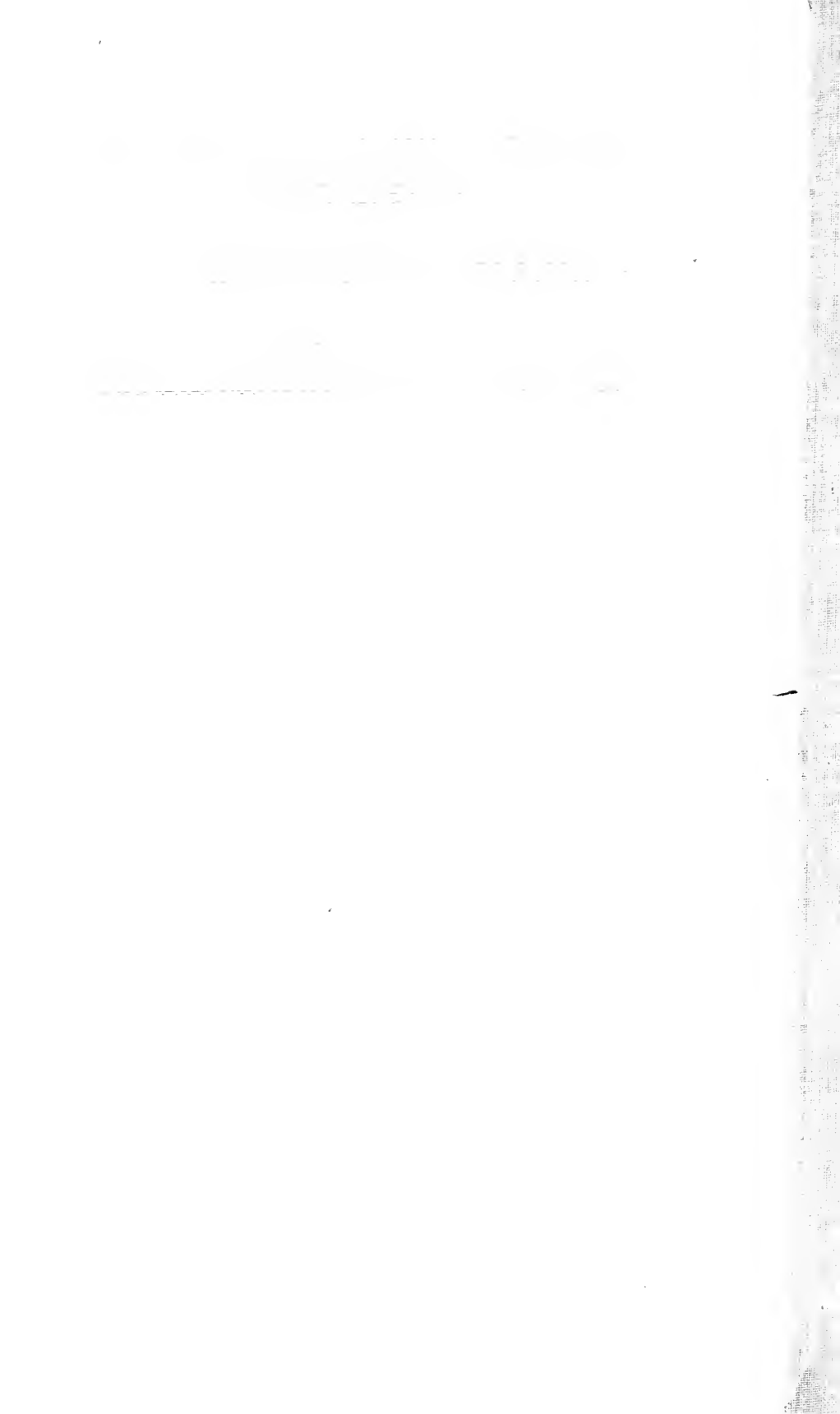


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STATE TRIALS

OF

MARY, QUEEN OF SCOTS,
SIR WALTER RALEIGH, AND
CAPTAIN WILLIAM KIDD.

CONDENSED AND COPIED FROM THE STATE TRIALS
OF FRANCIS HARGRAVE, ESQ., LONDON, 1776, AND
OF T. B. HOWELL, ESQ., F. R. S., F. S. A., LON-
DON, 1816, WITH EXPLANATORY NOTES.

BY

CHARLES EDWARD LLOYD. *pres.*

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To the Honorable JETER C. PRITCHARD, United States Senator, and to the Honorable JAMES E. BOYD, Assistant Attorney-General of the United States, to whose kindness I am indebted for the privilege of reading the State Trials, Newgate Calendars and copies of English manuscripts, from which the following court records are taken, this volume is respectfully and gratefully dedicated by

CHARLES EDWARD LLOYD.

PREFACE.

The first edition of the "State Trials," contained in four volumes folio, was published in 1719. The compiler was Mr. Salmon. It began with the trial of William Thorp for heresy, in the eighth year of the reign of Henry IV., and ended with that of Dr. Sacheverell, near the end of Queen Anne's reign.

A second edition appeared in 1730. New matter was added which increased the size to six volumes. The editor was Mr. Emlyn. The preface to this edition is remarkable. Extracts from it, commenting on the language of Sir Edward Coke, will be found in notes in the trial of Sir Walter Raleigh in this volume. Mr. Emlyn was the editor of Sir Matthew Hale's "History of the Pleas of the Crown."

In 1742 a third edition was issued.

In 1766 two additional volumes appeared which brought the date of the State Trials to the year 1760.

The fourth edition, edited by Francis Hargrave, Esquire, contained ten volumes. It was issued in 1775. The eleventh or supplemental volume to this fourth edition by Mr. Hargrave was published in 1781.

A complete collection of "State Trials and proceedings for high treason and other crimes and misdemeanors from the earliest period to the year 1783," compiled by T. B. Howell, Esquire, F. R. S., F. S. A., including the matter contained in the folio edition of Mr. Hargrave, was issued in twenty-one volumes in 1816. This collection is of inestimable value. It contains extracts from the Hardwicke Papers, copies of manu-

scripts from the Bodleian Library, the British Museum, etc., that cannot fail to interest, not only lawyers, but cultured people throughout the world.

This handy volume, the first of a series, contains the State Trials of Mary, Queen of Scots, Sir Walter Raleigh, and Captain William Kidd, condensed and copied from the State Trials of Hargrave and Howell. The original text is closely followed except when it is necessary to avoid useless repetitions. Brief notes and literal translations are given when necessary.

The publication of this series places these valuable and interesting old English legal classics in the hands of the masses.

CHARLES EDWARD LLOYD.

CONTENTS.

DEDICATION	iii
PREFACE	v
PROCEEDINGS AGAINST MARY, QUEEN OF SCOTS	1
Indictment of the Duke of Norfolk, outlining original plot	2
Proceedings at Fotheringay Castle by the Commissioners appointed by Queen Elizabeth	11
Proceedings in the Star Chamber	25
Proceedings in Parliament	27
Commission for the execution of the Queen of Scots	41
Queen Elizabeth's letter to Sir Amias Powlet	44
Queen Mary's execution	45
Queen Elizabeth's letter to James of Scotland	52
Arrest and trial of Sir William Davison	53
Sir William Davison's letter to Sir Francis Walsingham	57
TRIAL OF SIR WALTER RALEIGH	61
Indictment of Sir Walter Raleigh	65
Jury of knights, esquires and gentlemen chosen	67
Attorney-General Sir Edward Coke defines various treasons, etc.	73
Attorney-General Coke loses his temper and has to be persuaded to continue the trial	109
Attorney-General Coke's language becomes insulting to Sir Walter Raleigh	112
Verdict of the jury	114
Lord Chief Justice Popham addresses the prisoner and pronounces the judgment	115
Sir Walter Raleigh is pardoned, and goes on the Guiana expedition	117
He returns, is arrested and imprisoned	118

TRIAL OF SIR WALTER RALEIGH (continued)—	
Lord Chief Justice Coke issues writ of <i>habeas corpus</i> , and grants execution	119
Sir Walter Raleigh's letter to the king	121
Sir Walter Raleigh's letter to his wife	122
Execution	126
CAPTAIN WILLIAM KIDD BEFORE THE BAR OF THE HOUSE OF COMMONS	
Proclamation of King William III. against pirates	127
Trial of Captain William Kidd at the Old Bailey for murder and piracy	131
First indictment for murder	138
Trial of Captain William Kidd and nine of his crew for piracy and robbery on the <i>Quedagh Merchant</i>	168
Commission of reprisals upon the French from King William III. to Captain Kidd	206
Commission for cruising against pirates from King William III. to Captain Kidd	209
Verdict	234
Third indictment for piracy	235
Fourth indictment for piracy	237
Fifth indictment for piracy	239
Sixth indictment for piracy	240
Verdict	246
Sentence	246
Extract from Newgate Calendar giving account of Captain Kidd	247
Execution	253
APPENDIX	255

STATE TRIALS.

MARY, QUEEN OF SCOTS.

“Proceedings against Mary, Queen of Scots,” at Fotheringay Castle in 1586, “for being concerned in the conspiracy against Queen Elizabeth,” will be better understood by being introduced with the indictment of Thomas Howard, Duke of Norfolk, the most illustrious “conspirator” who was tried for high treason at Westminster, 1571. This state paper shows substantially what the entire plot was, and suggests what the indictment of Queen Mary would have been if she could have been tried by jury. As she remarked, “England contains no jury of my peers.” The details of her trial are given under the headline “Proceedings.” The formal arraignment of the Duke of Norfolk was the first overt act in a series of events intended to compass her death.

Twenty-four Lords of the Realm assembled on a large scaffold prepared in Westminster Hall, about a foot distant from the Chancery Court, to

try the Duke of Norfolk. A copy of the Latin indictment is in the British Museum. The translation is as follows:

MIDDLESEX.

The Jury present and say, in behalf of our lady the queen, That Thomas duke of Norfolk, late of Remming-hall in the county of Norfolk, as a false traitor against the most illustrious and Christian princess Elizabeth, queen of England, France, and Ireland, defender of the faith, &c. and his sovereign lady, not having the fear of God in his heart, nor weighing his due allegiance, but seduced by the instigation of the Devil, contrary to that cordial affection and bounden duty that true and faithful subjects of our said lady the queen do bear, and of right ought to bear, towards our said lady the queen; and intending to cut off and destroy the said queen Elizabeth, the 22d day of Sept. in the 11th year of the reign of our said sovereign lady queen Elizabeth, and divers other days and times before and after, at the Charter-House in the county of Middlesex, hath falsely, maliciously and traitorously conspired, imagined and gone about not only to deprive, depose, and cast out the said queen, his sovereign lady, from her royal dignity, title, power, and government of her kingdom of England; but, also to bring about and compass the death and final destruction of our said sovereign lady the queen, and to make and raise Sedition in the said kingdom of England, and to spread a miserable Civil War amongst the subjects of our said lady the queen, and to procure and make an Insurrection and Rebellion against our said lady the queen, his supreme and natural lady; and so to make public war within the realm of England contrary to our said lady the queen, and the government of her said kingdom, and to endeavor a change and alteration of the sincere worship of God, well and religiously established in the said kingdom: and also totally to subvert and destroy the whole constitution of the said state, so happily instituted and ordained in all its parts, with divers aliens and foreigners, not the subjects of our said lady the queen, hostilely to invade the said kingdom of England, and to make cruel war against our said lady the queen and her dominions. And for the compassing and bringing to pass all the said wicked and notorious

treasons, imaginations, and intentions proposed as aforesaid, he the said Thomas duke of Norfolk, well and truly knew and understood, that Mary, late queen of Scots, had laid claim and pretended a title and interest to the present possession and dignity of the imperial crown of this kingdom of England; well and truly knowing and understanding, that the aforesaid Mary, late queen of Scots, had falsely, wickedly, and unjustly said and affirmed, That our aforesaid lady, queen Elizabeth, had no right and title to the crown of this realm of England: And also well and truly knowing and understanding, that the aforesaid Mary, late queen of Scots, had falsely, wickedly, and unjustly usurped the stile, title, and regal name of this kingdom of England; and that she, the aforesaid Mary late queen of Scots, had impaled and joined the arms of the kingdom of England with the arms of the kingdom of Scotland, as well in her seals and plate as other things without any difference and distinction. And furthermore, well and truly knowing and understanding that the said Mary, late queen of Scots, had not revoked or renounced her wicked and unjust claims and usurpations aforesaid, the 23d day of Sept. in the 11th year of our said lady, now queen of England, and divers other days and places before and after the said time, at the Charter-House aforesaid, in the county of Middlesex aforesaid, falsely, subtly and traitorously sought and endeavoured, without the assent, consent or agreement of the aforesaid our lady queen Elizabeth, his supreme and sovereign lady, to be joined in marriage with the aforesaid Mary, late queen of Scots. And for this reason and cause he the said duke aforesaid, the 23rd day of Sept. in the 11th year aforesaid, and divers other days and places before and after, at Charter-House aforesaid in the county of Middlesex aforesaid, falsely, subtly and traitorously writ divers letters to the aforesaid Mary, late queen of Scots; and as well as letters, sent several pledges or tokens to the aforesaid Mary, late queen of Scots, the 23rd day of Sept. aforesaid, in the year aforesaid, and divers other days and times before and after. And also on the said 23rd day of Sept. in the 11th year of the reign of the said queen Elizabeth. and divers other days and places before and after, at Charter-house aforesaid, in the county of Middlesex aforesaid, falsely, subtly, and traitorously gave to, and accommodated the said

Mary, late queen of Scots, with divers sums of money; which the said Mary, late queen of Scots, falsely and traitorously had and received of him the said Thomas duke of Norfolk, the 23rd day of Sept. aforesaid, in the year aforesaid, at Charter-house aforesaid, in the county of Middlesex aforesaid; notwithstanding the aforesaid duke had been distinctly and especially forbid and prohibited by the aforesaid lady queen Elizabeth, upon his allegiance, that he should upon no account whatsoever hold Correspondence, or treat with the aforesaid Mary late queen of Scots, concerning Marriage with her the said Mary late queen of Scots; and notwithstanding the aforesaid duke, by divers letters and instruments writ with his own hand to the said lady queen Elizabeth, his supreme sovereign lady, publicly denied and renounced the aforesaid Marriage, protesting that he the said duke was never engaged, or had proceeded in the said Marriage.

And also said Jurors, upon their corporal oaths, further present and say, That Thomas earl of Northumberland, late of Topcliffe in the county of York, and Anne his wife; Charles earl of Westmoreland, late of Branspeth in the county of Durham; Richard Norton, late of Norton Comers in the county of York; Thomas Markenfield late of Markenfield in the said county, esquires; together with several other false Traitors, rebels, and public enemies of our said lady queen Elizabeth, not having the fear of God before their eyes, nor considering their due allegiance, but seduced by the instigation of the devil, imagined, devised, and conspired to deprive and depose the said lady queen Elizabeth from her royal dignity, title, and power of her kingdom of England; and also to bring about and compass the death and final destruction of the said lady queen Elizabeth, with the intention and design to complete and fulfil all their traitorous conspiracies and devices, on the 16th day of Nov. in the 11th year of the reign of the said queen, at Rippon in the said county of York; by their own consent and appointment, they did falsely and traitorously meet and assemble themselves together, with a great multitude of people to the number of 4,000 men and more, ready armed and prepared for open war against their said queen Elizabeth, their supreme and sovereign lady, at Rippon aforesaid, the 16th day of Nov. aforesaid, in the year aforesaid, falsely and traitorously

they were ready prepared and armed to execute all and singular the treasons and conspiracies aforesaid, of the said Thomas earl of Northumberland and Anne his wife, Charles earl of Westmoreland, Richard Norton, and Thomas Markenfield, with many others of the said false traitors and rebels aforesaid, by due form of law legally indicted, and afterwards upon that legally outlawed and attainted, as they now stand upon record in her said majesty's court of queen's-bench.

And after the perpetration and commission of the aforesaid wicked treasons, in manner aforesaid by them committed, the aforesaid Tho. earl of Northumberland, and Anne his wife; Charles earl of Westmoreland, R. Norton, and Thomas Markenfield; with many other false traitors and rebels aforesaid, the 20th day of Dec. in the 12th year of the reign of our said sovereign lady the queen, for those Treasons fled out of this kingdom into the kingdom of Scotland; and there resided, and were received, aided and assisted by several noblemen, and other great men of the said kingdom of Scotland, viz, by James duke of Chastelleroy, the earl of Huntley, Mr. Harris, Mr. Hume, and Mr. Firmherst, and other Scots, then subjects of the said kingdom of Scotland, detained from our said lady queen Elizabeth, in and towards which noblemen, and other great men of the aforesaid kingdom of Scotland, the said lady queen Elizabeth afterwards proclaimed, and caused war to be made upon the said rebels, as public enemies to her kingdom of England, by Tho. earl of Sussex, her majesty's lord lieutenant, and lieutenant-general of the north, with a powerful and strong army to oppose the enemy. Upon which account, Charles earl of Westmoreland, Anne, wife of Thomas earl of Northumberland, Rd. Norton, and Tho. Markenfield, fled from the aforesaid kingdom of Scotland, and transported themselves to Antwerp in Brabant, where they resided. And there the same Charles earl of Westmoreland, Anne wife of the said Tho. earl of Northumberland, Rd. Norton, and Tho. Markenfield, contrary to their due allegiance, staid in manifest contempt of the said queen and her laws. Yet the aforesaid Thomas duke of Norfolk, not ignorant of the premises, but well and truly knowing all and singular the transactions in manner and form aforesaid, the 6th day of August, in the 12th year of the reign of the said queen Elizabeth, at Charter-House aforesaid, in the county of

Middlesex aforesaid, and divers other days and places afore and after, falsely and traitorously took care, and caused to be sent, delivered and distributed, several sums of money, to aid, assist, and support the aforesaid Charles earl of Westmoreland, and Anne wife of Tho. earl of Northumberland.

And further. That the said duke of Norfolk, the 16th day of July, in the 13th year of the reign of the said lady Elizabeth, queen of England, at Charter-House aforesaid, in the county of Middlesex aforesaid, and divers other days and places afore and after, falsely and traitorously adhered to, aided and assisted James duke of Chastelleroi, earl of Huntley, Mr. Harris, Mr. Hume, Mr. Burleigh, and Mr. Firmherst, public enemies to our said lady Elizabeth, then queen of England.

And further, the Jurors aforesaid, upon their oaths, present and say. That whereas Pius Quintus, sometime bishop of Rome. was and is known to be a deadly and public enemy to our said lady queen Eliz. and her kingdom of England; that the said Tho. duke of Norfolk well and truly knowing and understanding this, the 10th day of March, in the 13th year of the reign of the said lady queen Eliz. at Charter-House aforesaid, in the county of Middlesex aforesaid, and divers other days and places afore and after, with intention to produce the said traitorous effects, falsely, subtly, and traitorously consented, consulted, advised, and procured one Robert Ridolph, a foreign merchant beyond the seas, and out of the kingdom of England, to send to the aforesaid bishop of Rome, to Philip king of Spain, and to the duke of Alva, to obtain of the aforesaid bishop of Rome certain sums of money, towards the raising and maintaining of an army to invade this kingdom of England, and to make war in the said kingdom, against the aforesaid lady Elizabeth, queen of England. &c. And that the said king of Spain, by the mediation of the said duke of Alva, did send into this kingdom of England a certain army of Germans to invade and make open and cruel war against the said lady queen Elizabeth.

And also that the same Thomas duke of Norfolk, the same 10th day of March, in the said 13th year of the reign of the said lady queen Eliz. aforesaid, and divers other days and places afore and after, at Charter-House aforesaid, in the county of Middlesex aforesaid, falsely, wickedly, and traitorously conspired, consented, and agreed with the aforesaid Robert Ri-

dolph, to advance, stir up, and raise within this kingdom of England, all the forces and power that he the aforesaid Thomas duke of Norfolk and his confederates were by any means capable of raising, or engaging others to raise within this kingdom of England, to join with the aforesaid army, and with other subjects of this kingdom of England, whom the said duke of Norfolk could gather together and join with the said army by the said king of Spain, in order to make open war against our said lady queen Elizabeth, within this her kingdom of England; and to take away and free Mary, late queen of Scots, out of the custody and possession of our said lady Elizabeth queen of England; and at the same time to deprive, depose, and eject the most illustrious and Christian princess queen Elizabeth, from her royal dignity, title, power, preheminance, and government of this kingdom of England: and at the same time, him the said Thomas duke of Norfolk, to join himself in marriage with the aforesaid Mary, late queen of Scots.

And further, the Jurors upon their oaths present and say, That the aforesaid Robert Ridolph had writ and composed three distinct and separate Letters of credit, in the name of the aforesaid Thomas duke of Norfolk, for him the said Robert Ridolph, in his false, wicked and treasonous messages aforesaid; viz. one of those letters to the aforesaid duke of Alva, another to the aforesaid bishop of Rome, and a third to the aforesaid Philip king of Spain. That afterwards the same Thomas duke of Norfolk falsely and traitorously intending, willing, and desiring success and effect from the aforesaid false and traitorous messages, by the aforesaid Robert Ridolph, as appeareth by his sending one Wm. Baker gent. one of the servants of the said Thomas duke of Norfolk, the 20th. day of March in the 13th year of the reign of the queen, at Charter-House aforesaid, in the county of Middlesex aforesaid, falsely and traitorously sent to Guerrawe Despeis, ambassador of the said Philip king of Spain, to declare, shew, and affirm to the aforesaid ambassador of the aforesaid Philip king of Spain, that he the said Thomas duke of Norfolk had affirmed and would affirm the aforesaid credential letters to the aforesaid duke of Alva, the bishop of Rome, and Philip king of Spain composed and writ in his name, were as valid to all intents and purposes, as if he the said Thomas duke of Norfolk had writ them with his own hand.

And further, the said Jurors upon their oaths present and say, That the aforesaid Robert Ridolph, the 24th day of March, in the 13th year of the reign of the said lady Eliz. queen of England aforesaid, at Dover, in the county of Kent, took his journey to several parts beyond the seas, in order to execute, perfect, and complete the said treasonable messages, with the consent and agreement of the aforesaid Thomas duke of Norfolk. And afterwards the aforesaid Robert Ridolph conveyed, declared, and communicated the said wicked and traitorous messages in foreign countries and parts beyond the sea, as well to the aforesaid duke of Alva as to the aforesaid bishop of Rome. And that the aforesaid Robert Ridolph, amongst his many other false and traitorous Messages, conveyed one Letter in unusual characters called Cyphers, which the aforesaid duke of Alva caused to be writ and sent to Thomas duke of Norfolk; which very letter, as declared to be writ and sent, he the said duke of Norfolk, the 18th day of April, in the 13th year of the reign of the said queen Eliz. aforesaid, at Charter-House aforesaid, in the county of Middlesex aforesaid, falsely and traitorously received and had; and then and there gave and delivered to the aforesaid Wm. Baker his servant several written pages in known letters, commonly to be deciphered: and the said Papers in common and known ciphers or characters he the said duke afterwards on the 25th day of April, in the 13th year of the reign of the said queen Eliz. at Charter-House aforesaid, in the county of Middlesex aforesaid, falsely and traitorously received, inspected and read over the said papers, and then and there falsely and traitorously retained and kept them. By which letters of the said Robert Ridolph to him the said Thomas duke of Norfolk, amongst other things, are signified and he makes known what a kind audience and reception he the said Robert met with from the aforesaid duke of Alva in his wicked and traitorous messages aforesaid. And that the said duke of Alva required and willed the friends and abettors of the said confederacy to be ready, whensoever a foreign power should be sent into this kingdom of England.

And furthermore, the same Jurors upon their oaths present and say, That the said Thomas duke of Norfolk, the 16th day of June, in the 13th year of the reign of the said lady queen Elizabeth, at Charter-House aforesaid, in the county of Mid-

dlex aforesaid, falsely and traitorously received a Letter directed to him the said duke, from Pius Quintus bishop of Rome; by which the said bishop of Rome promised to the said duke of Norfolk, aid, help, and assistance towards executing the said wicked and traitorous designs of the aforesaid Mary, late queen of Scots, contrary to their due allegiance, and the peace of our sovereign lady Elizabeth, now queen of England, her crown and dignity, and in manifest contempt of the laws of this kingdom, as well as the worst and most pernicious example of all other delinquents in the like case, and contrary to the form of several statutes in this case made and provided.

To this indictment, after some argument between Sir Robert Catlin, then Lord Chief Justice of England, Sir James Dyer, Lord Chief Justice of the Common Pleas, and the Duke of Norfolk, the prisoner pleaded "Not Guilty."

The Duke was his own attorney, conducted his case with singular ability, but was convicted of High Treason, and sentenced to be "hung, cut down quickly, and while yet alive the body to be quartered." This sentence was commuted, and the 2d of June, 1572, he was beheaded on a scaffold on Tower-hill. He died with great courage amidst a vast crowd of sympathizing spectators. There was much dissatisfaction throughout England at his undeserved fate. Mary, Queen of Scots, was more closely confined, but "Proceedings" to compass her execution for the plots outlined in the "Indictment" quoted above did not assume official shape until 1586. During the fourteen intervening years, Anthony Babington and a great many other men were condemned and executed

for similar conspiracies against the life and crown of Queen Elizabeth. The central figure in every trial was the unfortunate Mary, Queen of Scots, who throughout her long period of confinement showed at times a shrewdness and diplomacy which are not in keeping with a number of unwise acts, one of which no doubt sealed her doom. This was a most insulting letter from her to Queen Elizabeth, in which she accuses Elizabeth of inordinate vanity and the grossest immoralities. This letter was translated for this volume, but it contains language which should not be repeated in a book of this character. It throws no light on the "Proceedings." It proves that both Queens had glaring faults, and makes them appear in bold contrast to the venerable and universally venerated Queen and Empress who now rules both the kingdoms, then torn by internal dissensions on account of the frivolity, vulgarity and ambition of two noted women in the history of the world.

Through the connivance of Queen Elizabeth and some of her more pliable courtiers, an "Association" for the Queen's safety, and to avenge her death, was formed by the "people of England" which, though "entered into voluntarily" at first, was confirmed and established by statute in 1585. The following year a "Commission" was issued, founded on said statute, for the "Examination and Trial" of Mary, Queen of Scots.

PROCEEDINGS AT FOTHERINGAY-CASTLE.

The Commissioners appointed by Queen Elizabeth were:

John, Archbishop of Canterbury,
Sir Thomas Bromley, Chancellor of England,
William, lord Burghley, Lord Treasurer of England,
William, lord marquis of Winchester,
Edward, earl of Oxford, great chamberlain of Eng-

land,

George, earl of Shrewsbury, earl marshal of England,

Henry, earl of Kent,

Henry, earl of Derby,

William, earl of Worcester,

Edward, earl of Rutland,

Ambrose, earl of Warwick,

Henry, earl of Pembroke,

Robert, earl of Leicester,

Henry, earl of Lincoln,

Anthony, viscount Montague,

Charles, lord Howard, great admiral of England,

Henry, lord Hunsdon,

Henry, lord Abergavenny,

Edward, lord Zouch,

Edward, lord Morley,

William, lord Cobham,

Edward, lord Stafford,

Arthur, lord Grey of Wilton,

John, lord Lumley,

John, lord Sturton,

William, lord Sandes,

Henry, lord Wentworth,

Lewis, lord Mordant,
John, lord St. John of Bletscho,
Thomas, lord Buckhurst,
Henry, lord Compton,
Henry, lord Chesney,
Sir Francis Knolles,
Sir James a Crofts,
Sir Christopher Hatton,
Sir Francis Walsingham,
William Davison, Esq.,
Sir Ralph Sadler,
Sir Walter Mildmay,
Sir Amias Powlet,
John Wolley, (secretary for the Latin tongue)
Sir Christopher Wray,
Sir Edmund Anderson,
Sir Roger Manwood,
Sir Thomas Gawdy,
Justice William Periam.

The most part of these Commissioners came the 11th of Oct. to Fotheringay-castle in the county of Northampton, seated upon the bank of the river Nen, where the queen of Scots was then kept. The next day the commissioners sent to her sir Walter Mildmay, Powlet, and Edward Barker, a publick notary: who delivered into her hands queen Elizabeth's Letter; which when she had read, she, with a countenance composed to royal dignity, and with a mind untroubled, said, "It grieveth me that the queen, my most dear sister, is misinformed of me; and that I, having been so many years

straitly kept in prison, and grown lame of my limbs, have been neglected, after I have offered so many reasonable conditions for my liberty. Though I have thoroughly forewarned her of many dangers, yet hath no credit been given unto me, but I have been always contemned, though most nearly allied unto her in blood. When the Association was entered in, and the Act of Parliament thereupon made, I foresaw that whatsoever danger should happen either from foreign princes abroad, or from ill-disposed people at home, or for religion's sake, I must bear the whole blame, having many mortal enemies in the court. Certainly I might take it hardly, and not without cause, that a Confederacy hath been made with my son without my knowledge: but such matters I omit. As for this Letter, it seemeth strange to me, that the queen should command me as a subject, to appear personally in judgment. **I** am an absolute queen, and will do nothing which may prejudice either mine own royal majesty, or other princes of my place and rank, or my son. My mind is not yet dejected, neither will I sink under my calamity. I refer myself to those things, which I have protested before Bromley, now chancellor, and the lord La-Ware. The laws and statutes of England are to me most unknown; I am destitute of counsellors, and who shall be my peers I am utterly ignorant. My Papers and Notes are taken from me, and no man dareth step forth to be my advocate. I am clear from all crime against the queen, I have excited no man against her, and I am not to be charged but by my own word or writing, which cannot be produced against me. Yet can I not deny

but I have commended myself and my Cause to foreign princes."]

The next day there returned unto her in the name of the Commissioners, Powlet and Barker, who shewed unto her this Answer drawn in Writing, and asked her, whether she would persist in the same. When she had heard it distinctly read, she commended it as rightly and truly conceived, and said, she would persist therein. But, this, said she, ["I have forgotten, which I would have to be added thereunto: Whereas the queen hath written, that I am subject to the laws of England, and to be judged by them, because I have lived under the protection of them; I answer, that I came into England to crave aid, and ever since have been detained in Prison, and could not enjoy the protection or benefit of the laws of England; nay, I could never yet understand from any man, what manner of laws those were."]

In the afternoon came unto her certain selected persons from amongst the Commissioners, with men learned in the civil and canon-law. But the Lord Chancellor and the Lord Treasurer declared their authority by patent, and showed that neither her imprisonment, nor her prerogative of royal majesty could exempt her from answering in this kingdom; with fair words advising her to hear what matters were to be objected against her: otherwise they threatened, that by authority of law, they both could and would proceed against her, though she were absent. She answered, That she was no subject, and rather would she die a thousand deaths, than acknowledge herself a subject, considering, that by such an acknowledgment, she should both prejudice the

height of regal majesty, and withal confess herself to be bound by all the laws of England, even in matter of religion: nevertheless she was ready to answer to all things in a free and full parliament, for that she knew not whether this meeting and assembly were appointed against her, being already condemned by forejudgings, to give some shew and colour of a just and legal proceeding. She warned them therefore to look to their consciences, and to remember, that [the theatre of the whole world is much wider than the kingdom of England.] She began then to complain of injuries done unto her: and the Lord Treasurer interrupting her, began to reckon up queen Elizabeth's kindnesses towards her, namely, that she had punished some, which impugned the claim she laid to England, and had been a means to keep her from being condemned by the estates of the realm, for the marriage sought with the duke of Norfolk, for the rebellion in the north, and for other matters. All which when she seemed little to esteem, they returned back.

Within few hours after, they delivered unto her, by the hands of Powlet and the Solicitor, the chief points of their Commission, and the names of the Commissioners, that she might see, that they were to proceed according to equity and right, and not by any cunning point of law, and extraordinary course. She took no Exceptions against the Commissioners, but most sharply excepted against the late law, upon which the authority of their commission wholly depended; as that it was unjust, devised of purpose against her, that it was without example, and such whereunto she would never sub-

ject herself. She asked, by what law they would proceed: If by the civil or canon-law, then said she, interpreters are to be fetched from Pavia, or Poitiers, and other foreign universities; for in England none are to be found that are meet. She added also, That it was manifest, by plain words in the queen's Letters, That she was already forejudged to be guilty of the crime, though unheard; and therefore there was no reason why she should appear before them: and she required to be satisfied touching some scruples in the said Letters, which she had for herself noted confusedly, and by snatches, severally by themselves, but would not deliver them written out; for it stood not, said she, with her royal dignity, to play the scrivener.

Touching this matter, the said selected Commissioners went unto her again, to whom she signified, that she did not well understand what those words meant, 'seeing she is under the queen's protection.' The Lord Chancellor answered, That this was plain to every one of understanding, yet was it not for subjects to interpret what the queen's meaning was, neither were they made commissioners for that end. Then she required to have her protestation shewed and allowed, which she had formerly made. It was answered, that it never had been, nor now was to be allowed, for that it was prejudicial to the crown of England. She asked, By what authority they would proceed? It was answered, by authority of their Commission, and by the common law of England.

But, said she, Ye make laws at your pleasure, whereunto I have no reason to submit myself, considering

that the English in times past refused to submit themselves to the Law Salique of France: and if they would proceed by the common law of England, they should produce precedents and cases, forasmuch as that law consisteth much of cases and custom; and if by the canon law, none else ought to interpret the same, but the makers thereof. It was answered, That they would proceed neither by the Civil nor Canon Law, but by the Common Law of England: that it might nevertheless be proved by the civil and canon law, that she ought to appear before them, if she would not refuse to hear it. And indeed she refused not to hear it, but, as she said, by way of *Interlocution*, not *Judicially*.

From hence she fell into other speeches, That she had intended nothing to the destruction of the queen; that she had been incensed with injuries and indignities; that she should be a stone of offence to others, if she were so unworthily handled: that by Naw she had offered her best means for revoking the bishop of Rome's Bull; that she would have defended her innocency by letter, but it was not allowed her; and finally, that all the offices of kindness, which she had tendered these twenty years, were rejected. Thus while she wandered far in these digressions, they called her back again, and prayed her to speak plainly, whether she would answer before the commissioners. She replied, That the authority of their delegation was founded upon a late law made to entrap her; that she could not away with the queen's laws, which she had good reason to suspect; that she was still full of good courage, and would not offend against her progenitors the kings of Scots, by

acknowledging herself a subject to the crown of England: for this were nothing else but to profess them openly to have been rebels and traitors. Yet she refused not to answer, so as she might not be reduced to the rank of a subject: But she had rather perish utterly than to answer as a criminal person.

Whereunto Hatton, Vice-Chamberlain to queen Elizabeth, answered: You are accused (but not condemned) to have conspired the Destruction of our lady and queen anointed. You say you are a queen: be it so. But in such a crime the royal dignity is not exempted from answering, neither by the Civil nor Canon Law, nor by the Law of nations, nor of nature. For if such kind of offences might be committed without punishment, all justice would stagger, yea, fall to the ground. If you be innocent, you wrong your reputation in avoiding a Trial. You protest yourself to be innocent, but queen Elizabeth thinketh otherwise, and that neither without grief and sorrow for the same. To examine therefore your innocency, she hath appointed for Commissioners most honourable, prudent and upright men, who are ready to hear you according to equity with favour, and will rejoice with all their hearts, if you shall clear yourself of this crime. Believe me, the queen herself will be much affected with joy, who affirmed unto me at my coming from her, that never any thing befel her more grievous, than that you were charged with such a crime. Wherefore lay aside the bootless privilege of royal dignity, which can now be of no use unto you, appear in judgment, and shew your innocency,^e lest by avoiding Trial, you draw upon yourself suspicion, and

lay upon your reputation an eternal blot and aspersion.

“I refuse not (said she) to answer in a full parliament before the estates of the realm lawfully assembled, so as I may be declared the next to the succession; yea, before the queen and council, so as my protestation may be admitted, and I may be acknowledged the next of kin to the queen. To the judgment of mine adversaries, amongst whom I know all defence of mine innocency will be barred, flatly, I will not submit myself.”

The Lord Chancellor asked her, whether she would answer, if her Protestation were admitted? “I will never (said she) submit myself to the late law mentioned in the Commission.”

Hereupon the Lord Treasurer answered: “We, notwithstanding, will proceed to-morrow in the Cause, though you be absent and continue contumax.”

“Search (said she) your consciences, look to your honour, God reward you and yours for your Judgment against me.”

On the morrow, which was the 14th of the month, she sent for certain of the Commissioners, and prayed them, that her protestation might be admitted and allowed. The Lord Treasurer asked her, Whether she would appear to her Trial, if her Protestation were only received and put in writing, without allowance. She yielded at length, yet with much ado, and with an ill-will, lest she should seem (as she said) to derogate from her predecessors or successors; but was very desirous to purge herself of the crime objected against her, being persuaded by Hatton's reasons, which she had weighed with advisement.

Soon after, the Commissioners which were present, assembled themselves, in the Presence-Chamber. At the upper end of the Chamber was placed a Chair of estate for the queen of England, under a cloth of estate. Over-against it, below and more remote, near the transom or beam that ran cross the room, stood a chair for the queen of Scots. At the walls on both sides, were placed benches, upon which sate, on the one side, the Lord Chancellor of England, Lord Treasurer of England, the earls of Oxford, Kent, Derby, Worcester, Rutland, Cumberland, Warwick, Penbroke, Lincoln, and the lord viscount Montacute; on the other side, the barons of Abergavenny, Zouch, Morley, Stafford, Grey, Lumley, Sturton, Sandes, Wentworth, Mordant, St. John of Bletsho, Compton, and Cheiney. Nigh unto these sate the knights of the Privy-Council, sir James a Croftes, sir Christopher Hatton, sir Francis Walsingham, sir Ralph Sadleir, sir Walter Mildmay, and sir Amias Powlet. Forward, before the earls, sate the two Chief Justices, and the Chief Baron of the Exchequer: and on the other side two barons, the other Justices, Dale and Ford, doctors of the Civil-Law; and at a little table in the midst sate Popham the queen's Attorney, Egerton the Solicitor, Gaudy the queen's Serjeant at Law, the Clerk of the Crown, and two Writers.

When she was come, and had settled herself in her seat, after silence proclaimed, Bromley Lord Chancellor turning to her, spake briefly to this effect: "The most high and mighty queen Elizabeth, being not without great grief of mind advertised, that you have conspired the Destruction of her and of England, and the Subver-

sion of Religion, hath, out of her office and duty, lest she might seem to have neglected God, herself and her people, and out of no malice at all, appointed these commissioners, to hear the matters which shall be objected unto you, and how you can clear yourself of them, and make known your innocency."

She rising up, said, That she came into England to crave aid, which had been promised her, and yet was she detained ever since in prison. [She protested, that she was no subject of the queen's, but had been and was a free and absolute queen, and not to be constrained to appear before commissioners, or any other Judge whatsoever, for any cause whatsoever, save before God alone the highest Judge, lest she should prejudice her own royal majesty, the king of Scots her son, her successors, or other absolute princes. But, that she now appeared personally, to the end to refute the crimes objected against her. And hereof she prayed her own attendants to bear witness.]

The Lord Chancellor, not acknowledging that any Aid had been promised her, answered, That this Protestation was in vain, for that whosoever (of what place and degree soever he were) should offend against the laws of England, in England, was subject unto the same laws, and by the late act might be examined and tried; the said Protestation therefore made in prejudice of the laws and queen of England, was not to be admitted. The Commissioners nevertheless commanded, that as well her Protestation, as the Lord Chancellor's Auswer, should be recorded.

Then after the Commission was openly read, which

was grounded upon the Act already often mentioned, she stoutly opposed her Protestation against the said Act, as enacted directly and purposely against her, and herein she appealed to their consciences.

When Answer was made by the Lord Treasurer, that every person in this kingdom was bound even by the latest laws, and that she ought not to speak against the laws: and that the Commissioners would judge, according to that law, what Protestations or Appellations soever she interposed, she said at length, that she was ready to hear and answer touching any fact whatsoever against the queen of England.

Gawdy now opened the law from point to point, affirming, that she had offended against the same; and hereupon he made an historical discourse of Babington's Conspiracy, and concluded, That she knew of it, approved it, assented unto it, promised her assistance, and shewed the way and means.

She answered with stout courage, That she knew not Babington, that she never received any Letters from him, nor wrote any to him; that she never plotted the destruction of the queen, and that to prove the same, her Subscription under her own hand was to be produced; that for her part she never so much as heard speak thereof; that she knew not Ballard,¹ nor ever re-

¹ Anthony Babington, Chidiock Titchburne, Thomas Salisbury, Robert Barnewell, John Savage, Henry Donn and John Ballard were tried at Westminster, September 13 and 14, A. D. 1586, for High Treason. Ballard was a priest, and was the first one hung on the gallows erected on St. Giles' Fields where they were executed.

lieved him; but she understood from some that the catholics in England took many things very hardly, and hereof she herself had advertised the queen by Letters, and besought her to take pity on them; that many also, which were to her utterly unknown, had offered her their help and assistance, yet had she excited no man to commit any offense; and being shut up in prison, she could neither know nor hinder what they attempted.

Hereupon it was urged out of Babington's Confession, that there had been intercourse by Letters betwixt her and Babington. She confessed that there had passed Conference by Letters betwixt her and many men, yet could it not thereby be gathered that she was privy to all their wicked counsels. She required that her own Subscription, under her hand, might be produced; and asked, what hurt it were, if she redemanded the Letters, which had been kept from her almost a whole year? Then were read the Copies of Letters between her and Babington, wherein the whole Conspiracy was set down.

She listened attentively to the reading of these letters, two of which were signed by her name. She protested that she had neither written nor received them. She admitted that she "had done her best endeavor for the recovery of her liberty," and had solicited her friends to deliver her, that she desired to relieve the persecutions of the Catholics in England and elsewhere, but declared she "would not purchase the kingdom with the death of the meanest man of the common people, much

less of the queen." She earnestly protested her innocence, and "withal she shed plenty of tears." She accused Walsingham openly of practicing against her life and that of her son. He denied this. She accepted his denial, and told him he should give no better credit to the slanders he had heard about her. Weeping, she affirmed, "I would never make shipwreck of my soul by conspiring the destruction of my dearest sister" (Queen Elizabeth). It was answered by the lawyers that this should soon be disproved by testimony. The Commissioners adjourned until the afternoon. When they re-assembled letters were produced from Charles Paget and various others and the testimony of her former secretaries, Naw and Curle, to the effect that she had received and answered these letters. She said these men were no fit witnesses against her, denounced Naw as a man who might be made to do anything through hope of reward or fear, and said Curle, though an honest man, was merely a pliable tool in Naw's hands. She said Naw had frequently written other than he had been commanded to write, and utterly repudiated their alleged testimony. She finally said: "But now all my hope in England being desperate, I am fully resolved not to reject foreign aid." She demanded that she should be heard in full Parliament, and bore herself with great dignity and confidence. The Commissioners gained no point in this hearing. The record then gives:

PROCEEDINGS IN THE STAR CHAMBER.¹

These things being done, the assembly was prorogued to the 25th of October, at the Star-Chamber at Westminster. Thus far touching this matter out of the Commentaries of Edward Barker, principal Register to the queen's majesty; Thomas Wheeler, public Notary, Register of the Audience of Canterbury; and other credible persons which were present.

The said 25th day of October, all the Commissioners met, saving the earls of Shrewsbury and Warwick, which were both of them sick at that time; and after Naw and Curle² had by oath, *viva voce*, voluntarily without hope of reward, before them avowedly affirmed and confirmed all and every the Letters, and Copies of Letters, before produced, to be most true; Sentence was pronounced against the queen of Scots, and confirmed with the seals and subscriptions of the Commissioners, and recorded in these words: "By their joint assent and consent, they do pronounce and deliver their Sentence and Judgment, at the day and place last recited; and say, That after the end of the aforesaid session of parliament, in the Commission aforesaid specified, namely after the aforesaid 1st day of June, in the 27th year abovesaid, and before the date of the same Commis-

¹ The Star Chamber was an English court of ancient origin. It was abolished during the reign of Charles I. Lord Coke attributed the name to the fact that the court sat in the old Council Chamber of the Palace at Westminster, the ceiling of which was ornamented with gilded stars. Sir Wm. Blackstone thought it was so called because of its proximity to the chests containing the Jewish contracts called "stars."

² Former secretaries to Queen Mary.

sion, divers matters have been compassed and imagined within this realm of England, by Anthony Babington and others, *cum scientia*, in English with the privy, of the said Mary, pretending title to the crown of this realm of England tending to the hurt, death and destruction of the royal person of our said lady the queen. And namely, That after the aforesaid 1st day of June, in the 27th year abovesaid, and before the date of the Commission aforesaid, the aforesaid Mary pretending title to the crown of this realm of England, hath compassed and imagined within this realm of England divers matters tending to the hurt, death and destruction of the royal person of our sovereign lady the queen, contrary to the form of the statute in the Commission aforesaid specified."

Concerning this Sentence, which depended wholly upon the credit of the Secretaries, and they not brought forth face to face, according to the first Act of the 13th year of queen Elizabeth, much talk there was, and divers Speeches ran abroad; while some thought them credible persons, and some unworthy to be credited. I have seen Naw's Apology to King James, written in the year 1605; wherein laboriously protesting, he excuseth himself, that he was neither author, nor persuader, nor the first revealer of the Plot that was undertaken, nor failed of his duty through negligence, or want of foresight; yea, that this day he stoutly impugned the chief points of accusation against his lady and mistress: which notwithstanding appeareth not by Records. But the same day was there a Declaration made by the Commissioners and Judges of the land, That the said Sentence did

derogate nothing from James king of Scots, in title or honour, but that he was in the same place, degree and right, as if the same sentence had never been pronounced.

PROCEEDINGS IN PARLIAMENT.

Some few days after, a Parliament was holden at Westminster, begun by virtue of a certain power of vice-gerency, granted by the queen to the abp. of Canterbury, the Lord Treasurer, and the earl of Derby, and that not without precedent. In which Parliament the Proscription of the lord Paget, Charles Paget, sir Francis Englefield, Francis Throckmorton, Anthony Babington, Thomas Salisbury, Edward Jones, Chidiock Titchbourne, Charles Tilney, and the rest of the Conspirators, was confirmed, and their goods and possessions confiscate. The estates also of the realm, which had by their voices approved and confirmed the Sentence given against the queen of Scots, did with joint assent put up a Supplication to the queen by the hands of the lord chancellor, as follows:

‘ May it please your most excellent majesty, our most gracious sovereign, we your humble, loving and faithful subjects, the Lords and Commons in this present Parliament assembled, having of long time to our intolerable grief seen by how manifold most dangerous and execrable practices, Mary the daughter and heir of James V, late king of Scots, dowager of France, and commonly called Queen of Scots, hath compassed the Destruction of your majesty’s sacred and most royal person, in whose safety (next under God) our chief and only felicity doth consist; and thereby not only to be-

reave us of the sincere and true Religion of Almighty God, bringing us and this noble crown back again into the thralldom of the Romish tyranny, but also utterly to ruinate and overthrow the happy State and Commonwealth of this most noble realm; which being from time to time by the great mercy and providence of God, and your highness's singular wisdom, foreseen and prevented, your majesty of your exceeding great clemency and princely magnanimity hath either most graciously passed over, or with singular favour tolerated, although often and instantly moved by your most loving and faithful subjects to the contrary, in times of your Parliaments, and at many other times; and hath also protected and defended the said Scottish queen from those great dangers which her own people, for certain detestable crimes and offences to her imputed, had determined against her: all which notwithstanding, the same queen was nothing moved with these and many other your majesty's most gracious favours towards her; but rather obdurate in malice, and by hope of continual impunity imboldened to prosecute her cruel and mischievous determination by some speedy and violent course; and now lately a very dangerous Plot being conceived and set down by Anthony Babington and others, That six desperate and wicked persons should undertake that wicked and most horrible enterprize, to take away your majesty's life, (whom God of his infinite mercy long preserve) she did not only give her advice and direction upon every point, and all circumstances concerning the same, make earnest request to have it performed with all diligence, but did also promise assurance of large reward and recompence to the doers thereof; which being

informed to your majesty, it pleased your highness, upon the earnest suit of such as tendered the safety of your royal person, and the good and quiet state of this realm, to direct your Commission under the great seal of England, to the lords and others of your highness's privy council, and certain other lords of parliament of the greatest and most ancient degree, with some of your principal judges, to examine, hear and determine the same cause, and thereupon to give Sentence of Judgment according to a statute in that behalf, made in the 27th year of your most gracious reign: by virtue whereof, the more part of the same Commissioners, being in number 36, having at sundry times fully heard what was alleged and proved against the said Scottish queen in her own presence, touching the said Crimes and Offences, and what she could say for her Defence and Excuse therein, did after long deliberation give their Sentence and judgment with one consent, that the Death and Destruction of your royal person was imagined and compassed by the said Anthony Babington, with the privy of the same Scottish queen: and that she herself did also compass and imagine the death and destruction of your most royal person. Now for as much as we your majesty's most humble, loyal and dutiful subjects, representing unto your most excellent majesty the universal state of your whole people of all degrees in this your realm, do well perceive, and are fully satisfied, that the same Sentence and Judgment is in all things most honourable, just and lawful; and having carefully and effectually, according to our most bounden duties, weighed and considered upon what ground and cause so many traitorous complots, and dangerous

practices against your most royal person and estate, and for the invading of this realm, have for the space of many years past grown and proceeded, do certainly find, and are undoubtedly persuaded that all the same have been from time to time attempted and practised, by and from the Scottish queen, and by her confederates, ministers and favourers, who conceive an assured hope to achieve speedily by your majesty's untimely death that which they have long expected, and whereof during your life (which God long preserve to our inestimable comfort) they despair; to wit, to place her the said Scottish queen in the imperial and kingly seat of this realm, and by her to banish and destroy the professors and professing of the true Religion of Jesus Christ, and the ancient nobility of this land, and to bring this whole state and commonweal to foreign subjection, and utter ruin and confusion: which their malicious and traitorous purpose they will never cease to prosecute by all possible means they can, so long as they may have their eyes and imaginations fixed upon that lady, the only ground of their treasonable hope and conceits, and the only seed-plot of all dangerous and traitorous devices and practices against your sacred person. And seeing also what insolent boldness is grown in the heart of the same queen, through your majesty's former exceeding favours and clemencies towards her; and thereupon weighing with heavy and sorrowful hearts, in what continual peril of such like desperate conspiracies and practices your majesty's most royal and sacred person and life (more dear unto us than our own) is and shall be still, without any possible means to prevent it, so long as the Scottish queen shall be suffered to con-

tinue, and shall not receive that due punishment, which by justice, and the laws of this your realm, she hath so often and so many ways for her most wicked and detestable offences deserved: Therefore, and for that we find, that if the said lady should now escape the due and deserved punishment of Death for these her most execrable Treasons and Offences, your highness's royal person shall be exposed unto many more, and those more secret and dangerous Conspiracies than before, and such as shall not or cannot be foreseen, or discovered, as these her late attempts have been; and shall not hereafter be so well able to remove or take away the ground and occasion of the same, as now by justice may or ought to be done: We do most humbly beseech your most excellent majesty, that as well in respect of the continuance of the true religion now professed amongst us, and of the safety of your most royal person and estate, as in regard of the preservation and defence of us your most loving, dutiful and faithful subjects, and the whole commonweal of this realm; it may please your highness to take speedy order, That declaration of the same sentence and judgment be made and published by proclamation, and that thereupon direction be given for further proceedings against the said Scottish queen, according to the effect and true meaning of the said statute: Because upon advised and great consultation, we cannot find that there is any possible means to provide for your majesty's safety, but by the just and speedy execution of the said queen, the neglecting whereof may procure the heavy displeasure and punishment of Almighty God, as by sundry severe examples of his great justice in that behalf left us in the sacred scriptures doth appear. And

if the same be not put in present execution, we your most loving and dutiful subjects shall thereby (so far as man's reason can reach) be brought into utter despair of the continuance amongst us of the true religion of Almighty God, and of your majesty's life, and the safety of all your faithful subjects, and the good estate of this most flourishing commonweal.'

The Queen, with great majesty of countenance and voice, answered to this purpose: "So many and so great are the bottomless graces, and immeasurable benefits bestowed upon me by the Almighty, that I must not only most humbly acknowledge them as benefits, but admire them as miracles, being in no sort able to express them. And though there liveth not any that may more justly acknowledge himself bound to God than I, whose life he hath miraculously preserved from so many dangers, yet am I not more deeply bound to give him thanks for any one thing, than for this which I will now tell you, and which I account as a miracle: Namely, that as I came to the crown with the most hearty good-will of all my subjects, so now after 28 years reign, I perceive in them the same, if not greater good-will towards me; which if I once lose, well might I breathe, but never think I lived. And now though my life hath been dangerously shot at, yet I protest there is nothing hath more grieved me, than that one not differing from me in sex, of like rank and degree, of the same stock, and most nearly allied unto me in blood, hath fallen into so great a crime. And so far have I been from bearing her any ill-will, that upon the discovery of certain treasonable practices against me, I wrote unto her secretly, that if she would confess them by a private letter unto my-

self, they should be wrapped up in silence. Neither did I write thus in mind to entrap her, for I knew then as much as she could confess. And even yet, though the matter become thus far, if she would truly repent, and no man would undertake her cause against me, and if my life alone depended hereupon, and not the safety and welfare of my whole people, I would (I protest unfeignedly) most willingly pardon her. Nay if England might by my death attain a more flourishing estate, and a better prince, I would most gladly lay down my life: For, for your sakes it is, and for my people's, that I desire to live. As for me, I see no such great cause why I should either be fond to live, or fear to die. I have had good experience of this world, and I know what it is to be a subject, and what to be a sovereign. Good neighbours I have had, and I have met with bad; and in trust I have found treason. I have bestowed benefits upon ill deservers; and where I have done well, have been ill requited. While I call to mind these things past, behold things present, and expect things to come, I hold them happiest that go hence soonest. Nevertheless against such mischiefs as these, I put on a better courage than is common to my sex, so as whatsoever befall me, death shall not take me unprepared.—And as touching these Treasons, I will not so prejudicate myself, or the laws of my kingdom, as not but to think that she having been the contriver of the same treasons, was bound and liable to the ancient laws, though the late act had never been made; which notwithstanding was no ways made to prejudice her. So far was it from being made to entrap her, that it was rather intended to forewarn and terrify her from attempting anything against it. But seeing

it was now in force of a law, I thought good to proceed against her according to the same. But you lawyers are so curious in scanning the nice points of the law, and following of precedents and form, rather than expounding the laws themselves, that by exact observing of your form, she must have been indicted in Staffordshire, and have holden up her hand at the bar, and have been tried by a jury of twelve men. A proper course forsooth of trial against a princess! To avoid therefore such absurdities, I thought it better to refer the examination of so weighty a cause to a good number of the noblest personages of the land, and the judges of the realm; and all little enough. For we princes are set as it were upon stages, in the sight and view of all the world. The least spot is soon spied in our garments, a blemish quickly noted in our doings. It behoveth us therefore to be careful that our proceedings be just and honourable. But I must tell you one thing, that by this last act of parliament you have brought me to a narrow streight, that I must give order for her death, which is a princess most nearly allied unto me in blood, and whose practices against me have stricken me into so great grief, that I have been glad to absent myself from this parliament, lest I should increase my sorrow by hearing it spoken of, and not out of fear of any danger, as some think. But yet I will now tell you a secret (though it is well known that I have the property to keep counsel): It is not long since these eyes of mine saw and read an oath, wherein some bound themselves to kill me within a month: hereby I see your danger in me, which I will be very careful to avoid.—Your Association for my safety I have not forgotten, which I never so much as

thought of, till a great number of hands, with many obligations, were shewed me; which as I do acknowledge as a strong argument of your true hearts, and great zeal to my safety, so shall my bond be stronger tied to a greater care for your good. But forasmuch as this matter now in hand is very rare, and of greatest consequence, I hope you do not look for any present resolution; for my manner is, in matters of less moment than this, to deliberate long upon that which is once to be resolved. In the meantime I beseech Almighty God to illuminate my mind, that I may foresee that which may serve for the good of his church, the prosperity of the commonwealth, and your safety. And that delay may not breed danger, we will signify our resolution with all convenience. And whatever the best subjects may expect at the hands of the best princes, that expect from me to be performed to the full."

The twelfth day after when she had thoroughly weighed the matter in her mind, being distracted with doubtful care and thought, and as it were in some conflict with herself what to do in so important a business, she sent the Lord Chancellor to the higher house, and Puckering to the rest in the lower house; praying them to enter into a new consideration upon so weighty a matter, and to devise some better remedy, whereby both the queen of Scots Life might be spared, and her own security provided for.

After much and long deliberation, they judging that both the welfare and hurt of the prince belongeth to all, concurred again with one voice in the same opinion, and that for these Causes: For that the queen's safety could not be secured as long as the queen of Scots lived,

unless she either seriously repented and acknowledged her offence, or were kept with a more streight guard, good assurance being given by bond and oath for her good demeanour, or delivered hostages, or else departed the realm. As for her Repentance, they were out of all hope of it, considering that she had ill requited the queen which had saved her life, and did not yet acknowledge her fault. As for a surer guard, streighter custody, bonds, oath, and hostages, they held them all as nothing, for that the queen's life being once taken away, these would presently vanish. And if she should depart the realm, they feared lest she would presently take arms to invade the same.¹

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The Queen then spake in this manner:

“Full grievous is that way, whose going on, and end, yield nothing but cumber for the hire of a laborious journey. I have this day been in greater conflict with myself, than ever in all my life, whether I should speak, or hold my peace. If I speak and not complain, I shall dissemble: and if I should be silent your labour taken were all in vain. If I should complain, it might seem strange and rare; yet I confess that my most hearty desire was, that some other means might have been devised to work your security and my safety, than this which is now propounded. So as I cannot but complain, though not of you, yet unto you; that I perceive by your petitions, that my safety dependeth wholly upon the death of another. If there be any that think I have

¹ Here followed a long discourse on the danger to the Queen's life and the established religion, with a statement that all England asked the speedy execution of Mary, late Queen of Scots.

prolonged the time of purpose to make a counterfeit shew of clemency, they do me the most undeserved wrong, as He knoweth, which is the searcher of the most secret thoughts of the heart. Or, if there be any that be persuaded, that the commissioners durst not pronounce other sentence, as fearing thereby to displease me, or to seem to fail of their care for my safety, they but heap upon me most injurious conceits. For either those, whom I have put in trust, have failed of their duties, or else they signified unto the commissioners in my name, that my will and pleasure was, that every one should deal freely according to his conscience, and what they would not openly declare, that they should reveal unto me in private. It was of my most favourable mind towards her, that I desired some other means might be found out to prevent this mischief. But since now it is resolved, that my surety is, most desperate without her death, I have a most inward feeling of sorrow, that I, which have in my time pardoned so many rebels, winked at so many treasons, or neglected them with silence; must now seem to shew cruelty upon so great a princess.—I have, since I came to the crown of this realm, seen many defamatory Books and Pamphlets against me, accusing me to be a tyrant; well fare the writers hearts, I believe their meaning was to tell me news: and news indeed it was to me, to be branded with the note of tyranny: I would it were as great news to hear of their impiety. But what is it which they will not write now, when they shall hear that I have given consent, that the executioner's hands shall be imbrued in the blood of my nearest kinswoman? But so far am I from cruelty, that to save mine own life, I would not

offer her violence; neither have I been so careful how to prolong mine own life, as how to preserve both: which that it is now impossible, I grieve exceedingly. I am not so void of judgment, as not to see mine own perils before mine eyes; nor so mad, to sharpen a sword to cut mine own throat; nor so careless, as not to provide for the safety of mine own life. But this I consider with myself, that many a man would put his own life in danger to save a princess's life. I do not say, so will I; yet have I many times thought upon it.—But seeing so many have both written and spoken against me, give me leave, I pray you, to say somewhat in mine own defence, that ye may see what manner of woman I am, for whose safety you have passed such careful thoughts; wherein as I do with most thankful heart consider your vigilant care, so am I sure I shall never requite it, had I as many lives as you all. When first I took the scepter, I was not unmindful of God the giver, and therefore began my reign with his service, and the religion I had been both born in, bred in, and I trust shall die in. And though I was not ignorant how many perils I should be beset withal at home for altering religion, and how many great princes abroad, of a contrary profession, would attempt all hostility against me; yet was I no whit dismayed, knowing that God, whom only I respected, would defend both me and my cause. Hence it is, that so many treacheries and conspiracies have been attempted against me, that I rather marvel that I am, than muse that I should not be, were it not that God's holy hand hath protected me beyond all expectation.

Then to the end I might make the better progress in art of swaying the scepter, I entered into long and seri-

ous cogitation what things were worthy and fitting for kings to do: and I found it most necessary that they should be abundantly furnished with those special virtues, justice, temperance, prudence, and magnanimity.] As for the two latter, I will not boast myself, my sex doth not permit it: but for the two former, I dare say, (and that without ostentation) I never made a difference of persons, where right was one; I never preferred for favour, whom I thought not fit for worth; I never bent my ear to credit a tale that was first told, nor was so rash to corrupt my judgment with prejudice, before I heard the cause. I will not say but many reports might haply be brought me in too much favour of the one side or the other; for we princes cannot hear all ourselves: yet this I dare say boldly, my judgment went ever with the truth according to my understanding. And as full well Alcibiades wished his friend, not to give any Answer till he had run over the letters of the alphabet; so have I not used rash and sudden resolutions in anything. And therefore as touching your counsels and consultations, I acknowledge them to be so careful, provident and profitable for the preservation of my life, and to proceed from minds so sincere, and to me most devoted, that I shall endeavour myself all I can, to give you cause to think your pains not ill-bestowed, and strive to make myself worthy of such subjects.

And now for your Petition, I pray you for this present to content yourselves with an Answer without Answer? Your judgment I condemn not, neither do I mistake your Reasons, but pray you to accept my thankfulness, excuse my doubtfulness, and take in good part

my answer answerless. If I should say, I would not do what you request, I might say perhaps more than I think: and if I should say I would do it, I might plunge myself into peril, whom you labour to preserve; which in your wisdoms and discretions ye would not that I should, if ye consider the circumstances of place, time, and the manners and conditions of men."

After this the Assembly of the Estates was prorogued.

About that time were lord Buckhurst and Beale sent to the queen of Scots, to signify unto that Sentence was pronounced against her; that the same was approved and confirmed by act of parliament, as most just, and the Execution thereof instantly sued for by the Estates, out of a due regard of justice, security and necessity: and therefore to persuade her to acknowledge her Offences against God and the queen, and to expiate them before her death by repentance: letting her understand, that as long as she lived, the received Religion in England could not subsist. Hereat she seemed with a certain unwonted alacrity to triumph, giving Gods thanks, and rejoicing in her heart that she was holden to be an instrument for the re-establishing of Religion in this island. And earnestly she prayed, that she might have a Catholic priest to direct her conscience, and minister the Sacraments unto her. A bishop and a dean whom they commended unto her for this use, she utterly rejected, and sharply taxed the English nation, saying often, That the English had many times slaughtered their kings; no marvel therefore, if they now also shew their cruelty upon me, that am issued from the blood of their kings.

COMMISSION FOR THE EXECUTION OF THE QUEEN OF SCOTS.

The publication of the Sentence was stayed a while by the intercession of L'Aubespine the French ambassador; but in the month of December, through the earnest instance of some courtiers, it was publicly proclaimed all over the city, of London, the lord mayor, the aldermen, and principal officers and citizens being present, and afterward throughout the whole realm. In the Proclamation the queen seriously protested, that the publication was extorted from her not without exceeding grief of mind, out of a certain necessity, and the most vehement prayers and obtestations of the Estates of the Realm; though there were, which thought this to proceed of women's cunning, who though they much desire a thing, yet will always seem rather to be constrained unto it. Afterwards, on February the 1st, a Commission passed the Great Seal for her Execution, which was as follows:

“Elizabeth, by the grace of God, queen of England, France and Ireland, &c. To our trusty and well-beloved cousins, George earl of Shrewsbury, earl marshal of England; Henry earl of Kent; Henry earl of Derby; George earl of Cumberland; and Henry earl of Pembroke, greeting, &c. Whereas sithence the Sentence given by you, and others of our council, nobility and judges, against the queen of Scots, by the name of Mary, the daughter of James V., late king of Scots, commonly called the queen of Scots, and dowager of France, as to you is well known; all the States in the last Parliament assembled, did not only deliberately, by great advice,

allow and approve the same Sentence as just and honourable, but also with all humbleness and earnestness possible, at sundry times require, solicit, and press us to direct such further Execution against her person, as they did adjudge her to have daily deserved; adding thereunto, that the forbearing thereof was, and would be daily certain and undoubted danger, not only unto our own life, but also unto themselves, their posterity, and the public estate of this realm, as well for the cause of the gospel, and true religion of Christ, as for the peace of the whole realm; whereupon we did, although the same were with some delay of time, publish the same Sentence by our Proclamation, yet hitherto have forbore to give direction for the further satisfaction of the aforesaid most earnest requests, made by our said states of our parliament, whereby we do daily understand, by all sorts of our loving subjects, both of our nobility and council, and also of the wisest, greatest, and best devoted of all subjects of inferior degrees, how greatly and deeply, from the bottom of their hearts, they are grieved and afflicted with daily, yea hourly fears of our life, and thereby consequently with a dreadful doubt and expectation of the ruin of the present happy and godly estate of this realm, if we should forbear the further final execution as it is deserved, and neglect their general and continual requests, prayers, counsels and advices. And thereupon contrary to our natural disposition in such case, being overcome with the evident weight of their counsels, and their daily intercessions, importing such a necessity, as appeareth directly tending to the safety not only of ourself, but also to the weal of our whole realm, we have condescended to suf-

fer Justice to take place; and for the Execution thereof, upon the special trusty experience and confidence which we have of your loyalties, faithfulness and love, both toward our person and the safety thereof, and also to your native countries, whereof you are most noble and principal members; We do will, and by Warrant hereof do authorize you, as soon as you shall have time convenient, to repair to our Castle of Fotheringay, where the said queen of Scots is in custody of our right trusty and faithful servant and counsellor, sir Amias Powlet, knt. and then taking her into your charge, to cause by your commandment Execution to be done upon her person, in the presence of yourselves, and the aforesaid sir Amias Powlet, and of such other officers of justice as you shall command to attend upon you for that purpose; and the same to be done in such manner and form, and at such time and place, and by such persons, as to five, four or three of you, shall be thought by your discretions convenient, notwithstanding any law, statute or ordinance to the contrary. And these our letters patent sealed with our great seal of England, shall be to you, and every of you, and to all persons that shall be present, or that shall be, by you, commanded to do any thing appertaining to the aforesaid Execution, a full sufficient Warrant, and Discharge forever. And further, we are also pleased and contented, and hereby we do will, command and authorize our Chancellor of England, at the requests of you all, and every of you, that the duplicate of our Letters Patent, be to all purposes made, dated and sealed with our great Seal of England, as these presents now are: In witness whereof,

we have caused these our letters to be made patent. Yeoven at our manor of Greenwich, the 1st day of February, in the 29th year of our reign."

QUEEN ELIZABETH'S LETTER DIRECTED TO SIR AMIAS
POWLET, KNT., KEEPER OF THE QUEEN OF SCOTS,
AT THE CASTLE OF FOTHERINGAY.

"Amias, my most faithful servant, God reward thee treblefold in the double of thy most troublesome Charge so well discharged: if you knew, my Amias, how kindly, besides dutifully, my grateful heart accepts your double labours, and faithful actions, your wise orders, and safe regards, performed in so dangerous a charge, it would ease your travel, and rejoice your heart, in that I cannot balance, in any weight of my judgment, the value that I prize you at, and suppose no treasure to counter-vail such faith; and shall condemn myself, in that thought I never committed, if I reward not such deserts; yea, let me lack when I most need, if I acknowledge not such a merit with a reward, not *omnibus datum*; but let your wicked murderess know, how with hearty sorrow her vile deserts compel these orders; and bid her from me, ask God forgiveness for her treacherous dealing against my life many years, to the intolerable peril of her own: and yet not content with so many forgivenesses, but must fall again so horribly, far passing a woman's thought, much less a princess's; instead of excusing whereof, not one can serve it, being so plainly confessed by the author of my guiltless death. Let repentance take place, and let not the fiend possess her,

so that the better part be lost, which I pray with hands lifted up to him, that can both save and spill, with my most loving adieu, and prayer for thy long life, your assured and loving sovereign, as heart, by good desert, indureth, ELIZABETH, *Regina*."

QUEEN MARY'S EXECUTION.

In pursuance of this Commission, she was executed the 8th day of February following, in which Queen Elizabeth afterwards pretended she was surprised; the manner whereof is thus related by Camden:

Queen Elizabeth, after some hesitation, having delivered a Writing to Davison, one of her Secretaries, signed with her own hand, commanding a Warrant under the great seal of England to be drawn up for the Execution, which was to lie in readiness in case of any dangerous Attempt upon queen Elizabeth, commanded him to acquaint no man therewith; the next day the queen changed her mind, and commanded Davison by Killegrew that the Warrant should not be drawn. Davison came presently to the queen, and told her that it was drawn and under seal already; at which she was somewhat moved, and blamed him for making such haste. He notwithstanding acquainted the Council both with the Warrant and the whole matter, and easily persuaded them who were apt to believe what they desired, that the queen had commanded it should be executed. Hereupon without any delay Beale, who in respect of religion was the queen of Scots most bitter adversary, was sent down with one or two Executioners, and a Warrant, wherein authority was given to the Earls of

Shrewsbury, Kent, Derby, Cumberland, and others, to see Execution done according to law; and this without the queen's knowledge. And though she at that very time told Davison, that she would take another course, yet did not he for all that call Beale back.

As soon as the earls were come to Fotheringay, they, together with sir Amias Powlet, and sir Drew Drury, to whose custody the queen of Scots was committed, came to her and told her the cause of their coming, reading the Warrant, and in few words admonished her to prepare herself for Death, for she was to die the next day. She undauntedly, and with a composed spirit, made this Answer; "I did not think the queen, my sister, would have consented to my death, who am not subject to your law and jurisdiction: but seeing her pleasure is so, Death shall be to me most welcome; neither is that soul worthy of the high and everlasting joys above, whose body cannot endure one stroke of the executioner."

She desired she might have Conference with her Almoner, her Confessor, and Melvin, the Master of her Household; for her Confessor, it was flatly denied that he should come to her; and the earls recommended to her the bishop, or the dean of Peterborough, to comfort her; whom she refusing, the earl of Kent, in a hot burning zeal to religion, broke forth into these words among other speeches: "Your life will be the death of our Religion, as contrariwise your death will be the life thereof." Mention being made of Babington, she constantly denied his Conspiracy to have been at all known to her, and the revenge of her wrong she left to God. Then enquiring what was become of Naw and Curle; she asked whether it were ever heard of before, that servants

were suborned and accepted as Witnesses against their master's life?

When the earls were departed, she commanded supper to be hastened, that she might the better dispose of her concerns. She supped temperately, as her manner was; and seeing her servants, both men and women, weeping and lamenting as she sat at supper, she comforted them with great courage and magnanimity, bade them leave mourning, and rather rejoice, that she was now to depart out of a world of miseries. Turning to Burgoin, her physician, she asked him whether he did not now find the force of Truth to be great: "They say," quoth she, "that I must die, because I have plotted against the queen's life; yet the earl of Kent tells me, there is no other cause of my death, but that they are afraid for their Religion because of me; neither hath my offence against the queen, but their fear because of me, drawn this end upon me, while some, under the colour of Religion, and the public good, aim at their own private respects and advantages."

Towards the end of supper she drank to all her servants, who pledged her in order upon their knees, mingling tears with the wine, and begging pardon for their neglect of their duty; as she also in like manner did of them. After supper she perused her Will, read over the Inventory of her Goods and Jewels, and wrote down the Names of those, to whom she bequeathed every particular. To some she distributed money with her own hand. To her Confessor she wrote a Letter, that he would make intercession for her to God in his prayers. She wrote also letters of recommendation for her servants to the French king and the duke of Guise. At her

wonted time she went to bed, slept some hours; and then waking, spent the rest of the night in prayer.

The fatal day being come, which was the 8th of February, she dressed herself as gorgeously, as she was wont to do upon festival days, and calling her servants together, commanding her Will to be read; prayed them to take their legacies in good part, for her ability would not extend to giving them any greater matters.

Then fixing her mind wholly upon God in her Oration, or ordinary place of prayer, with sighs and groans, and prayers, she begged his Divine Grace and favour; till such time as Thomas Andrews, sheriff of the county, acquainted her, that she must now come forth: And forth she came with state, countenance and presence majestically composed; a cheerful look, and a matron-like and modest habit; her head covered with a linen veil, and that hanging down to the ground, her prayer-books hanging at her girdle, and carrying a crucifix of ivory in her hands. In the porch she was received by the earls and other noblemen, where Melvin, her servant, falling upon his knees, and pouring forth tears, bewailed his hard hap, that he was to carry into Scotland the woeful tidings of the unhappy fate of his lady and mistress; She thus comforted him, "Lament not, but rather rejoice, thou shalt by-and-by see Mary Stuart freed from all her cares. Tell them, that I die constant in my Religion, and firm in my fidelity and affection towards Scotland and France. God forgive them, who have thirsted after my blood, as harts do after the fountain! Thou, O God! who art Truth itself, and perfectly and truly understandest the inward thoughts of my heart, knowest how greatly I have desired that the

kingdoms of England and Scotland might be united into one. Commend me to my son, and assure him, that I have done nothing, which may be prejudicial to the kingdom of Scotland; admonish him to hold in amity and friendship with the queen of England; and see thou do him faithful service."

And now the tears trickling down, she bade Melvin several times farewell, who wept as fast as she. Then turning to the earls, she prayed them that her servants might be civilly dealt withal: That they might enjoy their Legacies, that they might stand by her at her Death, and might be sent back into their own country with letters of safe conduct. The former request they granted, but that they should stand by her at her death, the earl of Kent shewed himself somewhat unwilling, fearing some superstition. "Fear it not," said she, "These harmless souls desire only to take their last farewell of me: I know my sister Elizabeth would not have denied me so so small a matter, that my women should be then present, were it but for the honour of the female sex. I am her near kinswoman, descended from Henry VII., queen dowager of France, and anointed queen of Scots."

When she had said this, and turned herself aside, it was at last granted, that such of her servants as she should name should be present. She named Melvin, Burgoin her physician, her apothecary, her surgeon, two waiting women, and others, of whom Melvin bore up her train. So the gentlemen, two earls and the sheriff going before her, she came to the scaffold, which was built at the upper end of the Hall, on which was placed

a chair, a cushion, and a block, all covered with black cloth. As soon as she was set down, and silence commanded, Beale read the warrant: She heard it attentively, yet as if her thoughts were taken up with somewhat else. Then Fletcher, dean of Peterborough, began a long speech to her touching the Condition of her Life past, present, and to come. She interrupted him once or twice as he was speaking, prayed him not to trouble himself, protesting that she was firmly fixed and resolved in the ancient Catholic Roman Religion, and for it was ready to shed her last blood. When he earnestly persuaded her to true repentance, and to put her whole trust in Christ by an assured faith; she answered, That in that religion she was both born and bred, and now ready to die. The earls said they would pray with her; to whom she said, that she would give them hearty thanks, if they would pray for her: but to join, said she, in prayer with you, who are of another profession, would be in me a heinous sin. Then they appointed the dean to pray; with whom while the multitude that stood round about were praying, she fell down upon her knees, and holding the Crucifix before her in her hands, prayed in Latin, with her servants, out of the office of the Blessed Virgin Mary.

After the Dean had made an end of praying, she in English recommended the church, her son, and queen Elizabeth to God, beseeching him to turn away his wrath from this island, and professing, that she reposed her hope of Salvation in the blood of Christ: lifting up the Crucifix, she called on the Celestial Choir of Saints to make intercession to him for her: She forgave all her enemies, and kissing the crucifix, and signing herself

with the Cross, she said, "As thy arms, O Christ! were spread out upon the cross, so receive me with the stretched-out arms of thy mercy, and forgive my sins." Then the executioners asked her forgiveness, which she granted them. And when her women had taken off her upper garments (which she was eager and hasty to have done), wailing and lamenting the while, she kissed them; and signing them with the Cross, with a cheerful countenance bid them forbear their womanish lamentations, for now she should rest from all her sorrows. In like manner turning to her men servants, who also wept, she signed them with the Cross, and smiling, bade them farewell. And now having covered her face with a linen handkerchief, and laying herself down to the block, she recited the Psalm, "In thee, O Lord! do I put my trust, let me never be confounded." Then stretching forth her body, and repeating many times, "Into thy hands, O Lord! I commend my Spirit," her head was taken off at two strokes; The Dean crying out, "So let queen Elizabeth's enemies perish;" the earl of Kent answering Amen, and the multitude sighing and sorrowing. Her body was embalmed and ordered with due and usual rites, and afterwards interred with a royal funeral in the cathedral church of Peterborough. A pompous obsequy was also performed for her at Paris, by procurement of the Guises.

[The news of Mary's execution, being brought to Elizabeth, she appeared extremely concerned at it. Sighs, tears, lamentation and mourning were the signs she gave of her grief, which seemed immoderate.] She drove the Privy counsellors from her presence, and commanded them to be examined in the Star-Chamber, and Davison

to be tried for his life for his disobedience. A few days after she sent the following letter to the king of Scotland (afterwards king James I. of England), by Robert Cary:

“My dearest Brother.

“I would to God thou knewest (but not that thou feltest) the incomparable grief my mind is perplexed with, upon this lamentable accident, which is happened contrary to my meaning and intention, which, since my pen trembles to mention it, you shall fully understand by this my kinsman. I request you, that as God and many others can witness my innocence in this matter, so you will also believe, that if I had commanded it, I would never deny it. I am not so faint-hearted, that for terror I should fear to do the thing that is just, or to own it when it is once done; no, I am not so base and ignobly minded. But as it is no princely part, with feigned words to conceal and disguise the real meaning of the heart; so will I never dissemble my actions, but make them appear in their true and proper colours. Persuade yourself this for truth, that as I know this has happened deservedly on her part, so if I had intended it, I would not have laid it upon others; but I will never charge myself with that which I had not so much as a thought of. Other matters you shall understand by the bearer of this letter. As for me, I would have you believe there is not any which loves you more dearly, or takes more care for the good of you and your affairs. If any man would persuade you to the contrary, you may conclude he favours others more than you. God preserve you long in health and safety.”

This letter to James of Scotland was written about February 15th. March 28th Queen Elizabeth ordered Sir William Davison, Secretary of State, to whose care she had entrusted the death warrant of the Queen of Scots, to be arraigned in the Star Chamber for "Misprision and Contempt." Queen Elizabeth determined to make the public believe the execution of the Queen of Scots "was done against her will, and without her knowledge." Davison was her instrument. Shortly before the sentence of the Queen of Scots, he was purposely made Secretary of State. He was dismissed from his office soon after the clamor caused by the execution reached the ears of the Queen of England. A commission composed of

Sir Christopher Wraye, Lord Chief Justice,
 Lord Archbishop of Canterbury,
 Lord Archbishop of York,
 Earl of Worcester,
 Earl of Cumberland,
 Earl of Lincoln,
 Lord Grey,
 Lord Lumley,
 Sir James Croft,¹ Comptroller,
 Sir Gilbert Gerrard, Master of the Rolls,
 Lord Chief Justice of the Common Pleas, Edmund Anderson,
 Lord Chief Baron, Sir Roger Manwood,
 Sir Walter Mildmay, Chancellor of the Exchequer,
 was ordered to try him.

¹Sometimes this name is given Sir James A-Crofts.

Attorney-General Popham thus presents the Queen's case:

My lords, I am to inform your lordships in her majesty's behalf, of a certain great and grievous Contempt and Misprision against Mr. Davison, there prisoner at the bar, late one of her majesty's Secretaries. The manifold and sundry practices committed by the Scottish queen are not unknown to your honours, which were offences in the highest degree, and required to be looked unto with speed. It is well known with your lordships, also that thereupon, by earnest entreaty and intercession, her majesty at length condescended that the matter should be heard and decided according unto law. Whereupon were those honorable proceedings held at Fotheringay. But the residence which belonged thereunto, to-wit, the Execution, her majesty politieally neither consented unto, nor denied, esteeming no clemency in the former, nor wisdom in the latter. Which course she held from the 25th of Oct., all Nov. Dec. and Jan. During which time, most horrible conspiracies against her majesty's most sacred person were contrived, most false rumour that the Scottish queen was escaped, spread abroad, and bruited that foreigners were landed for invasion; all which, for preservation of the Scottish queen, and prejudice of ours. Upon these considerations, her majesty assented to sign the Warrant for her Execution, by whom such tumults were raised: notwithstanding, being moved to mercy by her great wisdom, she thought it necessary to have it in readiness, if any attempt should be begun, and yet not in haste to execute the same; this so signed, she left with Mr. Davison to carry the Great Seal, to have it in readiness as

aforesaid. And he, after the sealing, and without her majesty's commandment, presented it unto the lords, without her privy, contemptuously. Notwithstanding, upon delivery thereof to him, her majesty bid him use secrecy. And upon question made by the lords whether her majesty continued in that mind for execution of the Scottish queen, he said, she held that course still: and upon farther question said her majesty would not farther be troubled with that matter: Whereupon the lords seeing no impediment, dispatched the Execution, wherein Mr. Davison did break the secrecy her majesty reposed in him, in delivering it unto the lords, and dealt very contemptuously in not making her privy, knowing her mind to be to the contrary. For her majesty sent Mr. Killegrew unto him, commanding him, if it were not sealed already, it should not be sealed; and after, when he told her majesty it was sealed already, she asked him what haste? This act so done by him, he being but a particular counsellor, her majesty doth take it a matter of high indignity and abuse of her counsellors, and a thing of the greatest moment that ever happened since her reign, since which time never any counsellor in matters of far less importance proceeded without her resolution or privy; which thing she leaves to your honors consideration for punishment thereof.

The person who reported these "Proceedings" of the Star Chamber seems to have sympathized with the unfortunate scapegoat. He says:

Davison, with a comely countenance, replenished with gravity, a fine deliverance of speech, but a voice some-

what low (which he excused by late sickness) discreetly answered in sort ensuing: My Lords I am right sorry, that an action of this nature, for the honorable Proceedings against the Scottish queen, than which never was anything more honorable should after the full and laudable performance thereof be called into question. Again my lords, I am most sorry that her gracious highness should conceive such an high displeasure against me, as to trouble your honours with me at this present. But as in all my actions heretofore, I have been most faithful and forward to do her majesty's Commandments: so in this, by your honors favor, let me bear the testimony of my conscience, that I have done nothing either wittingly or willingly, but as became an honest man. And therefore first, that I delivered it unto the lords without her commandment, or against her commandment: let it be lawful for me with your honours leave to protest the contrary.

To that the Attorney answered: I said not that you delivered it unto the lords against her commandment, but that you knowing her mind to be contrary to it.

Davison to that replied: Well then I desire to have the proofs: whereupon the Solicitor General read his Examination, wherein to the sixth point he sayeth, That after signing and sealing he made her not privy to the sending down — Mr. Davison to that answered: My good lords, the Warrant for the Execution was signed and sealed by her majesty's express commandment: which being so, I take it to be irrevocable in law. Whereupon by the advice of the lords it was sent down, she not being privy to sending down, wherein I thought I dealt as beseemed me; for writs of execution

do not use to come to her majesty. That I was so forward, I thought it my duty, and for no other reason I protest: for I never had any private grudge or hatred against the Queen of Scots, but in respect of my country and common-weal. The warrant rested with me six weeks before I presented it, and when I presented it, my Lord Admiral will witness I was sent for. The place I held I protest I never sought for: it pleased her majesty for some gracious opinion of me to prefer me thereto. In which I am assured I have not committed any wilful error, but as an honest man should do: for nothing in the world is more dear to me than my reputation. I confess I said to some lords, I took it to be her majesty's pleasure to proceed therein, and I appeal to her majesty's own conscience if I had not cause to think so. But she is my most gracious sovereign: it is not my duty to say if she gainsay: I will not stand in contestation with her, for it beseems me not, and therefore I submit myself to what punishment your honours shall please to lay upon me.

The Commissioners commended his attitude towards the Queen. He adhered throughout the Proceedings substantially to the statements made above. Each member of the Commission made a speech, however, praising the Queen and reproving him. The Lord Archbishop of York preached a sermon on the duty of obedience.

His sentence was imprisonment and a fine.

Later Davison wrote as follows to Walsingham:

“The Queen after the departure of the French and Scottish ambassadors, of her own motion commanded

me to deliver her the Warrant for executing the sentence against the Queen of Scots. When I had delivered it she signed it readily with her own hand: when she had so done, she commanded it to be sealed with the Great Seal of England: and in a jesting manner said, 'Go tell all this to Walsingham, who is now sick, although I fear he will die for sorrow when he hears it.' She added also the reasons of her deferring it so long, namely lest she might seem to have been violently or maliciously drawn thereto: whereas in the meantime she was not ignorant how necessary it was: moreover, she blamed Powlet and Drury¹ that they had not eased her of this care, and wished that Walsingham would feel their pulses touching this matter. The next day after it was under the Great Seal, she commanded me by Killegrew that it should not be done: and when I informed her that it was done already she found fault with such great haste, telling me that in the judgment of some wise men,² another course might be taken. I answered, that that course was always best and safest which was most just. But fearing lest she should lay the fault upon me, (as she had laid the putting of the Duke of Norfolk to death upon Lord Burleigh) I acquainted Hatton with the whole matter, protesting that I would not plunge myself any deeper in so great a

¹Queen Elizabeth's letters to Sir Amias Powlet and to Sir Drew Drury were found among Sir Amias Powlet's papers, in which they were virtually ordered to make way with their prisoner and thus relieve her of responsibility and care.

²It is said that Lord Burleigh intimated to Sir Amias Powlet that assassination was the easiest solution of the difficulty, and that Sir Amias indignantly declined to play the assassin. Schiller's "Mary Queen of Scots" embodies this tradition.

business. He presently imparted it to the lord Burleigh, and the Lord Burleigh to the rest of the council, who all consented to have the Execution hastened, and every one of them vowed to bear an equal share in the blame, and sent Beale away with the Warrant and Letters. The third day after, when by a dream she was told of the queen of Scots death, I perceived that she wavered in her resolution: I asked her whether she had changed her mind? She answered, No: but another course said she, might have been devised. And withal she asked me, whether I had received any answer from Powlet? Whose Letter when I had shewed her, *wherein he flatly refused to undertake that which stood not with honor and justice*: she waxed angry, accused him and others (who had bound themselves by the Association) of perjury and a breach of their vow, as those that had promised great matters for their prince's safety, but would perform nothing: yet there are, said she, who will do it for my sake. But I showed her how dishonorable and unjust a thing this would be: and withal into how great danger she would bring Powlet and Drury by it: for if she approved the fact, she would draw upon herself both danger and dishonor, not without censure of injustice: and if she disallowed it, she would utterly undo men of great desert and their whole posterity. And afterwards she gave me a light check the same day that the Queen of Scots was executed because she was not yet put to death."

Contrasted with this letter to Walsingham, the defence Sir William Davison made for himself before the Star Chamber shows him to have been

a shrewd man. If he had acted otherwise before the Commissioners, his head would have paid the penalty of his temerity, without doubt. He evidently thoroughly understood the royal lady by whose order he had been imprisoned. It is apparent that he was one of the most innocent of those who were the actors in the execution of Mary, Queen of Scots.

TRIAL OF SIR WALTER RALEIGH.

The details of the trial of Sir Walter Raleigh, and the causes that led to his execution fifteen years after sentence was pronounced and a full pardon granted him by King James I., are of absorbing interest. The prisoner was one of the most popular and accomplished cavaliers of Queen Elizabeth's brilliant court. The Attorney-General was Sir Edward Coke,¹ whose manner of prosecuting a prisoner at the bar will not commend him to the reader.

Among the letters and other manuscripts that accompany this trial are indications of the King's bitter enmity against Raleigh, not so much because he was one of the favorites of Queen Elizabeth, whose course towards James' mother, Mary, Queen of Scots, is shown in the preceding trial, but because of his alleged complicity in the sentence and execution of the Earl of Essex. There are also proofs that Raleigh was in no way instrumental in causing the death of that unfortunate young nobleman.

¹ In Mr. Emlyn's preface to the second edition of *State Trials*, he commends the English attorneys as being superior to those of other nations. He says:

“The like Distinction will readily occur with respect to those

The enmity of Spain was a potential factor in bringing about the execution of Sir Walter Raleigh. In his first attempt to found a colony in North America, in 1579, Walter Raleigh was successfully opposed by a Spanish force and returned to England. At that date Spain was jealous of the presence of the Anglo-Saxon in the Western

whose Office was at the Bar. Some he will find, pressing nothing illegal against the prisoner, nothing hard and unreasonable (however in strictness legal), using no artifices to deprive him of his just Defence, treating his Witnesses with decency and candor; being not so intent upon convicting the Prisoner, as upon discovering Truth, and bringing real Offenders to Justice; looking upon themselves, according to that famous Saying of queen Elizabeth, not so much retained *pro Domina Regina*,* as *pro Domina Veritate*.†

“These will appear in a different light from others, who with rude and boisterous language abuse and revile the unfortunate Prisoner; who stick not to take all advantage of him, however hard and unjust, which either his ignorance, or the strict rigour of Law may give them; who by force or stratagem endeavor to disable him from making his Defence; who brow-beat his Witnesses as soon as they appear, tho’ ever so willing to declare the whole truth; and do all they can to put them out of countenance, and confound them in delivering their Evidence: as if it were the duty of their place to convict all who are brought to Trial, right or wrong, guilty or not guilty; and as if they, above all others, had a peculiar dispensation from the obligations of Truth and Justice. Such methods as these should be below men of honour, not to say men of conscience; yet in the perusal of this work, such persons will too often arise to view; and I could wish for the credit of the Law, that that great Oracle of it, the Lord Chief Justice Coke, had given less reason to be numbered among this sort.”

* For our Lady the Queen.

† For our Lady Truth. See in this connection, origin of the motto on the seal of the Department of Justice, in the Appendix.

Hemisphere. In 1584 Queen Elizabeth granted Sir Walter Raleigh a patent to take possession of the lands he should discover in North America. He fitted out two ships, discovered Virginia, and returned to England to be knighted by the Queen. He was especially active in opposing the Spanish invasions of England, helped to destroy the great Armada, and held the rank of Admiral in the expedition against Cadiz. His career practically ended with the death of Elizabeth. King James always regarded him with suspicion. November 17, 1603, he was tried for high treason and sentenced to death. James did not dare to execute the sentence, but kept him confined in the Tower of London fourteen years. After his release, he offered to operate a gold mine in Guiana, and made a map of the country for the King showing where it was located. Before his fleet of twelve ships sailed out of the Thames on this quest of which James seemed to approve, a fleet of Spanish ships had gone on a similar mission. When Raleigh's men landed on the Island of St. Thomas, West Indies, they fought several skirmishes with the Spaniards, and Raleigh's friends claim he found the identical map he drew for James in the closet of the Spanish Governor of the Island. There is no authentic clew as to how it got there. One theory is that it was stolen from England by the Spanish Ambassador to England, Count Gondomar. Another is that James himself connived

with Spain to convict Raleigh of high treason. At that time James I. was anxious to marry his son Charles to the Spanish Infanta.

When Raleigh arrived at the site of the mine, he found the Spaniards practically in possession. Thwarted, he returned to England. He landed at Plymouth, made an attempt to escape to France, was arrested, and was executed in the old palace yard of Winchester the morning of October 29, 1618, by the Sheriffs of London, on the "proofs" of guilt in the trial which follows. His sentence of death was fifteen years old and had been annulled by full pardon under the Great Seal of England! The only other evidence brought against him was the report that Count Gondomar denounced him to King James as a "Pirate." The machinations of this Spanish Ambassador availed more with James against this illustrious Knight than his own conspicuous merit and the love and admiration of his fellow-subjects. These details were gathered from a number of letters found in old English publications, some of which accompany the official records of the trial.

THE TRIAL OF SIR WALTER RALEIGH, AT WINCHESTER,
NOVEMBER 17TH, 1603.

COMMISSIONERS.

Henry Howard, Earl of Suffolk, Lord Chamberlain;
 Charles Blunt, Earl of Devon;
 Lord Henry Howard, afterwards Earl of Northampton;
 Robert Cecil, Earl of Salisbury;
 Edward, Lord Wotton of Morley;
 Sir John Stanhope, Vice Chamberlain;
 Lord Chief Justice of England, Popham;
 Lord Chief Justice of the Common Pleas, Anderson;
 Mr. Justice Gawdie;
 Justice Warburton;
 Sir W. Wade.

First, the Commission of Oyer and Terminer was read by the Clerk of the Crown Office; and the prisoner bid to hold up his hand.

And then presently the Indictment, which was in effect as followeth:

That he did conspire and go about to deprive the King of his Government; to raise up Sedition within the realm; to alter Religion, to bring in the Roman Superstition and to procure foreign enemies to invade the kingdom. That the lord Cobham, the 9th of June last, did meet with the said Sir Walter Raleigh in Durham-house, in the parish of St. Martin's in the Fields and then and there had conference with him, how to advance Arabella Stuart¹ to the crown and royal throne of this

¹ Arabella Stuart was the daughter of Charles Stuart, Earl of Lennox, brother of Lord Darnley, father of King James I. She died in the Tower of London, being caught in an attempt to escape from England with her husband, Sir William Seymour. James feared she might claim the crown of England. Her grandmother was Margaret, eldest sister of Henry VIII.

kingdom: and that then and there it was agreed, that Cobham should treat with Aremberg, ambassador from the archduke of Austria, to obtain of him 600,000 crowns, to bring to pass their intended treason. It was agreed that Cobham should go to the archduke Albert, to procure him to advance the pretended title of Arabella; from thence knowing that Albert had not sufficient means to maintain his own army in the Low Countries, Cobham should go to Spain to procure the king to assist and further her pretended title. It was agreed, the better to effect all this Conspiracy, that Arabella should write three Letters, one to the Archduke, another to the King of Spain, and a third to the duke of Savoy; and promise three things:— 1. To establish a firm Peace between England and Spain. 2. To tolerate the Popish and Roman Superstition. 3. To be ruled by them in contracting of her Marriage.—And for the effecting of these traitorous purposes, Cobham should return by the Isle of Jersey, and should find Sir Walter Raleigh captain of the said Isle, there, and take counsel of Raleigh for the distributing of the aforesaid crowns, as the occasion or discontentment of the subjects should give cause and way.—And further, That Cobham and his brother Brook met on the 9th of June last, and Cobham told Brook all these Treasons; to the which Treasons Brook gave his assent, and did join himself to all these. And after, on the Thursday following, Cobham and Brook did speak these words: “That there would never be a good world in England, till the king’ (meaning our sovereign lord) and his cubs (meaning his royal issue) were taken away.” And the more to disable and deprive the king of his crown, and to confirm the said Cobham in his intents, Raleigh did publish a Book, falsely written against the most just and royal Title of the king, knowing the said Book to be written against the just Title of the king; Which Book Cobham after that received of him. Further for the better effecting these traitorous purposes, and to establish the said Brook in his intent, the said Cobham did deliver the said Book unto him the 14th of June. And further, the said Cobham, on the 16th of June, for accomplishment of the said Conference, and by the traitorous instigation of Raleigh, did move Brook to incite Arabella to write to the three forenamed princes, to procure them to advance her Title; and that she after she had obtained the Crown,

should promise to perform three things, viz. 1. Peace between England and Spain. 2. To tolerate with impunity the Popish and Roman Superstitions. 3. To be ruled by them three in the contracting of her marriage.—To these motions the said Brook gave his assent. And for the better effecting of said Treasons, Cobham on the 17th of June, by the instigation of Raleigh, did write Letters to Count Aremberg, and did deliver the said Letters to one Matthew de Lawrençy, to be delivered to the said count, which he did deliver, for the obtaining of the 600,000 crowns; which money by other Letters Count Aremberg did promise to perform the payment of; and this Letter Cobham received the 18th of June. And then did Cobham promise to Raleigh, that when he had received the said money, he would deliver 8,000 crowns to him, to which motion he did consent; and afterwards Cobham offered Brook, that after he should receive the said crowns, he would give to him 10,000 thereof; to which motion Brook did assent.

To the Indictment, Sir Walter Raleigh pleaded “Not Guilty.”

The jury were:

Sir Ralph Conisby,	}	knights.
Sir Thomas Fowler,		
Sir Edward Peacock,		
Sir Wm. Rowe,		

Henry Goodyer,	}	esquires.
Thomas Walker,		
Roger Wood,		
Thomas Whitby,		

Tho. Highgate,	}	gentlemen.
Robert Kempton,		
John Chawkey,		
Robert Bromley,		

Sir Walter Raleigh, Prisoner, was asked, Whether he would take exceptions to any of the Jury?

Raleigh: I know none of them; they are all Christians and honest gentlemen, I except against none.

E. of Suffolk: You gentlemen of the king's learned Counsel, follow the same course as you did the other day.

Raleigh: My lord, I pray you I may answer the points particularly as they are delivered, by reason of the weakness of my memory and sickness.

L. C. J. Popham: After the king's learned counsel have delivered all the Evidence, sir Walter, you may answer particularly to what you will.

Heale, the King's Serjeant: You have heard of Raleigh's bloody attempts to kill the king and his royal progeny, and in place thereof, to advance one Arabella Stuart. The particulars of the Indictment are these: First, that Raleigh met with Cobham the 9th of June, and had Conference of an Invasion, of a Rebellion, and an Insurrection, to be made by the king's subjects, to depose the king, and to kill his children, poor babes that never gave offense. Here is blood, here is a new king and governor. In our king consists all our happiness, and the true use of the Gospel; a thing which we all wish to be settled, after the death of the Queen. Here must be Money to do this, for money is the sinew of war. Where should that be had? count Aremberg must procure it of Philip king of Spain, five or six hundred thousand crowns; and out of this sum Raleigh must have 8000. But what is that count Aremberg? Though I am no good Frenchman, yet it is as much as to say in English, earl of Aremberg. Then there must be Friends to effect this; Cobham must go to Albert archduke of Austria, for whom Aremberg was ambassador at that

time in England. And what then? He must persuade the duke to assist the pretended title of Arabella. From thence Cobham must go to the king of Spain, and persuade him to assist the said title. Since the Conquest, there was never the like Treason. But out of whose head came it? Out of Raleigh's, who must also advise Cobham to use his brother Brook to incite the lady Arabella to write the three several Letters, as aforesaid in the Indictment; all this was on the 9th of June. Then three days after, Brook was acquainted with it. After this, Cobham said to Brook, 'It will never be well in England, till the king and his 'cubs' are taken away.' Afterwards, Raleigh delivered a book to Cobham, treacherously written against the Title of the king. It appears that Cobham took Raleigh to be either a God, or an idol. Cobham endeavours to set up a new king, or governor; God forbid mine eyes should ever see so unhappy a change. As for the lady Arabella, she, upon my conscience, hath no more Title to the crown than I have, which before God I utterly renounce. Cobham, a man bred in England, hath no experience abroad; but Raleigh, a man of great wit, military, and a sword-man. Now, whether these things were bred in a hollow tree, I leave to them to speak of, who can speak far better than myself.—And so sat him down again.

Attorney General (Sir Ed. Coke): I must first, my lords, before I come to the cause, give one caution, because we shall often mention persons of eminent places, some of them great monarchs: whatever we say of them, we shall but repeat what others have said of them; I mean the Capital Offenders in their Confessions. We, professing law, must speak reverently of kings and

potentates. I perceive these honourable lords, and the rest of this great assembly, are come to hear what hath been scattered upon the wrack of report. We carry a just mind, to condemn no man, but upon plain Evidence. Here is Mischief, Mischief *in summo gradu*,¹ exorbitant Mischief. My Speech shall chiefly touch these three points: Imitation, Supportation and Defence.—The Imitation of evil ever exceeds the Precedent; as on the contrary, imitation of good ever comes short. Mischief cannot be supported but by Mischief; yea it will so multiply, that it will bring all to confusion. Mischief is ever underpropped by falsehood or foul practices; and because all these things did concur in this Treason, you shall understand the main, as before you did the bye.—The Treason of the bye consisteth in these Points; first, that the lord Grey, Brook, Markham, and the rest, intended by force in the night to surprise the king's court; which was a Rebellion in the heart of the realm, yea in the heart of the heart, in the Court. They intended to take him that is a sovereign, to make him subject to their power, purposing to open the doors with musquets and cavaliers, and to take also the Prince and Council; then under the king's authority to carry the king to the Tower; and to make a stale of the admiral. When they had the king there, to extort three things from him: first, A Pardon for all their Treasons: Secondly, A Toleration of the Roman Superstition; which their eyes shall sooner fall out than they shall ever see; for the king hath spoken these words in the hearing of many, 'I will lose the crown and my life, before

¹ In the highest degree.

ever I will alter Religion.' And thirdly, To remove Counsellors. In the room of the Lord Chancellor, they would have placed one Watson a priest, absurd in Humanity, and ignorant in Divinity. Brook, of whom I will speak nothing, Lord Treasurer. The great Secretary must be Markham; *Oculus patrie*.¹ A hole must be found in my Lord Chief Justice's coat. Grey must be Earl-Marshal, and Master of the Horse, because he would have a table in the court; marry, he would advance the earl of Worcester to a higher place. All this cannot be done without a multitude; therefore Watson the priest tells a resolute man, that the king was in danger of Puritans and Jesuits; so to bring him in blindfold into the action, saying, That the king is no king till he be crowned; therefore every man might right his own wrongs: but he is *rex natus*,² his dignity descends as well as yours, my lords. Then Watson imposeth a blasphemous oath, that they should swear to defend the king's person; to keep secret what was given them in charge, and seek all ways and means to advance the Catholic Religion. Then they intend to send for the Lord Mayor and the Aldermen, in the king's name, to the Tower; lest they should make any resistance, and then to take hostages of them; and to enjoin them to provide for them victuals and munition. Grey, because the king removed before Midsummer, had a further reach, to get a Company of Sword-men to assist the action: therefore he would stay till he had obtained a regiment from Ostend or Austria. So you see these Treasons were like Sampson's foxes, which were joined in their tails, though their heads were severed.

¹ Eye of the country.

² Born king.

Raleigh: You Gentlemen of the Jury, I pray remember, I am not charged with the Bye, being the Treason of the Priest.

Att.:¹ You are not. My lords, you shall observe three things in the Treasons; 1. They had a Watch-word (the king's safety); their Pretence was *Bonum in se*;² their Intent was *Malum in se*;³ 2. They avouched Scripture; both the priests had *Scriptum est*;⁴ perverting and ignorantly mistaking the Scriptures: 3. They avouched the Common Law, to prove that he was no king until he was crowned; alledging a Statute of 13 Eliz. This, by way of Imitation, hath been the course of all Traitors.—In the 20th of Edw. 2. Isabella the Queen, and the lord Mortimer, gave out, that the king's Person was not safe, for the good of the Church and Commonwealth. The Bishop of Carlisle did preach on this Text, 'My head is grieved,' meaning by the Head, the King; what when the Head began to be negligent, the people might reform what is amiss. In the 3rd of Henry 4, sir Roger Clarendon, accompanied with two priests, gave out, that Richard 2, was alive, when he was dead. Edward 3 caused Mortimer's head to be cut off, for giving counsel to murder the king. The 3rd of Henry 7, sir Henry Stanley found the crown in the dust, and set it on the king's head: when Fitzwater and Garrett told him, that Edward 5 was alive, he said, 'If he be alive, I will assist him.' But this cost him his head. Edmund de la Pole, duke of Suffolk, killed a

¹The "Att." designated throughout was the Attorney General, Sir Edw. Coke.

²Good in itself.

³Bad in itself.

⁴It is written.

man in the reign of king Henry 7, for which the king would have him hold up his hand at the bar, and then pardoned him: Yet he took such an offence thereat, that he sent to the noblemen to help to reform the Commonwealth; and then said, he would go to France and get power there. Sir Roger Compton knew all the Treason, and discovered Windom and others that were attainted. He said, there was another thing that would be stood upon, namely, that they had but one Witness. Then he vouched one Appleyard's Case, a Traitor in Norfolk, who said, a man must have two accusers. Helms was the man that accused him; but Mr. Justice Catlin said, that that Statute was not in force at that day. His words were 'Thrust her into the ditch.' Then he went on speaking of Accusers, and made this difference: an Accuser is a speaker by report, when a Witness is he that upon his oath shall speak his knowledge of any man,—A third sort of Evidence there is likewise, and this is held more forcible than either of the other two; and that is, when a man, by his accusation of another, shall, by the same accusation, also condemn himself, and make himself liable to the same fault and punishment: this is more forcible than many Witnesses. So then so much by way of Imitation.—Then he defined Treason: There is Treason in the heart, in the hand, in the mouth, in consummation: comparing that *in corde*¹ to the root of a tree; *in ore*,² to the bud; *in manu*³ to the blossom; and that which is *in consummatione*⁴ to the fruit.—Now I come to your Charge,—You of the Jury: the greatness of Treason is

¹ In the heart.

² In the mouth.

³ In the hand.

⁴ In the consummation.

to be considered in these two things, *Determinatione finis*, and *Electione mediorum*.¹ This Treason excelleth in both, for that it was to destroy the king and his progeny. These Treasons are said to be *Crimen laesae majestatis*;² this goeth further and may be termed, *Crimen exterpandæ regie majestatis, & totius progenici suae*.³ I shall not need, my lords, to speak anything concerning the King, nor of the bounty and sweetness of his nature, whose thoughts are innocent, whose words are full of wisdom and learning, and whose works are full of honour: although it be a true Saying, *Nunquam nimis quod nunquam satis*.⁴ But to whom do you bear malice? to the Children?

Raleigh: To whom speak you this? You tell me news I never heard of.

Attorney: Oh, sir, do I? I will prove you the notoriest Traitor that ever came to the bar. After you have taken away the King, you would alter Religion: as you sir Walter Raleigh, have followed them of the Bye in Imitation: for I will charge you with the words.

Raleigh: Your words cannot condemn me; my innocency is my defence. Prove one of these things wherewith you have charged me, and I will confess the whole Indictment, and that I am the horriest Traitor that ever lived, and worthy to be crucified with a thousand thousand torments.

Attorney: Nay, I will prove all: thou art a monster; thou hast an English face, but a Spanish heart. Now

¹The determination of the end and the choice of means.

²The crime of injuring Majesty.

³The crime of destroying his royal Majesty and all his children.

⁴That is never too much which is never enough.

you must have Money: Aremberg was no sooner in England (I charge thee Raleigh) but thou incitest Cobham to go unto him, and to deal with him for Money, to bestow on discontented persons, to raise Rebellion on the Kingdom.

Raleigh: Let me answer for myself.

Attorney: Thou shalt not.

Raleigh: It concerneth my life.

L. C. J.: Sir Walter Raleigh, Mr. Attorney is but yet in the General: but when the king's Counsel have given the Evidence wholly you shall answer every Particular.

Attorney: Oh! do I touch you?

Lord Cecil: Mr. Attorney, when you have done with this General Charge, do you not mean to let him answer every particular?

Attorney: Yes, when we deliver the Proofs to be read. Raleigh procured Cobham to go to Aremberg, which he did by his instigation: Raleigh supped with Cobham before he went to Aremberg; after supper, Raleigh conducted him to Durham-house; from thence, Cobham went with Lawrencey, a servant of Aremberg's, unto him, and went in by a back way. Cobham could never be quiet until he had entertained this motion, for he had four Letters from Raleigh. Aremberg answered, the Money should be performed, but knew not to whom it should be distributed. Then Cobham and Lawrencey came back to Durham-house, where they found Raleigh. Cobham and Raleigh went up, and left Lawrencey below, where they had secret conference in a gallery; and after, Cobham and Lawrencey departed from Raleigh. Your jargon was Peace: What is that? Spanish Invasion, Scottish Subversion. And again, you are

not a fit man to take so much Money for procuring of a lawful Peace, for peace procured by Money is dishonourable. Then Cobham must go to Spain, and return by Jersey, where you were Captain: and then, because Cobham had not so much policy, or at least wickedness, as you, he must have your advice for the distribution of the Money. Would you have deposed so good a king, lineally descended of Elizabeth, eldest daughter of Edward 4? Why then must you set up another? I think you meant to make Arabella a Titular Queen, of whose Title I will speak nothing; but sure you meant to make her a stale. Ah! good lady, you could mean her no good.

Raleigh: You tell me news, Mr. Attorney.

Att.: Oh, sir! I am the more large, because I know with whom I deal: for we have to deal today with a man of wit.

Raleigh: Did I ever speak with this lady?

Att.: I will track you out before I have done. Englishmen will not be led by persuasion of words, but they must have books to persuade.

Raleigh: The Book was written by a man of your profession, Mr. Attorney.

Att.: I would not have you impatient.

Raleigh: Methinks you fall out with yourself; I say nothing.

Att.: By this Book you would persuade men, that he is not the lawful king. Now let us consider some circumstances: My lords, you know my lord Cobham (for whom we all lament and rejoice; lament in that his house, which hath stood so long unspotted, is now ruined; rejoice, in that his Treasons are revealed:) he

is neither politician nor sword man; Raleigh was both, united in the cause with him, and therefore cause of his destruction. Another circumstance is, the secret contriving of it. Humphry Stafford claimed Sanctuary for Treason. Raleigh, in his Machiavelian policy, hath made a Sanctuary for Treason: He must talk with none but Cobham; because, saith he, one Witness can never condemn me. For Brook said unto sir Griffith Markham, 'Take heed how you do make my lord Cobham acquainted; for whatsoever he knoweth, Raleigh, the witch, will get it out of him.' As soon as Raleigh was examined on one point of Treason concerning my lord Cobham, he wrote to him thus; 'I have been examined of you, and confessed nothing.' Further, you sent to him by your trusty Francis Kemish, that one Witness could not condemn: and therefore, bad his lordship be good of courage. Came this out of Cobham's quiver? No: but out of Raleigh's Machiavelian and devilish policy. Yes, but Cobham did retract it; why then did ye urge it? Now then see the most horrible practices that ever came out of the bottomless pit of the lowest hell. After that Raleigh had intelligence that Cobham had accused him, he endeavored to have intelligence from Cobham, which he had gotten by young sir John Payton: but I think it was the error of his youth.

Raleigh: The lords told it me, or else I had not been sent to the Tower.

Att.: Thus Cobham, by the instigation of Raleigh, entered into these actions: So that the question will be, Whether you are not the principal Traitor, and he would nevertheless have entered into it? Why did Cobham retract all that same? First, Because Raleigh was so

odious, he thought he should fare the worse for his sake. Secondly, he thought thus with himself, If he be free I shall clear myself the better. After this, Cobham asked for a Preacher to confer with, pretending to have Dr. Andrews; but indeed he meant not to have him, but Mr. Galloway; a worthy and reverend preacher, who can do more with the king (as he said) than any other; that he, seeing his constant denial, might inform the king thereof. Here he plays with the preacher. If Raleigh could persuade the lords, that Cobham had no intent to travel, then he thought all should be well. Here is Forgery! In the Tower Cobham must write to sir Thomas Vane, a worthy man, that he meant not to go into Spain: which Letter Raleigh devised in Cobham's name.

Raleigh: I will wash my hands of the Indictment, and die a true man to the king.

Att.: You are the absolutest Traitor that ever was.

Raleigh: Your phrases will not prove it.

Att.: Cobham writeth a Letter to my lord Cecil, and doth will Mellis's man to lay it in a Spanish Bible, and to make as though he found it by chance. This was after he had intelligence with this viper, that he was false.

Lord Cecil: You mean a Letter intended to me; I never had it.

Att.: No, my lord, you had it not. You, my masters of the jury, respect not the wickedness and hatred of the man, respect his cause: if he be guilty, I know you will have care of it, for the preservation of the king, the continuance of the Gospel authorized, and the good of us all.

Raleigh: I do not hear yet, that you have spoken one word against me: here is no Treason of mine done: If my lord Cobham be a Traitor, what is that to me?

Att.: All that he did was by thy instigation, thou Viper; for I thou thee, thou Traitor.

Raleigh: It becometh not a man of quality and virtue, to call me so: But I take comfort in it, it is all you can do.

Att.: Have I angered you?

Raleigh: I am in no case to be angry.

C. J. Popham: Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty, for the service of the king, and you for your life; be valiant on both sides.

THE LORD COBHAM'S EXAMINATION.

“He confesseth he had a Passport to go into Spain, intending to go to the Archduke to confer with him about these practices; and because he knew the Archduke had not Money to pay his own army, from thence he meant to go to Spain, to deal with the king for the 600,000 crowns, and to return by Jersey; and that nothing should be done until he had spoken with sir Walter Raleigh for distribution of the Money to them which were discontented in England. At the first beginning, he breathed out oaths and exclamations against Raleigh, calling him Villian and Traitor; saying he had never entered into these courses, but by his instigation, and that he would never let him alone.”— [Here Mr. Attorney willed the Clerk of the Crown-Office to read over these last words again, ‘He would never let him alone.’] “Besides he spake of Plots and Invasions; of the particulars whereof he could give no account, though Ra-

leigh and he had conferred of them. Further he said, he was afraid of Raleigh, that when he should return by Jersey, that he would have delivered him and the Money to the king. Being examined of sir Arthur Gorge, he freed him, saying, They never durst trust him: but sir Arthur Savage they intended to use, because they thought him a fit man."

Raleigh: Let me see the Accusation; This is absolutely all the Evidence can be brought against me; poor shifts. You Gentlemen of the Jury, I pray you understand this. This is that which must either condemn, or give me life; which must free me, or send my wife and children to beg their bread about the streets: This is that must prove me a notorious Traitor, or a true subject to the king. Let me see my Accusation, that I may make my Answer.

Clerk of the Council: I did read it, and shew you all the Examinations.

Raleigh: At my first Examination at Windsor, my lords asked me, what I knew of Cobham's practice with Aremberg, I answered negatively: And as concerning Arabella, I protest before God, I never heard one word of it. If that be proved, let me be guilty of ten thousand Treasons. It is a strange thing you will impute that to me, when I never heard so much as the name of Arabella Stuart, but only the name of Arabella.— After being examined, I told my lords, that I thought my lord Cobham had conference with Aremberg; I suspected his visiting of him; for after he departed from me at Durham-house, I saw him pass by his own stairs, and passed over to St. Mary Saviours, where I knew Lawreny, a merchant, and a follower of Aremberg, lay, and there-

fore likely to go unto him. My lord Cecil asked my opinion concerning Lawrency; I said, that if you do not apprehend Lawrency, it is dangerous, he will fly; if you do apprehend him, you shall give my lord Cobham notice thereof. I was asked who was the greatest man with my lord Cobham; I answered, I knew no man so great with him as young Wyat of Kent.—As soon as Cobham saw my Letter to have discovered his dealing with Aremberg, in his fury he accused me; but before he came to the stair-foot he repented, and said he had done me wrong. When he came to the end of his Accusation, he added, that if he had brought this money to Jersey, he feared that I would have delivered him and the money to the king. Mr. Attorney, you said this never came out of Cobham's quiver; he is a simple man. Is he so simple? No; he hath a disposition of his own, he will not easily be guided by others; but when he has once taken head in a matter, he is not easily drawn from it: he is no babe. But it is strange for me to devise with Cobham, that he should go to Spain, to persuade the king to disburse so much money, he being a man of no love in England, and I having resigned my room of chiefest command, the Wardenship of the Stannaries. Is it not strange for me to make myself Robin Hood, or a Kett, or a Cade? I knowing England to be in better estate to defend itself than ever it was. I knew Scotland united; Ireland quieted, wherein of late our forces were dispersed; Denmark assured, which before was suspected. I knew that having lost a lady whom time had surprized, we had now an active king, a lawful Successor, who would himself be present in all his affairs. The State of Spain was not unknown to me: I

had written a Discourse, which I had intended to present unto the king, against peace with Spain. I knew the Spaniards had six repulses: three in Ireland, and three at sea, and once in 1588, at Cales, by my Lord Admiral. I knew he was discouraged and dishonoured. I knew the king of Spain to be the proudest prince in Christendom; but now he cometh creeping to the king my master for peace. I knew, whereas, before he had in his port six or seven score sail of ships, he hath now but six or seven. I knew of 25,000,000 he had from his Indies, he hath scarce one left. I knew him to be so poor, that the Jesuits in Spain who were wont to have such large allowance, were fain to beg at the church-door. Was it ever read or heard that any prince should disburse so much money without a sufficient pawn? I knew her own subjects, the citizens of London, would not lend her majesty money, without lands in mortgage. I knew the Queen did not lend the States money, without Flushing, Brill, and other towns for a pawn. And can it be thought, that he would let Cobham have so great a sum? — I never came to the lord Cobham's, but about matters of his profit; as the ordering of his house, paying of his servants board-wages, &c. I had of his, when I was examined, 4,000*l.* worth of jewels for a purchase; a pearl of 3,000*l.* and a ring worth 500*l.* If he had had a fancy to run away, he would not have left so much to have purchased a lease in fee-farm. I saw him buy 300*l.* worth of Books to send to his Library at Canterbury, and a cabinet of 30*l.* to give to Mr. Attorney, for drawing the conveyances: and God in Heaven knoweth, not I, whether he intended to travel or no. But for that practice with Arabella, or letters to Arem-

berg framed, or any discourse with him, or in what language he spake unto him; if I knew any of these things, I would absolutely confess the indictment, and acknowledge myself worthy ten thousand deaths.

COBHAM'S SECOND EXAMINATION READ.

“The lord Cobham being required to subscribe to an Examination, there was shewed a Note under sir Walter Raleigh's hand; the which when he had perused, he paused, and after brake forth into those Speeches: Oh Villian! Oh, Traitor! I will now tell you all the truth; and then said, his purpose was to go into Flanders, and into Spain, for the obtaining the aforesaid Money; and that Raleigh had appointed to meet him in Jersey as he returned home, to be advised of him about the distribution of the money.”

L. C. J. Popham: When Cobham answered to the Interrogatories, he made scruple to subscribe; and being urged to it, he said, if he might hear me affirm, that a person of his degree ought to set his hand, he would: I lying then at Richmond for fear of the Plague, was sent for, and I told him he ought to subscribe; otherwise, it were a Contempt of a high nature: then he subscribed. The Lords questioned with him further, and he shewed them a Letter, as I thought written to me, but it was indeed written to my lord Cecil: he desired to see the Letter again, and then said, ‘Oh wretch! Oh Traitor!’ whereby I perceived you had not performed that trust he had reposed in you.

Raleigh: He is as passionate a man as lives; for he hath not spared the best friends he hath in England in his passion. My lords, I take it, he that has been exam-

ined, has ever been asked at the time of his Examination, if it be according to his meaning, and then to subscribe. Methinks, my lords, when he accuses a man, he should give some account and reason of it: It is not sufficient to say, we talked of it. If I had been the Plotter, would not I have given Cobham some arguments, whereby to persuade the king of Spain, and answer his objections? I knew Westmoreland and Bothwell, men of other understandings than Cobham, were ready to beg their bread.

Sir Tho. Fowler, one of the Jury: Did sir Walter Raleigh write a Letter to my lord before he was examined concerning him, or not?

Att.: Yes.

Lord Cecil: I am in great dispute with myself to speak in the case of this gentleman: A former dearness between me and him, tyed so firm a knot of my conceit of his virtues, now broken by a discovery of his imperfections. I protest, did I serve a king that I knew would be displeased with me for speaking, in this case I would speak, whatever came of it; but seeing he is compacted of piety and justice, and one that will not mislike of any man for speaking a truth, I will answer your question.— Sir Walter Raleigh was staid by me at Windsor, upon the first news of Copley, that the king's Person should be surprized by my lord Grey, and Mr. George Brook; when I found Brook was in, I suspected Cobham, then I doubted Raleigh to be a partaker. I speak not this, that it should be thought I had greater judgment than the rest of my lords, in making this haste to have them examined. Raleigh following to Windsor, I met with him upon the Terrace, and willed him, as from the king,

to stay; saying, the lords had something to say to him: then he was examined, but not concerning my lord Cobham, but of the surprizing Treason. My lord Grey was apprehended, and likewise Brook; by Brook we found, that he had given notice to Cobham of the surprizing Treason, as he delivered it to us; but as with as much sparingness of a brother, as he might. We sent for my lord Cobham to Richmond, where he stood upon his justification, and his quality; sometimes being froward, he said he was not bound to subscribe, wherewith we made the king acquainted. Cobham said, if my L. C. Justice would say it were a Contempt, he would subscribe; whereof being resolved, he subscribed. There was a light given to Aremberg, that Lawrency was examined; but that Raleigh knew that Cobham was examined, is more than I know.

Raleigh: If my lord Cobham had trusted me in the Main, was not I as fit a man to be trusted in the Bye?

Lord Cecil: Raleigh did by his letters acquaint us that my lord Cobham had sent Lawrency to Aremberg, when he knew not he had any dealings with him.

Lord Hen. Howard: It made for you, if Lawrency had been only acquainted with Cobham, and not with you. But you knew his whole estate, and were acquainted with Cobham's practice with Lawrency: and it was known to you before, that Lawrency depended on Aremberg.

Attorney: 1. Raleigh protested against the surprizing Treason. 2. That he knew not of the matter touching Arabella. I would not charge you, sir Walter, with a matter of falsehood: you say you suspected the Intelligence that Cobham had with Aremberg by Lawrency.

Raleigh: I thought it had been no other Intelligence, but such as might be warranted.

Attorney: Then it was but lawful suspicion. But to that whereas you said, that Cobham had accused you in passion, I answer three ways: 1. I observed when Cobham said, Let me see the Letter again, he paused; and when he did see that Count Aremberg was touched, he cried out, Oh Traitor! Oh Villian! now will I confess the whole truth. 2. The accusation of a man on hearsay, is nothing; would he accuse himself on passion, and ruinate his case and posterity, out of malice to accuse you? 3. Could this be out of passion? Mark the manner of it; Cobham had told this at least two months before to his brother Brook, 'You are fools, you are on the bye, Raleigh and I are on the main; we mean to take away the king and his cubs:' this he delivered two months before. So mark the manner and the matter; he would not turn the weapon against his own bosom, and accuse himself to accuse you.

Raleigh: Hath Cobham confessed that?

L. C. J.: This is spoken by Mr. Attorney to prove that Cobham's Speech came not out of passion.

Raleigh: Let it be proved that Cobham said so.

Attorney: Cobham saith, he was a long time doubtful of Raleigh, that he would send him and the money to the king. Did Cobham fear lest you would betray him in Jersey? Then of necessity there must be Trust between you. No man can betray a man, but he that is trusted, in my understanding. This is the greatest argument to prove that he was acquainted with Cobham's Proceedings. Raleigh has a deeper reach, than to make himself, as he said, 'Robin Hood, a Kett, or

Cade: ' yet I never heard that Robin Hood was a Traitor; they say he was an outlaw. And whereas he saith that our king is not only more wealthy and potent than his predecessors, but also more politic and wise, so that he could have no hope to prevail; I answer, there is no king so potent, wise and active, but he may be overtaken through Treason. Whereas you say Spain is so poor, discoursing so largely thereof; it had been better for you to have kept in Guiana, than to have been so well acquainted with the state of Spain. Besides, if you could have brought Spain and Scotland to have joined, you might have hoped to prevail a great deal the better. For his six Overthrows, I answer, he hath the more malice, because repulses breed desire of revenge. Then you say you never talked with Cobham, but about leases, and letting lands, and ordering his house; I never knew you Clerk of the Kitchen, &c. If you had fallen on your knees at first, and confessed the Treason, it had been better for you. You say, he meant to have given me a Cabinet of 30*l.*; perhaps he thought by those means to have anticipated me therewith. But you say all these are Circumstances: I answer, all this Accusation in Circumstance is true. Here now I might appeal to my lords, that you take hold of this, that he subscribed not to the Accusation.

Lord Hen. Howard: Cobham was not then pressed to subscribe.

Attorney: His Accusation being testified by the lords, is of as great force, as if he had subscribed. Raleigh saith again, if the Accuser be alive he must be brought face to face to speak; and alledges, 25 Edw. 3*rd* that there must be two sufficient Witnesses, that must be

brought face to face before the accused; and alledged 10 and 13 Elizabeth.

Raleigh: You try me by the Spanish Inquisition, if you proceed only by the Circumstances, without two Witnesses.

Attorney: This is a treasonable speech.

Raleigh: *Evertere Hominem justum in causa sua injustum est.*¹ Good my lords, let it be proved, either by the laws of the land, or the laws of God, that there ought not to be two Witnesses appointed; yet I will not stand to defend this point in law, if the king will have it so: it is no rare thing for a man to be falsely accused. A Judge condemned a woman in Sarum for killing her husband on the testimony of one Witness; afterwards his man confessed the Murder, when she was executed; who after being touched in conscience for the Judgment, was used to say, *Quod nunquam de hoc facto animam in vita sua purgaret.*² It is also commanded by the Scripture; *Allocutus est Jehova Mosen, in Ore duorum aut trium Testium,*³ &c. If Christ requireth it, as it appeareth, Mat, xviii. if by the Canon, Civil Law, and God's Word, it be required, that there must be two Witnesses at the least; bear with me if I desire one. I would not desire to live if I were privy to Cobham's Proceedings. I have been a slave, a villian, a fool, if I had endeavoured to set up Arabella, and refused so gracious a lord and sovereign. But urge your proofs.

¹ It is unjust to overthrow an honest man in his own cause.

² That he could never purge his soul of this act.

³ Jehovah said to Moses, by the mouth of two or three witnesses, &c. &c.

L. C. Justice: You have offered Questions on diverse Statutes, all which mention two accusers in case of Indictments: you have deceived yourself, for the laws of 25 Edw. 3d, and 5 Edw. 6th are repealed. It sufficeth now if there be Proofs made either underhand, or by testimony of Witnesses, or by oaths; it needs not the Subscription of the party, so there be hands of credible men to testify the Examination.

Raleigh: It may be an error in me; and if those laws be repealed, yet I hope the equity of them remains still; but if you affirm it, it must be a law to posterity. The Proof of the Common Law is by witness and jury: let Cobham be here, let him speak it. Call my accuser before my face, and I have done.

Attorney: *Scientia sceleris est mera ignorantia.*¹ You have read the letter of the law, but understand it not. Here was your anchorhold, and your rendezvous: you trust to Cobham, either Cobham must accuse you, or nobody; if he did, then it would not hurt you, because he is but one Witness; if he did not, then you are safe.

Raleigh: If I ever read a word of the law or statutes before I was a Prisoner in the Tower, God confound me.

Attorney: Now I come to prove the Circumstances of the Accusation to be true. Cobham confessed he had a Pass-port to travel, hereby intending to present overtures to the Arch-Duke, and from thence to go to Spain, and there to have conference with the king for Money. You say he promised to come home by Jersey, to make merry with you and your wif.

Raleigh: I said in his return from France, not Spain.

¹The knowledge of wickedness is pure ignorance.

Attorney: Further in his Examination, he saith, nothing could be set down for the Distribution of the Money to the discontented, without conference with Raleigh. You said it should have been for procurement of Peace, but it was for raising Rebellion. Further, Cobham saith, he would never have entered into these courses, but by your instigation, and that you would never let him alone. Your scholar was not apt enough to tell us all the Plots; that is enough for you to do, that are his master. You intended to trust sir Arthur Savage, whom I take to be an honest and true gentleman, but not sir Arthur Gorge.

Raleigh: All this is but one Accusation of Cobham's, I hear no other thing; to which Accusation he never subscribed nor avouched it. I beseech you, my lords, let Cobham be sent for, charge him on his soul, on his allegiance to the king; if he affirm it, I am guilty.

Lord Cecil: It is the Accusation of my lord Cobham, it is the Evidence against you: must it not be of force without his subscription? I desire to be resolved by the Judges, whether by the law it is not a forcible argument of evidence.

Judges: My lord, it is.

Raleigh: The king at his coronation is sworn *In omnibus Judiciis suis aequitatem, non rigorem Legis, observare*.¹ By the rigour and cruelty of the law it may be a forcible evidence.

L. C. J.: This is not the rigour of the law, but the justice of the law; else when a man hath made a plain

¹To observe equity in all his judgments, not the rigor of the law.

Accusation, by practice he might be brought to retract it again.

Raleigh: Oh my lord, you may use equity.

L. C. J.: That is from the king; you are to have justice from us.

Lord Anderson: The law is, if the matter be proved to the jury, they must find you guilty; for Cobham's Accusation is not only against you, there are other things sufficient.

Lord Cecil: Now that sir Walter Raleigh is satisfied that Cobham's Subscription is not necessary, I pray you, Mr. Attorney, go on.

Raleigh: Good Mr. Attorney, be patient, and give me leave.

Lord Cecil: An unnecessary patience is a hindrance; let him go on with his proofs, and then refel them.

Raleigh: I would answer particularly.

Lord Cecil: If you would have a table and pen and ink, you shall.

Then paper and ink was given him. Here the Clerk of the Crown read the Letter, which the lord Cobham did write in July, which was to the effect of his former Examination; further saying, I have disclosed all: to accuse anyone falsely, were to burden my own conscience.

Attorney: Read Copley's Confession the 8th of June; He saith, he was offered 1000 crowns to be in this action.

Here Watson's Additions were read. 'The great mass of Money from the count was impossible,' &c.

Brook's Confession read: 'There have Letters passed, saith he, between Cobham and Aremberg, for a great

sum of Money to assist a second action, for the surprizing of his majesty.'

Attorney: It is not possible it was of passion: for it was in talk before three men, being severally examined, who agreed in the sum to be bestowed on discontented persons; That Grey should have 12,000 crowns, and Raleigh should have 8,000, or 10,000 crowns.

COBHAM'S EXAMINATION, JULY 18.

"If the money might be procured (saith he) then a man may give pensions. Being asked if a pension should not be given his brother Brook, he denied it not."

LAWRENCY'S EXAMINATION.

"Within five days after Aremberg arrived, Cobham resorted unto him. That night that Cobham went to Aremberg with Lawrency, Raleigh supped with him."

Attorney: Raleigh must have his part of the Money, therefore now he is a traitor. The crown shall never stand one year on the head of the king (my master) if a Traitor may not be condemned by Circumstances: for if A. tells B. and B. tells C. and C. D. &c. you shall never prove Treason by two Witnesses.

RALEIGH'S EXAMINATION WAS READ.

He confesseth Cobham offered him 8000 crowns, which he was to have for the furtherance of the Peace between England and Spain, and that he should have it within three days. To which he said, he gave this answer: When I see the Money, I will tell you more: for I had thought it had been one of his ordinary idle conceits, and therefore made no Account thereof.

Raleigh: The Attorney hath made a long narration of Copley, and the Priests, which concerns me nothing, neither know I how Cobham was altered. For he told me if I would agree to further the Peace, he would get me 8000 crowns. I asked him, Who shall have the rest of the Money? He said I will offer such a nobleman (who was not named) some of the Money. I said, he will not be persuaded by you, and he will extremely hate you for such a motion. Let me be pinched to death with hot irons, if I ever knew there was any intention to bestow the money on discontented persons. I had made a discourse against the Peace, and would have printed it; if Cobham changed his mind, if the Priests, if Brook had any such intent, what is that to me? They must answer for it. He offered me the Money before Aremberg came, that is difference of time.

Serj. Philips: Raleigh confesseth the matter, but avoideth it by distinguishing of times. You said it was offered you before the coming of Aremberg, which is false. For you being examined whether you should have such Money of Cobham, or not; you said, Yea, and that you should have it within two or three days. *Nem moriturus praesumitur mentiri.*¹

Ld. Hen. Howard: Alledge me any ground or cause, wherefore you gave ear to my lord Cobham for receiving Pensions, in matters you had not to deal with.

Raleigh: Could I stop my Lord Cobham's mouth?

Ld. Cecil: Sir Walter Raleigh presseth, that my lord Cobham should be brought face to face. If he asks things of favour and grace, they must come only from

¹No one about to die is supposed to lie.

him that can give them. If we sit here as commissioners, how shall we be satisfied whether he ought to be brought, unless we hear the Judges speak?

L. C. J.: This thing cannot be granted for then a number of Treasons should flourish: the Accuser may be drawn by practice, whilst he is in person.

Justice Gawdy: The Statute you speak of concerning two Witnesses in case of Treason, is found to be inconvenient, therefore by another law it was taken away.

Raleigh: The common Trial of England is by Jury and Witnesses.

L. C. J.: No, by Examination: if three conspire a Treason, and they all confess it; here is never a Witness, yet they are condemned.

Justice Warburton: I marvel, sir Walter, that you being of such experience and wit, should stand on this point; for so many horse-stealers may escape, if they may not be condemned without witnesses. If one should rush into the king's Privy-Chamber, whilst he is alone, and kill the king (which God forbid) and this man be met coming with his sword drawn all bloody; shall not he be condemned to death? My lord Cobham hath, perhaps, been laboured withal; and to save you, his old friend, it may be that he will deny all that which he hath said.

Raleigh: I know not how you conceive the Law.

L. C. J.: Nay, we do not conceive the Law, but we know the Law.

Raleigh: The wisdom of the Law of God is absolute and perfect, *Hæc fac et vives*,¹ &c. But now by the Wis-

¹ Do this, and thou shalt live.

dom of the State, the Wisdom of the Law is uncertain. Indeed, where the Accuser is not to be had conveniently, I agree with you; but here my Accuser may; he is alive, and in the house. Susanna had been condemned, if Daniel had not cried out, 'Will you condemn an innocent Israelite, without examination or knowledge of the truth?' Remember, it is absolutely the Commandment of God: If a false witness rise up, you shall cause him to be brought before the Judges; if he be found false, he shall have the punishment which the accused should have had. It is very sure, for my lord to accuse me in my certain danger, and it may be a means to excuse himself.

L. C. J.: There must not such a gap be opened for the destruction of the king, as would be if we should grant this. You plead hard for yourself, but the laws plead as hard for the king. I did never hear that course to be taken in a case of Treason, as to write one to another, or speak one to another, during the time of their imprisonment. There hath been intelligence between you; and what under-hand practices there may be, I know not. If the Circumstances agree not with the Evidence, we will not condemn you.

Raleigh: The king desires nothing but the knowledge of the truth, and would have no advantage taken by severity of the law. If ever we had a gracious king, now we have; I hope, as he is, such are his ministers. If there be but a trial of five marks at Common Law, a witness must be deposed. Good my lords, let my Accuser come face to face, and be deposed.

L. C. J.: You have no law for it; God forbid any man should accuse himself upon his oath.

Attorney: The law presumes, a man will not accuse himself to accuse another. You are an odious man: for Cobham thinks his cause the worse that you are in it. Now you shall hear of some stirs to be raised in Scotland.

PART OF COPLEY'S EXAMINATION.

"Also Watson told me, that a special person told him, that Aremberg offered to him 1000 crowns to be in that action; and that Brook said, the stirs in Scotland came out of Raleigh's head."

Raleigh: Brook hath been taught his Lesson.

Ld. Hen. Howard: This Examination was taken before. Did I teach him his Lesson?

Raleigh: I protest before God, I meant it not by any privy-counsellor; but because money is scant he will juggle on both sides.

RALEIGH'S EXAMINATION.

"The way to invade England, were to begin with Stirs in Scotland."

Raleigh: I think so still: I have spoken it to divers of the Lords of the Council, by way of discourse and opinion.

Attorney: Now let us come to those words 'of destroying the king and his cubs.'

Raleigh: O barbarous! If they, like unnatural villians, should use those words, shall I be charged with them? I will not hear it; I was never any Plotter with them against my country, I was never false to the crown of England. I have spent 4000 pounds of my own against the Spanish Faction, for the good of my country. Do

you bring the words of these hellish spiders, Clark, Watson, and others against me?

Attorney: Thou hast a Spanish heart, and thyself art a Spider of Hell; for thou confessest the king to be a most sweet and gracious prince, and yet hast conspired against him.

WATSON'S EXAMINATION READ.

"He said, that George Brook told him twice, That his brother, the lord Cobham, said to him, that you are but on the bye, but Raleigh and I are on the main."

BROOK'S EXAMINATION READ.

"Being asked what was meant by this Jargon, the Bye and the Main? he said, That the lord Cobham told him, that Grey and others were in the Bye, he and Raleigh were on the Main. Being asked, what exposition his brother made of these words? He said, he is loath to repeat it. And after saith, by the main was meant the taking away of the king and his issue; and thinks on his conscience, it was infused into his brother's head by Raleigh."

COBHAM'S EXAMINATION READ.

"Being asked, if ever he had said, 'it will never be well in England, till the king and his cubs were taken away;' he said, he had answered before, and that he would answer no more to that point."

Raleigh: I am not named in all this; there is a law of two sorts of Accusers; one of his own knowledge, another by hear-say.

E. of Suffolk: See the Case of Arnold.

L. C. J: It is the Case of sir Will. Thomas, and sir Nicholas Arnold.

Raleigh: If this may be, you will have any man's life in a week.

Attorney: Raleigh saith, that Cobham was in a passion when he said so. Would he tell his brother anything of malice against Raleigh, whom he loved as his life?

Raleigh: Brook never loved me; until his brother had accused me he said nothing.

Ld. Cecil: We have heard nothing that might lead us to think that Brook accused you, he was only in the surprizing Treason: for by accusing you he should accuse his brother.

Raleigh: He doth not much care for that.

Ld. Cecil: I must judge the best. The accusation of his brother was not voluntary; he pared everything as much as he could to save his brother.

COBHAM'S EXAMINATION READ.

“He saith he had a Book written against the Title of the King, which he had of Raleigh, and that he gave it to his brother Brook: and Raleigh said it was foolishly written.”

Attorney: After the king came within 12 miles of London, Cobham never came to see him; and intended to travel without seeing the queen and the prince. Now in this discontentment you gave him the Book, and he gave it to his brother.

Raleigh: I never gave it him, he took it off my table. For I well remember before that time I received a Chal-

lence from sir Amias Preston, and for that I did intend to answer it, I resolved to leave my estate settled, therefore laid out all my loose Papers, amongst which was this Book.

Ld. Howard: Where had you this Book?

Raleigh: In the old Lord Treasurer's Study, after his death.

Ld. Cecil: Did you ever shew or make known the Book to me?

Raleigh: No, my lord.

Ld. Cecil: Was it one of the Books which was left to me or my brother?

Raleigh: I took it out of the study in my Lord Treasurer's house in the Strand.

Ld. Cecil: After my father's decease, sir Walter Raleigh desired to search for some Cosmographical descriptions of the Indies, which he thought were in his Study, and were not to be had in print; which I granted, and would have trusted sir Walter Raleigh as soon as any man: though since for some infirmities, the bands of my affection to him have been broken; and yet reserving my duty to the king my master, which I can by no means dispense with, by God, I love him, and have a great conflict within myself: but I must needs say, sir Walter used me a little unkindly to take the Book away without my knowledge: nevertheless, I need make no apology in behalf of my father, considering how useful and necessary it is for privy-counsellors and those in his place to intercept and keep such kind of writings; for whosoever should then search his study may in all likelihood find all the Notorious Libels that were writ against the late queen; and whosoever should

rummage my Study, or at least my Cabinet, may find several against the king, our Sovereign Lord, since his accession to the throne.

Raleigh: The Book was in Manuscript, and the late Lord Treasurer had wrote in the beginning of it with his own Hand, these words, 'This is the Book of Robert Snagg.' And I do own, as my lord Cecil has said, that I believe they may also find in my house almost all the Libels that have been writ against the late queen.

Att.: You were no privy-counsellor, and I hope never shall be.

Ld. Cecil: He was not a sworn counsellor of state, but he has been called to consultations.

Raleigh: I think it a very severe interpretation of the law, to bring me within compass of Treason for this Book, writ so long ago, of which nobody had read any more than the Heads of the Chapters, and which was burnt by G. Brook without my privity; admitting I had delivered the same to lord Cobham, without allowing or approving, but discommending it, according to Cobham's first Accusation: and put the case, I should come to my lord Cecil, as I have often done, and find a stranger with him, with a packet of Libels, and my lord should let me have one or two of them to peruse: this I hope is no Treason.

Att.: I observe there was intelligence between you and Cobham in the Tower; for after he said it was against the king's Title, he denied it again.

Sir W. Wade: First, my lord Cobham confesseth it, and after he had subscribed it, he revoked it again: to me he always said, that the drift of it was against the king's Title.

Raleigh: I protest before God, and all his works, I give him not the Book.

Note: Sir Robert Wroth speaketh, or whispereth something secretly.

Attorney: My lords, I must complain of Sir Robert Wroth; he says this Evidence is not material.

Sir R. Wroth: I never spake the words.

Att.: Let Mr. serjeant Philips testify whether he heard him say the words or no.

Ld. Cecil: I will give my word for sir R. Wroth.

Sir R. Wroth: I will speak as truly as you, Mr. Attorney, for by God I never spake it.

L. C. J.: Wherefore should this Book be burnt?

Raleigh: I burned it not.

Serj. Phillips: You presented your friend with it when he was discontented. If it had been before the queen's death, it had been a less matter; but you gave it him presently when he came from the king, which was the time of his discontentment.

Raleigh: Here is a Book supposed to be treasonable; I never read it, commended it, or delivered it, nor urged it.

Attorney: Why this is cunning.

Raleigh: Everything that doth make for me is cunning, and everything that maketh against me is probable.

Att.: Lord Cobham saith, that Kemish came to him with a letter torn, and did wish him not to be dismayed, for one witness could not hurt him.

Raleigh: This poor man hath been close prisoner these 18 weeks; he was offered the rack to make him confess. I never sent any such message by him; I only

writ to him to tell him what I had done with Mr. Attorney; having of his at that time a great pearl and a diamond.

Ld. H. Howard: No circumstance moveth me more than this. Kemish was never on the rack, the king gave charge that no rigour should be used.

Commissioners: We protest before God, there was no such matter intended to our knowledge.

Raleigh: Was not the Keeper of the Rack sent for, and he threatened with it?

Sir W. Wade: When Mr. Solicitor and myself examined Kemish, we told him that he deserved the Rack, but did not threaten him with it.

Commissioners: It was more than we knew.

COBHAM'S EXAMINATION READ.

"He saith, Kemish brought him a letter from Raleigh, and that part which was concerning the Lords of the Council was rent out; the Letter contained that he was examined, and cleared himself of all; and that the lord H. Howard said, because he was discontent, he was fit to be in the action. And further that Kemish said to him from Raleigh, that he should be of good comfort, for one witness could not condemn a man for treason."

Ld. Cecil: Cobham was asked, whether, and when he heard from you? He said, every day.

Raleigh: Kemish added more, I never bade him speak those words.

Note: Mr. Attorney here offered to interrupt him.

Ld. Cecil: It is his last Discourse; give him leave, Mr. Attorney.

Raleigh: I am accused concerning Arabella, concerning Money out of Spain. My Lord Chief Justice saith, a man may be condemned with one Witness, yea, without any Witness. Cobham is guilty of many things, *Conscientia mille testes*;¹ he hath accused himself, what can he hope for but mercy? My lords, vouchsafe me this grace: let him be brought, being alive, and in the house; let him avouch any of these things, I will confess the whole Indictment, and renounce the king's mercy.

Ld. Cecil: Here hath been a touch of the lady Arabella Stuart, a near kinswoman of the king's. Let us not scandal the innocent by confusion of speech: she is as innocent of all these things as I, or any man here; only she received a Letter from my lord Cobham, to prepare her; which she laughed at, and immediately sent it to the king. So far was she from discontentment, that she laughed him to scorn. But you see how far the count of Aremberg did consent.

The Lord Admiral (Nottingham) being by in a Standing, with the lady Arabella, spake to the court: The lady doth here protest upon her salvation, that she never dealt in any of these things; and she so willed me to tell the court.

Ld. Cecil: The lord Cobham wrote to my lady Arabella, to know if he might come to speak with her, and gave her to understand, that there was some about the king that laboured to disgrace her; she doubted it was but a trick. But Brook saith, his brother moved him to procure Arabella to write Letters to the king of Spain; but he saith, he never did it.

¹ Conscience is a thousand witnesses.

Raleigh: The lord Cobham hath accused me, you see in what manner he hath forsworn it. Were it not for his Accusation, all this were nothing. Let him be asked, if I knew of the letter which Lawrency brought to him from Aremberg. Let me speak for my life, it can be no hurt for him to be brought; he dares not accuse me. If you grant me not this favour, I am strangely used; Campain was not denied to have his accusers face to face.

L. C. J.: Since he must needs have justice, the acquitting of his old friend may move him to speak otherwise than the truth.

Raleigh: If I had been the infuser of all these Treasons into him; you Gentlemen of the Jury, mark this, he said I have been the cause of all his miseries, and the destruction of his house, and that all evil hath happened unto him by my wicked counsel: if this be true, whom hath he cause to accuse and to be revenged on, but on me? And I know him to be as revengful as any man on earth.

Attorney: He is a party, and may not come; the law is against it.

Raleigh: It is a toy to tell me of law; I defy such law, I stand on the fact.

Ld. Cecil: I am afraid my often speaking (who am inferior to my lords here present) will make the world think I delight to hear myself talk. My affection to you, sir Walter, was not extinguished, but slaked, in regard of your deserts. You know the law of the realm (to which your mind doth not contest), that my lord Cobham cannot be brought.

Raleigh: He may be, my lord.

Ld. Cecil: But dare you challenge it?

Raleigh: No.

Lord Cecil: You say that my lord Cobham, your main accuser, must come to accuse you. You say he hath retracted. I say many particulars are not retracted. What the validity of all this is, is merely left to the Jury. Let me ask you this, if my lord Cobham will say you were the only instigator of him to proceed in the Treasons, dare you put yourself on this?

Raleigh: If he will speak it before God and the king, that ever I knew of Arabella's matter, or the Money out of Spain, or of the surprizing Treason; I put myself on it, God's will and the king's be done with me.

Lord H. Howard: How! if he speak things equivalent to that you have said?

Raleigh: Yes, in the main point.

Lord Cecil: If he say, you have been the instigator of him to deal with the Spanish king, had not the council cause to draw you hither?

Raleigh: I put myself on it.

Lord Cecil: Then, sir Walter, call upon God, and prepare yourself; for I do verily believe my lords will prove this. Excepting your faults (I call them no worse), by God, I am your friend. The heat and passion in you, and the Attorney's zeal in the king's service, makes me speak this.

Raleigh: Whosoever is the workman, it is reason he should give an account of his work to the work-master. But let it be proved that he acquainted me with any of his conferences with Aremberg: he would surely have given me some account.

Lord Cecil: That follows not: If I set you on work, and you give me no account, am I therefore innocent?

Att.: For the lady Arabella, I said she was never acquainted with the matter. Now that Raleigh had conference in all these Treasons, it is manifest. The Jury hath heard the matter. There is one Dyer a pilot, that being in Lisbon, met with a Portugal gentleman who asked him if the king of England was crowned yet: To whom he answered, 'I think not yet, but he shall be shortly.' Nay, saith the Portugal, that shall never be, for his throat will be cut by Don Raleigh and Don Cobham before he be crowned.

Dyer was called and sworn, and delivered this Evidence.

Dyer: I came to a merchant's house in Lisbon, to see a boy I had there; there came a gentleman into the house, and enquiring what countryman I was, I said, an Englishman. Whereupon he asked me, if the king was crowned? And I answered, No, but that I hopes he should be so shortly. Nay, saith he, he shall never be crowned; for Don Raleigh and Don Cobham will cut his throat ere that day come.

Raleigh: What infer you upon this?

Att.: That your Treason hath wings.

Raleigh: If Cobham did practice with Aremberg, how could it not but be known in Spain? Why did they name the duke of Buckingham with Jack Straw's Treason, and the duke of York with Jack Cade, but that it was to countenance his Treason? Consider, you Gentlemen of the Jury, there is no cause so doubtful which the king's counsel cannot make good against the law. Consider my disability, and their ability: they prove

nothing against me, only they bring the Accusation of my lord Cobham, which he hath lamented and repented as heartily, as if it had been for an horrible murder: for he knew that all this sorrow which should come to me, is by his means. Presumptions must proceed from precedent or subsequent facts. I have spent 40,000 crowns against the Spaniards. I had not purchased 40 pounds a year. If I had died in Guiana, I had not left 300 marks a year to my wife and son. I that have always condemned the Spanish Faction, methinks it is a strange thing that now I should affect it! Remember what St. Austin says, *Sic judicate tanquam ab alio mox judicandi; unus judex, unum Tribunal.*¹ If you would be contented on presumptions to be delivered up to be slaughtered, to have your wives and children turned into the streets to beg their bread; if you would be contented to be so judged, judge so of me.

Serj. Philips: I hope to make this so clear as that the wit of man shall have no colour to answer it. The matter is Treason in the highest degree, the end to deprive the king of his crown. The particular Treasons are these: first, to raise up Rebellion, and to affect that, to procure Money; to raise up Tumults in Scotland, by divulging a treasonable Book against the king's right to the crown; the purpose, to take away the life of his majesty and his issue. My lord Cobham confesseth sir Walter to be guilty of all these Treasons. The question is, whether he be guilty as joining with him, or instigating of him? The course to prove this, was by my

¹ So judge, as if you were soon to be judged by another; one Judge, one Tribunal.

lord Cobham's Accusation. If that be true, he is guilty: if not, he is clear. So whether Cobham say true, or Raleigh, that is the question. Raleigh hath no answer but the shadow of as much wit, as the wit of man can devise. He useth his bare denial; the denial of a Defendant must not move the Jury. In the Star Chamber, or in the Chancery, for matter of Title, if the Defendant be called in question, his denial on his oath is no Evidence to the Court to clear him, he doth it *in propria causa*;¹ therefore much less in matters of Treason. Cobham's testification against him before them, and since, hath been largely discoursed.

Raleigh: If truth be constant, and constancy be in truth, why hath he forsworn that that he hath said? You have not proved any one thing against me by direct proofs, but all by circumstances.

Att.: Have you done? The king must have the last.

Raleigh: Nay, Mr. Attorney, he which speaketh for his life, must speak last. False repetitions and mistakings must not mar my cause. You should speak *secundum allegata et probata*.² I appeal to God and the king in this point, whether Cobham's Accusation be sufficient to condemn me.

Att.: The king's safety and your clearing cannot agree. I protest before God, I never knew a clearer Treason.

Raleigh: I never had intelligence with Cobham since I came to the Tower.

Att.: Go to, I will lay thee upon thy back, for the

¹ In his own cause.

² According to things alleged and things proved.

confidentest Traitor that ever came at a bar. Why should you take 8,000 crowns for a peace?

Lord Cecil: Be not so impatient, good Mr. Attorney, give him leave to speak.

Att.: If I may not be patiently heard, you will encourage Traitors, and discourage us. I am the king's sworn servant, and must speak; If he be guilty, he is a Traitor; if not, deliver him.

Note: Here Mr. Attorney sat down in a chafe, and would speak no more, until the Commissioners urged and entreated him. After much ado, he went on, and made a long repetition of all the Evidence, for the direction of the Jury; and at the repeating of some things, sir Walter Raleigh interrupted him, and said, he did him wrong.

Att.: Thou art the most vile and execrable Traitor that ever lived.

Raleigh: You speak indiscreetly, barbarously and uncivilly.

Att.: I want words sufficient to express thy viperous Treasons.

Raleigh: I think you want words indeed, for you have spoken one thing half a dozen times.

Att.: Thou are an odious fellow, thy name is hateful to all the realm of England for thy pride.

Raleigh: It will go near to prove a measuring cast between you and me, Mr. Attorney.

Att.: Well, I will now make it appear to the world, that there never lived a viler viper upon the face of the earth than thou. And therewithal he drew a Letter out of his pocket, saying further, My lords, you shall see, this is an Agent that hath writ a Treatise against the

Spaniards, and hath ever so detested him; this is he that hath spent so much Money against him in service; and yet you shall all see whether his heart be not wholly Spanish. The lord Cobham, who of his own nature was a good and honourable gentleman, till overtaken by this wretch, now finding his conscience heavily burdened with some courses which the subtilty of this Traitor had drawn him into; my lords, he could be at no rest with himself, nor quiet in his thoughts, until he was eased of that heavy weight: out of which passion of his mind, and discharge of his duty to his prince, and his conscience to God, taking it upon his salvation that he wrote nothing but the truth, with his own hands he wrote this Letter. Now, sir, you shall see whether you had intelligence with Cobham, within four days before he came to the Tower. If he be wholly Spanish, that desired a Pension of 1500*l.* a year from Spain, that Spain by him might have intelligence, then Raleigh is a Traitor: He hath taken an apple, and pinned a Letter unto it, and threw it into my lord Cobham's window: the contents whereof were this, 'It is doubtful whether we shall be proceeded with or no, perhaps you shall not be tried.' This was to get a retraction. Oh! it was Adam's apple, whereby the devil did deceive him. Further, he wrote thus, 'Do not as my lord of Essex did; take heed of a Preacher; for by his persuasion he confessed, and made himself guilty.' I doubt not but this day God shall have as great a conquest by this Traitor, and the Son of God shall be as much glorified, as when it was said, *Vicisti, Galilae;*¹ you know my meaning. What

¹Thou hast conquered, Galilean.

though Cobham retracted, yet he could not rest nor sleep till he confirmed it again. If this be not enough to prove him Traitor, the king my master shall not live three years to an end.

Note: Here Mr. Attorney produced the Lord Cobham's Letter, and as he read it, inserted some speeches.

"I have thought fit to set down this to my lords, wherein I protest on my soul to write nothing but the truth. I am now come near the period of my time, therefore I confess the whole truth before God and his angels. Raleigh, four days before I came from the Tower, caused an apple" (Eve's apple) "to be thrown in at my chamber window; the effect of it was, to intreat me to right the wrong that I had done him, in saying, 'that I should have come home by Jersey;' which under my hand to him I have retracted. His first Letter I answered not, which was thrown in the same manner; wherein he prayed me to write him a Letter, which I did. He sent me word, that the Judges met at Mr. Attorney's house, and that there was good hope the proceedings against us should be stayed: he sent me another time a little tobacco. At Aremburg's coming, Raleigh was to have procured a pension of 1500*l.* a year, for which he promised, that no action should be against Spain, the Low Countries, or the Indies, but he would give knowledge before hand. He told me, the States had audience with the king." — (Attorney: "Ah! Is not this a Spanish heart in an English body?") "He hath been the original cause of my ruin; for I had no dealing with Aremburg, but by his instigation. He hath also been the cause of my discontentment; he advised me not to be overtaken with

preachers, as Essex was; and that the king would better allow of a constant denial, than to accuse any."

Att.: Oh, damnable atheist! He hath learned some Text of Scripture to serve his own purpose, but falsely alledged. He counsels him not to be counselled by preachers, as Essex was: He dies the child of God, God honoured him at his death; thou wast by when he died: *Et lupus et turpes instant morientibus Ursae.*¹ He died indeed for his offence. The king himself spake these words; "He that shall say, Essex died not for Treason, is punishable."

Raleigh: You have heard a strange tale of a strange man. Now he thinks, he hath matter enough to destroy me; but the king and all of you shall witness, by our deaths, which of us was the ruin of the other. I bid a poor fellow throw in the Letter at his window, written to this purpose; 'You know you have undone me, now write three lines to justify me.' In this I will die, that he hath done me wrong. Why did not he acquaint him with my dispositions?

L. J. C.: But what say you now of the Letter, and the Pension of 1500*l.* per annum?

Raleigh: I say, that Cobham is a base, dishonourable, poor soul.

Att.: Is he base? I return it into thy throat on his behalf: But for thee he had been a good subject.

L. C. J.: I perceive you are not so clear a man, as you have protested all this while; for you should have discovered these matters to the king.

¹Both the wolf and the loathsome she-bears press around those dying.

Note: Here Raleigh pulled a Letter out of his pocket, which the lord Cobham had written to him, and desired my lord Cecil to read it. because he only knew his hand; the effect of it was as follows:

COBHAM'S LETTER OF JUSTIFICATION TO RALEIGH.

"Seeing myself so near my end, for the discharge of my own conscience, and freeing myself from your blood, which else will cry vengeance against me; I protest upon my salvation I never practised with Spain by your procurement; God so comfort me in this my affliction, as you are a true subject, for anything that I know. I will say as Daniel, *Purus sum a sanguine hujus.*¹ So God have mercy upon my soul, as I know no Treason by you."

Raleigh: Now I wonder how many souls this man hath! He damns one in this letter, and another in that.

[Here was much ado: Mr. Attorney alledged, that his last Letter was politically and cunningly urged from the lord Cobham, and that the first was simply the truth; and that lest it should seem doubtful that the first Letter was drawn from my lord Cobham by promise of mercy, or hope of favour, the Ld. C. J. willed that the Jury might herein be satisfied. Whereupon the earl of Devonshire delivered, that the same was mere voluntary, and not extracted from the lord Cobham upon any hopes or promise of Pardon.]

This was the last Evidence: whereupon a marshal was sworn to keep the Jury private. The Jury departed,

¹I am innocent of the blood of this one.

and staid not a quarter of an hour, but returned, and gave their verdict, Guilty.

Serj. Heale demanded Judgment against the Prisoner.

Clerk of the Crown: Sir Walter Raleigh, Thou hast been Indicted, arraigned, and pleaded Not Guilty, for all these several Treasons; and for Trial thereof, hast put thyself upon thy country; which country are these, who have found thee Guilty. What canst thou say for thyself, why Judgment and Execution of Death should not pass against thee?

Raleigh: My lords, the Jury have found me Guilty; they must do as they are directed. I can say nothing why Judgment should not proceed. You see whereof Cobham hath accused me: you remember his Protestations, that I was never Guilty. I desire the king should know of the wrongs done unto me since I came hither.

L. C. J.: You have had no wrong, sir Walter.

Raleigh: Yes, of Mr. Attorney. I desire my lords to remember three things to the king. 1. I was accused to be a practiser with Spain; I never knew that my lord Cobham meant to go thither; I will ask no mercy at the king's hands, if he will affirm it. 2. I never knew of the practice with Arabella. 3. I never knew of my lord Cobham's practice with Aremberg, nor of the surprising Treason.

L. C. J.: In my conscience, I am persuaded that Cobham hath accused you truly. You cannot deny, but that you were dealt with to have a Pension to be a spy for Spain; therefore you are not so true to the king as you have protested yourself to be.

Raleigh: I submit myself to the king's mercy; I

know his mercy is greater than my offence. I recommend my wife, and son of tender years, unbrought up, to his compassion.

L. C. J.: I thought I should never have seen this day, to have stood in this place to give Sentence of Death against you: because I thought it impossible, that one of so great parts should have fallen so grievously. God hath bestowed on you many benefits. You have been a man fit and able to have served the king in good place. You had brought yourself into a good state of living: if you had entered into a good consideration of your estate, and not suffered your own wit to have entrapped yourself. You might have lived well, with 3000*l.* a year, for so I have heard your revenues to be. I know nothing that might move you to be discontented; but if you had been down, you know fortune's wheel, when it is turned about, riseth again. I never heard that the king took away anything from you but the Captainship of the Guard, which he did with very good reason, to have one of his own knowledge, whom he might trust, in that place. You have been taken for a wise man, and so have shewed wit enough this day. Two vices have lodged chiefly in you: one is an eager ambition, the other corrupt covetousness. Ambition, in desiring to be advanced to equal grace and favor, as you have been before time; that grace you had then you got not in a day or year. For your covetousness, I am sorry to hear that a gentleman of your wealth should become a base Spy for the enemy, which is the vilest of all other: wherein on my conscience, Cobham hath said true: by it you would have increased your living 1500*l.* a year.

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Now it resteth to pronounce Judgment, which I wish you had not been this day to have received of me; for if the fear of God in you had been, answerable to your other great parts, you might have lived to have been a singular good subject. I never saw the like Trial, and I hope I shall never see the like again. But since you have been found guilty of these horrible Treasons, the judgment of this court is, That you shall be had from hence to the place whence you came, there to remain until the day of execution; and from thence you shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off, and thrown into the fire before your eyes; then your head to be stricken off from your body, and your body shall be divided into four quarters, to be disposed of at the king's pleasure: And God have mercy upon your soul.

Sir Walter Raleigh besought the earl of Devonshire, and the lords, to be suitors on his behalf to the king; that in regard of places of estimation he did bear in his majesty's time, the rigour of his Judgment might be qualified, and his death be honourable and not ignominious. Wherein after they had promised him to do their utmost endeavours, the court rose, and the prisoner was carried up again to the castle.

Sir Walter Raleigh¹ remained in the Tower fourteen years, during which time he made such a rep-

¹The priests and George Brooke mentioned in the Trial as co-conspirators were promptly executed. Lord Cobham, Lord

utation as an author that Prince Henry remarked no king but his father "would keep such a bird in a cage." Through the interposition of friends he was released and given command of a fleet of twelve ships to find the gold mines in Guiana. On his return to England, Sir Lewis Steukley, Vice-Admiral of Devon, seized him by order of the king and brought him to London. At first he was confined in his own house; later, he was imprisoned in the Tower. Count Gondomar attempted to have him tried on a pretended breach of peace¹ so that he might gain from England an acknowledgment of Spain's rights in the Western Hemisphere. James was willing to sacrifice Raleigh, but was afraid to risk another trial. So they resolved to proceed against him on his former condemnation.

Wednesday, Oct. 28th 1618 the Lieutenant of the Tower, in pursuance of a Writ of Habeas Corpus brought

Gray and Sir Griffin Markham were conducted to the scaffold a few days later. The sheriff had been verbally instructed to advise them to confess their treasons and to prepare for death, and at the last moment to read their pardon from the scaffold. This paper or "warrant," written in James's own hand, had been secretly sent by the King to the place of execution, by the hand of a trusty Scot, John Gibb. An immense throng had assembled, and shouts of joy mingled with cries of "God save the King," as the sheriff concluded. The chronicler of the incident wrote that Sir Walter Raleigh, who watched the scene from the window of his prison, must have had "hammers in his head" in his effort to make out what it all meant.

Having pardoned Cobham, Gray and Markham, James was compelled to defer the execution of Sir Walter Raleigh.

¹See Appendix.

Sir Walter Raleigh from the Tower to the King's-Bench bar at Westminster.

Mr. Attorney Yelverton: My lords, Sir Walter Raleigh, the prisoner at the bar, was 15 years since convicted of high treason, and then received Judgment to be hanged, drawn and quartered: his majesty of his abundant grace, hath been pleased to shew mercy upon him till now, that justice calls unto him for Execution and I now require order for the same.

Then Mr. Fanshaw, Clerk of the Crown, read the record and called to the Prisoner to hold up his hand, which he did.

Then the prisoner was asked, What he could say for himself, why execution should not be awarded against him?

Sir Walter: The Judgment which I received to die so long since, I hope it cannot now be strained to take away my life: for that since it was his majesty's pleasure to grant me a commission to proceed in a voyage beyond the seas, wherein I had power as marshal on the life and death of others, so, under favor I presume I am discharged of that Judgment: for by that Commission, I departed the land, and undertook a Journey, to honour my sovereign, and to enrich his kingdom with gold, the ore whereof this hand hath found and taken in Guiana: but the Voyage, notwithstanding my endeavour, had no other success, but what was fatal to me, the loss of my son and wasting of my whole estate.

Being about to proceed, he was by the Lord Chief Justice¹ interrupted who spake:

¹ Sir Edward Coke, Attorney-General when Sir Walter Raleigh was tried in 1603, was Lord Chief Justice.

L. C. J.: Sir Walter Raleigh, this which you now speak touching your Voyage, is not to the purpose, neither can your Commission anyway help you, by that you are not pardoned: for by words of a special nature, in case of treason, you must be pardoned, and not implicitly. There was no word tending to Pardon in all your Commission, and therefore you must say something else to the purpose: otherwise we must proceed to give execution.

Sir Walter Raleigh: If your opinion be so my lord, I am satisfied, and so put myself on the mercy of the King, who I know is gracious: and, under favour, I must say I hope he will be pleased to take commiseration upon me concerning that judgment which is so long past, and which I think, here are some could witness, nay his majesty was of opinion, that I had hard measure therein.

L. C. J.: Sir Walter Raleigh, you must remember your self: you had an honorable Trial and so were justly convicted: and it were wisdom in you now to submit yourself, and to confess your Offence did justly draw upon you that Judgment which was then pronounced against you. Wherefore, I pray you attend what I shall say unto you. I am here called to grant Execution upon the Judgment given you 15 years since: all of which time you have been as a dead man in the law, and might at any minute have been cut off, but the king in mercy spared you. You might think it heavy if this were done in cold blood, to call you to Execution, but it is not so: for new Offences¹ have stirred up his majesty's justice to remember to revive what the law hath for-

¹ These "offences" were defending himself against the Spaniards in the West Indies and in Guiana, where the gold mine was located.

merly cast upon you. I know you have been valiant and wise, and I doubt not but you retain both these virtues, for now you shall have occasion to use them. Your faith hath heretofore been questioned, but I am resolved you are a good Christian: for your Book, which is an admirable work¹ doth testify as much. I would give you counsel, but I know you can apply unto yourself far better than I am able to give you: yet, while I, with the good neighbor in the Gospel, who, finding one in the way wounded and distressed, poured oil into his wounds and refreshed him, I give unto you the oil of comfort: though, in respect that I am a minister of the law, mixed with vinegar. Sorrow will not avail you in some kind: for, were you pained, sorrow would not ease you: were you afflicted, sorrow would not relieve you: were you tormented, sorrow could not content you: and yet, the sorrow for your sins would be an everlasting comfort to you. You must do as that valiant Captain did, who perceiving himself in danger, said in defiance of death: 'Death, thou expectest me, but maugre thy spite, I expect thee.' Fear not death too much, nor fear not death too little: not too much, lest you fail in your hopes: not too little, lest you die presumptuously. And here I must conclude with my prayers to God for it: and that he would have mercy on your soul. Execution is granted.'

¹Lord Coke doubtless refers to Sir Walter Raleigh's *History of the World*, written during his confinement in the Tower. The book is still regarded as one of the finest models of the quaint and stately old English style. Among the poems written at the same time was one called *The Pilgrimage*, some of the lines of which were probably inspired by Coke's treatment of Raleigh. See Appendix.

Sir Walter Raleigh: My lord, I desire thus much favour, that I may not be cut off suddenly: for I have something to do in discharge of my conscience, and something to satisfy his majesty in, something to satisfy the world in: and I desire I may be heard at the day of my death. And here I take God to be my judge, before whom I shall shortly appear, I was never disloyal to his majesty, which I will justify where I shall not fear the face of any king on earth; and so I beseech you all to pray for me.

SIR WALTER RALEIGH'S LETTER TO THE KING THE
NIGHT BEFORE HIS EXECUTION.

The life which I had, most mighty prince, the law hath taken from me, and I am now but the same earth and dust, out of which I was made. If my offence had any proportion with your majesty's mercy, I might despair, or if my deserving had any quantity with your majesty's unmeasurable goodness, I might yet have hope; but it is you that must judge, and not I. Name, blood, gentility, or estate, I have none; no not so much as a being, no not so much as a *vitam plantae*:¹ I have only a penitent soul in a body of iron, which moveth towards the loadstone of death, and cannot be withheld from touching it, except your majesty's mercy turn the point towards me that expelleth. Lost I am for hearing of vain man, for hearing only, and never believing nor accepting: and so little account I made of that speech of his, which was my condemnation (as my forsaking him doth truly witness) that I never remembered any such thing, till it was at my trial objected against me. So

¹Life of a cutting, a slip, a young plant.

did he repay my care, who cared to make him good, which I now see no care of man can effect. But God (for my offence to him) hath laid this heavy burden upon me; miserable and unfortunate wretch that I am. But for not loving you (my sovereign) God hath not laid this sorrow on me; for he knows (with whom I am not in case to lie) that I honoured your majesty by fame, and loved and admired you by knowledge; so that whether I live, or die, your majesty's loving servant I will live and die. If now I write what seems not well-favoured, most merciful prince, vouchsafe to ascribe it to the counsel of a dead heart, and to a mind that sorrow hath confounded. But the more my misery is, the more is your majesty's mercy, if you please to behold it, and the less I can deserve, the more liberal your majesty's gift shall be: herein you shall only imitate God, by giving free life; and by giving it to such a one, from whom there can be no retribution, but only a desire to pay a lent life with the same great love, which the same great goodness shall bestow on it. This being the first letter that ever your majesty received from a dead man: I humbly submit myself to the will of God, my supreme lord, and shall willingly and patiently suffer whatsoever it shall please your majesty to afflict me withal.

WALTER RALEIGH.

SIR WALTER RALEIGH'S LETTER TO HIS WIFE.

You shall now receive, my dear wife, my last words in these my last lines. My love I send you, that you may keep it when I am dead; and my counsel, that you may remember it when I am no more. I would not by

my Will present you with sorrows, dear Besse, let them go into the grave with me, and be buried in the dust. And seeing that it is not God's will that I should see you any more in this life, bear it patiently, and with a heart like thyself. First, I send you all the thanks which my heart can conceive, or my words can rehearse, for your many travails, and care taken for me; which though they have not taken effect as you wished, yet my debt to you is not the less; but pay it I never shall in this world. Secondly, I beseech you for the love you bare me living, do not hide yourself many days, but by your travels seek to help your miserable fortunes, and the right of your poor child. Thy mourning cannot avail me, I am but dust. Thirdly, you shall understand that my land was conveyed *bona fide*¹ to my child; the Writings was drawn at Midsummer was 12 months, my honest cousin Brett can testify so much, and Dolberry too can remember somewhat therein. And I trust my blood will quench their malice that have cruelly murdered me, and that they will not seek also to kill thee and thine with extreme poverty. To what friend to direct thee I know not, for all mine have left me in the true time of trial. And I perceive that my death was determined from the first day. Most sorry I am, God knows, that being thus surprized with death I can leave you in no better estate. God is my witness, I meant you all my office of wines, or all that I could have purchased by selling it, half my stuff, and all my jewels, but some one for the boy; but God hath prevented all my resolutions, that great God that ruleth all in all; but if

¹ In good faith.

you can live free from want, care for no more, the rest is but vanity. Love God, and begin betimes to repose yourself upon him, and therein shall you find true and lasting riches, and endless comfort; for the rest, when you have travelled and wearied your thoughts over all sorts of worldly cogitations, you shall but sit down by sorrow in the end. Teach your son also to love and fear God whilst he is yet young, that the fear of God may grow with him; and then God will be a husband to you, and a father to him; a husband and a father which cannot be taken from you. Baily oweth me 200*l.* and Adrian 600*l.* in Jersey. I also have much owing me besides. The arrearages of the wines will pay your debts. And howsoever you do, for my soul's sake, pay all poor men. When I am gone, no doubt you shall be sought to, for the world thinks that I was very rich. But take heed of the pretences of men, and their affections, for they last not but in honest and worthy men; and no greater misery can befall you in this life than to become a prey, and afterwards to be despised. I speak not this, God knows, to dissuade you from marriage, for it will be best for you both in respect of the world and of God. As for me, I am no more yours, nor you mine, death hath cut us asunder; and God hath divided me from the world, and you from me. Remember your poor child for his father's sake, who chose you, and loved you in his happiest times. Get those Letters, if it be possible, which I writ to the lords, wherein I sued for life; God is my witness, it was for you and yours that I desired life; but it is true that I disdained myself for begging of it: for know it, my dear wife, that your son is the son of a true

man, and who, in his own respect, despiseth death, and all his misshapen and ugly forms. I cannot write much, God he knows how hardly I steal this time while others sleep, and it is also time that I should separate my thoughts from the world. Beg my dead body, which living was denied thee; and either lay it at Sherburne (and if the land continue) or in Exeter church by my father and mother. I can say no more, Time and Death call me away; the everlasting, powerful, infinite and omnipotent God, that Almighty God, who is goodness itself, the true life and true light, keep thee and thine, have mercy on me, and teach me to forgive my persecutors and accusers, and send us to meet in his glorious kingdom. My dear wife, farewell. Bless my poor boy. Pray for me, and let my good God hold you both in his arms. Written with the dying hand of sometime thy husband, but now alas overthrown. WALTER RALEIGH.

The King issued a special warrant October 28th, in which it was ordered he should be beheaded. Thursday, October 29, 1618, he was brought to the scaffold. He strongly protested his innocence, in an eloquent and forcible speech, to an audience of Lords and friends who gathered around him.

A proclamation being made, that all men should depart, the scaffold, he prepared himself for death; giving away his hat, his cap, with some money, to such as he knew, that stood near him. And then taking his leave of the lords, knights, gentlemen, and others of his acquaintance, and amongst the rest, taking his leave of

my lord of Arundel, he thanked him for his company, and intreated him to desire the king that no scandalous Writings to defame him might be published after his death; saying further unto him, I have a journey to do, and therefore I will take my leave.— And then putting off his doublet and gown, desired the headsman to shew him the ax; which not being suddenly granted unto him, he said, I prithee let me see it, dost thou think that I am afraid of it? So it being given unto him, he felt along upon the edge of it, and smiling, spake unto Mr. Sheriff, saying ‘This is a sharp medicine, but it is a physician that will cure all diseases.’

Then going to and fro upon the scaffold on every side, he intreated the company to pray to God to give him strength.

Then having ended his Speech, the executioner kneeled down and asked him forgiveness, the which laying his hand upon his shoulder he forgave him. Then being asked which way he would lay himself on the block, he made answer and said, So the heart be straight it is no matter which way the head lieth; So laying his head on the block, his face being towards the east, the headsman throwing down his own cloak, because he would not spoil the prisoner’s gown, he giving the headsman a sign when he should strike, by lifting up his hands, the Executioner struck off his head at two blows, his body never shrinking nor moving. His head was shewed on each side of the scaffold, and then put into a red leather bag, and his wrought velvet gown thrown over it, which was afterwards conveyed away in a mourning coach of his lady’s.— He was 66 years old.

CAPTAIN KIDD, THE PIRATE.

The trial of Captain William Kidd was practically begun in the House of Commons, March 29th, 1701. The Journal of that date reads as follows:

“Resolved, that an humble Address be presented to his majesty, by such members of this House as are of his majesty’s honorable privy Council, that he will please to give order, that Captain Kidd may be proceeded against according to law.”

Previous to this date, Captain Kidd had appeared in person before Parliament to give an account of the various expeditions he had commanded. He had been brought from New York, where it seems he had been arrested by order of the Earl of Bellamont, in an English ship sent for that purpose, and confined in Newgate prison. The Earl of Bellamont, then Governor of New England, “had been ordered to transmit to the House of Commons all commissions, instructions, and other papers relating to Captain Kidd.” After these papers had been read to the House, the Speaker was ordered to issue a warrant to the Keeper of Newgate for Captain Kidd to appear before the bar of the House. He was examined by that body and remanded to prison.

April 1, 1701, the King gave the necessary di-

rections for the "Trial to proceed according to Law."

April 16th, Captain Kidd requested that his commission, given him by the King under the Great Seal of England, and other papers necessary for his vindication, should be returned to him. The Clerk of the House sent them to the Secretary of the Admiralty. Captain Kidd complained greatly of the delay in receiving these papers.

He seems to have had a few influential friends, as well as a number of powerful enemies, in England. During the reign of William III. a State Tract was published in which it was thought advisable to make an elaborate vindication of the measures adopted against Captain William Kidd, which was entitled "A Full Account of the Proceedings in relation to Captain Kidd."

The Earl of Bellamont and Colonel Livingston of New York were friends of Captain Kidd when he first inaugurated his enterprises in the West Indies and along the Atlantic coast. Perhaps he was guilty of an unfair division of the spoils. There are countless tales of treasures hidden by this mysterious and daring mariner of Colonial days. Roanoke Island, off the coast of North Carolina, the rich cotton-bearing Sea Islands, all along the shores of the Great Dismal Swamp, are places he was said to frequent for the purpose of burying part of his riches before he should reach New York!

The earlier local historians openly claimed there

was collusion between the Earl of Bellamont, Colonel Livingston and Captain Kidd. A careful reading of the trials here given does not discount this conjecture.

There were six indictments against Captain William Kidd, one for the murder of a sailor named William Moore, and five for piracy. The first trial, for "Murder and Piracy upon the High Seas," was held at the Old-Bailey, May 8, 1701.

The following Proclamation by King William shows to what an extent piracy was practiced. It also shows that Captain Kidd's reputation as a pirate was such as to debar him from royal clemency:

BY THE KING A PROCLAMATION.

William, R.

Whereas we being informed, by the frequent complaints of our good subjects trading to the East Indies, of several wicked practices committed on those seas, as well upon our own subjects as those of our allies, have therefore thought fit (for the security of the trade of those countries, by an utter extirpation of the pirates in all parts eastward of the Cape of Good Hope, as well beyond Cape Comorin as on this side of it, unless they shall forthwith surrender themselves, as is herein after directed) to send out a squadron of men of war, under the command of Capt. Thomas Warren. Now we, to the intent that such who have been guilty of any acts of piracy in those seas, may have notice of our most gracious intention, of extending our royal mercy to such of them as shall surrender themselves, and to cause the severest punishment according to law to be inflicted upon those who shall continue obstinate, have thought fit, by the advice of our privy council to issue this proclamation; hereby requiring and commanding all persons who have been guilty of any act of piracy, or any ways aiding or assist-

ing therein, in any place eastward of the Cape of Good Hope, to surrender themselves within the several respective times herein after limited, unto the said Captain Thomas Warren, and the commander in chief of the squadron for the time being, and to Israel Hayes, Peter Dellanoye, and Christopher Pollard, esquires, commissioners appointed by us for the said expedition, or to any three of them, or, in case of death, to the major part of the survivors of them. And we do hereby declare, that we have been graciously pleased to empower the said Capt. Thomas Warren, and the commander in chief of the said squadron for the time being, Israel Hayes, Peter Dellanoye, and Christopher Pollard, esquires commissioners aforesaid, or any three of them, or, in case of death, to the major part of the survivors of them, to give assurance of our most gracious pardon unto all such pirates in the East Indies, viz. all eastward of the Cape of Good Hope, who shall surrender themselves for piracies or robberies committed by them upon the sea or land: except, nevertheless, such as they shall commit in any place whatsoever after notice of our grace and favour hereby declared; and also excepting all such piracies and robberies as shall be committed from the Cape of Good Hope eastward, to the longitude or meridian of Socatora, after the last day of April, 1699, and in any place from the longitude or meridian of Socatora eastward, to the longitude or meridian of Cape Comorin, after the last day of June, 1699, and in any place whatsoever eastward of Cape Comorin after the last day of July, 1699; and also excepting Henry Every alias Bridgman, and William Kidd.

Given at our court of Kensington, the 8th. day of December 1698, in the 10th. year of our reign. God Save the King.

THE TRIAL OF CAPTAIN WILLIAM KIDD AT THE OLD-BAILEY, FOR MURDER AND PIRACY UPON THE HIGH SEAS; AND OF NICHOLAS CHURCHILL, JAMES HOWE, ROBERT LAMLEY, WILLIAM JENKINS, GABRIEL LOFF, HUGH PARROT, RICHARD BARLICORN, ABEL OWENS, AND DARBY MULLINS, FOR PIRACY: 13 WILLIAM III. A. D. 1701.

May 8, 1701.

The King's Commission for holding the court being first read, they proceeded to call the gentlemen summoned upon the Grand-jury, and the persons sworn were the seventeen following, viz.:

William Broughton,
 Thomas Hanwell,
 Daniel Borwell,
 - Humphry Bellamy,
 Nath. Rolston, sen.
 Joshua Bolton,
 Benjamin Pike,
 Joseph Marlow,
 Benjamin Travis,
 Stephen Thompson,
 . Thomas Cooper,
 Robert Gower,
 Robert Clement,
 Thomas Sesson,
 William Goodwin,
 Robert Callow,
 Thomas Haws.

Cl. of Arr.:¹ Gentlemen of the Grand-jury, stand together, and hear the charge.

The King's majesty commands all justices of the high court of Admiralty,² that have any authority to take any inquisitions, recognizances, examinations, or informations of offences committed within the jurisdiction of the Admiralty of England, to deliver the records of the same into this court, &c. And all others are commanded to keep silence, upon pain of imprisonment.

Then Dr. Oxenden gave the charge to the Grand-jury, explaining the nature of the commission, and the crimes enquirable by virtue of it by the Grand-jury.

Then the Grand-jury withdrew, and after some time returned into court, and found the Bill of Indictment against captain Kidd for Murder, and another against him and

Nicholas Churchill,
James Howe,
Robert Lamley,
William Jenkins,
Gabriel Loff,

¹ The Clerk of Arraignments is an officer attached to the Central Criminal Court and to each Circuit. He has to discharge for the Judge sitting on the Crown side (*i. e.*, in criminal cases) the duties which are discharged for him by a master on the civil side: taxation of costs, allowance to witnesses, the business connected with jurors, their excuses and fines, the custody of documents, the duty of recording verdicts, and the making out of warrants after sentence is pronounced. He is also expected to advise the Court upon points of Criminal procedure.

² The High Court of Admiralty was a Court of Maritime jurisdiction, anciently styled the Court of the Lord High Admiral. It had two jurisdictions: one as an Instance Court in which civil and criminal suits of a maritime nature were decided, and the other as a Prize Court. As early as the reign of Edward III the Court of the Admiral was firmly established.

Hugh Parrot,
Richard Barlicorn,
Abel Owens, and

Darby Mullins, for Piracy. Then proclamation as usual being made, the aforesaid prisoners were brought to the bar, and arraigned.

Cl. of Arr.: William Kidd, hold up thy hand.

Kidd: May it please your lordships, I desire you to permit me to have counsel.

Recorder: (Sir Salathiel Lovell). What would you have counsel for?

Kidd: My lord, I have some matter of law relating to the indictment, and I desire I may have counsel to speak to it.

Dr. Oxenden: What matter of law can you have?

Cl. of Arr.: How does he know what he is charged with? I have not told him.

Recorder: You must let the court know what those matters of law are, before you can have counsel assigned you.

Kidd: They be matters of law, my lord.

Recorder: Mr. Kidd, do you know what you mean by matters of law?

Kidd: I know what I mean; I desire to put off my trial as long as I can, till I can get my evidence ready.

Recorder: Mr. Kidd, you had best mention the matter of law you would insist on.

Dr. Oxenden: It cannot be matter of law, to put off your trial, but matter of fact.

Kidd: I desire your lordship's favour; I desire Dr. Oldish and Mr. Lemmon may be heard as to my case.

Cl. of Arr.: What can he have counsel for, before he has pleaded?

Recorder: Mr. Kidd, the court tells you, you shall be heard what you have to say when you have pleaded to your indictment. If you plead to it, if you will, you may assign matter of law, if you have any; but then you must let the court know what you would insist on.

Kidd: I beg your lordship's patience till I can procure my papers. I had a couple of French passes, which I must make use of in order to my justification.

Recorder: That is not matter of law. You have had long notice of your trial, and might have prepared for it. How long have you had notice of your trial?

Kidd: A matter of a fortnight.

Dr. Oxenden: Can you tell the names of any persons that you would make use of in your defence?

Kidd: I sent for them, but I could not have them.

Dr. Oxenden: Where were they then?

Kidd: I brought them to my lord Bellamont in New-England.

Recorder: What were their names? You cannot tell without book. Mr. Kidd, the court see no reason to put off your trial, therefore you must plead.

Cl. of Arr.: W. Kidd, hold up thy hand.

Kidd: I beg your lordships I may have counsel admitted, and that my trial be put off; I am not really prepared for it.

Recorder: Nor never will, if you can help it.

Dr. Oxenden: Mr. Kidd, you have had reasonable notice, and you knew you must be tried, and therefore you cannot plead you are not ready.

Kidd: If your lordships permit those papers to be read, they will justify me. I desire my counsel may be heard.

Mr. Coniers: We admit of no counsel for him.

Recorder: There is no issue joined; and therefore there can be no counsel assigned. Mr. Kidd, you must plead.

Kidd: I cannot plead till I have those papers that I insisted upon.

Mr. Lemmon: He ought to have his papers delivered to him, because they are very material for his defence. He has endeavoured to have them, but could not get them.

Mr. Coniers: You are not to appear for any one till he pleads, and that the court assigns you for his counsel.

Recorder: They would only put off the trial.

Mr. Coniers: He must plead to the indictment.

Cl. of Arr.: Make silence.

Kidd: My papers were all seized, and I cannot make my defence without them. I desire my trial may be put off till I can have them.

Recorder: The court is of opinion they ought not to stay for all your evidence; it may be they will never come. You must plead, and then if you can satisfy the court, that there is a reason to put off your trial, you may.

Kidd: My lord, I have business in law, and I desire counsel.

Recorder: Mr. Kidd, the course of courts is, when you have pleaded, the matter of trial is next: if you can then shew there is cause to put off the trial, you may: but now the matter is to plead.

Kidd: It is a hard case when all these things shall be kept from me, and I be forced to plead.

Recorder: If he will not plead, there must be judgment.

Kidd: My lord, would you have me plead, and not to have my vindication by me?

Cl. of Arr.: Will you plead to the indictment?

Kidd: I would beg that I may have my papers for my vindication.

Cl. of Arr.: Nicholas Churchill, hold up thy hand.

Churchill: My lord, I desire I may have the benefit of the proclamation; I came in upon the King's proclamation.

Recorder: If you do not plead, the court must pass judgment upon you. You can have no benefit in what you say, till you have pleaded. If you were indicted for felony, and you will not plead, the law takes it in nature of a confession, and judgment must pass, as if you were proved guilty.

Cl. of Arr.: Nicholas Churchill, hold up thy hand. James Howe, hold up thy hand. Robert Lamley, hold up thy hand. (Which they did.)

Recorder: W. Kidd has not held up his hand.

Cl. of Arr.: He does hold up his hand. William Jenkins, hold up thy hand. Gabriel Loff, hold up thy hand. Hugh Parrot, hold up thy hand. Richard Barlicorn, hold up thy hand. Abel Owens, hold up thy hand.

Owens: I came in upon the King's proclamation, and entered myself into the King's service.

Recorder: You must plead first, and then if there be occasion, you will have the benefit of it. (Then he held up his hand.)

Cl. of Arr.: Darby Mullins, hold up thy hand.

Mullins: May it please your lordships, I came in voluntarily on the king's proclamation.

Recorder: This is the same case with Owens, you must speak to that afterwards.

Cl. of Arr.: W. Kidd, you stand indicted by the name of William Kidd, &c. Art thou guilty or not guilty?

Kidd: I cannot plead to this indictment, till my French passes are delivered to me.

Cl. of Arr.: Are you guilty or not guilty?

Kidd: My lord, I insist upon my French papers; pray let me have them.

Recorder: That must not be now, till you have put yourself upon your trial.

Kidd: That must justify me.

Recorder: You may plead it then, if the court see cause.

Kidd: My justification depends on them.

Recorder: Mr. Kidd, I must tell you, if you will not plead, you must have judgment against you, as standing mute.

Kidd: I cannot plead till I have these papers; and I have not my witnesses here.

Recorder: You do not know your own interest; if you will not plead you must have judgment against you.

Kidd: If I plead I shall be accessory to my own death, till I have persons to plead for me.

Recorder: You are accessory to your own death, if you do not plead. We cannot enter into the evidence, unless you plead.

Cl. of Arr.: Are you guilty or not guilty?

Recorder: He does not understand the law; you must read the statute to him.

Cl. of Arr.: Mr. Kidd, are you guilty of this piracy, or not guilty?

Kidd: If you will give me a little time to find my papers, I will plead.

Cl. of Arr.: There is no reason to give you time; will you plead or not?

Mr. Coniers: Be pleased to acquaint him with the danger he stands in by not pleading. Whatever he says, nothing can avail him till he pleads.

Recorder: He has been told so, but does not believe us.

Mr. Coniers: If there be any reason to put off his trial, it must be made appear after issue is joined.

Recorder: If you say guilty, there is an end of it; but if you say not guilty, the court can examine into the fact.

Officer: He says he will plead.

Cl. of Arr.: W. Kidd, art thou guilty or not guilty?—

Kidd: Not guilty.

Cl. of Arr.: How wilt thou be tried?

Kidd.: By God and my country.

Cl. of Arr.: God send thee a good deliverance. (And so of all the rest.)

Kidd: My lord, I beg I may have my trial put off for three or four days, till I have got my papers.

Recorder: The judges will be here by-and bye, and you may move the court then; we are only to prepare for your trial: We do not deny your motion; but when the court is full, they will consider of the reasons you have to offer.

(Then William Kidd was tried upon the indictment for murder.)

Cl. of Arr.: W. Kidd, Hold up thy hand: Thou standest indicted by the name of William Kidd, late of London, mariner, &c.

THE FIRST INDICTMENT FOR MURDER.

The Jurors for our sovereign lord the king do, upon their oath, present, That William Kidd, late of London, mariner, not having the fear of God before his eyes, but being moved and

seduced by the instigation of the devil, the thirtieth day of October, in the ninth year of the reign of our sovereign lord, William the third, by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. by force and arms, &c. upon the high sea, near the coast of Malabar, in the East Indies, and within the jurisdiction of the admiralty of England, in a certain ship, called the Adventure-galley (whereof the said William Kidd then was commander), then and there being, feloniously, voluntarily, and of his malice aforethought, then and there did make an assault in and upon one William Moore, in the peace of God and of our said sovereign lord the king, to wit then and there being, and to the ship aforesaid, called the Adventure-galley, then and there belonging; and that the aforesaid William Kidd, with a certain wooden bucket, bound with iron-hoops, of the value of eight pence, which he the said William Kidd then and there had and held in his right hand, did violently, feloniously, voluntarily, and of his malice aforethought, beat and strike the aforesaid William Moore in and upon the right part of the head of him the said William Moore, a little above the right ear of the said William Moore, then and there upon the high sea, in the ship aforesaid, and within the jurisdiction of the admiralty of England aforesaid, giving the said William Moore, then and there with the bucket aforesaid, in and upon the right part of the head of him the said William Moore, a little above the right ear of the said William Moore, one mortal bruise; of which mortal bruise the aforesaid William Moore, from the said thirtieth day of October, in the ninth year aforesaid, until the one and thirtieth day of the said month of October, in the year aforesaid, upon the high-sea aforesaid, in the ship aforesaid, and within the jurisdiction of the admiralty of England aforesaid, did languish, and languishing did live; upon which one and thirtieth day of October, in the ninth year aforesaid, the aforesaid William Moore upon the high-sea aforesaid, near the aforesaid coast of Malabar, in the East Indies aforesaid, in the ship aforesaid, called the Adventure-galley, and within the jurisdiction of the admiralty of England aforesaid, did die; and so the jurors aforesaid, upon their oath aforesaid, do say, that the aforesaid William Kidd feloniously, voluntarily, and of his malice aforethought did kill and murder the aforesaid William Moore upon the high sea aforesaid, and within the jurisdiction of the ad-

miralty of England aforesaid, in manner and form aforesaid, against the peace of our said sovereign lord the king, his crown and dignity, &c.

How sayest thou, William Kidd, art thou guilty of this murder whereof thou standest indicted, or not guilty?

Kidd: Not guilty.

Cl. of Arr.: How wilt thou be tried?

Kidd: By God and my country.

Cl. of Arr.: God send thee a good deliverance, Nicholas Churchill, James Howe, Robert Lamley, William Jenkins, Gabriel Loff, Hugh Parrot, Richard Barlicorn, Abel Owens, Darby Mullins, hold up your hands. You the prisoners at the bar, those men that you shall hear called, and personally appear, are to pass between our sovereign lord the king and you, upon trial of your several lives and deaths. If therefore you, or any of you, will challenge them, or any of them, your time is to speak to them as they come to the book to be sworn, and before they be sworn.

Kidd: My lord, I desire counsel may be assigned me.

Recorder: Captain Kidd, I told you it would be your time, when the jury was called, to offer what you had to offer; therefore, if you have anything now to say to the court, you had best say it.

Kidd: I beg I may have counsel, Dr. Oldish, and Mr. Lemmon, that they may be heard on my behalf.

Just. Powel: If he desires it, you may be counsel for him, provided there be any matter of law that he has to plead; otherwise he must be tried.

Dr. Oldish: My lord, he moves that his trial for piracy may be put off for several reasons; one is, there is one

Davis, that is a necessary witness for him; he was taken a passenger into the ship, and therefore could not be concerned in any piracy: now this Davis stands indicted, so that he is deprived of this person, who is a necessary witness for him in this case.

Mr. Coniers: He is not indicted yet; he may call him if he thinks fit.

Just. Powel: If he be indicted, yet he may be a witness.

Dr. Oldish: My lord, we desire he may be here.

Just. Powel: Where is he?

Cl. of Arr.: He is in Newgate.

Just. Powel: Let him be sent for.

Dr. Oldish: My lord, it is very fit his trial should be delayed for some time, because he wants some papers very necessary for his defence. It is very true, he is charged with piracies in several ships; but they had French passes when the seizure was made. Now if there were French passes, it was a lawful seizure.

Just. Powel: Have you those passes?

Kidd: They were taken from me by my lord Bellamont; and these passes would be my defence.

Dr. Oxenden: Had you any other passes when you took the Armenian ship?

Dr. Oldish: If those ships that he took had French passes, there was just cause of seizure, and it will excuse him from piracy.

Kidd: The passes were seized by my lord Bellamont, that we will prove as clear as the day.

Mr. Lemmon: My lord, I desire one word as to this circumstance; he was doing his king and country service, instead of being a pirate: for in this very ship there

was a French pass, and it was shewn to Mr. Davis, and carried to my lord Bellamont, and he made a seizure of it. And there was a letter writ to testify it, which was produced before the parliament; and that letter has been transmitted from hand to hand, so that we cannot at present come by it. There are several other papers and letters that we cannot get; and therefore we desire the trial may be put off till we can procure them.

L. C. B.¹ Ward: Where are they?

Mr. Lemmon: We cannot yet tell whether they are in the Admiralty-office, or whether Mr. Jodrell hath them.

Just. Powel: Let us see on what you go. You talk of French passes; you should have been prepared to make affidavit of it. What ship was that which had the French passes?

Mr. Lemmon: The same we were in, the same he is indicted for.

Just. Powel: Make out this, Mr. Lemmon.

Mr. Lemmon: My lord, we desire Mr. Davis may be sent for; he will prove it.

L. C. B. Ward: Send for Edward Davis.

Mr. Fell: My lord, will you have him brought into court?—L. C. B. Ward: Yes.

Sol. Gen.: They have had a fortnight's notice to prepare for the trial.

¹ Lord Chief Baron was the title of the Chief Justice of the English Court of the Exchequer. In 1880, on the death of the Lord Chief Justice of England and the Lord Chief Baron of the Exchequer, a Council of Judges was held, and the offices of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer were abolished and consolidated into one division, called the Queen's Bench Division, under the Presidency of a Lord Chief Justice.

Dr. Oldish: We petitioned for money, and the court ordered 50*l.*; but the person that received it went away, and we had none till last night.

Dr. Oxenden: I ordered that the money might be paid into his own hands, that he might be sure to have it.

Mr. Crawley, (Register,) declared, that he paid the 50*l.* into his own hands on Tuesday morning.

L. C. B. Ward: You ought to make it out, that there is a reasonable cause to put off the trial, or else it cannot be allowed.

Mr. Lemmon: My lord, we will be ready to-morrow morning.

L. C. B. Ward: They ought to have had due notice; what notice have they had?

Sol. Gen.: A fortnight's notice, this day fortnight.

Dr. Oldish: My lord, he should have had his money delivered to him.

Kidd: I had no money nor friends to prepare for my trial till last night.

L. C. B. Ward: Why did you not signify so much to the king's officers?

Sol. Gen.: My lord, this we will do; let Davis be brought into court; and if that be a just excuse we are contented. In the mean time, let him be tried for the murder, wherein there is no pretence of want of witnesses or papers.—Officer: Davis is here, my lord.

Cl. of Arr.: Set all aside but captain Kidd. William Kidd, you are now to be tried on the bill of murder; the jury is going to be sworn; if you have any cause of exception, you may speak to them as they come to the book.

Kidd: I shall challenge none; I know nothing to the contrary but they are honest men.

The jury sworn were, Nathaniel Long,
 Jo. Ewers,
 Jo. Child,
 Ed. Reeves,
 Tho. Clark,
 Nath. Green,
 Henry Sherbrook,
 Henry Dry,
 Richard Greenaway,
 Jo. Sherbrook,
 Tho. Emms,
 Rog. Mott.

After proclamation made (as usual) the court proceeded to the trial as follows:

Cl. of Arr.: W. Kidd, hold up thy hand. (Which he did.) You gentlemen of the jury, look upon the prisoner, and hearken to his cause. He stands indicted by the name of William Kidd, &c. as before in the indictment. Upon this indictment he has been arraigned, and thereunto has pleaded, Not guilty, and for his trial has put himself on God and his country, which country you are. Your charge is to enquire, whether he be guilty of the murder whereof he stands indicted, in manner and form as he stands indicted, or not guilty, &c.

Mr. Knap: My lord, and you gentlemen of the jury; this is an indictment of murder. The indictment sets forth, "That William Kidd, on the thirtieth of October, on the high sea, on the coast of Malabar, did assault one William Moore, on board a ship called The Adventure, whereof William Kidd was captain, struck him with a wooden bucket, hooped with iron, on the side of the head near the right ear, and that of this bruise he died the

next day, and so that he has murdered the same person." To this indictment he pleaded not guilty: if we prove him guilty, you must find him so.

Sol. Gen.: My lord, and gentlemen of the jury, we will prove this as particularly as can be, that William Kidd was captain of the ship, and that William Moore was under him in the ship, and that without any provocation he gave him this blow whereof he died.

Mr. Coniers: My lord, it will appear to be a most barbarous fact, to murder a man in this manner; for the man gave him no manner of provocation. This William Moore was a gunner in the ship, and this William Kidd abuses him, and calls him 'lousy dog;' and upon a civil answer, he takes this bucket and knocks him on the head, whereof he died the next day. Call Joseph Palmer, and Robert Bradinham. (Who appeared, and were sworn.) Joseph Palmer, give my lord and the jury an account of what you saw done by William Kidd, on the coast of Malabar, as to William Moore his gunner.

Palmer: About a fortnight before this accident fell out, captain Kidd met with a ship on that coast, that was called *The Loyal Captain*. And about a fortnight after this, the gunner was grinding a chissel aboard *The Adventure*, on the high sea near the coast of Malabar, in the East Indies.

Mr. Coniers: What was the gunner's name?

Palmer: William Moore: and captain Kidd came and walked on the deck, and walks by this Moore; and when he came to him, says, 'Which way could you have put me in a way to take this ship, and been clear?' 'Sir,' says William Moore, 'I never spoke such a word, nor ever thought such a thing.' Upon which captain Kidd

called him a 'lousy dog.' And says William Moore, 'If I am a lousy dog, you have made me so, you have brought me to ruin, and many more.' Upon his saying this, says captain Kidd, 'Have I ruined you, ye dog?' and took a bucket bound with iron hoops, and struck him on the right side of the head, of which he died the next day.

Mr. Cowper: What was the gunner doing at that time that he gave him the blow?

Palmer: He was grinding a chissel at the time that he struck him.

Mr. Cowper: Did he give him the blow immediately after he gave him that answer?

Palmer: He walked two or three times backward and forward upon the deck before he struck the blow.

Just. Turton: What did capt. Kidd say first?

Palmer: 'Which way could you have put me in a way of taking this ship, and been clear?' Says the gunner, 'I never said so, nor thought any such thing.'

Mr. Cowper: Hark you, friend, explain that matter.

Baron Hatsell: What was the occasion of those words?

Palmer: It was concerning this ship.

L. C. B. Ward: What ship was it? Name the ship.

Palmer: It was The Loyal Captain. Captain Kidd said to Wm. Moore, 'Which way could you have put me in the way to have taken this ship, and been clear?' Says W. Moore, 'I never said such a thing, nor thought it.' Upon that he called him 'lousy dog.'

L. C. B. Ward: Was that ship taken?

Palmer: No, she was gone.

Mr. Coniers: You say he called him 'lousy dog?'—

Palmer: Yes.

Mr. Coniers: What did William Moore say to him then?

Palmer: He said, 'If I am a lousy dog, you have brought me to it; you have ruined me and many more.' Upon this, says captain Kidd, 'Have I brought you to ruin, you dog?' Repeating it two or three times over, and took a turn or two upon the deck, and then takes up the bucket, and strikes him on the head.

Mr. Cowper: You say he made a turn or two on the deck, and then struck him?

Palmer: Yes.

Mr. Coniers: Tell my lord what passed next after the blow.

Palmer: He was let down the gun-room; and the gunner said, 'Farewel, farewel, captain Kidd has given me my last.' And capt. Kidd stood on the deck, and said, 'You're a villain.'

Mr. Cowper: How near was captain Kidd to him when he said he had given him his last?

Palmer: He was near him.

Mr. Cowper: Was he within hearing of what Moore said?

Palmer: Yes; he was within seven or eight foot.

Sol. Gen.: Did you apprehend that he died of that blow?

Palmer: He was in perfect health before that.

Sol. Gen.: What did the surgeon think of it?

Palmer: The surgeon is here.

Sol. Gen.: Did you see him afterwards?

Palmer: No, I did not see him after, till he was dead.

Mr. Cowper: How did the wound appear when you saw him?

Palmer: After he was dead, the surgeon was called to open his head; and capt. Kidd said, 'You are damn'd busy without orders.'

Mr. Cowper: Though we ask you questions, you must turn your face there, towards the jury. Give the jury an account of what you saw.

Palmer: I felt on his head, and I felt some thing give way, and about the wound there was a bruise.

Mr. Cowper: You say you saw him when he was carried off, after the blow; how did his head appear then? Was he bloody?

Palmer: There was not much blood came from him.

L. C. B. Ward: Was¹ you by when these words were spoken?

Palmer: Yes, my lord.

L. C. B. Ward: Did you see the prisoner give the blow with the bucket upon those words? — Palmer: Yes, my lord.

L. C. B. Ward: How long was it before he went down the deck?

Palmer: Presently.

L. C. B. Ward: Did he complain of the wound?

Palmer: He said, 'Farewel, farewel, captain Kidd has given me my last.'

L. C. B. Ward: Was this Moore in a good condition of health before this blow was given him? — Palmer: Yes, my lord.

L. C. B. Ward: And afterwards he complained? — Palmer: Yes, my lord.

L. C. B. Ward: When he was dead, what marks were on his head?

¹ All mistakes are copied literally. See Appendix.

Palmer: On the right side of his head, on this place (pointing to his own head) it was bruised a considerable breadth; and in one place I could feel the skull give way.

Mr. Cowper: How long after the blow did he die?

Palmer: The next day following.

Mr. Cowper: And you say you saw him dead then?—

Palmer: Yes, sir.

L. B. C. Ward: Captain Kidd, if you will ask him any questions, you may.

Kidd: My lord, I would ask this man, what this Moore was doing when this thing happened?

L. C. B. Ward: Mr. Palmer, you hear what he says; what was Moore doing?

Palmer: He was grinding a chissel.

Kidd: What was the occasion that I struck him?

Palmer: The words that I told you before.

Kidd: Was there no other ship?

Palmer: Yes.

Kidd: What was that ship?

Palmer: A Dutch ship.

Kidd: What were you doing with the ship?

Palmer: She was becalmed.

Kidd: This ship was a league from us, and some of the men would have taken her, and I would not consent to it; and this Moore said, I always hindered them making their fortunes: was not that the reason I struck him? was there a mutiny on board?

Palmer: No; you chased¹ this Dutchman, and in the way took a Malabar boat, and chased this ship all the

¹Chased.

whole night; and they shewed their colours, and you put up your colours.

Kidd: This is nothing to the point: was there no mutiny aboard?

Palmer: There was no mutiny, all was quiet.

Kidd: Was there not a mutiny, because they would go and take that Dutchman?

Palmer: No, none at all.

Mr. Coniers: Call Robert Bradinham.

Jury: What was the cause that he struck him?

Palmer: A fortnight before this was done, we met with this Loyal Captain, of which captain Hoar was commander, and he came on board captain Kidd's ship, and captain Kidd went on board his, and then captain Kidd let this ship go. About a fortnight after this, the gunner was grinding his chissel on the deck, and captain Kidd said to him, 'Which way could you have put me in a way to take this ship, and been clear?' To which he replied, 'I never said such a thing, nor thought of such a thing.' Whereupon captain Kidd called the gunner 'lousy dog;' and, says Moore, 'If I am a lousy dog, you have made me so; you have brought me to ruin, and a great many more.' And says captain Kidd, 'Have I brought you to ruin, you dog?' and after struck him with the bucket. These were all the words that passed.

Just. Powel: Was captain Kidd aboard that ship?

Palmer: Yes; and captain Hoar was aboard him.

Just. Powel: Was there any body nigh at that time?

Palmer: Yes; there were eight or nine men that had muskets and other arms, and they were for taking the

ship, and capt. Kidd was against it, and so it was not done.

Kidd: My lord, I was in the cabin, and heard a noise, and came out; and Wm. Moore said, 'You ruin us, because you will not consent to take captain Hoar's ship.' Says a Dutchman, 'I will put captain Kidd in a way to take this ship, and come off fairly.'

L. C. B. Ward: You may ask him any questions you have a mind to, but you must reserve what you have to say for yourself till you come to make your defence.

Sol. Gen.: Mr. Palmer, do you know of any other provocation to strike him besides those words?

Palmer: I know of no other provocation.

Mr. Coniers: Set up Robert Bradinham. (Who appeared.) Mr. Bradinham, in what office was you in the ship?

Bradinham: I was surgeon of the ship.

Mr. Coniers: Of what ship?

Brad.: The Adventure-Galley, whereof captain Kidd was master.

Mr. Coniers: Was you there when the blow was given? — Brad.: No.

Mr. Coniers: Was you sent for when capt. Kidd had given the gunner the wound upon the head?

Brad.: I was sent for to his assistance after he was wounded, and I came to him, and asked him how he did? He said, 'He was a dead man; capt. Kidd had given him his last blow.' And I was by the gun-room, and captain Kidd was walking there, and I heard Moore say, 'Farewel, farewel, captain Kidd has given me my last blow;' and captain Kidd, when he heard it, said, 'Damn him, he is a villian.'

Mr. Coniers: Did you hear him say so?

Brad.: I did hear it.

Mr. Cowper: Was it in a way of answer to what he said? — Brad.: Yes.

Mr. Cowper: How long did he live after the blow?

Brad.: He died the next day. The wound was but small, the skull was fractured.

Mr. Cowper: Do you believe he died of the wound? — Brad.: Yes.

Mr. Cowper: Had you any discourse with captain Kidd after this, about this man's death?

Brad.: Some time after this, about two months, by the coast of Malabar, captain Kidd said, 'I do not care so much for the death of my gunner, as for other passengers of my voyage, for I have good friends in England that will bring me off for that.'

L. C. B. Ward: Mr. Kidd, will you ask him any questions?

Kidd: I ask him whether he knew of any difference between this gunner and me before this happened?

Brad.: I knew of no difference between them at all.

Sol. Gen.: Mr. Kidd, have you any thing more to ask him? — Kidd: No.

Mr. Coniers: Then we have done for the king.

L. C. B. Ward: Then you may make your defence. You are charged with murder, and you have heard the evidence that has been given, what have you to say for yourself?

Kidd: I have evidence to prove it is no such thing, if they may be admitted to come hither. My lord, I will tell you what the case was: I was coming up within a league of the Dutchman, and some of my men were

making a mutiny about taking her, and my gunner told the people he could put the captain in a way to take the ship, and be safe. Says I, How will you do that? The gunner answered, We will get the captain and men aboard. And what then? We will go aboard the ship, and plunder her, and we will have it under their hands that we did not take her. Says I, This is Judas like, I dare not do such a thing. Says he, We may do it, we are beggars already. Why, says I, may we take this ship because we are poor? Upon that a mutiny arose: so I took up a bucket, and just threwed it at him, and said, You are a rogue to make such a motion, This I can prove, my lord.

L. C. B. Ward: Call your evidence.

Mr. Cowper: Mr. Palmer, was there any mutiny in the ship when this man was killed?

Palmer: There was none.

L. C. B. Ward: Captain Kidd, call what evidence you will.

Kidd: They are prisoners, I desire they may be called up.

L. C. B. Ward: Whatever other crimes they may be guilty of, they may be witnesses for him in this case.

Baron Hatsell: Mr. Palmer, did he throw the bucket at him, or strike him with it?

Palmer: He held it by the strap in his hand.

Kidd: Call Abel Owens. (Who appeared.) Can you tell which way this bucket was thrown?

Just. Powel: What was the provocation of throwing this bucket?

Owens: I was in the cook-room and hearing some difference on the deck, I came out, and the gunner was

grinding a chissel on a grind stone, and the captain and he had some words, and the gunner said to the captain, You have brought us to ruin, and we are desolate. And, says he, Have I brought you to ruin? I have not brought you to ruin, I have not done an ill thing to ruin you; you are a saucy fellow to give me these words. And then he took up the bucket and did give him the blow.

Kidd: Was there not a mutiny among the men?

Owens: Yes, and the bigger part was for taking the ship; and the captain said, you that will take the Dutchman, you are the strongest, you may do what you please; if you will take her, you may take her; but if you go from aboard, you shall never come aboard again.

L. C. B. Ward: When was this mutiny you speak of?

Owens: When we were at sea.

L. C. B. Ward: How long was it before this man's death?

Owens: About a month.

Just. Powel: At this time when the blow was given, did Moore the gunner endeavour to make any mutiny?

Owens: No.

Just. Powel: Was there any mutiny then?

Owens: None at all.

Kidd: Did not he say he could put me in a way to take the Dutchman, and be clear?

Owens: I know there were several of them would have done it, but you would not give consent to it.

Kidd: No; but this was the reason I threw the bucket at him.

L. C. B. Ward: Captain Kidd, he tells you this was a month before you struck him.

Jury: My lord, we desire he may be asked, whether he did throw the bucket, or strike him with it?

L. C. B. Ward: Answer the jury to that question.

Owens: He took it with the strap, and struck him with it.

Kidd: Did not I throw it at him?

Owens: No; I was near you when you did it.

Mr. Coniers: Did you see the stroke given?

Owens: I did see the stroke given.

L. C. B. Ward: Captain Kidd, will you call any more?

Kidd: Yes, my lord. Call Richard Barlicorn.

Just. Powel: What questions would you have him asked?

Kidd: R. Barlicorn, What was the reason that blow was given to the gunner?

Barlicorn: At first when you met with the ship, there was a mutiny, and two or three of the Dutchmen came aboard; And some said, she was a rich vessel, and they would take her; and the captain said, No, I will not take her. And there was a mutiny in the ship, and the men said, If you will not, we will. And he said, If you have a mind, you may; but they that will not, come along with me.

Kidd: Do you think William Moore was one of those that was for taking her? — Barlicorn: Yes.

L. C. B. Ward: How long was that before Moore died, do you know?

Barlicorn: No; I did not keep a journal.

L. C. B. Ward: Was it after Moore died?

Barlicorn: No. Sir, it was before Moore died.

Mr. Coniers: How long before?

Barlicorn: I believe it was about a month or three weeks, I cannot tell which.

L. C. B. Ward: You say there was a mutiny in the ship, what was the mutiny about? — Barlicorn: About taking the ship.

L. C. B. Ward: What was the ship's name?

Barlicorn: The Loyal Captain. And the captain said, If they take the ship, they should never come aboard again.

L. C. B. Ward: Was you by when Moore received this blow?

Barlicorn: No; I was not by then.

Kidd: Did you know of any quarrel between this Moore and I before that accident?

Barlicorn: No. I did not.

Just. Powel: Was there any mutiny in the ship when this Moore died?

Barlicorn: They were talking of it.

Kidd: Was there not a Dutchman close by us, when this blow was given? — Barlicorn: Yes, Sir.

Kidd: He was going to make another mutiny, and I prevented him.

Just. Powel: Did Moore endeavour to make any mutiny at this time?

Barlicorn: The ship was gone at that time.

Just. Powel: How long had she been gone?

Barlicorn: About a week.

Baron Hatsell: Was there any mutiny about the Dutch ship you saw?

Barlicorn: The Dutch ship? Not that I know of; but there was a mutiny aboard the Loyal Captain.

Kidd: Do you not know of another mutiny?

Baron Hatsell: Do you know of any other mutiny? —

Barlicorn: No.

Kidd: At that very time they were going to make a mutiny.

L. C. B. Ward: Will you ask him any more questions?

Kidd: What discourse had I with Moore at that time?

Barlicorn: I was aboard our ship, but did not see the blow given.

Kidd: They were saying they would take her, and he said he could put me in a way to take her, without coming to any harm.

L. C. B. Ward: What occasion could those words be of a mutiny?

Barlicorn: There were many of the men would have gone with arms, and taken that ship without the captain's consent.

L. C. B. Ward: At that time when this Moore was killed, was there any mutiny? — Barlicorn: No.

L. C. B. Ward: When was it that Moore said, they might have taken this ship?

Barlicorn: At the same time when the ship was in company with us.

L. C. B. Ward: That was a week or a fortnight before?

Barlicorn: No, Sir, the Loyal Captain was within sight of us.

Baron Hatsell: What, when Moore was killed?

Barlicorn: No, not then. William Moore lay sick a great while before this blow was given; and the doctor said, when he visited him, this blow was not the cause of his death.

L. C. B. Ward: Then they must be confronted. Do you hear, Bradinham, what he says? He says you said, That blow was not the cause of his death. Did you ever say so?

Bradinham: My lord, I never said so.

L. C. B. Ward: Did you see that young man there?

Bradinham: Yes; he was aboard the ship.

L. C. B. Ward: Was Moore sick before that blow?

Bradinham: He was not sick at all before.

Barlicorn: He was sick some time before, and this blow did but just touch him; and the doctor said, he did not die on the occasion of this blow.

Just. Gold: Did you ever say so, Mr. Bradinham?

Bradinham: No, my lord.

Sol. Gen.: You say he did but just touch him; Were you present when the blow was given?

Barlicorn: No; but I saw him after he was dead, and I was by when the doctor said, he did not die of that blow.

Mr. Cowper: What did he die of?

Barlicorn: I cannot tell, he had been sick before; we had many sick men aboard.

Sol. Gen.: How long did he lie after this blow before he died?

Barlicorn: I cannot tell justly how long it was.

L. C. B. Ward: How long do you think? You took notice of the blow; how long did he live after that?

Barlicorn: I believe about a week.

L. C. B. Ward: And the two witnesses swore he died the next day.

Barlicorn: I cannot tell justly how long he lived afterwards.

Jury: We desire to know whether he knew what was the occasion of this blow?

Barlicorn: All the reason I can give is, because it was thought he was going to breed a mutiny in the vessel.

L. C. B. Ward: Did you hear of that by any body?

Kidd: Was Bradinham in the mutiny? Declare that.

L. C. B. Ward: Mr. Kidd, why do you ask that question?

Kidd: I ask him whether Bradinham was not in any mutiny in the ship?

L. C. B. Ward: Why do you ask that?

Barlicorn: If anything was to be, he was as forward as any one.

L. C. B. Ward: You say he was as forward as any; but it does not appear any one made a mutiny at this time.

Barlicorn: I do not know, Sir.

L. C. B. Ward: Have you any more to call?

Kidd: My lord here is another witness.

L. C. B. Ward: What is your name.

Parrot: Hugh Parrot.

L. C. B. Ward: Mr. Kidd, What do you ask him?

Kidd: I ask you whether Bradinham was in a mutiny in my ship?

Parrot: I cannot say whether he was or no.

L. C. B. Ward: Capt. Kidd, you are tried for the death of this Moore; now why do you ask this question? What do you infer from hence? You will not infer, that if he was a mutineer, it was lawful for you to kill Moore.

Kidd: Do you know the reason why I struck Moore?

Parrot: Yes, because you did not take the Loyal Captain, whereof captain Hoar was commander.

L. C. B. Ward: Was that the reason he struck Moore, because the ship was not taken?

Parrot: I shall tell you how it happened, according to the best of my knowledge. My commander fortun'd to come up with this captain Hoar's ship, and some were for taking her, and some not; and afterwards there was a little sort of mutiny, and some rose in arms, the greatest part, and they said they would take this ship; and the commander was not for it; and so they resolv'd to go away in the boat, and take her. Captain Kidd said, 'If you desert my ship, you shall never come aboard again, and I will force you into Bombay, and I will carry you before some of the council there.' Insomuch as my commander stilled them again, and they remained on board. And about a fortnight afterward, there pass'd some words between this William Moore and my commander; and then says he, 'Captain, I could have put you in a way to have taken this ship, and been never the worse for it.' He says, 'Would you have me take this ship? I cannot answer it, they are our friends;' and my commander was in a passion; and with that I went off the deck, and I understood afterwards the blow was given, but how I cannot tell.

Just. Powel: Capt. Kidd, have you any more to ask him; or have you any more witnesses to call?

Kidd: I could call all of them to testify the same thing; but I will not trouble you to call any more.

L. C. B. Ward: Have you any more to say for yourself?

Kidd: I have no more to say, but I had all the prov-

ocation in the world given me; I had no design to kill him, I had no malice or spleen against him.

L. C. B. Ward: That must be left to the jury to consider the evidence that has been given; you make out no such matter.

Juryman: My lord, I desire the prisoner may give an account, whether he did do any thing in order to his cure.

L. C. B. Ward: He is to be tried according to law; the king's evidence hath been heard, and he has the liberty to produce what evidence he can for himself; will you put him to produce more evidence than he can? If he has any more to say, it will be his interest to say what he can; the court is willing to hear him as long as he hath any thing to offer for himself, either upon that account, or any thing else.

Kidd: It was not designedly done, but in my passion, for which I am heartily sorry.

L. C. B. Ward: Gentlemen of the jury, the prisoner at the bar, William Kidd, is indicted for the murder of William Moore, and whether he be guilty of this murder, or not guilty, it is your part to determine on the evidence that has been given. The fact charged against him is this, That the prisoner at the bar, William Kidd, being the commander of the ship, called *The Adventure galley*, and the deceased William Moore the gunner in that ship; that upon the high sea, near the coast of Malabar, in the East Indies, and within the jurisdiction of the Admiralty of England, in October, in the 9th year of his majesty's reign, 1697, the prisoner, William Kidd, out of his malice forethought, did strike the de-

ceased William Moore with a bucket hooped with iron, on the right side of the head, and that the blow was the occasion of the death of the said William Moore; that this was done on the 30th of October, and that his death ensued on the 31st of October, being the next day. This is the fact charged upon him.

Now you have heard the evidence that has been given on the king's part, and you will weigh it well. You hear the first witness that has been produced on behalf of the king, is Joseph Palmer. He tells you he was present on board this ship at the time when the blow was given: and he says, there had been some discourse between the prisoner William Kidd and the deceased Moore, concerning taking a ship that was called *The Loyal Captain*; and that captain Kidd said to him, 'How could you have put me in a way to take that ship, and be clear?' 'No,' says Moore, 'I said no such thing.' The reply captain Kidd made to him was, 'He was a lousy rogue.' The answer of the deceased was this, 'If I am so, you have made me so; you have ruined me and a great many others.' With that says captain Kidd, 'Have I ruined you, you dog?' And up he took a bucket hooped with iron, and gave him a blow on the right side of his head. And thereupon he complained and said, 'You have given me my last blow.' And then Moore went down below deck, and he saw him no more till the next day, and then he was dead; and he felt upon his head, and perceived a bruise in one part of it, as broad as a shilling, and he felt the skull was broke; and he does take on him to say, that he believes that blow was the occasion of his death. Being asked, whether he knew in what state of health he was before, he says, he

was in a healthy condition; he was grinding a chissel at that time when the blow was given; and that blow he believes was the occasion of his death. And being asked, whether he heard any other words, or saw or knew any thing that could be any cause of provocation? he says, he knew no more than the reply of the deceased; 'If I am a lousy dog, you have made me so, and have been my ruin:' and then having taken two or three turns upon the deck, he gave him the blow; and then Moore went down the deck, and used these words, 'You have given me my last blow,' or to that effect.

Gentlemen, you have heard the surgeon also, Robert Bradinham; and he tells you, he did not see the blow given, but he was sent for after, and the deceased said, 'Captain Kidd had given him his last blow;' and thereupon he did examine him as a surgeon, and does believe that blow on the head was the occasion of his death; and he did observe it as well as he could.

Juryman: My lord, I think Bradinham said, he was not then by when the prisoner gave the blow.

L. C. B. Ward: I did not say he was: he says, he was sent for after the blow; and when he came, the deceased said, he gave it him, and what would be the consequence.

Now these two being cross examined by the prisoner William Kidd, whether they did not know of some mutiny in the ship, that might be the occasion of his giving this blow; they have told both their stories, of what discourse there was of taking this ship, The Loyal Captain, and of what design there was upon the Dutch ship after. Now the first of these was a fortnight before this happened, and the other a week; so that there was then

no occasion of mutiny, nor do they know of any mutiny at that time.

Now, Gentlemen, he has produced for himself three witnesses. The first that he calls is Abel Owens; and this witness has not in his testimony made for the prisoner, but in effect confirmed what the other witnesses for the king said: for he tells you he was by when the blow was given, and gives you an account how this thing was; that there was some discourse between them, much what to the effect aforesaid, both as to what captain Kidd said to Moore, and what Moore replied; and that captain Kidd should say to Moore, 'You are a saucy fellow,' or to that purpose; and Moore said, 'You have ruined me, and a great many others;' and with that the prisoner took up the bucket, and struck him with it. And he being asked, if there were any provocation or occasion why this blow was given, and whether there was any mutiny at that time, as he pretended? he says, he knew of none, only he speaks of one about a month before.

They have called two other witnesses; one is Richard Barlicorn; he is the prisoner's servant; and though he be his servant, yet the law allows him to be a witness for him, and the credit of his testimony is left to you. Now what has he said? He has told you some thing different stories. He thinks there was a mutiny in the ship. And being asked about what time? he thinks it was about a month or three weeks before; and, upon further examination, saith, there was no mutiny when Moore was killed. He is willing to say what he can for his master, and believes Mr. Kidd did not design to do any harm to that man; for he heard the surgeon say, that blow was not the occasion of his death. Now, in

contradiction to that Bradinham the surgeon says, he never did say so, but believes that this blow was the occasion of his death. You have heard what objections the young man's testimony is liable to, and you will consider his whole evidence.

The last witness the prisoner has called, is Hugh Parrot. He says, there was some thing of these words, and that the deceased did say, he could have put the captain in a way to have taken the ship; and hereupon words arose, and the captain was in a passion; and that then he went away, and understood afterwards the blow was given, but how he could not tell.

Now, Gentlemen, this being the matter of fact, the prisoner is indicted upon it for murder. Now to make the killing of a man to be murder, there must be malice prepense, either expressed or implied: the law implies malice, when one man, without any reasonable cause or provocation, kills another. You have had this fact opened to you. What mutiny or discourse might be a fortnight or month before, will not be any reason or cause for so long continuance of a passion. But what did arise at that time, the witnesses tell you. The first witness tells you, the first words that were spoken, were by Mr. Kidd; and upon his answer, Mr. Kidd calls him 'Lousy dog.' The reply was, 'If I am so, you have made me so; you have ruined me, and a great many more.' Now, gentlemen, I leave it to you to consider, whether that could be a reasonable occasion or provocation for him to take a bucket, and knock him on the head and kill him. You have heard the witnesses have made it out that he was a healthy man, and they are of opinion that the blow was the occasion of his death.

Now for the prisoner, on such a saying, and without any other provocation, to take a bucket and knock the deceased on the head, and kill him, must be esteemed an unjustifiable act: for as I said, if one man kill another without provocation, or reasonable cause, the law presumes and implies malice; and then such killing will be murder, in the sense of the law, as being done out of malice prepense. If there be a sudden falling out, and fighting, and one is killed in heat of blood, then our law calls it manslaughter: but in such a case as this, that happens on slight words, the prisoner called the deceased a 'lousy dog;' and the deceased said, 'If I be so, you have made me so;' can this be a reasonable cause to kill him? And if you believe them to be no reasonable cause of provocation, and that this blow was given by the prisoner, and was the occasion of Moore's death, as the witnesses allege, I cannot see what distinction can be made, but that the prisoner is guilty of murder. Indeed, if there had been a mutiny at that time, and he had struck him at the time of the mutiny, there might have been a reasonable cause for him to plead in his defence, and it ought to have been taken into consideration; but it appears, that what mutiny there was, was a fortnight at least before: therefore, gentlemen, I must leave it to you: if you believe the king's witnesses, and one of the prisoner's own, that this blow was given by the prisoner in the manner aforesaid, and are satisfied that it was done without reasonable cause or provocation, then he will be guilty of murder: and if you do believe him guilty of murder, upon this evidence, you must find him so: if not, you must acquit him.

Kidd: My lord, I have witnesses to produce for my reputation.

L. C. B. Ward: Mr. Kidd, we gave you time to make your defence; why did not you produce them? You were asked more than once, if you had any more to say; and you said, you would call no more witnesses.

Kidd: I can prove what service I have done for the king.

L. C. B. Ward: You should have spoken sooner; but what would that help in this case of murder? You said you had no more to say before I began.

Then an Officer was sworn to keep the Jury; and about an hour after the Jury returned, and gave in their verdict.

Cl. of Arr.: Gentlemen, answer to your names. Nath. Long.

Nath. Long: Here, &c.

Cl. of Arr.: Are you all agreed of your verdict?

Omnes: Yes.

Cl. of Arr.: Who shall say for you?

Omnes: Foreman.

Cl. of Arr.: William Kidd, hold up thy hand, (which he did). Look upon the prisoner. Is he guilty of the murder whereof he stands indicted, or not guilty?

Foreman: Guilty.

Cl. of Arr.: Look to him, keeper.

THE TRIAL OF WM. KIDD, NICHOLAS CHURCHILL, JAMES HOWE, ROBERT LAMLEY, WM. JENKINS, GABRIEL LOFFE, HUGH PARROT, RICHARD BARLICORN, ABEL OWENS, AND DARBY MULLINS, FOR PIRACY AND ROBBERY, ON A SHIP CALLED "THE QUEDAGH¹ MERCHANT:" 13 WILLIAM III. A. D. 1701.

May 9, 1701.

'The jurors for our sovereign lord the king do, upon their oath, present, That

William Kidd, late of London, mariner;
 Nicholas Churchill, late of London, mariner;
 James Howe, late of London, mariner;
 Robert Lamley, late of London, mariner;
 Wm. Jenkins, late of London, mariner;
 Gabriel Loffe, late of London, mariner;
 Hugh Parrot, late of London, mariner;
 Richard Barlicorn, late of London, mariner;
 Abel Owens, late of London, mariner; and
 Darby Mullins, late of London, mariner;

the 30th day of January, in the 9th year of the reign of our sovereign lord, William the Third, by the grace of God, of England, Scotland, France and Ireland, king, defender of the faith, &c. by force and arms, &c. upon the high sea, in a certain place distant about ten leagues from Cutsheen, in the East-Indies, and within the jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break, and enter a certain merchant ship, called The Quedagh Merchant, then being a ship of certain persons (to the jurors aforesaid un-

¹ Quedah, Kedah, or Kiddah, is a half independent state on the west coast of the Malay Peninsula, on the Strait of Malacca.

known); and then and there piratically and feloniously, did make an assault in and upon certain mariners (whose names to the jurors aforesaid are unknown) in the same ship, in the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid mariners of the same ship, in the ship aforesaid, upon the high sea, in the place aforesaid, distant about ten leagues from Cutsheen aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away the said merchant ship, called The Quedagh Merchant, and the apparel and tackle of the same ship, of the value of 400*l.* of lawful money of England; 70 chests of opium, of the value of 1,400*l.* of lawful money of England; 250 bags of sugar, of the value of 100*l.* of lawful money of England; 20 bales of raw silk, of the value of 400*l.* of lawful money of England; 100 bales of callicoes, of the value of 200*l.* of lawful money of England; 200 bales of muslins, of the value of 1,000*l.* of lawful money of England, and three bales of romels, of the value of 30*l.* of lawful money of England; the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there, upon the high sea aforesaid, in the aforesaid place, distant about ten leagues from Cutsheen aforesaid, in the East-Indies aforesaid, being found in the aforesaid ship, in the custody and possession of the said mariners of the said ship, and from their custody and possession, then and there, upon the high sea aforesaid, in the place aforesaid, distant about ten leagues from Cutsheen aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, against the peace of our said now sovereign lord the king, his crown and dignity, &c.’

Cl. of Arr.: Set William Kidd, Nicholas Churchill, &c. to the bar (And so of the rest.) Will. Kidd, hold up thy hand. (Which he did, and so of the rest.) You the prisoners at the bar, those men that you shall hear called, and that personally appear, are to pass between our sovereign lord the king and you, upon trial of your several lives and deaths. If therefore you, or any of you, will challenge any of them, your time is to speak to them as they come to the book to be sworn, and before they be sworn.

And there being no challenges, the twelve that were sworn on the jury were as follows:

John Cooper,
 Jo. Hall,
 Jo. James,
 Peter Parker,
 Caleb Hook,
 R. Rider,
 P. Walker,
 William Hunt,
 John Micklethwait,
 Richard Chiswell,
 Abraham Hickham,
 George Grove.

Cl. of Arr.: Crier, count these: John Cooper.

Cryer: One, &c. Twelve good men and true, stand together, and hear your evidence.

(Then the usual proclamation for information was made; and the prisoners being bid to hold up their hands, the clerk of arraignments charged the jury with them thus:)

Cl. of Arr.: You of the jury, look upon the prisoners, and hearken to their cause. They stand indicted by the

names of William Kidd, &c. (as before in the indictment). Upon this indictment they have been arraigned, and thereunto have severally pleaded, Not Guilty; And for their trial put themselves on God and their country, which country you are. Your charge is, to enquire whether they be guilty of the piracy and robbery whereof they stand indicted in manner and form as they stand indicted, or not guilty, &c.

Nic. Churchill: My lord, I beg your opinion, whether I may not plead the king's pardon?

L. C. B. Ward: Let us see your pretences; you shall have all legal defences and advantages allowed to you.

Churchill: I came in upon his majesty's proclamation.

L. C. B. Ward: Have you the king's proclamation? If you have, let us see it.

Churchill: We had notice of it at Guiana: and we delivered up ourselves to col. Bass, governor of East-Jersey, and I have it under his hand. I beg your lordship would appoint me counsel to plead my case.

(The paper was shewn, and read.)

Mr. Crawley: I know not when it was.

Churchill: I had notice of it at Guiana: I have been two years in custody.

L. C. B. Ward: How long have you been a prisoner?

Churchill: Almost two years? two years next July.

L. C. B. Ward and the rest of the Judges: The Proclamation (for what you say yourself) does not reach your case.

Howe, Churchill, Mullins: We came in upon the proclamation all the same day.

Just. Powel: How can you make it appear you surrendered?

Prisoners: Here is an affidavit made of it by the governor's secretary; and there is the gentleman himself, col. Bass.

Just. Powel: You must make it out that you have come in within the conditions of that proclamation, if you have any benefit by it.

L. C. B. Ward: Let the proclamation be read.¹ (Which was done accordingly.)

Clerk: There is no day mentioned in this paper when they surrendered themselves.

Mr. Moxon: My lord, about the year 1698, there was a special commission given to four persons, and they were to proceed in their voyage to the Indies, and they carried a great number of Proclamations, That all the pirates in such and such places should surrender themselves: Now they came to St. Helena with them, and captain Warren was sent to St. Mary's, and he was to deliver some of these proclamations there, and the commissioner had then the ambassador to the Great Mogul on board, and this captain Warren these proclamations. Warren comes and delivers the proclamations out, and, among the rest, the prisoner at the bar having notice of this, he goes to the governor, and confesses he had been a pirate, and desired them to take notice that he surrendered himself; and we have the governor here, to give an account of this matter.

L. C. B. Ward: The proclamation says, They must surrender themselves to such and such persons by name: see if it be so. (Then the proclamation was read again.) Here are several qualifications mentioned; you must

¹ See page 129.

bring yourselves under them, if you would have the benefit of it.

Dr. Newton: Let them shew that they surrendered themselves to the persons they were to surrender to.

Mr. Moxon: My lord, we will prove we gave notice within the time, by this paper.

Sol. Gen. (sir John Hawles): There is no time mentioned in it. (The affidavit was read.) 'Charles Hally, gent. maketh oath. That in the year 1698, there being notice of his majesty's gracious pardon to such pirates as should surrender themselves, James Howe, Nicholas Churchill, and Darby Mullins, in May, 1699, did surrender themselves to Jeremiah Bass, and he did admit them to bail.'

L. C. B. Ward: There are four commissioners named in the proclamation; there is no governor mentioned that is to receive them, only those four commissioners.

Mr. Moxon: But, my lord, consider the nature of this proclamation, and what was the design of it, which was, to invite pirates to come in.

Mr. Coniers: We must keep you to the proclamation; here is not enough to put off the trial.

L. C. B. Ward: If you had brought yourselves within the case of the proclamation, we should be very glad; you that offer it, must consider it is a special proclamation, with divers limitations; and if you would have the benefit of it, you must bring yourselves under the conditions of it. Now there are four commissioners named, that you ought to surrender to; but you have not surrendered to any one of these, but to colonel Bass, and there is no such man mentioned in this proclamation.

Mr. Knapp: My lord, and the gentlemen of the jury,

the indictment sets forth, that the prisoners at the bar, on the 30th of January, in the 9th year of his majesty's reign, ten leagues distant from Cutsheen, did piratically seize and rob a certain ship called the Quedagh Merchant, and put the men in fear of their lives; and the said ship, with her apparel, tackle and goods, did then and there, upon the high sea, take and carry away, against the peace of our sovereign lord the king, his crown and dignity: to this indictment they have pleaded, not guilty: If we prove it upon them, you must find them guilty.

Dr. Newton, Advocate for the Admiralty: My lord, and gentlemen, the prisoners at the bar, captain William Kidd, late commander of the Adventure Galley, and nine other mariners in the same vessel, stand indicted for feloniously and piratically assaulting and taking a ship, called the Quedagh Merchant, on the high sea near Cutsheen, in the East Indies, about the 30th of January, in the 9th year of his majesty's reign: The ship was considerable for its force and bulk, being about four hundred ton; and more considerable for its lading, having on board to the value of many thousand pounds.

This captain Kidd, who thus acted the pirate himself, went from England in April, 1696, with a commission, dated the 26th of January preceding, to take and seize pirates in the Indian seas, which were then very much and very dangerously infested by them, to the great hazard, and loss, and ruin of the merchant.

The ship carried thirty guns, and there were on board about eighty men; but the captain being come to New York, in July 1696, pretending, as indeed it was designed he should, and he had undertaken to make that

design good, that he was going to Madagascar (which was the known and common receptacle of the pirates in those seas) to take pirates, and free the seas from those disturbers of the commerce of mankind; so many came in to him, being invited by articles publicly set up by him in that place, that his number quickly increased to one hundred and fifty five men; a force sufficient, if he had meant well, to have made him useful to the public; and to prove as mischievous, if his designs were otherwise: And what those were, will quickly appear.

After calling in at several places for provisions, and, among others, at Madagascar, in July, 1697, he sailed to Bab's Key, a small island at the entrance of the Red Sea, and a convenient station for the observing what vessels went from thence to the Indies; and now, instead of taking pirates, he becomes one himself, and the greatest and the worst of all. Here he staid three weeks, in expectation of the Mocca fleet, to make his benefit and his fortune out of it; for, whatever he had before pretended, this was his real design, and now so possessed his mind, that he could not refrain from declaring, and that often to his men, That now he should make his voyage, and ballast his ship with gold and silver. After long expectation, the fleet, on the 14th of August, to the number of 14, came by; he fell in with the middle of them, fired several guns at them; but finding they had an English and Dutch convoy, that design happily failed of the wished-for success.

This disappointment however did not discourage him, but that he proceeded on for the coast of Malabar, where he knew the trade was considerable, and hoped his advantage would be proportionable in the disturbing it;

and there accordingly, for several months, he committed many great piracies and robberies, taking the ships and goods of the Indians and others at sea, Moors and Christians, and torturing cruelly their persons, to discover if any thing had escaped his hands; burning their houses, and killing, after a barbarous manner, the natives on the shore; equally cruel, dreaded and hated both on the land and at sea.

These criminal attempts and actions had rendered his name (to the disgrace and the prejudice of the English nation) too well known and deservedly detested, in those remote parts of the world; and he was now looked upon as an arch-pirate, and the common enemy of mankind; and accordingly two Portuguese men of war went out in pursuit of him, and one met with him and fought him for several hours; but Kidd's fortune then reserved him for another manner of trial.

Amongst the great number of vessels he took on that coast, was the ship he stands indicted for, *The Quedagh Merchant*, being then on a trading voyage from Bengal to Surat, the commander English, captain Wright, the owners Armenian merchants, and others. He had taken Moors before, but Moors and Christians are all alike to pirates, they distinguish not nations and religions.

Those on board the vessel offered 30,000 rupees for her ransom, but the ship was too considerable to be parted with, even for so great a sum; so Kidd sold goods out of her, on the neighboring coast, to the value of 10 or 12,000*l.* out of which he took whatever he could pretend to for ammunition and provisions, with forty shares for himself, and the remainder was disposed of amongst the crew, and particularly those who are here indicted with

him, who accompanied him, who assisted him throughout in all his piracies, and who now too share the spoils and the guilt with him.

With this ship and another, and the remainder of the goods not sold on the coast, he sailed once more for Madagascar, where he arrived in the beginning of May, 1698, and there again what was left on board was divided according to the same proportions, and amongst the same persons as before, each mariner having about three bales to his share.

(Then the Jury brought in their verdict against William Kidd, for murder; and Dr. Newton proceeded:)

It is not to be omitted, that at his return to Madagascar, there came on board some persons from the ship *The Resolution*, formerly the *Mocca* frigate (for the piratically seizing of which vessel there have been formerly trials and convictions in this place), of which captain Culliford, a notorious pirate, now in custody, and against whom two bills have been found for piracy by the grand jury, was the commander. They at first seemed to be afraid of Kidd, but without any ground; as his former actions had demonstrated, and the sequel shewed: they, who were hardened pirates, and long inured to villainies, could scarce think that any man could so betray the trust and confidence the public had placed in him, and said, they heard he was come to take and hang them; but captain Kidd assured them he had no such design, and that he had rather his soul should broil in hell, than do them any harm; bid them not be afraid, and swore he would be true to them; and here, indeed, he did not break his word. This was his way of being true to his trust, and making good the ends of

his commission, in acting with the greatest treachery, and the greatest falseness, that ever man did: and, to make all that has been represented of him true, captain Kidd and captain Culliford went on board, treated and presented each other; and, instead of taking Culliford, as it was his duty to have done, and his force was sufficient to have performed it, he gave him money and ammunition, two great guns and shot, and other necessaries to fit him out to sea, that he might be in a condition the better to take and seize other innocent persons.

His own ship he now left, and went on board *The Quedagh Merchant*; several of his men then went from him, but not the prisoners; they were all along well wishers and assistants to him, fought for him, divided the plunder with him, and are now come to be tried with him.

This, Gentlemen, is the crime he is indicted for, piracy; the growing trouble, disturbance, and mischief of the trading world, and the peaceable part of mankind, the scandal and reproach of the European nations, and the Christian name (I wish I could not say, that the Kidds and the Averys¹ had not made it more particularly so of the English) amongst Mahometans and Pagans, in the extremest parts of the earth; which turns not only to the disadvantage of the immediate sufferers, but of all such as traffic in those countries, whether companies or single merchants, who are to suffer for the misfortunes of others, with whom, it may be, they have no dealings; and for the villainies of such, whom they and all mankind equally and justly detest and abhor.

This is the person that stands indicted at that bar, than whom no one in this age has done more mischief,

¹ See Appendix.

in this worst kind of mischief; or has occasioned greater confusion and disorder, attended with all the circumstances of cruelty and falsehood, and a complication of all manner of ill.

If therefore these facts shall be proved upon him, you will then, gentlemen, in finding him guilty, do justice to the injured world, the English nation (our common country) whose interest and welfare so much depend on the encrease and security of trade; and, lastly, to yourselves, whom the law has made judges of the fact.

Sol. Gen.: My lord, and gentlemen of the jury, I am of counsel for the king, against the prisoners at the bar, in this case, with the doctor that has opened the matter from the beginning. These prisoners at the bar went out with commissions for good purposes, though they made use of them to very bad ones. Gentlemen of the jury, I must tell you, the charges upon which you are to enquire, is only upon a certain ship, called *The Quedagh Merchant*, and to that we shall apply our evidence. What was taken in her has been opened already: all we will do now is to call our witnesses, and make out, to your satisfaction, the things charged upon them.

Mr. Coniers: My lord, we shall prove this charge by the persons who were evidence before, Robert Bradinham, and Joseph Palmer: they went out with captain Kidd in his voyage, and he began it in April, 1696. I believe it will be necessary, that they give some account before this piracy was committed, which was not, in time, till February, 1697. They will give you an account of some plunders that happened before this, and then of the taking of this ship, and the dividing it amongst them.

Just. Powel: When went they out?

Mr. Coniers: They began their voyage in April, 1696, and took this ship in February, 1697. They did, all along that voyage, commit several plunders on several ships they thought a prey: their design was, not to take pirates, but to take what they could get out of any ships, friends or enemies; for in this ship, The *Quedagh Merchant*, which was a Moorish ship, there were several Armenians; and they offered them a great sum of money to redeem the ship, but they refused it; and they disposed of the goods, and divided the money; and for the proof of that, we will call Mr. Bradinham.

Just. Powel: I understand, that he had a commission; therefore if any one has a commission, and he acts according to it, he is not a pirate; but if he take a commission for a colour, that he may be a pirate, it will be bad indeed: and therefore, if you can prove, that he was a pirate all along, this will be a great evidence against him.

Mr. Coniers: My lord, we will prove that: so that the commission was but a colour. Mr. Bradinham, pray, give my lord and the jury an account when you began your voyage, and your proceedings afterwards.

Bradinham: Some time in the year 1696, about the beginning of May, I and others were with captain Kidd; and we sailed from Plymouth, designing for New York; and in the way we met with a French banker,¹ and took her.

Mr. Coniers: Tell the court what ship it was you went in, and with whom.

Bradinham: We went with captain Kidd, in the *Adventure galley*.

¹ A ship engaged in cod fishing.

Mr. Coniers: What number of men had you when you first went out?

Bradinham: About 70 or 80 men.

Mr. Coniers: What force of guns had you?

Bradinham: We had 30 guns.

Mr. Coniers: In what office was captain Kidd in the ship?

Bradinham: He was the commander of her.

Mr. Coniers: Now tell my lord and the jury what time you left England, and how you proceeded.

Bradinham: In May, 1696, we left Plymouth, and went to New York, and in the way met with a French ship, and took her: and when we came to New York, captain Kidd put up articles, that if any men would enter themselves on board his ship, they should have their shares of what should be taken; and he himself was to have forty shares.

Mr. Coniers: What number of men did he get after these articles were published?

Brad.: He carried from New York 155 men.

Mr. Coniers: Whither did he sail then?

Brad.: To the Madeiras, from thence to Bonavis, from thence to St. Jago, from thence to Madagascar, from thence to Joanna, from thence to Mahala, from Mahala to Joanna again, and from thence to the Red-sea; and there we waited for the Mocca fleet: They passed us one night, and we pursued them, and went among them, but he found they were too strong for him, and was fain to leave them.

Mr. Cowper: How long did you lie in wait for that fleet?

Brad.: A fortnight or three weeks.

Mr. Cowper: Did he express himself so, that he did lie in wait for that fleet?

Brad.: Yes; he said, that he did design to make a voyage out of them.

Mr. Cowper: Did he not lie in wait for any French effects in that fleet?

Brad.: No, only for the Moorish fleet.

Mr. Cowper: What do you mean by the Moorish fleet?

Brad.: The natives of India, the Mahometans.

Mr. Cowper: Where did you lie in wait for that fleet?

Brad.: In the Red-sea.

Mr. Cowper: In the mouth of it?—Brad.: Yes.

Mr. Cowper: Is it a fit place for that purpose?

Brad.: Several sail of ships may lie there.

Mr. Cowper: Did you expect them?

Brad.: Yes; captain Kidd waited for them.

Mr. Coniers: How long did you stay there?

Brad.: About a fortnight.

Mr. Coniers: Did you do any thing in that time to get intelligence?

Brad.: Captain Kidd sent his boat three times to Mocca, to see if they could make any discovery; and the two first times they could make none; but the third time they brought word the ships were ready to sail; and accordingly they came, and we sailed after them, and fell in with them, and captain Kidd fired at them.

Mr. Cowper: You say, he sent his boat three times for intelligence: Can you remember what answer they brought?

Brad.: The two first times they brought no intelligence; but the third time they brought word that 14 or 15 ships were ready to sail.

Mr. Coniers: What colours did they say they had?

Brad.: I cannot tell that. When captain Kidd had fetched them up, he found they were under convoy, and so he left them: and then he was going to the coast of Malabar, and by the way met with captain Parker.

Just. Powel: Did they fire any guns at the Mocca fleet?

Brad.: Yes; capt. Kidd fired divers guns at them.

Mr. Coniers: After such time as you left the Mocca fleet, what happened after that? Recollect yourself.

Brad.: We took a ship, that captain Parker was commander of, between Carawar and the Red-sea.

Mr. Coniers: What ship was this that capt. Parker was commander of?

Brad.: A Moorish ship; she came from Bombay, and capt. Parker was the master.

Mr. Coniers: What did you take from this ship?

Brad.: Capt. Kidd took out Parker, and a Portuguese for a Linguister.

Mr. Coniers: A Linguister, What do you mean by that?

Brad.: An interpreter; he took out of her a bale of coffee, a bale of pepper, about twenty pieces of Arabian gold, and ordered some men to be taken and hoisted up by their arms, and drubbed with a naked cutlace.

Mr. Coniers: Why did he do that?

Brad.: That they might confess what money they had.

Mr. Coniers: Were those Frenchmen that were thus used?

Brad.: No, they were Moors.

Mr. Coniers: Was there any demand made of those men, capt. Parker and the Portuguese?

Brad.: Yes; the English factory sent for this Parker and the Portuguese, and he denied that he had any such persons on board, for he kept them in the hole.

Mr. Coniers: Do you know any thing more?

Brad.: Then he went to sea, and that night met with a Portuguese man of war; the next morning he came up with her, and the Portuguese first fired at capt. Kidd, and he at him again; they fought four or five hours. Capt. Kidd had ten men wounded.

Mr. Coniers: So there was nothing more than fighting?—Brad. No.

Mr. Coniers: Go on. What did you do next?

Brad.: We went to the coast of Malabar.

Mr. Coniers: What did you go thither for?

Brad.: We went to one of the Malabar islands for wood and water, and captain Kidd went ashore, and several of his men, and plundered several boats, and burnt several houses, and ordered one of the natives to be tied to a tree, and one of his men to shoot him.

Mr. Coniers: Pray go on: What was the reason of his shooting this Indian?

Brad.: One of his men, that was his cooper, had been ashore, and some of the natives had cut this man's throat, and that was the reason he ordered his men to serve this man so.

Mr. Coniers: Pray go on, and give an account of what afterwards.

Brad.: Then we came back again to the Malabar coast and cruised; and in October he killed his gunner, William Moore.

Mr. Coniers: Tell what happened next after that.

Mr. Cowper: Was this the October next after he left England, or the year following?

Brad.: It was in October, 1697.

Mr. Coniers: Well, go on.

Brad.: Some time in November he took a Moorish ship belonging to Surat: there were two Dutchmen belonging to her, the rest were Moors. Captain Kidd chased this ship under French colours; and when the Dutchman saw that, he put on French colours too. And captain Kidd came up with them, and commanded them on board; and he ordered a Frenchman to come upon deck, and to pretend himself captain: And so this commander comes aboard, and comes to this Monsieur Le Roy that was to pass for the captain, and he shews him a paper, and said it was a French pass. And captain Kidd said, 'By God, have I caught you? You are a free prize to England.' We took two horses, some quilts, &c. and the ship he carried to Madagascar. In December he took a Moorish ketch;¹ she was taken by the boat; we had one man wounded in taking of her.

Mr. Coniers: When was this done?

Brad.: In December, 1697.

Mr. Coniers: What did you plunder then?

Brad.: Our people took the vessel ashore, and captain Kidd took out of her thirty tubs of sugar, a bale of coffee, &c. and then he ordered the vessel to be turned adrift.

Mr. Coniers: What followed in January?

Brad.: January the 20th, captain Kidd took a Portuguese that came from Bengal: he took out of her two

¹ An old English term applied to a vessel with two masts and from one hundred to two hundred and fifty tons burden.

chests of opium, some East India goods, and bags of rice, &c.

Mr. Coniers: How long did you keep this ship?

Brad.: He kept this Portuguese ship about seven days; he took out of her some butter, wax, and East India goods: He kept her till he was chased by seven or eight sail of Dutch, and then he left her.

Mr. Coniers: My lord, now we are come to that on which the indictment is founded. Mr. Bradinham, give a particular account of that.

Brad.: Some time in January, captain Kidd took The Quedagh Merchant; he gave her chase under French colours: he came up with her, and commanded the master aboard; and there came an old Frenchman in the boat; and after he had been aboard awhile, he told captain Kidd he was not the captain, but the gunner; and captain Kidd sent for his captain on board his ship.

Mr. Coniers: Who was that? — Brad.: Mr. Wright.

Mr. Coniers: What countryman was he?

Brad.: An Englishman. He was sent for aboard, and he came; and captain Kidd told him, he was his prisoner; and he ordered his men to go aboard, and take possession of the ship, and disposed of the goods on that coast, to the value of 7 or 8,000*l*.

Mr. Coniers: What persons were aboard her?

Brad.: There was captain Wright, and two Dutchmen, and a Frenchman, and some Armenians, and the rest Moors.

Mr. Coniers: Did these Armenians make any offer of any money for their ransom?

Brad.: Captain Kidd told them, they should be ransomed, if they made an offer that he liked of; so they

offered him 20,000 rupees. He told them, that was but a small parcel of money, and the cargo was worth a great deal more.

Mr. Coniers: Who did the cargo belong to?

Brad.: To those Armenians, as I was informed by captain Wright.

Mr. Coniers: What did he do with them?

Brad.: He disposed of some of them on the coast of India.

Mr. Coniers: What did he do with the proceed of the goods he sold?

Brad.: He shared the money.

Mr. Coniers: Had these men (the other prisoners) any of the share?

Brad.: Yes, all of them. You were a half share man, and you a half share man, (pointing at two of them).

Mr. Coniers: Mr. Bradinham, you say captain Wright came aboard Kidd's ship? — Brad.: Yes.

Mr. Coniers: Did he discourse with him?

Brad.: I was not with him, for he kept his cabin to himself.

Mr. Coniers: But you are sure he came aboard?—

Brad.: Yes.

Mr. Coniers: And he was an Englishman?

Brad.: Yes.

Mr. Coniers: How did captain Kidd behave himself to the ships or boats there?

Brad.: He boarded several ships, and took out of them what was for his turn.

Mr. Coniers: How did he use those that he traded with?

Brad.: Some of them came aboard several times, and

he traded with them: but some of them came aboard when he was going away, and he plundered them, and sent them ashore without any goods.

Mr. Coniers: What countrymen were those he served thus?

Brad.: Mahometans: they had dealt with him before considerably.

Mr. Coniers: How much did he take from them? —

Brad.: About 500 pieces of eight.

Mr. Coniers: How do you know that?

Brad.: I saw it told afterwards. We went to Madagascar afterwards, and by the way met with a Moorish ship, and took out of her several casks of butter, and other things.

Mr. Cowper: What were the crew of this ship?

Just. Powel: They are indicted for the Quedagh Merchant. Were all the prisoners in that action? You have given an historical account from the beginning, that he was a mere plunderer; but now you are to come to the Quedagh, for which they are indicted; go not beyond it.

Mr. Coniers: Look on the several prisoners at the bar, and tell, whether any of the prisoners were at the taking of The Quedagh Merchant?

Cl. of Arr.: Was William Kidd there at the time the ship was taken?

Brad.: Yes.

Cl. of Arr.: Was Nicholas Churchill there? — Brad.: Yes.

Cl. of Arr.: Do you know James Howe? Was he there? — Brad.: Yes.

Cl. of Arr.: Had he a share? — Brad.: Yes.

Cl. of Arr.: Had Robert Lamley a share?

Brad.: Yes; he was a servant, and had but half a share of the money, and a whole share of the goods.

Cl. of Arr.: William Jenkins, was he there, and had a share? — Brad.: Yes.

Cl. of Arr.: Gabriel Loffe, did you know what he had?

Brad.: He had half a share of the money, and a whole share of the goods.

Cl. of Arr.: Hugh Parrot, what had he? — Brad.: Half a share.

Cl. of Arr.: Had Richard Barlicorn a share?

Brad. He had half a share of money, and a whole share of goods.

Cl. of Arr.: Had Abel Owens any? — Brad.: He had half a share.

Abel Owens: Had I any of it?

Brad.: You had it; you took it.

Cl. of Arr.: What had Darby Mullins?

Brad.: He had half a share of the money, and a whole share of the goods.

Mr. Coniers: Now we have fully proved this as to the Quedagh Merchant.

Dr. Newton: When you came to Madagascar, what was done there?

Brad.: There came a canoo to us with some Englishmen in her; they were formerly acquainted with captain Kidd, and they told him, they had heard that he was come to take them, and hang them.

Dr. Newton: Who were they?

Brad.: They belonged to the Mocca frigate.

Mr. Coniers: Give a particular account of that matter.

Brad.: When we came to Madagascar, there came a canoo off to us.

Mr. Coniers: From whom?

Brad.: From the Mocca frigate, captain Culliford was the commander; and there were some white men in her, that had formerly been acquainted with captain Kidd; they heard that he was come to take them, and hang them. He told them it was no such thing, for he was as bad as they.

Mr. Coniers: Were they thought to be pirates?—

Brad.: They were so.

Mr. Coniers: What was it that captain Kidd said?

Brad.: He assured them it was no such thing; and afterwards went aboard with them, and swore to be true to them; and he took a cup of bomboo,¹ and swore to be true to them, and assist them; and he assisted this captain Culliford with guns, and an anchor, to fit him to sea again.

L. C. B. Ward: How came you to know all this? Was you aboard then?

Brad.: I was aboard then, and I heard the words.

Dr. Newton: Were any of the goods divided at Madagascar? — Brad.: Yes.

Mr. Coniers: Now look on the prisoners again: you say, after he met with this captain Culliford, you went and had a division made; pray, give an account of it.

Brad.: When we came to Madagascar, captain Kidd ordered the goods to be carried ashore, and shared; and he had forty shares himself.

Cl. of Arr.: So every one of the prisoners at the bar had a share? — Brad.: Yes.

¹ A drink made of limes, sugar and water.

Mr. Coniers: What became afterwards of the Adventure-Galley?

Brad.: She was so leaky, that she had two pumps going; and when she came to shore, they left her, because she was not fit to go to sea again. And so captain Kidd went aboard the Scuddee Merchant, and designed to make a man of war of her.

Mr. Coniers: What is that Scuddee Merchant? Do you mean the Quedagh Merchant? — Brad.: Yes.

L. C. B. Ward: What became of that ship afterwards?

Brad.: I left him at Madagascar, after the money and goods were divided; and can give no account afterwards.

Dr. Newton: But you say, capt. Kidd went aboard the Quedagh?

Brad.: Yes.

Mr. Coniers: My lord, we have done as to this witness; if they will ask any thing they may.

Cl. of Arr.: Will any of you ask him any questions?

Kidd: He says, when he went out first from England, he went out of Plymouth in May, which he did not; for he went in April, therefore this is a contradiction.

L. C. B. Ward: Mr. Kidd, if you will ask him any questions, you may. Do you desire he should be positive when you went from Plymouth.

Brad.: It was about the 1st of May, my lord.

L. C. B. Ward: What year?

Brad.: In the year 1696.

Cl. of Arr.: Nicholas Churchill, will you ask him any questions?

Churchill: I would have went ashore at Carawar, but the captain would not let me.

L. C. B. Ward: It is proved, that you was at the taking of the Quedagh Merchant, and dividing the goods.

Churchill: Yes, my lord; but I could not help it; I was forced to do what the captain ordered me.

Cl. of Arr.: James Howe, will you ask him any questions?

Howe: Have not I obeyed my captain in all his commands?

L. C. B. Ward: There is no doubt made of that. If any of you will ask him any questions, you may.

Kidd: Did you not see any French passes aboard the Quedagh Merchant?

Brad.: You told me you had French passes; I never did see them.

Kidd: Did you never declare this to any body, that you saw these French passes?

Brad.: No, I never did see any; but I only said, I heard you say you had them.

Churchill: Had I any share? — Brad.: Yes.

Churchill: How will you prove that?

Jenkins: My lord, I ask him, whether I was not a servant?

L. C. B. Ward: Ask the witness what questions you will.

Brad.: My lord, he was a servant.

L. C. B. Ward: Who was he servant to?

Brad.: To George Bullen.

Jenkins: My lord, I beg you will examine my indenture, for I have it in my pocket; I had nothing aboard that ship but what my master had.

Brad.: But you had a share of the goods: I cannot tell whether your master had it afterwards.

Cl. of Arr.: Gabriel Loffe, have you any question to ask him?

Loffe: I have nothing to say to him, but to ask him, Whether I did ever disobey my captain's commands, or was any ways mutinous on board the ship?

Brad.: No, I cannot say you did.

Cl. of Arr.: Hugh Parrot, do you ask him any questions? — Parrot: No.

Cl. of Arr.: Richard Barlicorn, do you ask him any questions?

Barlicorn: I ask him, whether I was not the captain's servant?

L. C. B. Ward: Yes, he says you was.

Cl. of Arr.: Abel Owens, will you ask him any questions?

Owens: I have nothing to say; but depend upon the king's proclamation.

Cl. of Arr.: Darby Mullins, have you any question to ask him?

Mullins: My lord, he knows I had nothing but what captain Kidd was pleased to give me.

L. C. B. Ward: Was he a servant to captain Kidd, or no?

Brad.: He had a half share of money, and a whole share of goods.

Just. Powel: What was the reason some had whole shares, and some half shares?

Brad.: Some were able seamen, and some landmen or servants. There were in all 160 shares, whereof captain Kidd had 40; and some of the men had whole shares, and some only half shares.

Mr. Cowper: You told us at first, that in your passage to New York, you took a French banker, and that he condemned her at New York.—Brad.: Yes.

Mr. Cowper: Did he offer to carry any other ships he took to be condemned?

Brad.: No, Sir, never.

Mr. Coniers: Call Joseph Palmer. (Who appeared.) Mr. Palmer, give my lord and the jury an account, whether you were one of the men that went with captain Kidd in the Adventure galley.—Palmer: Yes, I was.

Mr. Coniers: Then give an account when you left England; and of your proceedings in your voyage.

Palmer: About the last of April, or the beginning of May, 1696, we went out of Plymouth to New York, and by the way took a French banker. And in July we came to New York. About the 6th of February we went to Maderas.

Mr. Coniers: When you were at New York, was there any publication of any thing, to invite men to come in to captain Kidd?

Palmer: Yes, there were articles set up for men to come aboard captain Kidd's ship; he was to have 40 shares for his ship, and every man was to have a share; and they were to give him 6*l.* a man for their arms.

Mr. Coniers: How many men was his complement?

Palmer: When we came from New York, he had between 150 and 160 men.

Mr. Coniers: Give an account what you did after this: whither did you go then?

Palmer: We went from New York to Maderas, and from thence to Bonavist, and there we took in salt; and

from thence we went to St. Jago, and there we bought provisions; and from thence we went to Madagascar. When we were not far from the Cape of Good Hope, he met with captain Warren, with three sail of men of war besides himself; there was the Tiger, and the King-fisher, and another ship; and captain Kidd kept them company about three or four days, and after that went to Madagascar, and some time in February arrived there; and there we watered and victualled. We came to Malabar about the first of June. Then we went to Joanna, and from thence to Mahala; and from thence to Joanna again: and then we met with some Indian merchants; so we watered the ship there, and did them no harm: and from thence we went to Mahala, where captain Kidd graved¹ his ship. We had a great sickness in the ship, and sometimes we lost four or five men in a day. And afterwards we went to Joanna again, and there came aboard several Frenchmen and several Englishmen that had lost their ship. Those Frenchmen lent captain Kidd some money to mend his ship. And after this, we came to a place called Mabee, in the Red-sea, and took in water, and Guinea corn, that he took from the natives; and from thence we went to Bab's Key.

Mr. Coniers: What time was it that you came to that Bab's-Key?

Palmer: In July, 1697.

Mr. Coniers: Now, pray tell us what passed there?

Palmer: When captain Kidd came to Bab's Key, he staid there about three weeks.

Mr. Coniers: Why did you stay there? Tell us the reason of it.

¹ To grave a ship is to scrape and clean it.

Palmer: I heard him say, 'Come, boys, I will make money enough out of that fleet.'

Mr. Coniers: Out of what fleet?

Palmer: The Mocca fleet. When we came to the Key, he ordered some of his men to look out as spies. He sent his boat three times to make a discovery, and he gave them orders, either to take a prisoner, or to get an account what ships lay there. And the boat went twice, and brought no news; but the third time they brought word, that there were 14 or 15 ships lying there ready to sail; some of them had English colours, some Dutch colours, and some Moorish colours; and there was a great ship with red colours, with her fore-top-sail loose, ready to sail. And captain Kidd ordered his men to take care these ships did not pass by in the night.

Mr. Coniers: You say, he ordered his men to watch this fleet: how did he order them?

Palmer: He ordered them by a list in their turns, to look out for the coming of this fleet: and so after four or five days the fleet came down in an evening, about the 14th or 15th of August: the next morning captain Kidd went after them, and he fell into the midst of the fleet, and there was a Dutch convoy, and an English one among them. He went into the midst of the fleet, and fired a gun after a Moorish ship, and the two men of war fired at us, but did no harm, for they did not reach us. So we left the fleet, and from thence went to Carawar.

Mr. Coniers: Tell what passed there.

Palmer: Then we met with a small vessel belonging to Aden.

Mr. Coniers: What country did it belong to?

Palmer: Black people, only there was one Thomas Parker, and a Portuguese, Don Antonio, on board.

Mr. Coniers: Was he the commander of the ship?—

Palmer: I cannot tell.

Mr. Coniers: What did captain Kidd do with this ship?

Palmer: He took this Parker for a pilot, and the Portuguese for linguister.

Mr. Coniers: What do you mean by that word linguister?

Palmer: An interpreter, to speak Spanish and Portuguese.

Mr. Coniers: Did he take any thing out of the ship besides the men?

Palmer: He took a bale of pepper, and a bale of coffee, and let the ship go. But after this we went to Carawar.

Mr. Coniers: Before you let the ship go, how were the men used by him?

Palmer: He ordered some of the men to be hoisted up by their arms, and drubbed with a naked cutlass: they were laid with their hands backward.

Mr. Coniers: When they were hoisted up, give an account how they were used, and for what reason.

Palmer: They were beat with a naked cutlass, to make them discover what money was aboard.

Mr. Coniers: What was the next thing?

Palmer: He took out this Parker for a pilot, and Antonio, the Portuguese, for a linguister. I heard there was money taken, but I did not see it.

Mr. Coniers: What did he do with those men?

Palmer: He kept them as the other men were kept.

Mr. Coniers: Was there any demand made of these men?

Palmer: When we came to Carawar, the factory demanded them, and he denied them.

Mr. Coniers: What factory is this?

Palmer: An English factory. There were one Harvey and Mason came to demand these men.

Mr. Coniers: And what said captain Kidd to them?

Palmer: He denied that he had any such men; and he kept them in the hold, I believe, a week. Several of his men would have left him if they could.

Mr. Coniers: What did he do after this?

Palmer: He put to sea, and met with a Portuguese man of war, and fought her: he engaged her five or six hours, and afterwards he left her, and then he bought some hogs of the natives. After he went from this Carawar, he went to Porto, and took in some hogs there. And then went to the island of Malabar, and watered his ship; and his cooper went ashore, and the natives cut his throat. And after this captain Kidd sent some men ashore, and ordered them, that if they should meet any of the natives, they should kill them, and plunder them.

Mr. Coniers: Go on, Sir.

Palmer: After that they went to the coast of Malabar again, and in November met with a ship, and took her: one skipper Mitchel was the commander; she was a Moorish ship.

Mr. Coniers: What became of her?

Palmer: Captain Kidd carried her to Madagascar.

Mr. Coniers: What goods were in her?

Palmer: There were two horses, and ten bales of cotton, that he sold to the natives.

Mr. Coniers: Did he send for any aboard at this time?

Palmer: There was a Frenchman that was to pretend himself the captain. He took her under French colours, and hailed her in French; and this monsieur le Roy was to pass for captain, and he shewed his French pass, and —

Mr. Coniers: Give an account of his personating the captain. Who ordered him so to do?

Palmer: Captain Kidd ordered him so to do; and they hailed him in French, and he came aboard, and he had a French pass. And then captain Kidd told him, he was captain.

Mr. Coniers: And he took the ship?

Palmer: Yes, the cotton and horses, and sold them afterwards.

Mr. Coniers: Whither went you next?

Palmer: We coasted about the coast of Malabar.

Mr. Coniers: Did you meet with any boats there? —

Palmer: Yes, several.

Mr. Coniers: What did you do with them?

Palmer: Captain Kidd robbed and plundered them, and turned them adrift again.

Mr. Coniers: What was the next thing you did?

Palmer: About the 1st of January we met with a Portuguese ship.

Mr. Coniers: Where?

Palmer: On the same coast we took her.

Mr. Coniers: What did you do with that ship?

Palmer: He kept her a week, and took out two chests of Indian goods, and 30 jars of butter, and a tun of wax, and half a tun of iron, and 100 bags of rice.

Mr. Coniers: Did you take those goods you mentioned?

Palmer: Yes, and carried them aboard to the Adventure-galley.

Mr. Coniers: What was the next ship you met with?

Palmer: The Quedagh Merchant.

L. C. B. Ward: Be very plain and particular in this, and how she was taken; for this is the ship in the indictment, and for taking which the prisoners are tried.

Palmer: About the last of January she was taken: I was not then aboard the galley, for then I was aboard the November,¹ and was ordered to get water. After three or four days I went aboard; but I was not aboard at the time she was taken. About three or four days after, I saw her, and capt. Kidd was aboard; and I believe there were taken out of her goods to the value of 10 or 12,000*l.* which were sold, some before they were put ashore, and some after.

Mr. Coniers: To whom were they sold?

Palmer: To the Banians. Captain Kidd kept the seamen to help to sail the ships.

L. C. B. Ward: What became of the money the goods were sold for?

Palmer: It was shared.

L. C. B. Ward: What share had the captain?—Palmer: He had forty shares.

Cl. of Arr.: What share had W. Kidd?

Palmer: He had forty shares.

Cl. of Arr.: In goods, or money?

Palmer: In both goods and money.

¹ The Moorish ship captured in November.

Cl. of Arr.: Look upon Nicholas Churchill; what had he?

Palmer: He had near 200*l.* of each, which was a man's share.

Cl. of Arr.: Look upon James Howe; had he any share?

Palmer: Yes, a whole share.

Cl. of Arr.: Had Robert Lamley any share?

Palmer: He had half a share of the money, and a whole share of the goods.

Cl. of Arr.: William Jenkins, had he any share?

Palmer: He had half a share of the money, and a whole share of the goods.

Cl. of Arr.: Had Gabriel Loffe any share?

Palmer: He had half a share of the money and a whole share of the goods.

Mr. Coniers: Why had they no more?

Palmer: They were land-men.

Cl. of Arr.: Hugh Parrot, had he any?

Palmer: He had a whole share.

Cl. of Arr.: Had Richard Barlicorn any share?

Palmer: He had half a share.

Cl. of Arr.: Had Abel Owens any?

Palmer: He had a whole share.

Cl. of Arr.: Had Darby Mullius any share?

Palmer: He had a whole share.

Mr. Coniers: What became of the rest of the goods?

Palmer: They were carried to Madagascar.

Mr. Coniers: Who ordered the goods to be hoisted out and shared? Who ordered that?

Palmer: At the beginning I was not there.

Mr. Coniers: Who ordered it?

Palmer: Capt. Kidd: And most of the goods were ashore before I came back; and before I came back, he had his share, and most of the rest.

Mr. Coniers: How many of the prisoners at the bar had their share of the goods?

Palmer: All these men.

Cl. of Arr.: Whose shares were divided to them before you went away?

Palmer: None; but only they were prepared in order to be divided.

L. C. B. Ward: Did you hear any of them say, they had any shares.

Palmer: Yes, Hugh Parrot, and Gabriel Loffe.

Cl. of Arr.: What say you to William Kidd? Did he own he had any share? — Palmer: No.

Cl. of Arr.: Did you hear Nicholas Churchill say he had any?

Palmer: No, I did not; I cannot say I heard them say so.

Cl. of Arr.: Did you hear Gabriel Loffe and Hugh Parrot say they had any shares?

Palmer: Yes, I heard them say so.

Mr. Coniers: Whither did you proceed next?

Palmer: We left captain Kidd there; I went no further with him.

Mr. Coniers: I ask you, Whether you met with any ships besides what you mentioned?

Palmer: When we came to Madagascar, in the latter end of April, or beginning of May 1696, there was a ship called The Resolution, which was formerly called The Mocca frigate; several of the men came off to capt. Kidd, and told him, they heard he came to take

and hang them. He said, that it was no such thing, and that he would do them all the good he could. And captain Culliford came aboard of captain Kidd, and captain Kidd went aboard of Culliford.

Mr. Coniers: Who was that Culliford?

Palmer: The captain of the ship. And on the quarter-deck they made some Bomboo, and drank together; and captain Kidd said, Before I would do you any harm, I would have my soul fry in hell-fire; and wished damnation to himself several times, if he did. And he took the cup and wished that might be his last, if he did not do them all the good he could.

Just. Powel: Did you take these men to be pirates?

Palmer: They were reckoned so.

Dr. Newton: Did captain Kidd make Culliford any presents?

Palmer: Yes, he had four guns of him.

Dr. Newton: Of whom?

Palmer: Of captain Kidd; he presented him with them.

Just. Powel: Was there not a present on the other side?

Palmer: I believe there was, I have heard so? I heard Culliford say, I have presented captain Kidd to the value of four or five hundred pounds.

Mr. Cowper: Were these kindnesses done to Culliford, after Culliford's men said, they heard captain Kidd came to hang them?

Palmer: Yes.

Mr. Cowper: What did captain Kidd do after that?

Palmer: He went aboard the Quedagh merchant.

Mr. Cowper: What did he do with his own ship?

Palmer: She was leaky, and he left her.

Mr. Cowper: Did he carry, or attempt to carry, any of the ships he took, in order to condemn them, besides that French banker.

Palmer: He never did, nor talked of any such thing.

L. C. B. Ward: Mr. Kidd, Will you ask this witness any questions?

Kidd: I ask him, Whether I had no French passes?

Palmer: Indeed, captain Kidd, I cannot tell. I did hear him say, that he had French passes, but I never saw them.

L. C. B. Ward: Those goods that were taken out of the Quedagh merchant, whose goods were they supposed to be?

Palmer: The Armenian merchants. I have heard captain Kidd say several times, he had French passes.

Kidd: And did you hear no body else say so?—Palmer: No.

Cl. of Arr.: Churchill, Will you ask any questions?

Churchill: My lord, I have no questions to ask him.

Cl. of Arr.: James Howe, Will you ask him any questions?—Howe: No.

Cl. of Arr.: Robert Lamley will you ask him any questions?

Lamley: No.

Cl. of Arr.: William Jenkins, will you ask him any questions?

Jenkins: Had I half a share?

Palmer: You received half a share of money, and a whole share of goods.

Jenkins: You know that I was a servant, and had nothing in this voyage but what my master had.

Cl. of Arr.: Gabriel Loffe, Will you ask him any questions?—Loffe: No.

Cl. of Arr.: Hugh Parrot, will you ask him any questions?—Parrot: No.

Cl. of Arr.: Richard Barlicorn, will you ask him any thing?—Barlicorn: No.

Cl. of Arr.: Abel Owens, Will you ask him any thing?—Owens: No.

Cl. of Arr.: Darby Mullins, will you ask him any thing?—Mullins: No.

Kidd: It is in vain to ask any questions.

L. C. B. Ward: Then you may make your own defence. Come, Mr. Kidd, what have you to say in your own defence?

Kidd: I had a commission to take the French, and pirates; and in order to that, I came up with two ships, that had French passes both of them. I called you all a-deck to consult: and did not a great many of the men go aboard? Did not you go? You know, Mr. Palmer, I would have given these ships to them again, but you would not; you all voted against it.

Palmer: This man (pointing to the Armenian that was in court) offered you 20,000 rupees for the ship, and you refused it.

Kidd: Did not I ask, where will you carry this ship? And you said, we will make a prize of her; we will carry her to Madagascar.

Palmer: Says captain Kidd to his men, These Armenians make such a noise for the ship, that I must say, my men will not part with her; but there was not a quarter part of the men concerned in it. The Armenians came crying and wringing their hands: upon which,

says captain Kidd, I must say, my men will not give them the ship. And so some of the men went on the fore-castle, and pretended, they would not give them the ship; but there was not a quarter part of the men concerned in it.

L. C. B. Ward: Did those goods belong to Frenchmen, or Armenians?

Palmer: To Armenians.

L. C. B. Ward: What was that pretence of a French pass that was on board The Quedagh Merchant?—Palmer: I saw none.

Kidd: But you have heard of it.

Palmer: I have heard of it, but never saw it.

L. C. B. Ward: Mr. Kidd, have you any more to say? You speak of a commission that you had; you may have it read, if you please.

Kidd: I desire to have them both read.

L. C. B. Ward; Yes, they shall.

Then his Commission of Reprisals upon the French was read:

‘William the Third, by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. Whereas we have taken into our consideration the injuries, spoils, and acts of hostility committed by the French king and his subjects, unto and upon the ships, goods, and persons of our subjects extending to their grievous damages, and amounting to great sums: and that notwithstanding the many and frequent demands made for redress and reparation, yet none could ever be obtained: we did therefore, with the advice of our privy council, think fit, and ordered, that general reprisals be granted against the ships, goods, and subjects of the French king; so that as well our fleets and ships, as also all other ships and vessels, that shall be commissioned by letters of marque, or general reprisals, or otherwise, shall or may lawfully seize, and take all ships, vessels, and goods belonging to the French king, or his subjects, or inhabitants within any of

the territories of the French king: and such other ships, vessels and goods, as are, or shall be liable to confiscation, and bring the same to judgment in our high court of Admiralty of England, or such other court of admiralty as shall be lawfully authorised in that behalf, according to the usual course and laws of nations. And whereas William Kidd is thought fitly qualified, and hath equipped, furnished, and victualled a ship called The Adventure-Galley, of the burden of about 287 tons, whereof the said William Kidd is commander: and whereas he the said Wm. Kidd hath given security with sureties by bond to us, in our said high court of admiralty, according to the effect and form set down in certain instructions made the 2nd day of May, 1693, and in the 5th year of our reign, a copy whereof is given to the said captain William Kidd: Know ye therefore that we, by these presents, grant commission to, and do license and authorise the said Wm. Kidd to set forth in warlike manner the said ship called The Adventure Galley, under his own command, and therewith by force of arms to apprehend, seize, and take the ships, vessels, and goods belonging to the French king and his subjects, or inhabitants within the dominions of the said French king, and such other ships, vessels, and goods, as are, or shall be liable to confiscation, and to bring the same to such port as shall be most convenient, in order to have them legally adjudged in our high court of admiralty, or such other court of admiralty as shall be lawfully authorized in that behalf; which being condemned, it shall and may be lawful for the said William Kidd, to sell and dispose of such ships, vessels, and goods, so adjudged and condemned, in such sort and manner as by the courts of admiralty hath been accustomed (except in such cases where it is otherwise directed by the said instructions and the act of parliament thereunto annexed). Provided always, that the said William Kidd keep an exact journal of his proceedings, and therein particularly take notice of all prizes which shall be taken by him, the nature of such prizes, the times and places of their being taken, and the values of them, as near as he can judge: as also of the station, motion and strength of the enemy, as well as he or his mariners can discover by the best intelligence he can get; and also whatsoever else shall come unto him, or any of his officers, or mariners, or be discovered or declared unto him or them, or found out by examination, or conference with any mariners or passengers of, or in any

of the ships or vessels taken, or by any other person, or persons, or by any other ways or means whatsoever, touching or concerning the designs of the enemy, or any of their fleets, vessels, or parties, and of their stations, ports, and places, and of their intents therein: and of what merchant ships or vessels of the enemy's bound out, or home, or to any other place, as he, or his officers, or mariners shall hear of, and what else material in those cases may arrive to his or their knowledge; of all which he shall from time to time, as he shall, or may have opportunity, transmit an account to our commissioners for executing the office of lord high-admiral of England, or their secretaries, and to keep a correspondence with them by all opportunities that shall present. And further provided, That nothing be done by the said William Kidd, or any of his officers, mariners, or company, contrary to the true meaning of our aforesaid instructions: but that the said instructions shall be by them, and each and every of them, as far as they, or any of them are therein concerned, in all particulars well and duly performed and observed. And we pray and desire all kings, princes, potentates, estates, and republics, being our friends and allies, and all others to whom it shall appertain, to give the said William Kidd all aid, assistance and succour in their ports with his said ship, company and prizes, without doing, or suffering to be done, to him any wrong, trouble, or hindrance; we offering to do the like, when we shall be by them thereunto desired. And we will and require all our own officers whatsoever, to give him succour and assistance as occasion shall require. This our commission to continue in force till farther ordered to the contrary from us, or our commissioners for executing the office of lord high-admiral of England. In witness whereof we have caused the great seal of our high court of admiralty of England to be hereunto affixed. Given at London the 11th day of December, in the year of our Lord, 1695, and in the 7th year of our reign.

ORLANDO GEE, Reg.'¹

Just. Powel: Capt. Kidd, can you make it appear there was a French pass aboard the Quedagh Merchant?

¹ Registrar: The Admiralty Registrars perform functions corresponding to those discharged by the Masters of the Queen's Bench Division.

Kidd: My lord, these men say, they heard several say so.

Mr. Coniers: But all came from you.

L. C. B. Ward: If there was a French pass in the ship, you ought to have condemned her as prize.

Then his other Commission was read for Cruising against the pirates.

William, R.

‘William III. By the grace of God, king of England, Scotland, France, and Ireland, defender of the faith, &c. To our trusty and well-beloved captain William Kidd, commander of the ship Adventure-Galley, or to any other the commander for the time being, greeting. Whereas we are informed, That captain Thomas Too, John Ireland, captain Thomas Wake, and captain William Maze, or Mace, and other our subjects, natives or inhabitants of New-England, New-York, and elsewhere, in our plantations in America, have associated themselves with divers others wicked and ill-disposed persons, and do against the law of nations, daily commit many and great piracies, robberies, and depredations upon the seas in the parts of America, and in other parts, to the great hindrance and discouragement of trade and navigation, and to the danger and hurt of our loving subjects, our allies, and all others navigating the seas upon their lawful occasions: Now know ye, That we being desirous to prevent the aforesaid mischiefs, and, as far as in us lies, to bring the said pirates, free-booters, and sea-rovers to justice, have thought fit, and do hereby give and grant unto you the said captain William Kidd (to whom our commissioners for exercising the office of our lord high-admiral of England, have granted a commission as a private man of war, bearing date the 11th day of December, 1695,) and unto the commander of the said ship for the time being, and unto the officers, mariners, and others, who shall be under your command, full power and authority to apprehend, seize, and take into your custody, as well the said captain Thomas Too, John Ireland, captain Thomas Wake, and captain William Maze, or Mace, as all such pirates, free-booters, and sea-rovers, being either our own subjects, or of any other nations associated with

them, which you shall meet upon the coasts or seas of America, or in any other seas or ports, with their ships and vessels, and also such merchandizes, money, goods, and wares, as shall be found on board, or with them, in case they shall willingly yield themselves: but if they will not submit without fighting, then you are by force to compel them to yield. And we do also require you to bring, or cause to be brought such pirates, free-booters, and sea-rovers, as you shall seize, to a legal trial; to the end they may be proceeded against according to law in such cases. And we do hereby charge and command all our officers, ministers, and other our loving subjects whatsoever, to be aiding and assisting to you in the premises. And we do hereby enjoin you to keep an exact journal of your proceeding in the execution of the premises, and therein to set down the names of such pirates, and of their officers and company, and the names of such ships and vessels as you shall by virtue of these presents seize and take, and the quantities of arms, ammunition, provision, and loading of such ships, and the true value of the same, as near as you can judge. And we do hereby strictly charge and command you, as you shall answer the same at your utmost peril, that you do not in any manner offend, or molest any of our friends or allies, their ships, or subjects, by colour or pretence of these presents, or the authority thereby granted. In witness whereof, we have caused our great seal of England to be affixed to these presents. Given at our court at Kensington, the 26th day of January, 1695, in the 7th year of our reign.'

L. C. B. Ward: Now you have had the commissions read, what do you excuse your-self by? What use do you make of them to justify or defend yourself?

Kidd: About this Quedagh Merchant.

L. C. B. Ward: What would you have her a French ship?

Kidd: Under a French commission. The master was a tavern keeper at Surat: do not you know that, Mr. Palmer?

Palmer: I was not on board when this pass came; I never saw it.

L. C. B. Ward: But then you should have condemned this ship, if she had been a French ship, or had a French pass.

Kidd: The evidence says, It was by my order that the goods were taken out; I was not at the sharing of the goods, I knew nothing of it.

L. C. B. Ward: Out of the goods that were taken, some were sold in the country there, and the produce of them was so much money; it is proved that that money was divided; and pursuant to the articles set up, you were to have forty shares, and the rest of the men whole, or half shares, as they deserved. Now this money, both these men swear it was taken by you: and the first swears, that the goods not sold then, that remained in the ship, were also divided, and that you had forty shares of them: and the other says, he did not see the goods divided, but two of the men acknowledged it.

Kidd: My lord, this Frenchman was aboard five or six days before I understood there was any Englishmen aboard. Well, said I, what are you? An Englishman, I am, master. What have you to shew for it? Nothing, says he. When they see a French pass, they will not let the ship go.

Just. Powel: You have produced letters patent that impowered you to take pirates: why did you not take Culliford?

Kidd: A great many of the men were gone ashore.

Just. Powel: But you presented him with great guns, and swore you would not meddle with them.

L. C. B. Ward: When the question was put, Are you come to take us and hang us? you answered, I will fry in hell before I will do you any harm.

Kidd: That is only what these witnesses say.

L. C. B. Ward: Did you not go aboard Culliford?

Kidd: I was not aboard Culliford.

L. C. B. Ward: These things press very hard upon you. We ought to let you know what is observed, that you may make your defence as well as you can.

Kidd: I desire Mr. Davis may be called. (He was called accordingly, and appeared.) Mr. Davis, pray give an account whether you did not see a French pass?

L. C. B. Ward: You are his witness; you must answer what he asks you.

Davis: I came a passenger from Madagascar, and from thence to Amboyna, and there he sent his boat ashore, and this man was ashore; and there was one said, captain Kidd was published a pirate in England; and he gave those passes to him to read. The captain said, they were French.

L. C. B. Ward: Who gave them?

Davis: Captain Kidd gave them.

L. C. C. Ward: Did you know any thing of taking the Quedagh Merchant?

Davis: No, no.

L. C. B. Ward: Then you cannot say, they have any relation to the Quedagh Merchant? — Davis: No, not I.

Kidd: You heard capt. Elms say, They were French passes.

Davis: Yes, I heard capt. Elms say, They were French passes. Says he, If you will, I can turn them into Latin.

Baron Hatsell: Have you any more to say, capt. Kidd?

Kidd: I have some papers, but my lord Bellamont keeps them from me, that I cannot bring them before the court.

Cl. of Arr.: Have you any more to say?

Kidd: I have some to call, that will bear testimony to my reputation.

L. C. B. Ward: Call whom you please, we will not abridge you.

Kidd: Call Mr. Bradinham. I desire this of him, whether he never saw the French passes, and whether he did not tell col. Bass so?

Bradinham: I never saw a French pass; I only heard so.

Col. Bass: I have heard Mr. Bradinham say, he heard capt. Kidd say, he had French passes on board; but I never heard him say, he saw them passes.

Kidd: He just now denied that he ever saw the French passes, or heard of them.

L. C. B. Ward: He says so now, that he never saw them, only he heard you say so. Col. Bass, have you heard him say the passes related to the Quedagh Merchant?

Bass: He has often said, he heard Kidd say the French passes were aboard.

Cl. of Arr.: Have you any more witnesses to call?

Kidd: I desire Mr. Say may be called: he is in the prison, I desire he may be sent for.

L. C. B. Ward: We will give you all the liberty you can expect. If you have any more, you were best call them all together. In the mean time, what say you, Churchill?

Churchill: I desire col. Bass may be called, and that this affidavit may be read.

L. C. B. Ward: Col. Bass, what have you to say for N. Churchill?

Bass: My lord, I only wait for his question.

L. C. B. Ward: Churchill, what will you ask col. Bass?

Churchill: Whether I did not surrender myself to him?

L. C. B. Ward: If you can make your case come within the proclamation, you must make it appear, that you surrendered according to the directions of it.

Churchill: My lord, we came in in the year 1699, and surrendered ourselves to col. Bass.

L. C. B. Ward: If you can make it appear that you surrendered yourselves in pursuance of that, to the persons appointed to receive your surrender, that will be somewhat to the point; but col. Bass had not power by that proclamation to receive your surrender; and therefore you cannot have any benefit by it, unless you bring your case within it. But you may call col. Bass, if you will.

Churchill: My lord, we came in upon that proclamation, and might have gone away any day if we would; but we staid in the country, and we never offered to go away till it was my lord Bellamont's pleasure to send for us.

L. C. B. Ward: You may call col. Bass, and hear what he says.

Churchill: Col. Bass, will you be pleased to tell my lord, whether we did not surrender ourselves to you in pursuance of the king's proclamation?

Bass: My lord, about the 29th of May, 1699, I had an account of some persons, that were supposed pirates, that were come to surrender themselves; and on my landing, these two persons came to me, and surrendered to me

the 4th of June, 1699. And I told them, I must refer their case to his majesty at home.

L. C. B. Ward: Who were they that surrendered to you?

Bass: Nicholas Churchill and James Howe.

L. C. B. Ward: Where were you governor?

Bass: At the province of West Jersey.

Dr. Oxenden: How came they here.

Bass: I left them under bail.

L. C. B. Ward: Did you send them over?

Bass: No, my lord, I came to England before: I left them in custody. They were sent over prisoners by my successor.

L. C. B. Ward: What did they say to you when they surrendered to you?

Bass: They said they had been in the Indies, and that they had committed several piracies, and desired they might have the benefit of his majesty's proclamation.

L. C. B. Ward: What pirates did they mention to you?

Bass: They mentioned the *Mocca* frigate, and capt. Kidd.

Dr. Oxenden: Had you the proclamation?

Bass: No; but I had seen one of them.

L. C. B. Ward: Did you take yourself allowed to receive their surrender?

Bass: No, my lord, I did not.

Cl. of Arr.: Nicholas Churchill, have you quite done?

Churchill and Howe: Yes, Sir, we came in upon his majesty's proclamation.

Cl. of Arr.: Robert Lamley, what have you to say?

Lamley: My lord, I was but a servant.

L. C. B. Ward: Who was you a servant to?

Lamley: To Mr. Owens.

L. C. B. Ward: How does that appear?—Lamley:
The surgeon knows it.

Bradinham: My lord, he was concerned with the cook.

Lamley: My lord, here is my indenture. (Which was read.)

Cl. of Arr.: William Jenkins, what have you to say?

Jenkins: I have nothing to say, but I was servant to Mr. Bullen.

L. C. B. Ward: Where is your witness to prove it?

Jenkins: Both the king's witnesses know it.

Bradinham and Palmer: My lord, he was his servant.

Cl. of Arr.: Gabriel Loffe, what say you for yourself?

Loffe: My lord, about the year 1696, I entered myself on board capt. Kidd, and went out with him, and I never disobeyed his command in any thing.

L. C. B. Ward: Did he go out under the first commission?

Palmer: He came aboard at New York.

L. C. B. Ward: Did you take him in before or after the articles were set up?

Palmer: After the articles were set up.

L. C. B. Ward: Did capt. Kidd take any notice of his commission in the articles?

Palmer: Yes, my lord, He did mention them. I have a copy of the articles.

Mr. Crawley: Mr. Palmer, are these articles the copy of the articles set up by capt. Kidd at New York?—

Palmer: Yes.

Just. Gould: Did you examine them?

Palmer: To the best of my knowledge they were a true copy.

Just. Turton: Did you compare them with the original? — Palmer: No, my lord.

Cl. of Arr.: Gabriel Loffe, Have you any more to say?

Loffe: Yes, a great deal more to ask the evidence.

Cl. of Arr.: What will you ask them?

Loffe: Whether I did not obey the captain?

Just. Turton: There is no scruple to be made of that.

Loffe: I went out to serve his majesty under his commission.

L. C. B. Ward: But how came you to take part of the money?

Loffe: I had what they pleased to give me.

L. C. B. Ward: You must needs imagine, that when capt. Kidd did these extravagant things, and divided the money and goods, that he did not act according to his commission. What could you think of it?

Cl. of Arr.: Hugh Parrot, what have you to say for yourself?

Parrot: My lord, in the year 1695, in the month of October, I sailed out of Plymouth in a merchant-man, bound for Cork in Ireland, there to take in provisions; thence to the island of Barbadoes; and in sight of the island of Barbadoes, I was taken by a French privateer, and carried to Martinico; and thence coming in a transport ship, I was brought to Barbadoes; there I shipped myself in a vessel bound to Newfoundland, and thence to Maderas: And then I went to Madagascar, and there I staid some short time after, and came in company with capt. Kidd; and then the commander and I had a fall-

ing out, and so I went ashore at that island: And understanding that captain Kidd had a commission from the king, I came aboard capt. Kidd's ship, and ever since have been with him.

L. C. B. Ward: Did you come in after he had been at New York?

Parrot: This was in the year 1697.

L. C. B. Ward: You have acted with him and shared with him. Could you imagine he was acting according to his commission, when he was doing these things?

Parrot: I thought I was safe where the king's commission was.

L. C. B. Ward: The commission was to take pirates, and not to turn pirates.

Parrot: Mr. Palmer, did you ever see me guilty of an ill thing? Did I ever disobey my captain.

Palmer: You were always obedient to your commander.

Parrot: Then I came to Madagascar with captain Kidd, where I might have gone aboard a known pirate, but I refused it, and kept close to my captain: And when I came to New England, I might have gone away as others did; but I had my liberty at Boston for about a week, and went up and down, and I surrendered myself.

L. C. B. Ward: You did not surrender yourself, but only you had a liberty to go away, and did not.

Parrot: I thought there was no need of it. My lord, I desire you would ask the witnesses, whether I ever disobeyed the captain's commands?

L. C. B. Ward: They say no otherwise, but that you went willingly.

Cl. of Arr.: Richard Barlicorn, what have you to say?

Barlicorn: My lord, I beg leave that I may produce some evidence for my reputation. Here is a certificate from the parish where I was born.

L. C. B. Ward: That will signify nothing; we cannot read certificates; they must speak *viva voce*.

Barlicorn: Call Benjamin Bond, Daniel Phillips, and James Newton.

L. C. B. Ward: What do you call these witnesses for?

Barlicorn: To give an account of my reputation, what they know of me.

Bond: I knew him when he was a child, and he was very civil and honest; I lived near him till he was 13 or 14 years old; and he came of honest parents, and behaved himself very civilly all that time.

L. C. B. Ward: Have you known anything of him since?—Bond: No, my lord.

L. C. B. Ward: What have you to say further?

Barlicorn: My lord, I was a servant to captain Kidd, and have been with him six years; and I have a certificate from several of my relations that will testify it.

Cl. of Arr.: Have you any thing more to say?

Barlicorn: I am a servant to capt. Kidd.

L. C. B. Ward: How long have you been so? Where was it that you came first to be his servant?—Barlicorn: At Carolina.

Cl. of Arr.: And Owens, what say you for yourself?

Owens: My lord, I desire the privilege of the Proclamation. I entered myself into the king's service. I have been in the King's service, according to his majesty's proclamation. I desire it may be read. (Which was done.)

L. C. B. Ward: You desire the benefit of this proclamation; but you must bring yourself under the qualifications it requires, if you would have any benefit of it.

Mr. Crawley: He has a certificate of it.

L. C. B. Ward: Is it within the Proclamation?

Mr. Crawley: The certificate is dated the 15th of March, 1700, from Mr. Riches, a justice of the peace in Southwark.

L. C. B. Ward: Mr. Riches, I suppose, did believe he was within this Proclamation.

Just. Gould: The pardon extends to all persons for piracies committed before that time, if they surrender themselves to such and such, and enter themselves on board one of his majesty's ships.

Mr. Coniers: A justice of the peace is not within the Proclamation.

Cl. of Arr.: Have you any more to say?

Owens: Only to desire the benefit of the proclamation.

L. C. B. Ward: He surrendered himself to justice Riches, and then entered himself aboard one of his majesty's ships: and then there was evidence against him when on board, and he was seized, this may be fit to recommend him to the king's mercy, but it is not a defence against the accusation.

Cl. of Arr.: Darby Mullins, What do you say for yourself?

Mullins: I came in upon the king's act of grace; I came ashore with the rest of the people.

L. C. B. Ward: What have you to shew, to entitle you to the benefit of the Proclamation?

Mullins: I was ready to die of the bloody-flux, and not able to go myself, but I sent my name into the governor.

L. C. B. Ward: Where was you when you was so sick?

Mullins: In West-Jersey. I came ashore in Cape May. I was sick like to die all the way from Madagascar, expecting every minute to die with the bloody-flux.

Dr. Oxenden: How came you to leave capt. Kidd?

Mullins: He used me very hardly and therefore I left him.

L. C. B. Ward: You had a dividend of the money and goods.

Mullins: He gave it to me, and afterwards took it from me.

L. C. B. Ward: Was he your master?

Mullins: I had no master.

Dr. Oxenden: How did you come to Jersey?

Mullins: I came there with capt. Shelley; he is in court.

Dr. Oxenden: You were aboard captain Culliford.

Mullins: I came home, in hopes to get the king's pardon.

L. C. B. Ward: That which you say is very odd; though you quitted capt. Kidd's ship, you went into Culliford's.

L. C. B. Ward: Capt. Kidd, you said you had more to say just now: if you have let us hear it.

Kidd: I desire this man may be heard two or three words.

L. C. B. Ward: What is his name? — Kidd: Mr. Say.

Say: I happened to be at the Treasury-office in Broadstreet to receive some money, and Mr. White was there;

and he asked me, Will you go along with me, and see one Elbury, that is in the Marshalsea for debt? Says I, I am a stranger to him, I do not care to go. Says he, Bear me company. So I went with him; and when I came there I saw capt. Kidd's men. And this Mr. Elbury was in company with capt. Kidd's surgeon. Says I, I am a brother of the quill, I should be glad to drink a glass with you. We stayed there but a little while, and asked what that man was? Says he, He is capt. Kidd's surgeon. Upon this I said, Here is a mighty noise about capt. Kidd. Says he, I believe he has done but what he can answer, or that can do him any hurt. Says I, Where have you been with him? He said at Madagascar.

L. C. B. Ward: Mr. Bradinham was with them, there is no doubt of that. It is not to be questioned, that he would not say any thing ill of them then. Capt. Kidd, have you any thing more to say?

Kidd: Call capt. Humphreys. (Who appeared.)

L. C. B. Ward: What questions would you ask him?

Kidd: What do you know of me?

Humphreys: I knew you, Sir, in the West-Indies in the beginning of the late war; and I know you had the applause of the general, as I can shew by the general's letter. I know nothing further of you.

Kidd: Did you know any thing that I was guilty of any piracies?

Humphreys: No; but you had a general applause for what you had done from time to time.

L. C. B. Ward: How long was this ago?

Humphreys: Twelve years ago.

L. C. B. Ward: That was before he was turned pirate.

Kidd: Call capt. Bond. (Who appeared.)

L. C. B. Ward: What do you call him for?

Kidd: Capt. Bond, pray, will you give an account of what you know of me?

Bond: I know you was very useful at the beginning of the war in the West-Indies.

Baron Hatsell: To be sure, they had a good opinion of him in 1695, when they granted him the commission.

Kidd: There is nothing in the world can make it appear I was guilty of piracy; I kept company with captain Warren for six days.

Mr. Coniers: I believe you kept company more with captain Culliford than with captain Warren.

Kidd: I never designed to do any such thing.

Mr. Coniers: My lord, we will say nothing at all; but leave it to your lordship to direct the jury.

Kidd: I have many papers for my defence, if I could have had them.

L. C. B. Ward: What papers were they? — Kidd: My French passes.

L. C. B. Ward: Where are they? — Kidd: My lord Bellamont had them.

L. C. B. Ward: If you had had the French passes you should have condemned ships.

Kidd: I could not, because of the mutiny in my ship.

L. C. B. Ward: If you had any thing of disability upon you to make your defence, you should have objected it at the beginning of your trial; what you mean by it now I cannot tell. If you have any thing more to say, you may say it, the court is ready to hear you.

L. C. B. Ward: Gentlemen of the jury, the prisoners at the bar, stand all here indicted for the crime of pi-

racy, charged to be committed by them. And the instance of the crime is, for feloniously and piratically seizing and taking the ship called *The Quedagh Merchant*, with the apparel and tackling thereof, to the value of 400*l.* and divers goods mentioned in the indictment, to the value of 4,500*l.* the goods of several persons unknown, from the mariners of the said ship, and this at high-sea, within the jurisdiction of the court of Admiralty, about ten leagues from Cutsheen in the East-Indies the 30th of January, 1697, and in the 8th year of his majesty's reign. Now whether all, or any, and which of these prisoners, are guilty of this crime of piracy laid in this indictment, or not guilty, it is your part to determine according to the evidence that has been given on both sides. The crime charged on them is piracy, that is, seizing and taking this ship and goods in it, piratically and feloniously: The time and place is laid also in the indictment. To make good this accusation, the king's counsel have produced their evidence; and two witnesses have been examined in this case, each of them were in the ship which took the *Quedagh Merchant*, and very well acquainted with all the proceedings; that is, Robert Bradinham and Joseph Palmer. The first has given you an historical account of the whole proceedings of capt. Kidd, from his first going out of England in the *Adventure-galley*, to the time of this fact charged on them. They tell you, that about May, 1696, the king intrusted this captain Kidd with two commissions, and they were both read to you: By one of them, under the admiralty-seal, he was authorized to set out as a privateer the *Adventure-galley*, and therewith to take and seize the ships and goods belong-

ing to the French king, or his subjects, and such other as were liable to confiscation. And by the other commission, under the broad-seal of England, authority was given for the taking of some pirates by name, and all other pirates in the several places therein mentioned; but in no sort to offend or molest any of the king's friends or allies, their ships or subjects, by colour thereof. And by both commissions, command was given to bring all such ships and goods, as should be taken, to legal trials and condemnations. They tell us, that this ship set out from Plymouth about May, 1696, and that in their passage they did take a French ship, and they did condemn that ship. Now, gentlemen, you must bear this in your minds, that to make it piracy, it must be the taking piratically and feloniously upon the high sea, within the jurisdiction of the admiralty of England, the goods of a friend, that is, such as are in amity with the king. Now, you see what way they went to work, and what measures they took. Captain Kidd goes out, and goes to New-York; and when he was there, he has a project in his head, of setting up articles between himself and the people that were willing to be concerned with him: For now, whether it seems more probable from what followed, that capt. Kidd designed to manage himself according to the measures given him, and the powers of his commissions, or any other way, you must consider: for it is told you, that between one hundred and fifty and one hundred and sixty men came in under these articles, whereof the other prisoners were part, and concerned in them. And as to those articles, the import of them was, that whatever should be taken

by these people in their expeditions, should be divided into one hundred and sixty parts, whereof captain Kidd was to have forty shares for his part, and the rest were to have according to the merit of each party, some whole shares, and some half shares.

Now after these articles, you perceive what progress they made, and what course they took; they went from one place to another, and used a pretty deal of severity wherever they came. A design they had to go into the Red-sea, and they had expectations of the Mocca fleet that lay at Mocca, and they sent their spies three times to get intelligence: the two first times they could make no discovery; but the third time they made an effectual discovery, that the fleet was ready to sail; and in the mean time capt. Kidd lay there in expectation of this fleet; and, as the first witness tells you, capt. Kidd said, he intended to make a voyage out of this fleet. Well, he had a discovery of this fleet, and they came accordingly; and they tell you, that he and his men in the ship did attack one of the ships: but these ships being guarded by two men of war, he could make nothing of them; however, he shewed what his intention and design was. Could he have proved, that what he did was in pursuance of his commission, it had been something; but, what had he to do to make any attack on these ships, the owners and freighters whereof were in amity with the king? This does not appear to be an action suitable to his commission. After he had done this, he came to land, and there, and afterwards at sea, pursued strange methods, as you have heard. The seeming justification he depends on, is his commissions. Now it must be observed how he acted with relation to them, and what

irregularities he went by. He came to a place in the Indies, and sent his cooper ashore, and that cooper was killed by the natives; and he uses barbarity, and ties an Indian to a tree, and shoots him to death. Now he went from place to place, and committed hostilities upon several ships, dealing very severely with the people.

But this being something foreign to the indictment, and not the facts for which the prisoners at the bar are indicted, we are confined to the Quedagh Merchant; but what he did before, shews his mind and intention not to act by his commissions, which warrant no such things. Gentlemen, you have an account, that he met with this ship, the Quedagh Merchant, at sea, and took her; that this ship belonged to people in amity with the king of England; that he seized this ship, and divers goods were taken out of her and sold, and the money divided pursuant to the heads contained in those articles set up at New-York. The witnesses that speak to that, come home to every one of the prisoners: they tell you, that the dividend was made; that captain Kidd had forty shares of the money, and the rest of the prisoners had their proportions according to the articles, some whole shares, and some a half a share of that money. After they had seized on the ship, you hear of a certain sort of project, that a Frenchman should come and pretend himself the master, and produce, or pretend to produce a French pass, under a colour that these peoples ship and goods, who were Moors, should be Frenchmen's ship and goods, or sailed under a French pass, and so justify what he did under the colour of his commission from the king. Now no man knows the mind and intention of another, but as it may be discovered by his actions. If he would

have this to be understood to be his intention, or that it was a reality, that he took this as a French ship, or under a French pass, then he ought to have had the ship and goods inventoried, and condemned according to law, that he might have had what proportion belonged to him, and that the king might have had what belonged to him, as his commissions directed: but here was nothing of that done, but the money and goods that were taken were shared; and you have an account likewise how some of the goods were sold, and the money disposed of, and how the remaining goods were disposed of; and one witness speaks positively of the distribution of the goods that remained unsold, that they were divided according to the same proportions as the articles mentioned, and every one of the prisoners had his share: there belonged forty shares to captain Kidd, and shares and half shares to the rest.

Now this is the great case that is before you, on which the indictment turns: the ship and goods, as you have heard, are said by the witnesses to be the goods of the Armenians, and other people that were in amity with the king; and captain Kidd would have them to be the goods of Frenchmen, or at least, that the ship was sailed under French passes. Now if it were so, as capt. Kidd says, it was a lawful prize, and liable to confiscation; but if they were the goods of persons in amity with the king, and the ship was not navigated under French passes, it is very plain it is a piratical taking of them. Gentlemen, it is to be considered what evidence capt. Kidd hath given to prove that ship and goods to belong to the French king, or his subjects, or that the ship was sailed under a French pass, or, indeed that there ever

was a French pass shewn or seen. He appeals indeed to the witnesses over and over again, did you never see it? No, say they: Nor did not you, saith he, say you saw it? No, saith the witness; I said that captain Kidd said he had a French pass, but I never saw it. Now after all, the taking of the *Quedagh Merchant* is brought down to Mr. Kidd, and the prisoners with others, and the distribution of the money produced by the sale of the goods among Mr. Kidd and his crew, whereof every one of these prisoners were present at the same time, and had proportions.

Now gentlemen, this must be observed; If this was a capture on the high sea, and these were the goods of persons in amity with the king, and had no French pass, then it is a plain piracy. And if you believe the witnesses, here is a taking of the goods and ships of persons in amity, and converting them to their own use: such a taking at land as this would be felony, and being at sea it will be piracy; for this is a taking the ship from the right owners, and turning it to their own use. So that you have evidence as to the seizing of the ship, and dividing the money rising from the goods sold, and sharing the remainder according to the articles.

Now, what does captain Kidd say to all this? He has told you, he acted pursuant to his commission; but that cannot be, unless he gives you satisfaction, that the ship and goods belonged to the French king, or his subjects, or that the ship had a French pass; otherwise neither of them will excuse him from being a pirate; for if he takes the goods of friends, he is a pirate; he had no authority for that; there is no colour from either of his commissions for him to take them: And as to the French

passes, there is nothing of that appears by any proof; and, for aught I can see, none saw them but himself, if there were ever any. It is proved, that the people that were owners of the goods made him very large offers to redeem the ship (twenty thousand rupees, as I remember;) but he would not accept their proposal, but said, 'that is a small sum, the cargo is worth a great deal more,' or to that effect: And further said, 'he must answer these people, that his men will not part with it:' And a Frenchman was to be set up for a mock business, as you have heard; and if the witnesses say true, they were said by the captain of the ship to be, and were reputed to be, the ship and goods of friends and not of enemies; and if they were so, and had no French pass, then is he, and those that were concerned with him, guilty of piratically taking this ship, and of piratically seizing the goods in the ship; and neither of his commissions will justify such an act as this. If he had acted pursuant to his commission, he ought to have condemned the ship and goods, if they were a French interest, or sailed under a French pass; but by his not condemning them, he seems to shew his aim, mind, and intention, that he did not act in that case by virtue of his commission, but quite contrary to it; for he takes the ship, and shares the money and goods, and is taken in that very ship by my lord Bellamont, and he had continued in that ship till that time; so there is no colour or pretence appears, that he intended to bring this ship to England to be condemned, or to have condemned it in any of the English plantations, having disposed of the whole cargo as aforesaid. Here I must leave it to you to consider, whether, according to the evidence that appears, there

is any ground for him to say, he has acted by his commission in taking the Quedagh Merchant and goods in her, or whether he has not acted contrary thereunto.

Now, for himself, he has called some persons here to give an account of his reputation, and of his services done in the West-Indies; and one of them says, about ten or twelve years he did good service there. Why, so he might and might have, and it is very like he had such reputation when the king trusted him with these commissions, else I believe he had never had them; so that whatever he might be so many years ago, that is not a matter to be insisted on now, but what he hath been since, and how he hath acted in this matter charged against him: So that, gentlemen, as to Mr. Kidd, I must leave to you, whether he is guilty of piracy or no? And if you believe him guilty upon the evidence, you will find him so, if not, you will acquit him.

Now for the other prisoners, it is proved they were all concerned in taking and sharing the ship and goods in the indictment; yet their circumstances differ pretty much among themselves. There are three of them, that it has been made out to you, and owned by the king's witnesses, that they were servants, Robert Lamley, William Jenkins, Richard Barlicorn. All these are made out to be servants, and you have had the indentures of two of them produced, and the king's witnesses prove them so, and they were admitted to be servants. Now, Gentlemen, there must go an intention of the mind, and a freedom of the will, to the committing a felony or piracy. A pirate is not to be understood to be under constraint, but a free agent; for in this case the bare act will not make him guilty, unless the will make it

so. Now a servant, it is true, if he go voluntarily, and have his proposition, he must be accounted a pirate; for then he acts upon his own account, and not by compulsion. And these persons, according to the evidence, received their part; but whether they accounted to their masters for their shares afterwards, yea or no, as they pretend, but make no proof of it, I must leave that to you; and therefore there is a consideration to be had of them: for if these men did go under the compulsion of their masters, to whom they were servants, and not voluntarily, and upon their own accounts, it may difference their case from others, who went and acted willingly in this matter, and upon their own accounts. So that as to those that were servants under the command of their masters, that were present with them, I must leave it to you, whether you will distinguish between them and the others, that were not servants, but free agents. It is true, a servant is not bound to obey his master but in lawful things, which they say they thought this was, and that they knew not to the contrary, but that their masters acted according to the king's commission; and therefore their case must be left to your consideration, whether you think them upon the whole matter guilty or no. If you believe them guilty, you will find them so, otherwise you will acquit them.

For the other persons, some of them pretend they came in on his majesty's proclamation, and for that you must consider the evidence, and take it altogether, and consider whether you are satisfied by what they have said or proved, that they have brought themselves within the benefit of the king's favour by that proclamation. You have heard it read, and observed the qualifications

and directions by it, and the terms upon which the pardon was promised, which are not made out to you, to be complied with by them; they may apply another way for the king's mercy; this court must proceed according to the rules of law and justice: but then all of them hold on this; we were, say they, under the captain, and acted under him as their commander: and, gentlemen, so far as they acted under his lawful commands, and by virtue and in pursuance of his commissions, it must be admitted they were justifiable, and ought to be justified: but how far forth that hath been, the actions of the captain and their own will best make it appear. It is not contested, but that these men knew, and were sensible of what was done and acted, and did take part in it, and had the benefit of what was taken shared amongst them: and if the taking of this ship and goods was unlawful, then these men can claim no advantage by these commissions, because they had no authority by them to do what they did, but acted quite contrary to them. What had they to do to enter into such articles, and to act as they did? you must consider the evidence given here, according to the rules of the law; and if you are satisfied, that they have knowingly and wilfully been concerned or partaken with captain Kidd in taking this ship, and dividing the goods, and that piratically and feloniously, then they will be guilty within this indictment. It is worthy of consideration what appears upon the evidence, that they met with one reputed to be a notorious pirate, called Culliford; he was esteemed an arch-pirate, and known to be so; yet this capt. Kidd, that was commissioned to take pirates, instead of taking him, grows to such an intimacy with him, that he said

he would have his soul fry in hell before he would hurt him, or to that effect; and so they made presents one to another; and capt. Kidd left three of his men with him. Whilst men pursue their commissions they must be justified; but when they do things not authorised, or never acted by them, it is as if there had been no commission at all. I have distinguished the evidence as well as my memory serves me, and must leave it to you to determine upon the whole matter, who are guilty, and who not? And such as you are satisfied to be guilty, you will find so, and such as you are not satisfied to be guilty, you will acquit.

(Then the Jury withdrew, and after half an hour's stay, brought in their verdict.)

Cl. of Arr.: Gentlemen, of the Jury, answer to your names, John Cowper, &c.

J. Cowper: Here, &c.

Cl. of Arr.: Are you agreed of your Verdict?— Omnes: Yes.

Cl. of Arr.: Who shall say for you?— Omnes: Foreman.

Cl. of Arr.: William Kidd, hold up thy hand. (Which he did.) How say you, is he guilty of the piracy whereof he stands indicted, or not guilty? (And so of the rest.)

Foreman: Guilty.

Cl. of Arr.: Is Nicholas Churchill guilty, or not guilty?

Foreman: Guilty.

Cl. of Arr.: Is James Howe guilty, &c.?— Foreman: Guilty.

Cl. of Arr.: Is Robert Lamley guilty, &c.?— Foreman: Not guilty.

Cl. of Arr.: Is William Jenkins guilty, &c.? — Foreman: Not guilty.

Cl. of Arr.: Is Gabriel Loffe guilty, &c.? — Foreman: Guilty.

Cl. of Arr.: Is Hugh Parrot guilty, &c.? — Foreman: Guilty.

Cl. of Arr.: Is Richard Barlicorn guilty, &c.? — Foreman: Not guilty.

Cl. of Arr.: Is Abel Owens guilty, &c.? — Foreman: Guilty.

Cl. of Arr.: Is Darby Mullins guilty, &c.? — Foreman: Guilty.

(Then William Kidd and the other nine persons, were further arraigned upon four indictments, in manner following:)

Cl. of Arr.: William Kidd, hold up thy hand. (Which he did, and so the other nine.) You stand indicted by the name of William Kidd, late of London, mariner, &c.

The Jurors for our sovereign lord the king do, upon their oath, present, That William Kidd, late of London, mariner, &c., the 20th day of September, in the 9th year of the reign of our sovereign lord William the 3rd, by the grace of God, of England, Scotland, France, and Ireland king, defender of the faith, &c. by force and arms, &c. upon the high sea, in a certain place, distant about 50 leagues from the port of Carrawar, in the East Indies, and within the jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break and enter a certain ship called a Moorish ship, then being a ship of certain persons (to the jurors aforesaid unknown), and then and there piratically and feloniously did make an assault in and upon certain mariners

(whose names to the jurors aforesaid are unknown) in the same ship, in the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid mariners of the same ship, in the ship aforesaid then being, in corporal fear of their lives, then and there in the ship aforesaid, upon the high sea, in the place aforesaid, distant about 50 leagues from the port of Carrawar aforesaid, in the East Indies aforesaid, and within the jurisdiction aforesaid, piratically and feloniously did steal, take and carry away 100 pound weight of coffee, of the value of 5*l.* of lawful money of England, 60 pound weight of pepper of the value of 3*l.* of lawful money of England, 1 cwt. of myrrh, of the value of 5*l.* of lawful money of England, and 20 pieces of Arabian gold, of the value of 8*l.* of lawful money of England, the goods, chattels and monies of certain persons (to the jurors aforesaid unknown) then and there upon the high sea aforesaid, in the aforesaid place, distant about 50 leagues from the port of Carrawar aforesaid, in the East Indies aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid ship, in the custody and possession of the said mariners in the said ship, from the said mariners of the said ship, and from their custody and possession, then and there upon the high sea aforesaid, in the place aforesaid, distant about 50 leagues from the port of Carrawar aforesaid, in the East Indies aforesaid, and within the jurisdiction aforesaid, against the peace of the said now sovereign lord the king, his crown and dignity, &c.

How sayest thou, William Kidd, art thou guilty of this piracy and robbery, whereof thou standest indicted, or not guilty?

Kidd: Not guilty.

Cl. of Arr.: Culprit, how wilt thou be tried?

Kidd: By God and my country.

Cl. of Arr.: God send thee a good deliverance. (And so of the other nine).

Cl. of Arr.: William Kidd, hold up thy hand. (Which he did: and so the other nine). You stand indicted by the name of William Kidd, late of London, mariner. (And so of the rest.)

The Jurors for our sovereign lord the king do, upon their oath, present, that William Kidd, late of London, mariner, &c.; the 27th day of November, in the 9th year of the reign of our sovereign lord William the Third, by the grace of God, of England, Scotland, France, and Ireland, king, defender of the faith, &c. by force and arms, &c. upon the high sea, in a certain place, distant about four leagues from Callicut, in the East-Indies, and within the jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break, and enter a certain ship called a Moorish ketch, then being a ship of certain persons (to the jurors aforesaid unknown), and then and there piratically and feloniously did make an assault in and upon certain mariners (whose names to the jurors aforesaid are unknown) in the same ship in the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid mariners of the same ship, in the ship aforesaid then being, in corporal fear of their lives, then and there in the ship aforesaid, upon the high sea, in the place aforesaid, distant about four leagues from Callicut aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, piratically and feloni-

ously did steal, take and carry away the same ship, and the apparel and tackle of the same ship, of the value of 500*l.* of lawful money of England; 11 bales of cotton, of the value of 60*l.* of lawful money of England; two horses, each of them of the price of 20*l.* of lawful money of England; and 50 Indian quilts of the value of 5*l.* of lawful money of England (the goods and chattels of certain persons to the jurors aforesaid unknown) then and there upon the high sea aforesaid in the aforesaid place, distant about four leagues from Callicut aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid ship, in the custody and possession of the said mariners in the same ship, from the said mariners of the said ship, and from their custody and possession, then and there upon the high sea aforesaid, in the place aforesaid, distant about four leagues from Callicut aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, against the peace of our said now sovereign lord the king, his crown and dignity, &c.

How sayest thou, William Kidd, art thou guilty of this piracy and robbery whereof thou standest indicted, or not guilty?

Kidd: Not guilty.

Cl. of Arr.: Culprit, how wilt thou be tried?

Kidd: By God and my country.

Cl. of Arr.: God send thee a good deliverance. (And so of the other nine.)

Cl. of Arr.: Wm. Kidd, hold up thy hand. (Which he did: and so the other nine.)

You stand indicted by the name of William Kidd, late of London, mariner. (And so the rest.)

The Jurors for our sovereign lord the king do, upon their oath, present, that Wm. Kidd, late of London, mariner, &c.; the 28th day of December, in the 9th year of the reign of our sovereign lord William the 3rd, by the grace of God of England, Scotland, France and Ireland, king, defender of the faith, &c. by force and arms, &c. upon the high sea, in a certain place, distant about four leagues from Callicut, in the East-Indies, and within the jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break and enter a certain ketch, called a Moorish ketch, then being a ketch of certain persons (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault in and upon certain mariners (whose names to the jurors aforesaid are unknown) in the same ship, in the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously, did put the aforesaid mariners of the same ketch, in the ketch aforesaid then being, in corporal fear of their lives, then and there in the ketch aforesaid, upon the high sea, in the place aforesaid, distant about four leagues from Callicut aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away the said ketch, and the apparel and tackle of the same ketch, of the value of 50*l.* of lawful money of England; thirty tubs of sugar-candy, of the value of 15*l.* of lawful money of England; six bales of sugar, of the value of 6*l.* of lawful money of England; and ten bales of tobacco, of the value of 10*l.* of lawful money of England, the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there upon

the high sea aforesaid, in the aforesaid place, distant about four leagues from Callicut aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid ketch, in the custody and possession of the said mariners in the same ketch, from the said mariners of the said ketch, and from their custody and possession, then and there upon the high sea aforesaid, in the place aforesaid, distant about four leagues from Callicut aforesaid, in the East-Indies aforesaid, and within the jurisdiction aforesaid, against the peace of our said now sovereign lord the king, his crown and dignity, &c.

How sayest thou, William Kidd, art thou guilty of the piracy and robbery whereof thou standest indicted, or not guilty?

Kidd: Not guilty.

Cl. of Arr.: How wilt thou be tried?

Kidd: By God and my country.

Cl. of Arr.: God send thee a good deliverance. (And so of the other nine.)

Cl. of Arr.: William Kidd, hold up thy hand. (Which he did: and so the other nine.)

You stand indicted by the name of William Kidd, late of London, mariner, &c. (And so of the rest.)

The jurors for our sovereign lord the king do, upon their oath, present, That William Kidd, late of London, mariner, &c. the 20th day of January, in the 9th year of the reign of our sovereign lord, William the 3rd, by the grace of God of England, Scotland, France, and Ireland king, defender of the faith, &c. by force of arms, &c. upon the high sea, in a certain place, distant about 12 leagues from Callicut in the East Indies, and

within the jurisdiction of the Admiralty of England, did piratically and feloniously set upon, board, break, and enter a certain ship, called a Portuguese ship, then being a ship of certain persons (to the jurors aforesaid unknown), and then and there piratically and feloniously did make an assault in and upon certain mariners, subjects of the king of Portugal (whose names to the jurors aforesaid are unknown) in the same ship, in the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid mariners of the same ship, in the ship aforesaid then being, in corporal fear of their lives, then and there in the ship aforesaid, upon the high sea, in the place aforesaid, distant about 12 leagues from Callicut aforesaid, in the East Indies aforesaid, and within the jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away two chests of opium, of the value of 40*l.* of lawful money of England; 80 bags of rice, of the value of 12*l.* of lawful money of England; one ton of bees-wax, of the value of 10*l.* of lawful money of England; 30 jars of butter, of the value of 10*l.* of lawful money of England; and half a ton of iron, of the value of 4*l.* of lawful money of England, the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there upon the high sea aforesaid, in the aforesaid place, distant about 12 leagues from Callicut aforesaid, in the East Indies aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid ship in the custody and possession of the said mariners in the same ship, from the said mariners of the same ship, and from their custody and possession,

then and there upon the high sea aforesaid, in the place aforesaid, distant about 12 leagues from Callicut aforesaid, in the East Indies aforesaid, and within the jurisdiction aforesaid, against the peace of our said now sovereign lord the king, his crown and dignity, &c.

How sayest thou, William Kidd, art thou guilty of the piracy and robbery whereof thou standest indicted, or not guilty?

Kidd: Not guilty.

Cl. of Arr.: How wilt thou be tried?

Kidd: By God and my country.

Cl. of Arr.: God send thee a good deliverance. (And so of the other nine.)

Here the court adjourned until the next morning at 8 o'clock, May 9, 1701. A new jury being sworn, Bradinham and Palmer, witnesses for the king, were required to repeat the testimony brought out in the trial for "Piracy and Robbery on the ship called the Quedagh Merchant," which proved the taking of the Moorish ship September 20th, the Moorish ketch November 27th, the Moorish ketch December 28th, and the Portuguese ship January 20th. These four ships were seized and plundered prior to the piracy of the Quedagh Merchant, though Kidd and his associates were tried in the order given. Justice Turton thus sums up the evidence as regards the two Moorish ships captured, one in September, the other in November:

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Then he sailed towards the coast of Carrawar, and there they met with the first Moorish ship, that he is now charged with; and this ship they seized, and took one Parker, who was the captain: they seized him, and also a Portuguese, whom they made use of as an interpreter; and some of the men, whom they treated in a barbarous manner. They tell you, that there happening to be an English factory, near that place; they of that factory understanding that this Parker and the Portuguese were on board the ship, they sent to demand them, and capt. Kidd denied them, and said, there were no such men on board, and yet he had hid them under the deck. You are also told by the witnesses what they found and seized on board this ship, viz. pepper, coffee, myrrh, and some gold. They have told you, the gold was shared amongst them, and in specie, as I remember; every mess had two pieces, and the rest of the goods were divided amongst them in proportion, according to their original agreement, or they had their shares of the money for which they were sold. This was the first ship that he stands charged with the piratical taking of; and this ship was a Moorish ship, and did belong to the natives of that place.

And then it appears they went to the coast of Malabar, and there they took the other ship that he is charged with by the other indictment; the first was taken in September, and this in November. There was on board that ship two horses, and several bales of cotton, and some other goods, and this also belonged to the Moors and one skipper Mitchell, a Dutchman, was captain of her. When they had taken this ship, they went to

Madagascar, and there, it is told you, they sunk this vessel: and they having several other goods that they had taken out of another vessel, the goods were sold, and divided between the captain and the rest of the men, according to their several proportions. And it is proved to you, that every one of these prisoners had some share of the product of those goods.

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Gentlemen, there are three persons that were servants, that is, Robert Lamley, he was servant to Owens the cook; William Jenkins, he was servant to the mate; and Richard Barlicorn, who was servant to capt. Kidd: now, though these might have their shares delivered to them, yet it is to be presumed that they were to be accountable to their masters: and they being servants, I suppose you will think to distinguish them from the rest.

Gentlemen, this is the sum of the evidence given for king; and, indeed, this seems to be as strong an evidence against the prisoners at the bar as can be: they did endeavour to take the Mocca fleet, but they were too strong for them; and they could have no suspicion that they were French, for they had English, Dutch, and Moorish colours; so that captain Kidd could have no pretence from his commission to look after these ships: there were no French among them, and yet there he lay three weeks waiting for them; but they did actually take these two ships mentioned in the indictments, and disposed of the goods, and shared the product among themselves. Here is all the evidence that can be given of piracy.

The jury acquitted the three servants and found Kidd and the others "guilty."

Kidd and six of his accomplices then were tried for taking the Moorish ketch December 28th and the Portuguese ship January 20th.

Just. Turton: Gentlemen of the jury, Here are several persons, viz. William Kidd, Robert Lamley, William Jenkins, Gabriel Loffe, Hugh Parrot, Richard Barlicorn, and Darby Mullins, they all stand indicted for piracy: indeed there are three more indicted with them, viz. Nicholas Churchill, James Howe, and Abel Owens; but they have confessed themselves guilty, and you are now eased of any enquiry concerning them, and are only to consider of the other seven, who are indicted upon two several indictments; one is, for the piratical and felonious taking away a Moorish ketch, to the value of 50*l.* and the goods therein to the value of 100*l.*; this was in December 1697: and the other is, for piratically seizing and taking away goods to the value of 70*l.* from the Portugal ship, twelve leagues from Callicut, in the East Indies. Now to these two indictments these prisoners at the bar have pleaded, not guilty; and whether they are so or no, you are to determine upon the evidence given you. There have been two witnesses produced for the King, Robert Bradinham, and Joseph Palmer: I will not trouble you with the repetition of their distinct evidence, because they agree in all things; and if I mention what one has said, it is, in effect, what the other has said also.

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The Capt. lays the blame on the men, and the men seem to lay the blame on him: He went out on a good design, to take pirates, had he pursued it; but instead of that, it appears that he turned pirate himself, and took the ships and goods of friends instead of enemies, which was a notorious breach of trust, as well as a manifest violation of law. The evidence seems strong against them, which I leave to you to consider of.

(Then the jury withdrew and after a short space brought in their verdict.)

Cl. of Arr.: Are you agreed of your Verdict? Omnes: Yes.

Cl. of Arr.: Who shall speak for you? Omnes: Foreman.

Foreman: Guilty. (And so of the rest.)

Cl. of Arr.: William Kidd, hold up thy hand. (Which he did) What cans't thou say for thyself? Thou hast been indicted for several piracies, and robberies, and murder and hereupon hast been convicted: What hast thou to say for thy self, why thou shouldst not die accordingly to law?

Kidd: I have nothing to say, but that I have been sworn against by perjured and wicked people.

(Then proclamation for silence was made, while sentence was pronouncing.)

Dr. Oxenden: You the prisoners at the bar, William Kidd, Nicholas Churchill, James Howe, Gabriel Loffe, Hugh Parrot, Abel Owens, Darby Mullins; you have been severally indicted for several piracies and robberies, and you William Kidd for murder. You have been tried by the laws of the land, and convicted; and noth-

ing now remains, but that sentence be passed according to the law. And the sentence of the law is this: "You shall be taken from the place where you are, and carried to the place from whence you came, and from thence to the place of execution, and there be severally hanged by your necks until you be dead. And the Lord have mercy on your souls."

Kidd: My Lord, it is a very hard sentence. For my part, I am the innocentest person of them all, only I have been sworn against by perjured persons.

Captain Kidd was afterwards executed according to the sentence.

In the first volume of the *Newgate Calendar*, published in London by Andrew Knapp and William Baldwin, Attorneys at Law, in 1824, is the following account of Captain Kidd. It contains information not brought out in the trial:

Piracy is an offense committed on the high seas, by villains who man and arm a vessel for the purpose of robbing fair traders. It is also piracy to rob a vessel lying in shore at anchor, or at a wharf. The River Thames, until the excellent establishment of a marine police, was infested by gangs of fresh-water pirates, who were continually rowing about, watching the homeward-bound vessels; which, whenever an opportunity offered, they boarded, and stole whatever part of their cargo they could hoist into their boats. But, of late

years, the shipping there, collected from every part of the habitable globe, have lain in tolerable security against such disgraceful depredations, and the introduction of the dock system has further increased this security.

Captain John Kidd¹ was born in the town of Greenock, in Scotland, and bred to the sea. Having quitted his native country, he resided at New York,² where he became owner of a small vessel, with which he traded among the pirates, obtained a thorough knowledge of their haunts, and could give a better account of them than any other person whatever. He was neither remarkable for the excess of his courage nor for the want of it. In a word, his ruling passion appeared to be avarice; and to this was owing his connexion with the pirates. While in their company he used to converse and act as they did; yet, at other times, he would make singular professions of honesty, and intimate how easy a matter it would be to extirpate these abandoned people, and prevent their future depredations.

His frequent remarks of this kind engaged the notice of several considerable planters, who, forming a more favorable idea of him than his true character would warrant, procured him the patronage with which he was afterwards honoured. For a series of years great complaints had been made of the piracies committed in the West Indies, which had been greatly encouraged by some of the inhabitants of North America, on account of the advantage they derived from purchasing effects

¹ In his trial he is called Captain William Kidd.

² He claimed London as his residence.

thus fraudulently obtained. This coming to the knowledge of King William III. he, in the year 1695, bestowed the government of New England and New York on the Earl of Bellamont, an Irish nobleman, of distinguished character and abilities, who immediately began to consider the most effectual method to redress the evils complained of, and consulted with Colonel Livingston, a gentleman who had great property in New York, on the most feasible steps to obviate the evils so long complained of. At this juncture Captain Kidd was arrived from New York in a sloop of his own: him, therefore, the colonel mentioned to Lord Bellamont as a bold and daring man, who was very fit to be employed against the pirates, as he was perfectly well acquainted with the places which they resorted to. This plan met with the fullest approbation of his lordship, who mentioned the affair to his Majesty, and recommended it to the Board of Admiralty: but such were then the hurry and confusion of public affairs, that, though the design was approved, no steps were taken towards carrying it into execution.

Accordingly Colonel Livingston made application to Lord Bellamont, that, as the affair would not well admit of delay, it was worthy of being undertaken by some private persons of rank and distinction, and carried into execution at their own expense, notwithstanding public encouragement was denied it. His lordship approved of this project, but it was attended with considerable difficulty: at length, however, the Lord Chancellor Somers, the Duke of Shrewsbury, the Earl of Romney, the Earl of Oxford, and some other persons, with Colonel Livingston, and Captain Kidd, agreed to raise 6000*l.* for the expense of the voyage; and the colonel and captain

were to have a fifth of the profits of the whole undertaking.¹

Matters being thus far adjusted, a commission, in the usual form, was granted to Captain Kidd, to take and seize pirates, and bring them to justice; but there was no special clause or proviso to restrain his conduct or regulate the mode of his proceeding. Kidd was known to Lord Bellamont, and another gentleman presented him to Lord Romney. With regard to the other parties concerned, he was wholly unacquainted with them; and, so ill was this affair conducted, that he had no private instructions how to act, but received his sailing orders from Lord Bellamont, the purport of which was, that he should act agreeably to the letter of his commission.

Accordingly a vessel was purchased and manned, and received the name of the Adventure Galley; and in this Captain Kidd sailed for New York towards the close of the year 1695, and in his passage made prize of a French ship. From New York he sailed to the Madeira Islands, thence to Bonavista and St. Jago, and from this last place to Madagascar. He now began to cruise at the entrance of the Red Sea; but, not being successful in those latitudes, he sailed to Calicut, and there took a ship of one hundred and fifty tons' burden, which he carried to Madagascar, and disposed of there. Having sold this prize he again put to sea, and, at the expiration of five weeks, took the Quedah Merchant, a ship of above four hundred tons' burden, the master of which was an Englishman, named Wright, who had two Dutch

¹The terms of this contract were not included in the trial.

mates on board, and a French gunner; but the crew consisted of Moors, natives of Africa, and were about ninety in number. He carried the ship to St. Mary's, near Madagascar, where he burnt the Adventure Galley, belonging to his owners, and divided the lading of the Quedah Merchant with his crew, taking forty shares to himself.

Then they went on board the last-mentioned ship, and sailed for the West Indies. It is uncertain whether the inhabitants of the West India Islands knew that Kidd was a pirate, but he was refused refreshments at Anguilla and St. Thomas's, and therefore sailed to Mona, between Porto Rico and Hispaniola,¹ where, through the management of an Englishman, named Bolton, he obtained a supply of provisions from Curacoa. He now bought a sloop of Bolton, in which he stowed great part of his ill-gotten effects, and left the Quedah Merchant, with eighteen of the ship's company, in Bolton's care. While at St. Mary's, ninety men of Kidd's crew left him, and went on board the Mocha Merchant, an East India ship, which had just then commenced to pirate.

Kidd now sailed in the sloop, and touched at several places, where he disposed of a great part of his cargo, and then steered for Boston, in New England. In the interim, Bolton sold the Quedah Merchant to the Spaniards, and immediately sailed as a passenger in a ship for Boston, where he arrived a considerable time before Kidd, and gave information of what had happened, to Lord Bellamont. Kidd, therefore, on his arrival, was seized

¹The Island of Cuba.

by order of his lordship, when all he had to urge in his defence was, that he thought the *Quedah Merchant* was a lawful prize, as she was manned with Moors, though there was no kind of proof that this vessel had committed any act of piracy.

Upon this the Earl of Bellamont immediately dispatched an account to England of the circumstances that had arisen, and requested that a ship might be sent for Kidd, who had committed several other notorious acts of piracy. The ship *Rochester* was accordingly sent to bring him to England; but this vessel, happening to be disabled, was obliged to return: a circumstance which greatly increased a public clamour which had for a time subsisted respecting this affair, and which, no doubt, took its rise from party prejudice. It was carried to such a height, that the members of parliament for several places were instructed to move the House for an inquiry into the affair; and accordingly it was moved, in the House of Commons, that 'The letters-patent granted to the Earl of Bellamont and others, respecting the goods taken from pirates, were dishonourable to the king, against the law of nations, contrary to the laws and statutes of this realm, an invasion of property, and destructive to commerce.' Though a negative was put on this motion, yet the enemies of Lord Somers and the Earl of Oxford continued to charge those noblemen with giving countenance to pirates; and it was even insinuated that the Earl of Bellamont was not less culpable than the actual offenders. Another motion was accordingly made in the House of Commons, to address his majesty that 'Kidd might not be tried till the next session of parliament; and that the Earl of Bellamont

might be directed to send home all examinations and other papers relative to the affair.' This motion was carried, and the King complied with the request which was made.

As soon as Kidd arrived in England, he was sent for, and examined at the bar of the House of Commons, with a view to fix part of his guilt on the parties who had been concerned in sending him on the expedition; but nothing arose to criminate any of those distinguished persons. Kidd, who was in some degree intoxicated, made a very contemptible appearance at the bar of the House; on which a member, who had been one of the most earnest to have him examined, violently exclaimed, 'This fellow! I thought he had been only a knave, but unfortunately he happens to be a fool likewise.' Kidd was at length tried at the old Bailey, and was convicted on the clearest evidence; but neither at that time nor afterwards charged any of his employers with being privy to his infamous proceedings.

He suffered, with one of his companions (Darby Mullins), at Execution Dock, on the 23d of May, 1701. After Kidd had been tied up to the gallows, the rope broke, and he fell to the ground; but being immediately tied up again, the ordinary, who had before exhorted him, desired to speak with him once more; and, on this second application, entreated him to make the most careful use of the few further moments thus providentially allotted him for the final preparation of his soul to meet its important change. These exhortations appeared to have the wished-for effect; and he was left, professing his charity to all the world, and his hopes of salvation through the merits of his Redeemer.

Thus ended the life of Captain Kidd, a man who, if he had entertained a proper regard for the welfare of the public, or even his own advantage, might have become an useful member of society, instead of a disgrace to it. The opportunities he had obtained of acquiring a complete knowledge of the haunts of the pirates rendered him one of the most proper men in the world to have extirpated this nest of villains; but his own avarice defeated the generous views of some of the greatest and most distinguished men of the age in which he lived. Hence we may learn the destructive nature of avarice, which generally counteracts all its own purposes. Captain Kidd might have acquired a fortune, and rendered a capital service to his country, in a point the most essential to its interests; but he appeared to be dead to all those generous sensations which do honour to humanity, and materially injured his country, while he was bringing final disgrace upon himself.

The story of this wretched malefactor will effectually impress on the mind of the reader the truth of the old observation, that "Honesty is the best policy."

APPENDIX.

Page 62. In this connection, the following account of the origin of the motto on the official seal of the Department of Justice is interesting. The extract was copied from a document in the Department by order of Assistant Attorney-General James E. Boyd:

“In response to your inquiry touching the origin and adoption of the Latin inscription on the seal of this Department, *Qui pro domina justitia sequitur*, I take pleasure in informing you that, according to a Department tradition, it was suggested to Attorney-General Black by a passage in Lord Coke’s Institutes, Part 3, folio 79, which reads thus: ‘And I well remember, when the Lord Treasurer Burleigh told Queen Elizabeth, Madame, here is your Attorney-General (I being sent for) *qui pro domina regina sequitur*, she said she would have the records altered; for it should be *attornatus generalis qui pro domina veritate sequitur*.’

“The first of these phrases is believed to have been quoted by Burleigh from a Latin form then in use (all judicial proceedings were at that time required to be recorded in Latin) in making up the record of actions brought by the Attorney-General on behalf of the Crown. It is translated, ‘who (the Attorney-General) sues for (or on behalf of) our lady the Queen.’

“‘*Sequor*’ is employed in the same sense (i. e., to sue or bring suit) in the Statute of Westminster 2, Chap. 18. as follows: ‘*in electione illius qui sequitur pro hujusmodi debito*’ (see Coke’s Institutes, Part 2, folio 394). In fact our word ‘*sue*’ comes from ‘*sequor*.’ (See Century Dictionary.)

“You will observe that the inscription on the seal is the Latin phrase used by Burleigh, with ‘*justitia*’ substituted for ‘*regina*.’

“When the motto was adopted the law department of the Government was known as the ‘Attorney-General’s Office.’

The Department of Justice was subsequently created (June 22, 1870) and the Attorney-General made the head thereof; but the seal of the former Attorney-General's office was retained as the seal of the Department of Justice with the words 'Department of Justice' inserted therein in lieu of 'Attorney-General's Office.'

"It would naturally be expected that this Department would justify the adoption of its motto by legal rather than classical precedent."

Page 117. This letter of Sir Walter Raleigh to King James is his own defense against Count Gondomar's accusations:

"May it please your most excellent majesty: In my journey outward-bound I had my men murdered at the island, and yet spared to take revenge: if I did discharge some Spanish barques taken without spoil: if I did forbear all parts of the Spanish Indies, wherein I might have taken 20 of their towms on the sea coasts, and did only follow the Enterprize I undertook for Guiana, where, without any directions from me, a Spanish village was burnt, which was new set up within three miles of the Mine, by your majesty's favour, I find no reason why the Spanish Ambassador should complain of me. If it were lawful for the Spaniards to murder 26 Englishmen, binding them back to back, and then cutting their throats, when they had traded with them a whole month, and came to them on land without so much as one sword; and that it may not be lawful for your majesty's subjects, being charged first by them, to repel force by force: we may justly say, O miserable English! If Parkes and Metham took Campeach and other places in the Honduraes, seated in the heart of the Spanish Indies, burned towms, killed Spaniards, and had nothing said to them at their return, and myself forbore to look into the Indies, because I would not offend: I may justly say, O miserable Sir Walter Raleigh! If I spent my poor estate, lost my son, suffered by sickness and otherwise, a world of miseries; if I have resisted, with the manifest hazard of my life, the robberies and spoils which my company would have made; if when I was poor I might have made myself rich; if, when I had gotten my liberty, which all men and nature itself do so much prize, I voluntarily lost it: if, when I was sure of my life, I rendered

it again: if I might elsewhere have sold my ship and goods, and put 5 or 6000*l.* in my pocket, and yet have brought her to England: I beseech your majesty to believe that all this I have done because it should not be said to your majesty, that your majesty had given liberty and trust to a man, whose end was but the recovery of his liberty, and who had betrayed your majesty's trust. My mutineers told me, that if I returned for England, I should be undone; but I believed in your majesty's goodness, more than in all their arguments. Sure I am, that I am the first that being free, and able to enrich myself, have embraced poverty and peril: and as sure I am, that my example shall make me the last. But your majesty's wisdom and goodness I have made my judge: who have ever been, and shall ever be, your majesty's most humble vassal.

“WALTER RALEIGH.”

Sir Walter Raleigh was the last survivor of the favorites of Queen Elizabeth and of the distinguished English officers who defeated the Spanish in 1588.

There is retribution in history. To-day, the descendants of the colonists who settled the “Virginia” he discovered (his royal patent from Queen Elizabeth extended from the Atlantic to the Pacific and far to the north and south of that State's boundaries), are foremost among those who have swept the power of Spain from the Western Hemisphere. The cruiser RALEIGH fired the first shot in the battle of Manila Bay. Men of the blood of Walter Raleigh's race have driven the flag of Castile and Arragon from the West Indies, the islands of the Pacific Ocean, and eliminated the ancient prestige of Spain from the history of the future.

The royal line of Stuart is extinct. The name of Raleigh lives and is honored throughout the civilized world.

The fact that Sir Walter Raleigh spent 40,000*l.* of his private funds in the expedition which resulted in the discovery of “Virginia” is not generally known. Under the terms of the royal patent granted him, the new country was “to belong to him and to his heirs forever.” One-fifth of the ore discovered was to revert to the crown of England. Queen Elizabeth, and not Sir Walter Raleigh, as is commonly believed, named the land “Virginia.”

Raleigh's wisdom and foresight first suggested the control of the Isthmus of Panama by the Anglo-Saxon.

Investigation never fails to enhance his reputation as a courtly knight, a brave man, and an accomplished student of men and affairs.

The language used by Sir Edward Coke as Attorney-General in the Trial of 1603 and the tribunal at Westminster, October 28, 1618, presided over by Lord Chief Justice Coke, are everlasting stains on the ermine of that great lawyer and jurist.

Page 120. The reference in the closing lines of the *Pilgrimage*, a poem written by Sir Walter Raleigh during his imprisonment in the Tower, is evident to one who has read the Trial.

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“From thence to heaven’s bribeless hall
 Where no corrupted voices brawl,
 No conscience, molten into gold,
 No forged accuser, bought or sold,
 No cause deferred, no vain-spent journey,
 For there Christ is the King’s Attorney:
 Who pleads for all without degrees,
 And He hath angels, but no fees:
 And when the grand twelve million jury
 Of our sins, with direful fury
 ’Gainst our souls black verdicts give,
 Christ pleads his death, and then we live.
 Be thou my speaker, taintless pleader,
 Unblotted lawyer, true proceeder!
 Thou giv’st salvation even for alms —
 Not with a bribed lawyer’s palms.
 And this is mine eternal plea
 To Him that made heaven, earth and sea,
 That since my flesh must die so soon,
 And want a head to dine next noon,
 Just at the stroke when my veins start and spread
 Set on my soul an everlasting head:
 Then am I, like a palmer, fit
 To tread those blest paths which before I writ
 Of death and judgment, heaven and hell,
 Who oft doth think, must needs die well.”

— SIR WALTER RALEIGH.

Page 148. The Lord Chief Baron Ward, the Solicitor General, Dr. Oxenden, and others who conducted this trial, always used the expressions "Was you," "You was," etc.

One's first impulse is to blame the printer, the proof-reader, or the man who reported the trial. But "you was" was good English at that time and occurs in the writings of Addison, Steel, Swift, and others. Later "you were" became the usage as being a more ceremonious and courteous manner of addressing a person.

The proceedings were probably reported correctly.

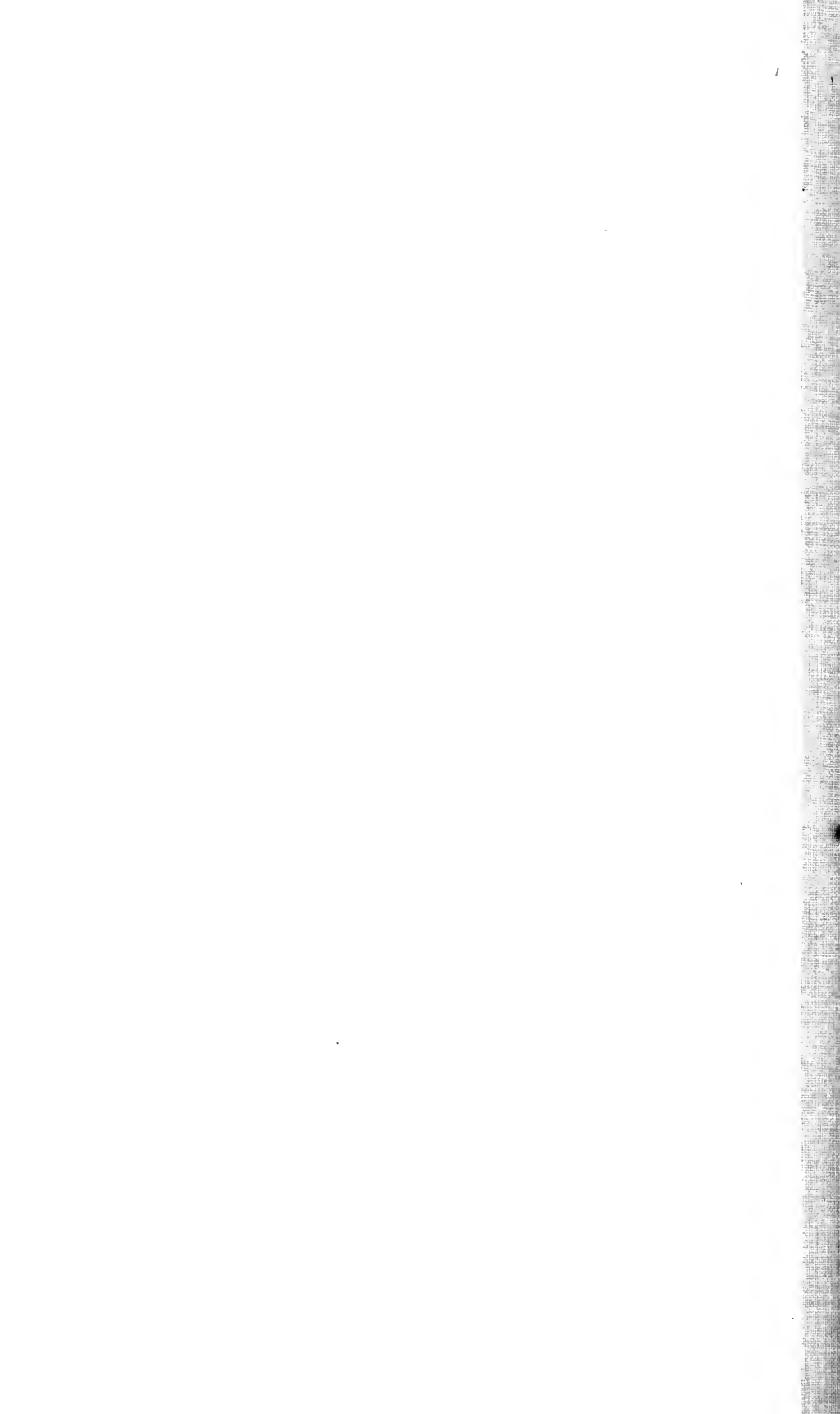
Major Frank Strong of the Department of Justice is authority for the statement that a system of short-hand was in vogue about that date. He writes: "In the trial of John Huggins, Esq., Warden of the Fleet Prison, for the Murder of Edward Arne at the Sessions House in the Old Bailey, May 21st, 1729, before Mr. Justice Page, Mr. Baron Carter and others, his Majesty's Justices, there is a foot-note to this effect: '*These trials of Huggins, Bambridge, and Aeton were all taken in Short-Hand by Mr. Luke Kenn (Clerk to the Committee appointed to enquire into the Gaols of the Fleet, Marshalsea &c.), who in his Life-time asked Two Hundred Pounds for the copy of them.*'" Hargrave's State Trials, vol. 9, page 111.

Page 178. Captain John Avery was born near Plymouth, England, about the year 1650. He chose a seafaring life, and soon became the mate of a merchantman. At this time Spain was still clinging desperately to her old policy of preserving the trade of her possessions in the new world for herself. She strove to maintain her monopoly by the most stringent laws. In the words of an ancient decree, no person could travel for merchandise, or for any other cause, to the said lands or islands, without special license from the reigning prince. One of the kings of Spain declared he would as soon give his two eyes as allow other nations to visit his West Indian territories. It was one thing to make prohibitive laws: it was quite another matter to enforce them. Spain, now fast approaching the stages of imperial decay, found the task of upholding her monopoly one for which she was becoming less and less capable. She maintained a coast-guard fleet, whose preposterous duty it was to seize all ships that dared to come within fifteen miles of the forbidden land. But the fleet was small and inefficient, and

the smugglers numerous and bold. Spain and Great Britain were in alliance against France, and the French free traders were giving most trouble to the Spaniards. In their extremity the Spaniards hired several vessels from Great Britain to increase the strength of the coast guard. Some enterprising Bristol merchants fitted out two stout ships, well armed, and manned by about two hundred and fifty adventurous fellows who were ready to go anywhere and do anything. Every, or Avery, sailed as first mate on one of these ships. When he reached the high seas he instigated a mutiny among the men. One night, when the Captain was drunk in his cabin (the ship was anchored off Coruña, where he was to receive his orders), Avery and his mutineers put to sea. When the Captain awoke he was sent ashore in a boat, and Avery sailed for Madagascar, then the favorite resort for pirates in the East Indies, as Jamaica was in the West Indies. After treacherously deceiving other pirates, Avery and his men captured the Great Mogul, a large vessel, whose cargo was valued at 300,000*l*. The pirates divided the plunder and sailed for Boston. Here they lived for awhile. Being unable to dispose of their diamonds, golden vessels, etc., taken from the Oriental ship, Avery and several of his followers returned to England. He confided his secret to certain Bristol dealers, who paid him a pittance for his riches, promising more when the jewels were sold. These promises were never kept, and Avery died on his native shores, hunted and in actual want, while his king and his countrymen believed him to be living in royal state in Madagascar as a Pirate King. He and Captain Kidd were alone excluded from the benefits of the King's Proclamation.







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