidence by his libelling at the Bar. And he hath not only libelled the Crown, but he hath called up some Witnesses on purpose to libel the rest of his own. And then I hope you will take Notice how he did insinuate with Mr. *Everard* at the beginning: When you were in the *French* King's Service, said he, and have been neglected ever since you left it; if you will come and join with me, without peradventure you may get Encouragement fitter than that poor and mean way that you are reduced to by embracing the Protestant Interest. He gives him a Method likewise to walk by: He thought him the Person that had writ some Pamphlet before, and therefore was fit for his Purpose, and

ought to be encouraged. And he does tell you the Words not only against the present Government, but that which every good Protestant must needs abhor and tremble at; he bids him take care to libel the whole Family. He tells him withal, you must be sure to say, that the late King, of blessed Memory, was concerned even in the *Irish* Rebellion; and that this King hath promoted those Persons that his Father had countenanced for that Action: and he tells him the Names of those Persons that were so promoted. After this is done, what does Mr. *Everard* do? he goes and makes a Discovery; he tells the Circumstances and the Persons, to whom, and when: And the Persons he made that Discovery to, do in every Circumstance agree with Time, Place, and all. The first Night this Appointment was, I hope you will remember, that when Mr. *Everard* had so placed that Gentleman, against whom there is not the least Word said or imagined to find fault with him, he takes Notice of the Instructions; owns that he had given him Instructions; and takes particular Notice of one Passage, that when Mr. *Everard* said, But there may be Danger in them, is not this Treason? the Prisoner made answer, the more Treason the better. Ay, but then this is dangerous, how shall I venture upon such Matters? Why have you not my Hand in it? I am as guilty as you, and in as much Danger. What then was the Reward? there was to be at present forty Guineas, and an annual Pension. But to whom was Mr. *Fitz-Harris* to discover this? not to the King, but to the *French* Embassador, and the Confessor was to be the Man that was to give the Reward. *Flanders* was first to be subdued, and the Parts beyond the Seas, and then *England* would be but a Morsel for them, they could take that in the way. All this was done, which is plainly sworn by a Witness that had a Place made on purpose for him to over-hear all that passed. And, my Lord, for the next Witness there is Sir *William Waller*; there is this, besides what is sworn, agreeing in Circumstance: He tells you both, to their very Money, that it was forty somewhat but he cannot say Guineas; and he tells you something of the Pension, a great many thousand Crowns: And he tells you particularly of that Circumstance of the *French* Confessor, and the *French* Embassador. Besides all this, does not Sir *William Waller* tell you this very thing, That he espy'd him with a Pen and Ink, that he gave a Note of the Libel itself, and he heard him give the Directions? and when he came into the Room, he saw the Ink fresh upon the Paper; and when he heard him give Directions for the Alteration of particular Words, he said, You have not worded it according to my Mind in such and such particular Places. But, my Lord, there is this Venom in it further to be taken Notice of, that he gave his Instructions to draw it so, as that it might best take Effect, according to his Intention: For when Mr. *Everard* thought it might do well to make it with *thou* and *thee*, as though it should be the Design of the Quakers, he said, No, by no Means; but put it in changing the Phrase, as if it was the Design of all the Protestant Dissenters, and so by that Means would draw the *Odium* upon them, and bring them in Danger as well as others. And this is confirmed too by Sir *William Waller*; so that in every Circumstance he hath shewed the Venom of his Design. But in the last Pace, which surely the Gentlemen of the Jury will not forget what Sir *William Waller* said, that *Fitz-Harris* did

say, I have taken care already to disperse abundance of Libels amongst our Party. And when *Everard* told him of a Libel that was some while before, he said he had seen that a great while ago, and there might be somewhat in it to the Purpose. And for the Answer that hath been given to it, my Lord, I think it does not bear any Sort of Relation to the Charge that is upon him; for whatsoever Discourse, or whatsoever he hath urged, is not much to his Purpose. He hath brought here a Nobleman; but after all, I would put him in mind of one Thing that Nobleman said, He did believe he came to him in the Name of one that sent him not: And so will every Body say that hath heard the Evidence; for all his Witnesses do positively deny that they ever knew of any such Matters as he speaks of. And now, my Lord, I could be very glad if this Gentleman (instead of saying as he hath said) would have come as soon as he had this Libel from *Everard*, and discovered it immediately to some Body himself before he had carried it on, as *Everard* did before the Thing was perfected. And so, Gentlemen, we do think upon this Evidence, we have left you without all manner of Excuse: It being impossible, upon such a Proof as this is, and considering the Nature and Venom of the Libel itself, the base, venomous, malicious Instigations he made use of to effect it, and the Ends for which it was done, to bring in the *French* to set us together by the Ears, to render the King odious to his People; and the Person 'tis acted by, a known *Irish* Papist; I cannot doubt of the Issue. And I do hope when I see so many honest Gentlemen and Protestants at the Bar, they will be loth to forfeit their own Souls to eternal Damnation, to save a Man that is guilty of such a Treason as this.

L. C. J. Have you done, Gentlemen?

Sir George Jefferies. Yes.

L. C. J. Then look you, Gentlemen of the Jury, here is Mr. *Fitz-Harris* indicted for Treason against the King, and 'tis for endeavouring to take away his Life, to make him odious to his Subjects, to incite them to a Rebellion, and to raise Arms here in this Kingdom against our King, our Sovereign. And by the Indictment it is said, that he hath declared these Endeavours and these Intentions, by causing a scandalous and evil Pamphlet or Libel to be written, with an Intent to be dispersed through the Kingdom. The Words of the Libel you have heard particularly read; some of them are taken out and mentioned in this Indictment. Mr. *Fitz-Harris* hath been arraigned, and hath pleaded Not Guilty; and you are to try the single Matter before you, whether Mr. *Fitz-Harris* be guilty of this Treason. That this is Treason, and contains a treasonable Matter, Gentlemen, is so plain, as no Body living can doubt it: But it is a Treason of as high a Nature as peradventure ever was in the Kingdom of *England*, and tends as much to that which would be the Destruction both of the King and Kingdom. The King's Life, all our Lives, all we have that is dear to us, or of any Advantage or Avail in the World, are concerned in this: For what does it tend to? It tends to a popular Insurrection, to raise the People up in Arms, that like a Deluge would overrun and sweep away all. It is to undo the Government and all Order in the Kingdom, and to destroy the Life and Being of all that is good amongst us. A more virulent and villainous Book certainly was never written; nor any Thing that tended more to Sedition, or to incite the People

to a Rebellion: Such a Book as peradventure no well governed Kingdom ever heard of the like. It tends to defame the King and all his Ancestors, and to blast all that shall come after him, to raise us into a Tumult. And what is all this to do? To settle the Roman Catholick Religion amongst us. And this is such a Piece of the Art of the Jesuits, which peradventure hath out-gone all they have done before. It seems to be their Hand directly, and we are all concerned as *Englishmen* to take care of such Villainies. This is the Nature of the Treason that is comprised in this Book. Whether Mr. *Fitz-Harris* was the Author, or Director, or Contriver of this Book, is the Question before you. (For plainly, without any Suppose, the Book contains in it as high Treason as ever was.) And as to that, Gentlemen, you must consider that this appears evidently to be a Design of the Roman Catholick Party; 'tis a jesuitical Design: For this is that they aim at, to confound all Things, that they may fish in troubled Waters. And you see they have found out an apt Instrument, an *Irish* Papist, one that hath been all-along continually concerned with them, and intermeddled in several of these Plots and Papers. Gentlemen, the Evidence that is given here against him is by three Persons, and there is great Evidence from the Matter that is produced, besides those Persons. There is Mr. *Everard* does declare to you the whole of this, and Mr. *Fitz-Harris's* Application to him to write this Book. He tells you the Intention of it, and he gives you the very Grounds upon which this was to be written; that is, to raise Sedition, that was the first Instruction; to raise a Sedition in the Kingdom, and this was to busy us at home, that the *French* King might get *Flanders* and the *Low-Countries*, while we are confounded at home: And then the Catholicks have their Game to play, and carry all before them. Look you, Gentlemen, Mr. *Everard* is so cautious, that he walks, not alone in the Case, but with a great deal of Prudence declares it to others, that they may be Witnesses in the Case for him. Mr. *Smith* does agree in all Things for the first Night that Mr. *Everard* hath declared, how that he heard the Directions owned as given by Mr. *Fitz-Harris*, for the writing this Book, and he heard the Design of it, he heard there was a Reward promised to him for the doing of it, and he tells you some of the Instructions. The next Night *Sir William Waller* was present; and he tells you all the Instructions of that Night, and that *Fitz-Harris* owned them, that he gave those Instructions in the private Consult. But that that is not to be answered, Gentlemen, is his own Instructions in Writing; what can be said to that? If you were doubtful of the Credit of these Gentlemen, yet Mr. *Fitz-Harris's* own Instructions in Writing under his Hand, are an Evidence beyond all Controul in the World that he gave those Directions; and these are Treason, that is plain. And therefore it does seem to be as strong an Evidence against Mr. *Fitz-Harris* of this Treason, as peradventure ever was given against a Traitor. There is not any one Witness that stands single, but there are two to each Night; and his own Instructions written by himself do not stand upon the Evidence of a single Witness, for he owned it in the Presence of three Witnesses: So then a stronger Evidence cannot be given that he was the Author and Director of this Book.

Then,

Then, Gentlemen, you must consider what he says for himself in Excuse of this horrid Treason that these Witnesses seem so fully to fix upon him. The first Witness he brings is Dr. Oates; and he does tell you, that having some Discourse with *Everard*, *Everard* should say, this was a Design of the Court, and was to be put into some Lords, and I think, into some Parliament-Men's Pockets; and then they were to be apprehended. I think this is Dr. Oates's Testimony. Mr. *Everard* is here upon his Oath, and he testifies no such thing in the World: 'Tis easy for one to come and say, I heard a Man say so; perhaps he said it by way of Conjecture; but that is no Answer to direct Proof. Mr. Sheriff *Cornish* is the next Witness, and he says, he had some Discourse with the King, and the King should say, he thought Mr. *Fitz-Harris* had been an honest Man, and had given him some Money.

Mr. Sh. *Cornish*. No, my Lord, the King said, he took him to be an ill Man.

L. C. J. Then it seems I was mistaken; his Majesty did not tell him he took *Fitz-Harris* to be an honest Man, but an ill Man. But that he had formerly some Money of the King, upon Pretence, of doing him some Service; now that brings it out what the King's Meaning was: For it seems there had been begged some Money for him, and the King, at my Lady *Portsmouth's* Desire, by way of Charity, gave him some little matter of Money; he boasting and telling the King he could do him some Service. You see what manner of Service it is he would have done for him and the Kingdom. Then as to the rest of his Evidence, there is Mrs. *Wall*, and my Lady *Dutchess of Portsmouth*; and he hath examined them concerning the Money he hath received, and they both declare upon what ground that Money was given: It was given, they tell you, for a Gratuity from the King to him; and upon his boasting, says Mrs. *Wall*, that he could do the King Service, and bring over Persons to his Interest. I think there is no other Witness very material: For as for Mr. *Bullstrode's* Evidence, it signifies nothing at all; it is not material for him or against him in the Case: A Discourse about delivering a Petition to the King from his Wife. Now, Gentlemen, you must consider what ill Use this Gentleman designs to make of the King's Charity and Favour to him; he gave him some Money to relieve his Wants, and now would he interpret this, and insinuate this to be given for ill Purposes, for to make him trepan his Subjects: Which is another piece of Virulency that these Papists always exercise against the King; they always make an ill Use of his best Actions, and an ill Interpretation of them. For, Gentlemen, can it be believed, that the King would ever design such a thing as this is, to blacken his Family for ever, to stir up all his Subjects against him, to endanger his Crown and Kingdom, and all that he has in the World? And all this to what Purpose? No colourable Design can be made of it. This is such a Thing, to excuse such a Villainy, as never was heard of, by wresting the King's Charity and Generosity to such ill Purposes; but that some Men have the Confidence to do any Thing. I must leave it to you. Here are three witness his own Hand to these Instructions, and his making a Declaration that it was not treasonable enough, nor virulent enough. All these things are strong Evidences in the Case. And if you believe these Witnesses and his own Hand-writing, 'tis a plain Case, you must find him Guilty.

Fitz-Harris. May I have Liberty to speak one Word?

L. C. J. Gentlemen, I had forgot one Thing. For fear it make an Impression in you, because I see he hath inculcated it often and often, and that is, the Impeachment that was by the Commons House of Treason against Mr. *Fitz-Harris* in the Lord's House: I must tell you, Gentlemen, that is not before you at all; the Matter of that was by way of Abatement pleaded to the Jurisdiction of this Court, and that is now over. You must have no Consideration, nor can have any Consideration of that now. Your Question is not whether we have Authority to try this Cause; but you are impannell'd and sworn to one Point, and that is, whether *Fitz-Harris* be guilty of this Treason or not. Whether the Court have Authority to do it, is another Question proper for our Determination, and we have determined it; but there is nothing of that lies before you in this Case. Therefore you must not be misled with any thing that he talks so fondly of concerning the Impeachment, or concerning his Blood lying at your Doors, that surely will signify nothing to Men of Understanding at all.

Mr. *Johnson*. My Lord, 'tis our Unhappiness to come before you under these Circumstances. We have understood there is a Vote of the Commons of *England* in Parliament, that says this Man shall not be tried in an inferior Court; now we take ourselves to be the Judges of this Man in part under your Lordship's Directions.

Mr. Serj. *Maynard*. You are not Judges of it, you are only to try the Fact.

Mr. *Johnson*. I only offer my Sense, and if the other Gentlemen think otherwise, they will speak it. I think the Office of a Juror is such, that it is within his Power to acquit or condemn, according to the Evidence, as it lies within his own Conscience. Now if we should acquit this Man (we have no Assurance we shall acquit him, only suppose it) then there is nothing against him but what lies in a Parliamentary way, and we shall forejudge their Cause. Therefore, I say, I do not know how far by Law we are compellable to give a Verdict in this Case upon him.

L. C. J. Look you, Gentlemen, we would consult your Satisfaction as much as we can in all Things; and 'tis reasonable that if you have any Doubts you should propose them to us, and to that Purpose we are to give you Satisfaction, and will in all Things. I must tell you, as to the Jurisdiction of the Court, that is not at all before you; and as to the Vote of the House of Commons, alledged by him, if any such there be, that cannot alter the Laws of the Land, nor justify any of us in departing from our Duties, no more than if a Letter or Mandate should be gained from the Prince or Chief Magistrate of this Kingdom, to any of us in Derogation of Justice (as it's possible by Surprize to be) we are to take Notice of the one, no more than the other. We are upon our Oaths to do Justice according to the Law of the Land: You likewise are upon your Oaths, and sworn to do Justice in your Sphere; and your Oath is, that you shall enquire truly whether he be guilty or not; and if he be guilty in your Judgments, you can no more spare him, than you can condemn an innocent Person. It never was pretended by any Man, nor will it be asserted by any Man that understands himself or the Constitution of the Government of this Kingdom, that a Vote of the House of Commons

mons can change the Law of the Land. It cannot excuse us, if we deny to try a Man that is brought before us; nor will it excuse you, being under an Oath, justly to try him. If you should (because the Commons House have voted that he shall not be tried) declare that Man innocent, who in your own Judgment you believe to be nocent; you nor we are not to consider what will be the Consequence of this, if this Man be acquitted or condemned; that is not before us. You and we too are tied precisely to the Laws of the Land, and by that Law must this Man be judged. As to our Parts, we must do it as to the Law, and you as to the Fact. But I'll tell you further, Gentlemen, this Doubt was moved to us by the Grand Jury, before the Bill was found; we had an Intimation, that they would move such a Doubt to us as seems to be your Doubt now. Therefore for their Satisfaction, and the taking away any Scruple that might be in the Case, all the Judges of *England* did meet together, and seriously debate the Matter and Substance of all this; and it was not our Opinion of this Court only, but the Opinion of all the Judges of *England*, That we had a Jurisdiction to try this Man. This we have told you, because we would satisfy all Men to go on fairly in the Things that are before them. Therefore, that being put out of the Case, you must consider of your Verdict, and give it in upon this Trial.

Mr. *Johnson*. We do not doubt, my Lord, but your Opinion in this Case will indemnify us from any future Charge by the Commons of *England*. But it lies before us to consider what we are bound to do in the Case.

Mr. Just. *Jones*. Gentlemen, I suppose you do not doubt but we are all of the same Opinion. It is no marvel indeed to hear a Man that stands in *Fitz-Harris's* place, to object any thing that may cast a Mist before your Eyes. And yet it cannot but be wondered at too, that when three Protestant Witnesses have sworn precisely, he should have the Confidence to urge any thing of this Nature. He who appears by the Indictment it self, and the Proofs made upon the Indictment, to have endeavoured to destroy all the Laws of *England*, all *Magna Charta*, all our Liberty and our Religion, and to inflave us to the King of *France*: For that appears plainly the Design, if you have any Credit to the Witnesses that are produced: He that would have pulled down all that is Sacred amongst us, is so zealous for the Authority of the House of Commons. We have all of us a great Reverence for the House of Commons, and for their Opinions; but as my Lord hath told you, so I tell you my Opinion, That a Vote of the House of Commons does not in the least sort alter the Law: For indeed if it did, it were to give a Legislative Power to the Commons, which does only belong to the King, the House of Lords, and the Commons together. And, Gentlemen, though Mr. *Fitz-Harris* says, if he be acquitted here by you, yet he should remain to be questioned again in Parliament; there is no Man in the World can doubt, if he were acquitted here, and were questioned in Parliament, but he would say, he hath been upon his legal Trial by his Peers, and that he hath been acquitted by his Peers upon solemn Evidence. But, Gentlemen, you are to consider what is your business: Your Office is to be Jurors, not to be Judges; you are not to take upon you any such Authority. Your Commission is your Oath, and by that Oath you are sworn to inquire whether the Prisoner be guilty, as he is indicted,

or not: If you, as *Englishmen*, can say, he is not guilty, let it lie upon your Consciences, and the Danger of the King's Blood and Life be upon you.

Mr. Just. *Dolben*. Gentlemen, I desire to speak one Word to you, to let you know, I am of the same Opinion with my Lord, and with my Brother; and I cannot but wonder at you for making this Scruple: For if there were any thing in what you have said, it concerns us that are Judges, and not you at all; for 'tis a matter of Jurisdiction: and whether we have a Jurisdiction or not, we must satisfy our selves that we have a Commission to do it; it concerns not you. Do you but consider the Oath you have taken, That you will well and truly try, and true Deliverance make betwixt our Sovereign Lord the King, and the Prisoner at the Bar, according to your Evidence: And you have sworn a true Verdict to give upon it, and do you now scruple whether you should give any Verdict or no, when but even now you have sworn you will give a Verdict? If any such thing as this had been in your Heads (for it might be then in your Heads, as well as now) why did not you speak of it before you took your Oath? You now lie under the Obligation of an Oath to give a Verdict according to your Evidence, and would you acquit him against such an Evidence as hath been given? For, besides what Sir *William Waller*, *Smith*, and *Everard* have deposed, the very Note sworn by Sir *Philip Lloyd* and Mr. *Bridgman*, to be owned by *Fitz-Harris* as his Hand, contains Treason enough in it, if there were no more: Therefore there must be something more in it, than for the sake of such an unreasonable Scruple.

Mr. Just. *Raymond*. I am of the same Opinion, truly.

Mr. *Johnson*. My Lord, I took the Liberty to speak it now; I could not speak it before: For I was not then to enquire what I was to be sworn to, nor could I know what would be the Matter that would come before us, till we were sworn. Therefore I humbly beg your Pardon, that I made the Motion.

L. C. J. We are not at all troubled at any thing you have said; do not mistake us, we do not take it ill from you, that you acquaint us with your Scruples: We are ready to give all Satisfaction we can, to any that are concerned before us; therefore we are no way troubled that you made any such Scruple, but have given you a fair Answer to it.

Mr. *Johnson*. My Lord, I desire a Note of the Names of the Jury.

L. C. J. Give it him, Mr. *Astrey*, or else the Croud is so great he may not know them.

[Then the Jury withdrew for half an Hour, and at their return being called over and appearing, the Clerk took the Verdict.]

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand: (Which he did.) Look upon the Prisoner; how say you, is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Foreman. Guilty, &c.

L. C. J. I think you have found a very good Verdict, and upon very full and strong Evidence.

Mr. Sol. Gen. Will your Lordship please to give Judgment?

L. C. J. We will take Time for that.

Mr. Sol. Gen. Will you give a Rule to have him brought up to-morrow?

L. C. J. Move us another Day for it.

Fitz-Harris. My Lord, I hope I may have the Liberty of my Wife, and some Friends now to come to me.

L. C. J. Any Friend I think may come to you: But, Mr. *Fitz-Harris*, you must be modest in the using that Liberty we give you. You have heretofore abused your Liberty; I do not love to exasperate Things to one in your Circumstances, but you must be prudent and careful, knowing your own Condition, that you do nothing prejudicial to the King or Kingdom.

Upon Wednesday June 15, 1681, Edward Fitz-Harris was brought to the Bar of the Court of King's-Bench, to receive his Sentence.

Mr. Att. Gen. My Lord, I humbly pray your Judgment against Mr. *Fitz-Harris*, who is convicted of High-Treason.

Silence proclaimed during Judgment.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand. Thou hast been indicted and arraigned of High-Treason, and hast thereunto pleaded, Not Guilty, and for thy Trial put they self upon God and thy Country, and thy Country have found thee Guilty: What canst thou say for thyself, why Judgment of Death should not be given against thee, and Execution awarded according to Law?

Fitz-Harris. My Lord, I think it will be prejudicial to the King's Service, that Sentence should pass before I have made an end of the Evidence I have given in against my Lord *Howard*.

L. C. J. Mr. *Fitz-Harris*, we can take no Notice of any thing of that Nature. When you are asked, what you can say why Judgment should not pass against you, it is, what legal Matter you have, what Matter in Law, to excuse yourself from that Judgment? For this is nothing, the saying you are to give Evidence; we know nothing of that, it will not delay Judgment a Minute. And for what you say, it will be prejudicial to the King's Service, it is the King that prays Judgment against you by his Attorney.

Fitz-Harris. I beg the King's Mercy for Transportation, my Lord.

L. C. J. We can do nothing in that.

Fitz-Harris. Nor to give me Time before my Execution? I can say no more, my Lord.

L. C. J. Look you, Mr. *Fitz-Harris*, you have been here indicted for a very great and heinous Treason, a Treason that is in truth of the first Magnitude; for it is a Treason that tends to the rooting up the whole Government of this Kingdom, and the destroying of us all; plainly, both of the King and of all his Subjects. It does not only destroy the Peace and Quiet, but it tends in truth to the utter Destruction of the whole Kingdom, and to bring us into a Confusion and Disorder, never to be avoided or retrieved, if your Designs should have taken effect. You have been here arraigned, and put yourself upon the Country, and they have found you guilty of this Treason: It is a thing you should well consider; for certainly, you have contracted to your self a mighty Guilt in such a thing as this is. You have endeavoured the Destruction of the King, and in such a way, as must have in truth destroyed all his good Subjects together with him. Your Design hath been to excite the People to a Rebellion, and a popular Insurrection, that would have swept away all like a Deluge, if it had taken Effect. In truth, it is a Treason against all Mankind, the stirring up of the People is; it is of evil Example to all Mankind, the stirring up of the People against their natural Lord, to whom we owe all Allegiance and Obedience. But your Design in this way was by setting the People of *England* together by the Ears, to bring in the Roman Catholick Re-

ligion upon such as should be left. It seems you are an *Irish* Papist, and sucked in very ill Principles where you have lived; and you have here endeavoured to do as much Mischief in this Kingdom, by that treasonable Book, as lies in any one Man's Power perhaps to do. It is a Mercy and a Happiness, that it hath pleased God in his Providence to deliver us out of your Hands; for this was your Design, if you could have brought it about: But it hath pleased God now to bring you to Justice for it, and the Judgment of the Law must pass upon you. Now that Judgment is this: *You must return to the Tower, from whence you came, and from thence you must be drawn through the Streets of the City of London to Tyburn; there you shall be hang'd by the Neck, but cut down before you are dead; your Bowels shall be taken out and burnt before your Face, your Head cut off, and your Body divided into four Quarters, to be disposed as shall please the King; and I pray God to have Mercy upon your Soul, to give you a Sight of your Sin, and Repentance for it.*

Fitz-Harris. My Lord, I hope I may have the Liberty of my Wife to come to me, and any Friend.

L. C. J. You have that Liberty already.

Fitz-Harris. No, not without the Presence of a Warder.

L. C. J. We will not restrain them as to that, let them come to you.

Officer. There is no Rule of Court for it, my Lord.

L. C. J. We will not restrain any thing of your Wife's coming, there is no Rule to restrain her; but let him have that Liberty that other Prisoners in his Condition usually have had in the *Tower*, his Wife to come to him, or any other Friend or Protestant Minister whatsoever.

Officer. Pray let it be put into the Rule of Court, my Lord.

L. C. J. We make no Rule, there does not need any. Look you, Mr. *Fitz-Harris*, we lay no Restraint upon your Wife, or any other Friend; but if your Wife be in another Condition, that she can't come to you, we can't meddle with that.

Mr. Just. Jones. We are not to deliver her out of Prison.

L. C. J. No, we make no Rule, but take off the Hands of the Court from restraining any one to come to you.

Then the Prisoner was taken away, and in Pursuance of this Sentence, the last Day of the said *Trinity-Term*, being the 22d of *June*, 1681. a Writ issued out of the Court of *King's-Bench* directed to the Lieutenant of the *Tower of London*, reciting the Judgment, and commanding him to deliver the Prisoner to the Sheriff of *Middlesex*, upon Friday the first Day of *July* next following to be executed according to the Sentence. Which Writ followeth in these Words.

CAROLUS Secundus Dei gratia Angl. Scot. Franc. & Hibern. Rex, fidei defensor, &c. Loc. tenen. Turris nostræ London. salutem. Cum nos in Cur. nostra coram nobis consideraverimus quod Edwardus Fitz-Harris nuper de Parochia S. Martini in Campis in Com. Midd. Gen. pro quibusdam altis proditionibus unde ipse coram nobis indidat. est, & superinde per quandam Juratam Patriæ inde inter nos & presat. Edwardum capt. convict. & attinet. ex-

istit, ac Turr. nostra London. per medium Civitatis nostræ London. præd. usq; ad Furcas de Tyborne trabatur, & super Furcas illas ibidem suspendatur, & vivens ad terram prosternatur, ac Interiora sua extra ventrem suum capiuntur, ipsoque vivente comburentur; Et quod Caput ejus amputetur, quodq; Corpus ejus in quatuor partes dividatur, & quod Caput & Quarter. ill. ponantur ubi nos ea assignare voluerimus: Ideo tibi præcipimus firmit. injungend. quod die Veneris primo die Julii prox. futur. apud Tower-Hill cum Vic. Midd. convenias, & præd. Edwardum Fitz-Harris eidem Vic. Midd. deliberari facias, ut idem Vic. executionem de eo in forma præd. fieri faciat, prout inde nobis respondere volueris. Teste Francisco Pemberton apud Westm. xxij^o die Junii, Anno Regni nostri xxxij^o.

Per. Cur. ASTRY.

And another Writ at the same time was issued out of the same Court, directed to the Sheriff of Middlesex, to receive the Prisoner from the Lieutenant of the Tower at the Time appointed, and to execute him according to the Sentence. Which Writ was in these Words.

CAROLUS Secundus Dei gratia Angl. Scot. Franc. & Hibern. Rex, fidei Defensor, &c. Vic. Midd. salutem. Cum nos in Cur. nostra coram nobis consideraverimus quod Edwardus Fitz-Harris nuper de Parochia S. Martini in Campis in Com. Midd. Gen. pro quibusdam altis proditiõibus unde ipse coram nobis indictat. est, & superinde per quandam Jur. Patriæ inde inter nos & præfat. Edwardum capt. convict. & attinct. existit, de Turr. nostra London. per medium Civitatis nostræ London. præd. usq; ad Furcas de Tyborne trabatur, & super Furcas illas ibidem suspendatur, & vivens ad terram prosternatur, ac Interiora sua extra ventrem suum capiuntur, ipsoque vivente comburentur; Et quod Caput ejus amputetur, quodq; Corpus ejus in quatuor partes dividatur & Quarter. ill. ponantur ubi nos ea assignare voluerimus: Ideo tibi præcipimus firmiter injungen. quod cum Loc. tenen. Turr. nostræ London. præd. die Veneris primo die Julii prox. futur. apud Tower-Hill convenias, & ipsum Edwardum Fitz-Harris de præfat. Loc. tenen. recipias, & Executionem de eo in forma præd. facias prout decet. Teste Francisco Pemberton apud Westm. xxij^o die Junii Anno Regni nostri xxxij^o.

Per Cur. ASTRY.

Upon the Day appointed, viz. July 1. Edward Fitz-Harris was, near the Tower-Gate, on Tower-Hill, delivered into the Custody of the Sheriffs of London and Middlesex, viz. Slingsby Bethel and Henry Cornisb, Esquires; who upon the Place signed a Discharge for him to the Lieutenant of the Tower. Then he was put on a Sledge, and thence conveyed through the City of London to Newgate, where he overtook Oliver Plunket, who was just before on another Sledge, passing to the same place of Execution.

Where being come (soon after Plunket's private Prayers, &c.) Fitz-Harris asked Capt. Richardson, Whether the Sheriffs had a Warrant for the Disposal of his Body? Capt. Richardson answered,

Yes. Then he desired Dr. Hawkins's Assistance, which the Sheriffs readily granted, and called for him to go to him on the Sledge; which the Doctor did, and on his Knees embraced him, and continued a private Discourse with him for some Time.

Sheriff Bethel asked Mr. Fitz-Harris, What have you to say?

Mr. Fitz-Harris answered, the Doctor of the Tower would answer for him, he having left his Mind with him.

Mr. Sheriff Bethel. You will do well to discharge your Conscience.

Fitz-Harris. I have left it all with the Doctor in Writing under my Hand, who will communicate it, with Witnesses, to the World.

Doctor Martin, of Woodstreet, being at the same Time in the Presence of the Sheriffs, desired Mr. Fitz-Harris to declare, whether he died a Protestant or a Papist. He answered, Having left his Mind fully with Dr. Hawkins, he hoped it might be satisfactory. The Doctor replied, it would be more satisfactory to declare himself there, and that it was no Shame to die a Protestant. To which Mr. Fitz-Harris replied as before.

Then Mr. Fitz-Harris said, Good People, this infamous kind of Death is much more irksome to me than Death itself: Such Judgments as these my Sins against God may justly bring upon me, and I do most humbly submit unto it. But as to the Crimes which I now die for, I take God to witness, I was no further concerned in the Libel, than to discover to the King what Practices of that kind were against him, being employed to that end; tho' those that employed me, refused to do me Justice at my Trial. And I call God to witness, I never had a Farthing of Money of the King in my Life, but on the Account of the like Service. And as to the Witnesses that have sworn against me, I do here solemnly declare now at my Death, that I have not seen the French Ambassador since the beginning of the breaking out of the Plot, neither have I had any Acquaintance with him. And as to his Confessor, I never spoke with him in my Life; neither have I had any Dealing, either directly, or indirectly, in my Life with them, though Sir William Waller and the rest swore most falsely to the contrary. And how like is it that the French Ambassador would give three thousand Crowns for writing that Libel, I leave the World to judge. What I may further declare, I have left with Dr. Hawkins. I forgive all the World, and do hope that God will forgive me. I beg the Prayers of all good People for a happy Passage into the other World.

Mr. Fitz-Harris desired to know of the Sheriffs, whether his Body might not be at the Disposal of his Wife, without quartering. Upon which the Sheriff read him the Warrant.

Soon after which he was executed.

The Paper * refer'd to was as follows.

I Edward Fitz-Harris, having been indicted of High-Treason, for endeavouring to dethrone the KING, was thereupon found Guilty, and Sentence of Death passed on me. I the afore-

* This Paper contains many notorious Falsties, which were impossible to be true; and carries along with it gross Marks of Artifice and Contrivance practised on him, while he was entirely under the Management of Dr. Hawkins, Minister of the Tower, who soon after was made Dean of Chichester. Fitz-Harris's Wife was not then admitted to him; but he wrote several Letters to her, one the very Morning on which he suffered, informing her, how he was practised on with Hopes of Life, if he would accuse the Earl of Shaftesbury and Lord Howard of the Libel: He declared, that they were innocent, and that what he had deposed against the Papists was true; he charged her by no means to be prevailed on to swear falsely against any. These Letters had such a Tendency to destroy the Credit of Hawkins's Paper, that the Court got her to deliver them, upon the Promise of a Pension.

said *Edward Fitz-Harris* do voluntarily and freely, without any Hopes to save my Life, but a dying Man, and to discharge my Conscience towards God, and for the better Satisfaction of the World, make this Declaration following, in the Presence of God, and unto Doctor *Francis Hawkins*, Chaplain of the *Tower of London*.

I do profess and declare my Religion in the general to be that which hath been truly and anciently delivered in the first four general Councils; and in particular, my Belief is that true Faith of a Christian, briefly contained in those three Creeds, commonly called *The Apostle's Creed*, *St. Athanasius's*, and *The Nicene Creeds*: And I die a Member, and in the Communion of Christ's Holy Catholick Church, hoping for Mercy, through the alone Merits of the Passion of our Lord and Saviour *Jesus Christ*.

I do also confess and declare, as to the Crimes which I die for, I was no further concerned in the Libel, than as employed to give the King Notice of what Libels, or other Accusations, there were against him; and to this Intent, and no other, I endeavoured to get this Libel: Which at length I did from Mr. *Everard*, all written under his own Hand, and carried it to Mrs. *Wall*, by whose Means I conveyed all Matters of this, or the like Nature, to the King. I told her I had a Business of great Consequence to acquaint the King with: But she answered me, That my Lord *Sunderland* being out, there would be no Money had for secret Service, and advised me to go to the Lord *Clarendon* or *Hyde*: But before I could do this, I was taken. As for that Part of the Libel which I left with *Everard*, as a Pledge, to assure him I would not betray him, I received it of the Lord *Howard*: And the Money I received from the King, was for bringing a Libel called, *The King unveiled, and the Lady Portsmouth's Articles*. I call God to witness, I never had a Farthing Charity from the King.

I do further confess and declare, that the Lord *Howard* told me of a Design to seize upon the King's Person, and to carry him into the City, and there detain him till he had condescended to their Desires. *Heyns* and myself were privy to this Design, and had several Meetings with the Lord *Howard*; and as an Encouragement, the Lord *Howard* assured us of breaking the Settlement of *Ireland*, taking off the additional Revenue of the Bishops, Forty-nine Men, and Grantees, whose Estates were to be shared amongst the Party.

I do confess and declare, That while I was in *Newgate*, the Sheriffs, *Bethel* and *Cornish*, came to me, with a Token from the Lord *Howard*, which I knew to be true, and brought Heads with them from *Everard*, wherein he accused me of being a Court-Emissary, or Yorkist, put on by the King to put the Libel into Protestant Houses to trepan them. But I declare upon my Death I had no such Intent, nor do I know any such thing. The Sheriffs likewise told me, I was to be tried within three or four Days, that the People would prosecute me, and the Parliament would impeach me, and that nothing would save my Life but discovering the Popish Plot; and then the Sheriffs aforesaid gave me great Encouragement from my Lord *Howard*, that if I would declare that I believed so much of the Plot as amounted to the introducing the *R. C.* or if I could find out any that could criminate the Queen, *R. H.* or make so much as a plausible Story to confirm the Plot, that the Parliament would restore me to my Father's Estate,

with the Profits thereof, since his Majesty's Restoration. I finding myself in the Condition I was, in *Newgate*, fettered, moneyless and friendless, my Wife ready to lie-in, without any Subsistence, my Children in a miserable Condition, and must needs be in a worse by my Death, and I could see no other Refuge for Life, but complying with them; so, not with ambitious Intent, but to save my Life, I did comply. The Sheriffs brought Instructions, which they said came from the Lords and Commons, who met that Day in order to address the King in my Behalf (if I should confirm the Instructions) and they made use of my Lord *Shaftesbury's* Name, and others, what Advantage I might have thereby. At the first I made a formal Story concerning the Plot, which was not prejudicial to any body, but most relating to general Heads known publickly; upon which Mr. *Cornish* told me, These were things cried about the Streets two Years ago: I replied, I could say no more. Mr. *Sheriff* said, He was sorry for me with all his Heart, but thought I could say more if I would, and pressed me hard to speak to several Heads; unto which, unless I spoke, he said, there was no Hope of Life; the Heads I was to speak to, is what the Examination taken by Sir *Robert Clayton* and Sir *George Treby* contains, and a great deal more that I did not say then, relating to the Queen, *R. H.* Earl of *Danby*, declaring *French* Pensioners, Lord *Hallifax*, *Hyde*, *Clarendon*, *Feversham*, *Seymer*, and others; the burning the Fleet, Forts and Governments in Popish Hands, Meal-Tub Plot, Prentices Plot, the Contrivance of the Libel on the Lady *Portsmouth*, being a *French* Design to destroy Protestants. These and many other Heads were brought to me by the Sheriffs.

I do further confess and declare, that Sir *Robert Clayton*, and Sir *George Treby*, coming to me to examine me, Sir *Robert Clayton* asked me what I could say concerning *Godfrey's* Murder? I answered, Something. He replied, It may be I was in a Confusion; recollect your self. And what I said concerning Father *Patrick*, was forced out of me, and what I said concerning him is not true. Sir *George Treby* was with me three Hours, or thereabouts, and pressed me to say something concerning *Godfrey's* Death: And said, Unless I could speak to that Murder, I could say nothing; whereupon I said something I had from others. He asked me if I could say no more? I replied, is not this enough to save my Life? Am not I Rogue enough? The Recorder hereupon swore, 'Zounds, what were you ever but a Rogue? Then the Recorder entered upon the Heads of the Examination; which being done, he told me, All this would not save my Life, unless I would speak to the Libel, which was a Court Trick; and it was not for nothing that I had been so often seen at the Lady *Portsmouth's*. The Lord *Shaftesbury* said, You know more of these Matters than any Man. Sir *George* would have me speak to the Consult; that the Duke was at it, the Lords *Bellasis*, *Arundel*, and *Powis*, were at it; you have seen them go to it at *St. James's*, without doubt they were there; do you but say it, we have those that will swear it.

I do further declare and confess, That what I said against the Queen and the Duke, I was put upon, in the Matter of Sir *Edmundbury Godfrey's* Murder; and do further declare, That what I swore against the Earl of *Danby*; the threatening Words that were uttered, I did (to the best of my Remembrance) hear, but whom they concerned I could

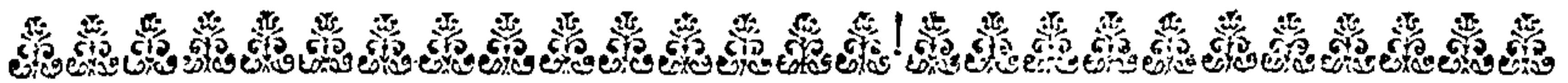
could not well know, by what my Lord himself said. And what *de Puis* told me concerning my Lord of *Danby*, I do believe was spoken out of ill Will; and what I said against him was to stave off my Trial till a Parliament; and they were the more desirous to accuse the Lord *Danby* of *Godfrey's* Murder, because the Crime of Murder is not inserted in his Pardon. I am sorry for what I have said against the Queen, his Royal Highness, and the Earl of *Danby*; I desire God to forgive me the Wrong I did them, and do heartily beg their Pardon.

I do further declare and protest, That this Confession and Declaration of mine I own sincerely, as a dying Man, and not to save my Life; and I call God and his Angels to Witness the Truth of it; and I renounce Mercy at the Hands of God Almighty, if this be not true.

And I do further declare and protest, as a dying Man, unto *James Walmesly*, *Edward Pattel*, and *Mary Walmesly*, That I have made this Confession and Declaration unto Dr. *Hawkins* freely, and of my own voluntary Accord, without any Manner of Promise made, or Hopes given me by him from the King of saving my Life by this Confession, I having given him to understand beforehand they were Matters of Consequence, and such as chiefly concerned the Good of the King and Kingdom.

I give the Doctor my hearty Thanks for all his Prayers, Counsel, and charitable Offices he hath done me, and I pray God to bless him for ever for it. I forgive all the World, and desire all the World to forgive me; and the Lord have Mercy on my Soul.

Edward Fitz-Harris.



CIII. *The Trial of Dr. OLIVER PLUNKET* *, *Titular Primate of Ireland, at the King's-Bench for High-Treason, June 8, 1681. Trin. 33. Car. II.*

THE third of May, 1681, in *Easter*, 33 *Car. Secund. Reg.* Dr. *Oliver Plunket* was arraigned at the *King's-Bench* Bar for High-Treason, for endeavouring and compassing the King's Death, and to levy War in *Ireland*, and to alter the true Religion there, and to introduce a foreign Power: And at his Arraignment, before his Plea he urged for himself, that he was indicted of the same High-Treason in *Ireland* and arraigned, and at the Day for his Trial, the Witnesses against him did not appear; and therefore he desired to know if he could be tried here for the same Fact. The Court told him, that by a Statute made in this Kingdom, he might be tried in the Court of *King's-Bench*, or by Commission of *Oyer and Terminer* in any Part of *England*, for Facts arising in *Ireland*; and that this Arraignment there (he being never tried upon it) was not sufficient to exempt him from being tried here; because till a Trial be passed, and there be a Conviction or Acquittal thereupon, an Arraignment, barely, is no Plea: For in such Cases the Party is put twice in danger of his Life, which only is the Thing the Law in such Cases looks after to prevent. He then desired Time for his Witnesses, which they told him he could not do till after Plea pleaded; whereupon he pleaded Not Guilty, and put himself upon the Country for his Trial. And after some Consideration, had about Time to be allowed him to bring his Witnesses from *Ireland*, the Court appointed the Day for his Trial, to be the first *Wednesday* in next Term, which was full five Weeks Time.

And accordingly on *Wednesday* the 8th of *June*, in *Trinity-Term*, he was brought to his Trial; and Proclamation, as in such Cases is usual, being made, it proceeded thus:

Cl. of Cr. Oliver Plunket, hold up thy Hand, those good Men which thou shalt hear called, and personally appear, are to pass between, &c.

Plunket. May it please your Lordship, I have been kept close Prisoner for a long Time, a Year and an half in Prison: When I came from *Ire-*

lana hither, I was told by Persons of good Repute, and a Counsellor at Law, that I could not be tried here; and the Reasons they gave me were, that first the Statute of *Henry VIII.* and all other Statutes made here, were not received in *Ireland*, unless they were an express mention made of *Ireland* in them: So that none were received there but such as were before *Poyning's* Act. So I came with that Persuasion that I could not be tried here, till at my Arraignment your Lordships told me it was not so, and that I must be tried here, though there was no express mention made of *Ireland*. Now, my Lord, upon that, whereas my Witnesses were in *Ireland*, and I knew nothing of it, and the Records upon which I very much rely were in *Ireland*, your Lordship was pleased to give me Time from the 4th of the last Month to this Day; and in the mean Time, as your Lordship had the Affidavit here Yesterday, and as Captain *Richardson* can testify, I have not dispatched only one, but two to *Ireland*, into the Counties of *Armagh*, *Dublin*, &c. and where there were Records very material to my Defence; but the Clerk of the Crown would not give me any Copy of any Record at all, unless he had some express Order from your Lordship. So that whether it were that they were mistaken, or wilfully refused, I could not get the Records, which were very material for me. For in some of those Records, some of those that accuse me were convicted of high Crimes, and others were outlawed and imprisoned, and broke Prison; and there were other Records also of Excommunication against some of them, and I could not get the Records, unless your Lordship would instruct me in some Way or other, how I can get over them that are most material for my Defence. The Servants that I sent hence, and took Shipping for *Ireland*, were two Days at Sea, and cast back again, and from thence were forced to go to *Holy-Head*, and from *Holy-Head* in going to *Dublin* they were thirteen or fourteen Days, the Winds were so contrary; and then my Servant went

* Burn. *Hist. of his own Times*, Vol. I. p. 502.

about to go into the County of *Armagh* and *Derry*, that were a hundred Miles from *Dublin* and *Meath*, and other Places: So that in so short a Time, my Lord, it was morally impossible for them to have brought the Witnesses over; and those that were ready to have come, would not stir at all, unless they had a Pass from hence, because some of them were Roman Catholicks, and they had heard that here some were taken Prisoners that were Roman Catholicks, and that none ought to come without a Pass; and they being Witnesses against the King, they might be clapped up here, and brought into very ill Condition; so they sent one over, that made Affidavit.

* *L. C. J.* It was the Affidavit was read here Yesterday.

Plunket. So that my Lord I conceive your Lordship will think I did it not out of any Intent to put off my Trial; for Captain *Richardson* is here, who knows that I writ by the Post, and desired them to come with the Pacquet-Boat, and they writ over to the Captain after they were landed; so that I depended upon the Wind and the Weather for my Witnesses, and wanted your Lordship's Order for the Records to be brought over, and that their Examination might be brought into Court, and their own original Examination here might be compared with it. So I humbly beg your Lordship's Favour, the Case is rare, and scarcely happens in five hundred Years, that one should be in my Circumstances. I am come here where no Jury knows me, nor the Quality of my Adversaries: If I had been in *Ireland*, I would have put myself upon my Trial To-morrow, without any Witnesses, before any Protestant Jury that knew them and me. And when the Orders went over, that I should be tried in *Ireland*, and that no Roman Catholick should be upon the Jury, and so it was in both the Grand and other Jury; yet then when I came to my Trial, after I was arraigned, not one appeared. This is manifest upon the Record, and can be proved.

L. C. J. There was no Prosecution of you there.

Plunket. But, my Lord, here is no Jury that knows me, or the Quality of my Adversaries; for they are not a Jury of the Neighbourhood that know them, and therefore my Case is not the same with other Cases. Though I cannot harbour, nor do not, nor will not, nor ought not, the least Conceit of hard Measure and Injustice; yet if I have not full Time to bring my Records and Witnesses all together, I cannot make my Defence. Some were there then, some afar off, so that it was a Miracle that in six or seven Counties they could do so much as they did: But they got in seven or eight of them, yet there were five or six wanting. Therefore I beseech your Lordship that I may have Time to bring my Records and Witnesses, and then I will defy all that is upon the Earth, and under the Earth, to say any Thing against me.

L. C. J. Look you, Mr. *Plunket*, 'tis in vain for you to talk and make this Discourse here now; you must know that by the Laws of this Kingdom, when a Man is indicted and arraigned of Treason and Felony, 'tis not usual to give such Time; 'tis rare that any Man hath had such Time as you have had, five Weeks Time to provide your Witnesses: If your Witnesses are so cautious, and are such Persons that they dare not, or will not venture for fear of being apprehended, or will not come into *England* without such

and such Cautions, we cannot tell how to help it; we can't furnish you with Witnesses, you must look to get your Witnesses yourself: If we should stay till your Witnesses will come, perhaps they will never come here, and so you will escape out of the Hands of Justice. Do not be discouraged in this, the Jury are Strangers to you peradventure, but they are honest Gentlemen, and you shall have no other upon your Jury; and you may be confident, that if there be not some Fact proved against you, that may amount to Treason, you shall be discharged; there are Persons that understand so much, and we will direct them so much. You shall have as fair a Trial as if you were in *Ireland*; but for us to stay for your Witnesses, or send you back to *Ireland*, we cannot do it: Therefore you must submit to your Trial. We heard your Affidavit Yesterday, and we did then tell the Gentlemen that moved it, as much as we tell you. You are here to be tried, look to the Jury as they are called, and except against them if you will.

Plunket. My Lord, I desire only to have the Favour of some Time, some Time this Term.

L. C. J. We can't do it. *Clerk of Cr.* Swear Sir *John Roberts*.

Plunket. I humbly present this to your Lordship, I am then in imminent Danger of my Life, if I cannot get ten Days to have my Witnesses over: I desire I may have but to the one and twentieth of this Month, and then if they do not come, you may go on.

L. C. J. We cannot do it, you have had five Weeks Time already.

Plunket. I desire but a few Days.

Cryer. Sir *John Roberts*, take the Book, look upon the Prisoner; You shall well and truly try, &c.

Plunket. My Lord, I desire to know, whether they have been of the Juries of *Langborn*, or the five Jesuits, or any that were condemned?

L. C. J. What if they have? That is no Exception.

Then the Jury was sworn, whose Names follow.

Sir <i>John Roberts</i> ,		<i>Thomas Earshy</i> ,
<i>Thomas Harriot</i> ,		<i>John Hayne</i> ,
<i>Henry Ashurst</i> ,		<i>Thomas Hodgkins</i> ,
<i>Ralph Bucknall</i> ,		<i>James Partberich</i> ,
<i>Richard Gowre</i> ,		<i>Samuel Baker</i> ,
<i>Richard Pagett</i> ,		<i>William Hardy</i> .

Cl. of Cr. *Oliver Plunket*, hold up your Hand. You of the Jury look upon the Prisoner, and hearken to his Charge.

“ **H**E stands indicted by the Name of *Oliver Plunket*, late of *Westminster*, in the County of *Middlesex*, Doctor in Divinity, for that he as a false Traitor against the most illustrious and most excellent Prince our Sovereign Lord *Charles II.* by the Grace of God, of *England*, *Scotland*, *France* and *Ireland* King, and his natural Lord, the Fear of God in his Heart not having, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true and due natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him our said Sovereign Lord the King do and of right ought to bear, utterly withdrawing, and contriving, and with

“ all his might intending the Peace and common
 “ Tranquillity within the Kingdom of *Ireland*,
 “ as also of this Kingdom of *England*, to disturb,
 “ and War and Rebellion against our said Sovereign
 “ Lord the King in the Kingdom of *Ireland*,
 “ then being the Dominion of our said Sovereign
 “ Lord the King, in Parts beyond the Seas, to
 “ stir up and move, and the Government of our
 “ said Sovereign Lord the King there to subvert;
 “ and our said Sovereign Lord the King from his
 “ Regal Power and Government there to depose
 “ and deprive; and our said Sovereign Lord the
 “ King, that now is, to Death and final Destruction
 “ to bring and put; and the true Worship of
 “ God within the said Kingdom of *Ireland*, by
 “ Law established and used, to alter to the Super-
 “ stition of the *Romish* Church: The first Day
 “ of *December*, in the Year of the Reign of our
 “ Sovereign Lord *Charles* the Second now King of
 “ *England*, &c. the two and thirtieth, and divers
 “ other Days and Times, as well before as after,
 “ at *Dublin* in the Kingdom of *Ireland*, in Parts
 “ beyond the Seas, with divers other false Trai-
 “ tors unknown, traiterously did compass, ima-
 “ gine and intend the Killing, Death, and final
 “ Destruction of our said Sovereign Lord the King,
 “ and the ancient Government of his said King-
 “ dom of *Ireland* aforesaid to change, alter, and
 “ wholly to subvert; and him our said Sovereign
 “ Lord the King, that now is, from the Crown
 “ and Government of his Kingdom of *Ireland* a-
 “ foresaid to depose and deprive, and the true
 “ Protestant Religion to extirpate, and War and
 “ Rebellion against the said Sovereign Lord the
 “ King there to move and levy. And to fulfil and
 “ accomplish his said most wicked Treasons, and
 “ traiterous Compassings, Imaginations and Pur-
 “ poses aforesaid, he the said *Oliver Plunket*, the
 “ said first Day of *December*, in the aforesaid two
 “ and thirtieth Year of the Reign of our said So-
 “ vereign Lord the King, that now is, with Force
 “ and Arms, &c. at *Dublin*, in the Kingdom of
 “ *Ireland*, then being the Dominion of our said
 “ Sovereign Lord the King in Parts beyond the
 “ Seas, maliciously, devilishly, and traiterously
 “ did assemble and gather together himself, with
 “ divers other Traitors unknown, and then and
 “ there devilishly, advisedly, maliciously, subtilly,
 “ and traiterously did consult and agree our said
 “ Sovereign Lord the King, that now is, to Death
 “ and final Destruction to bring, and from his
 “ Crown and Government aforesaid to depose and
 “ deprive, and the Religion of the *Romish* Church
 “ into the Kingdom of *Ireland* aforesaid, to intro-
 “ duce and establish. And the sooner to fulfil and
 “ perfect his said most wicked Treasons, and trai-
 “ terous Imaginations and Purposes, he the said
 “ *Oliver Plunket* with divers other false Traitors
 “ unknown, then and there advisedly, maliciously,
 “ and traiterously, did further consult and agree
 “ to contribute, pay, and expend divers great
 “ Sums of Money to divers Subjects of our said
 “ Sovereign Lord the King, and other Persons un-
 “ known, to procure them the said Persons un-
 “ known, our said Sovereign Lord the King, that
 “ now is, traiterously to kill, and the *Romish* Re-
 “ ligion into the said Kingdom of *Ireland*, to in-
 “ troduce and establish. And that he the said *Oli-*
 “ *ver Plunket*, and other Traitors unknown, af-
 “ terwards, to wit, the said first Day of *Decem-*
 “ *ber*, in the two and thirtieth Year of the
 “ Reign of our said Sovereign Lord the King
 “ aforesaid, at *Dublin* aforesaid, in the King-

“ dom of *Ireland* aforesaid, within the Domi-
 “ nion of our said Sovereign Lord the King,
 “ with Force and Arms, &c. unlawfully, mali-
 “ ciously, devilishly, and traiterously did receive,
 “ collect, pay, and expends divers great Sums of
 “ Money to divers Persons unknown, to persuade
 “ and induce divers other Persons also unknown,
 “ the said false Traitors in their said Treasons to
 “ help and maintain, against the Duty of his Al-
 “ legiance, and against the Peace of our said So-
 “ vereign Lord the King, that now is, his Crown
 “ and Dignity, and against the Form of the Sta-
 “ tutes in that Case made and provided.” To
 “ this Indictment he hath pleaded, Not Guilty.

Mr. *Heath*. May it please your Lordship, and
 you Gentlemen of the Jury, this is an Indictment
 of High-Treason against Dr. *Oliver Plunket*, the
 Prisoner at the Bar; and it sets forth, That the two
 and thirtieth Year of the King, at *Dublin* in the
 Kingdom of *Ireland*, he did compass and imagine
 the Death of the King, and to deprive the King of
 his Kingdom of *Ireland*, and to raise War to ex-
 tirpate the Protestant Religion in the Kingdom of
Ireland, and to establish the *Romish* Religion there.
 And it sets forth further; that for the Accomplish-
 ment of these Treasons, the Defendant, with se-
 veral others, did meet together at several Places at
Dublin in the Kingdom of *Ireland*, and elsewhere,
 and at these several Meetings did consult and agree
 to put the King to Death, to raise War, to extir-
 pate the Protestant Religion, and set up the *Ro-*
miss Religion. And the Indictment further sets
 forth, that to accomplish these Treasons, the De-
 fendant did raise great Sums of Money in the
 Kingdom of *Ireland*, and did get several Persons
 to contribute several Sums for these Treasons, and
 that the Defendant with others did disburse several
 Sums of Money to several Persons, to persuade
 them and entice them to be aiding and assisting in
 these Treasons, and to recompence them for them.
 To this Indictment the Defendant hath pleaded,
 Not Guilty. If we prove these Things, you are
 to find him Guilty.

Mr. Serj. *Maynard*. My Lord, we will quickly
 come to the Evidence: But in short, you have
 heard his Charge is as high as can be against the
 King, and against the Nation, and against all that
 is good. The Design and Endeavour of this Gen-
 tleman was the Death of the King, and the De-
 struction of the Protestant Religion in *Ireland*, and
 the raising of War: And to accomplish this, we
 charge him, that there was a Confederacy made,
 Assemblies and Consultations had to these Ends,
 and raising Money to accomplish it. Gentlemen,
 Dr. *Plunket* was made, as we shall prove to you,
 as they there call him, Primate of *Ireland*; and he
 got that Dignity from the Pope upon this very
 Design. He did by Virtue of that Power, which
 he thought he had gotten, make out Warrants,
 Significations, I know not what they call them, to
 know how many Men in *Ireland* could bear Arms
 from sixteen to forty; he raises Taxes upon the
 People and the Clergy there. But, my Lord, the
 Particulars will best fall from the Witnesses that we
 shall call and prove it by, and we need not make
 any Aggravation; for such a Thing as this cannot
 be more aggravated than 'tis.

Mr. *Att. Gen.* (Sir *Robert Sawyer*.) May it please
 your Lordship, and you Gentlemen of the Jury, the
 Character this Gentleman bears, as Primate under
 a foreign and usurped Jurisdiction, will be a great
 Inducement to you to give credit to that Evidence
 we shall produce before you. We shall prove that
 this