

Trials for Treason and Sedition, 1792–1794

*The Trial of Thomas Hardy for High Treason
(1794), Vol. I*

Edited by
John Barrell and Jon Mee





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Volume 2

The Trial of Thomas Hardy for High Treason (1794), Vol. I

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CONTENTS

<i>The Trial of Thomas Hardy for High Treason</i> (1794), Vol. I	1
Editorial Notes	429



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*The Trial of Thomas Hardy for High Treason,
at the Sessions House in the Old Bailey,
4 vols (London, Martha Gurney, 1794–5)*

Thomas Hardy (1752–1832) was born near Stirling, the son of a merchant seaman. A member of the Presbyterian Church of Scotland, he had originally been intended for the ministry, but when Hardy was eight his father died, the family's small fortune melted away, and Hardy was set to learn the trade of shoemaking. At the age of twenty-two he moved to London where he remained for the rest of his life. His belief in the necessity of universal manhood suffrage seems to have originated in 1791, when he opened a shop at no. 9 Piccadilly, where he lived with his wife Lydia and Olaudah Equiano, the abolitionist and former slave, and began reading the pamphlets produced by the reformers of the early 1780s, in particular the Duke of Richmond's *Letter to Colonel Sharman*. In January 1792, with a few friends who met in the Bell Inn in Exeter Street, he formed the London Corresponding Society, and became its secretary.

Following his arrest in May 1794, in circumstances described in the introduction, Hardy was held in the Tower of London along with John Horne Tooke, John Thelwall and the other leaders of the LCS and the SCI. Early the following month his shop was besieged by loyalist rioters celebrating the victory claimed by Lord Howe over the French fleet, 'the Glorious First of June'. His pregnant wife escaped by being pulled through a narrow window, and in August she died after giving birth to a still-born child.

Throughout the summer and autumn of 1794 Hardy was widely expected to be convicted. In the wording of the Habeas Corpus Suspension Bill in May, parliament itself appeared to have prejudged the outcome of the trials. During the trial of Robert Watt in early September, evidence was taken from informers on the LCS in an attempt to connect the society with the conspiracy to seize Edinburgh Castle. A month before the start of Hardy's trial the London newspapers were excitedly reporting the discovery of an LCS plot, in fact the invention of another informer, to assassinate George III with a dart fired from an air-

gun. By the time the trial began on 28 October, Hardy appeared to be the leader of a nationwide *coup d'état* which aimed to raise a republic on the corpse of the king and the ruins of the constitution.

When the trial finally began, however, the case against Hardy turned out to be thinner than had been expected, not least because it took the Attorney General Sir John Scott nine hours to explain it. 'Nine hours?' remarked the former Lord Chancellor Lord Thurlow. 'Then there is no treason, by God!' Treason was meant to 'stand out', to be established 'upon direct and manifest proof', but Hardy's treason, as elaborated by the crown lawyers, was nowhere clearly visible. It seemed to depend on an imaginative calculation of the possible, remote consequences of Hardy's actions, backed up by some wilful misreadings of the reform societies' papers and an equally wilful interpretation of the law. Thomas Erskine, Hardy's lead counsel, in a speech which for decades after was regarded as a classic of forensic oratory, insisted that Hardy had never intended more than to persuade parliament to adopt the Duke of Richmond's plan for reform, and gave a lucid and eloquent account of the law to argue that nothing Hardy had done could come within the treason of 'compassing and imagining the king's death'. This and his merciless cross-examination of the government informers called as witnesses were probably the main factors in securing Hardy's acquittal.

Hardy's business was ruined, but he managed to rebuild it slowly, and eventually retired in 1815. For the last decade of his life he was supported by the new radical leader Sir Francis Burdett. He remained quietly active in reform politics, dying a few months after the passing of the reform act of 1832. His autobiography, *Memoir of Thomas Hardy*, an extract of which appears in Volume 8, was published shortly after his death.

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THE
T R I A L
OF
T H O M A S H A R D Y

FOR
High Treason,

AT THE
SESSIONS HOUSE IN THE OLD BAILEY,

ON
*Tuesday the Twenty-eighth, Wednesday the Twenty-ninth,
Thursday the Thirtieth, Friday the Thirty-first of October;
and on Saturday the First, Monday the Third, Tuesday the
Fourth, and Wednesday the Fifth of November, 1794.*

V O L. I.

TAKEN IN SHORT-HAND,

By J O S E P H G U R N E Y.

L O N D O N :

SOLD BY MARTHA GURNEY, BOOKSELLER, 'HOLBORN HILL.

1794.



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T R I A L
OF
THOMAS HARDY
FOR
HIGH TREASON.

ON the tenth day of September, 1794, a Special Commission of Oyer and Terminer was issued under the Great Seal of Great Britain to inquire of certain High Treasons and Misprisions of Treason within the County of Middlesex.

On Thursday, the second of October, the Special Commission was opened at the Session House in Clerkenwell :

P R E S E N T,

The Right Honourable Sir **JAMES EYRE**, Knt.
Lord Chief Justice of his Majesty's Court of Common Pleas ;
The Right Honourable Sir **ARCHIBALD MACDONALD**,
Knt. Lord Chief Baron of his Majesty's Court of Exchequer ;
The Honourable Sir **BEAUMONT HOTHAM**, Knt.
one of the Barons of his Majesty's Court of Exchequer ;
The Honourable Sir **FRANCIS BULLER**, Baronet, one of
the Justices of his Majesty's Court of Common Pleas ;
The Honourable Sir **NASH GROSE**, Knt. one of the
Justices of his Majesty's Court of King's Bench ;
The Honourable Sir **SOULDEN LAWRENCE**, Knt.
one of the Justices of his Majesty's Court of King's Bench ;
And others his Majesty's Justices, &c.

B

After

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After the Commission had been read, the Sheriff delivered in the pannel of the Grand Jury, which was called over, when the following Gentlemen were sworn.

THE GRAND JURY.

Benjamin Winthrop, Esq.

John Henry Schneider, Esq.

Samuel Hawkins, Esq.

Edward Ironside, Esq.

George Ward, Esq.

Benjamin Kenton, Esq.

Thomas Boddam, Esq.

Rawson Hart Boddam, Esq.

Joseph Lancaster, Esq.

John Aris, Esq.

Robert Wilkinson, Esq.

William Pardoe Allet, Esq.

George Galway Mills, Esq.

John Perry, Esq.

Henry Wright, Esq.

Henry Peter Kuff, Esq.

John Hatchett, Esq.

Thomas Winflow, Esq.

Rowland Stephenson, Esq.

Thomas Cole, Esq.

John Campbell, Esq.

LORD

(3)

LORD CHIEF JUSTICE EYRE.

Gentlemen of the Grand Inquest,

You are assembled under the authority of the King's commission, which has been issued for the hearing and determining of the offences of high treason, and misprisions of treason, against the person and authority of the King.

That which hath given occasion for this commission is that which is declared by a late statute, namely, "That a traitorous and detestable conspiracy has been formed for subverting the existing laws and constitution, and for introducing the system of anarchy and confusion which has so lately prevailed in France;" a crime of that deep malignity which loudly calls upon the justice of the nation to interpose, "for the better preservation of his Majesty's sacred person, and for securing the peace, and the laws and liberties of this kingdom."

The first and effective step in this, as in the ordinary criminal proceedings, is, that a Grand Jury of the country should make public inquisition for the King, should diligently inquire, discover, and bring forward to the view of the criminal magistrate, those offences which it is the object of this special commission to hear and to determine.

You are Jurors for our Sovereign Lord the King; you are so styled in every indictment which is presented; but let the true nature of this service be understood. The King commands you to enter upon this inquiry; but the royal authority in this, as in all its other functions, is exerted, and operates ultimately for the benefit of his people. It is the King's object, his duty, to vindicate his peace, his crown, and dignity, because his peace, his crown, and dignity, are the subjects' protection, their security, and their happiness.

It is ultimately for them that the laws have thrown extraordinary fences around the person and authority of the King, and that all attempts against the one or the other are considered

(4)

as the highest crimes which can be committed, and are punished with a severity which nothing but the *salus populi* can justify.

The business of this day calls upon me (in order that you may the better understand the subject which is to come before you) to open to you the nature of that offence, which I have before spoken of in general.

An ancient statute, 25 Edward III, has declared and defined it. I shall state to you so much of that declaration and definition as appears to me to have any probable relation to the business of this day.

By that statute it is declared to be high treason to compass or imagine the death of the King, provided such compassing and imagination be manifested by some act or acts proved (by two witnesses) to have been done by the party accused in prosecution of that compassing and imagination; that is, from the moment that this wicked imagination of the heart is acted upon, that any steps are taken in any manner conducing to the bringing about and effecting the design, the intention becomes the crime, and the measure of it is full.

These acts or steps are technically denominated Overt Acts; and the forms of proceeding in cases of this nature require that these overt acts should be particularly set forth in every indictment of treason; and, from the nature of them, they must constitute the principal head of inquiry for the Grand Jury.

These overt acts involve in them two distinct considerations; 1st, The matter of fact of which they consist; in the next place, the relation of that fact to the design.

With respect to the mere matter of fact, it will be for the Grand Jury to inquire into the true state of it; and I can have very little to offer to your consideration respecting it: and, with respect to the question, whether the fact has relation to the design, so as to constitute an overt act of this species of treason, which involves considerations both of fact and of law, it is impossible that any certain rule should be laid down for your government; overt acts being in their nature all the possible means which may be used in the prosecution of the end proposed; they can
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(5)

can be no otherwise defined, and must remain for ever infinitely various.

Thus far I can inform you : that occasions have unhappily, but too frequently, brought overt acts of this species of treason under consideration ; in consequence of which we are furnished with judicial opinions upon many of them ; and we are also furnished with opinions (drawn from these sources) of text writers—some of the wisest and most enlightened men of their time, whose integrity has been always considered as the most prominent feature of their character, and whose doctrines do now form great landmarks, by which posterity will be enabled to trace, with a great degree of certainty, the boundary lines between high treason, and offences of a lower order and degree.

It is a fortunate circumstance that we are thus assisted ; for it is not to be dissimbled that, though the crime of high treason is “ the greatest crime against faith, duty, and human society,” and though “ the public is deeply interested in every prosecution of this kind, well founded,” there hath been, in the best times, a considerable degree of jealousy on the subject of prosecutions for high treason ; they are state prosecutions, and the consequences to the party accused are penal in the extreme.

Jurors and Judges ought to feel an extraordinary anxiety that prosecutions of this nature should proceed upon solid grounds. I can easily conceive, therefore, that it must be a great relief to Jurors placed in the responsible situation in which you now stand, bound to do justice to their country and to the persons accused, and anxious to discharge this trust faithfully ; sure I am that it is consolation and comfort to us, who have upon us the responsibility of declaring what the law is in cases in which the public and the individual are so deeply interested ; to have such men as the great Sir Matthew Hale, and an eminent Judge of our own times, who, with the experience of a century, concurs with him in opinion, Sir Michael Foster, for our guides.

To proceed by steps : from these writers upon the law of treason (who speak, as I have before observed, upon the authority of adjudged cases) we learn, that not only acts of immediate and direct attempt against the King's life are overt acts of com-

(6)

passing his death, but that all the remoter steps, taken with a view to assist to bring about the actual attempt, are equally overt acts of this species of treason; even the meeting and the consulting what steps should be taken in order to bring about the end proposed, has been always deemed to be an act done in prosecution of the design, and as such an overt act of this treason—This is our first step in the present inquiry. I proceed to observe that the overt acts I have been now speaking of have reference, nearer or more remote, to a direct and immediate attempt upon the life of the King; but that the same authority informs us, that they who aim directly at the life of the King (such, for instance, as the persons who were concerned in the assassination plot in the reign of King William) are not the only persons who can be said to compass or imagine the death of the king. The entering into measures which, in the nature of things, or in the common experience of mankind, do obviously tend to bring the life of the King into danger, is also compassing and imagining the death of the King; and the measures which are taken will be at once evidence of the compassing, and overt acts of it.

The instances which are put by Sir Matthew Hale and Sir Michael Foster (and upon which there have been adjudged cases) are of conspiracies to depose the King; to imprison him; to get his person into the power of the conspirators; to procure an invasion of the kingdom. The first of these, apparently the strongest case, and coming the nearest to the direct attempt against the life of the King; the last, the farthest removed from that direct attempt; but being a measure tending to destroy the public peace of the country, to introduce hostilities, and the necessity of resisting force by force, and where it is obvious that the conflict has an ultimate tendency to bring the person and life of the King into jeopardy; it is taken to be a sound construction of the statute 25 Edward III, and the clear law of the land, that this also is compassing and imagining the death of the King.

If a conspiracy to depose or to imprison the King, to get his person into the power of the conspirators, or to procure an invasion of the kingdom, involves in it the compassing and imagining of his death, and if steps taken in prosecution of such a con-

(7)

spiracy are rightly deemed overt acts of the treason of imagining and compassing the King's death; need I add, that if it should appear that it has entered into the heart of any man, who is a subject of this country, to design to overthrow the whole government of the country, to pull down and to subvert from its very foundations the British monarchy, that glorious fabric which it has been the work of ages to erect, maintain, and support, which has been cemented with the best blood of our ancestors; to design such a horrible ruin and devastation, which no King could survive, a crime of such a magnitude that no lawgiver in this country hath ever ventured to contemplate it in its whole extent; need I add, I say, that the complication and the enormous extent of such a design will not prevent its being distinctly seen, that the compassing and imagining the death of the King is involved in it, is in truth of its very essence.

This is too plain a case to require further illustration from me. If any man of plain sense, but not conversant with subjects of this nature, should feel himself disposed to ask whether a conspiracy of this nature is to be reached by this medium only; whether it is a specific treason to compass and imagine the death of the King, and not a specific treason to conspire to subvert the monarchy itself; I answer, that the statute of Edward III, by which we are governed, hath not declared this (which in all just theory of treason is the greatest of all treasons) to be high treason.

I said no lawgiver had ever ventured to contemplate it in its whole extent; the *feditio regni*, spoken of by some of our ancient writers, comes the nearest to it, but falls far short of it: perhaps if it were now a question whether such a conspiracy should be made a specific treason, it might be argued to be unnecessary: that in securing the person and authority of the King from all danger, the monarchy, the religion and laws of our country are incidentally secured; that the constitution of our government is so framed, that the imperial crown of the realm is the common centre of the whole; that all traitorous attempts upon any part of it are instantly communicated to that centre, and felt there; and that, as upon every principle of public policy and justice

(8)

they are punishable as traitorous attempts against the King's person or authority, and will, according to the particular nature of the traitorous attempt, fall within one or other of the specific treasons against the King, declared by the statute of 25 Edward III; this greatest of all treasons is sufficiently provided against by law.

Gentlemen, I presume I hardly need give you this caution, that though it has been expressly declared, by the highest authority, that there do exist in this country men capable of meditating the destruction of the constitution under which we live; that declaration, being extrajudicial, is not a ground upon which you ought to proceed.

In consequence of that declaration it became a public and indispensable duty of his Majesty to institute this solemn proceeding, and to impose upon you the painful task of examining the accusations which shall be brought before you; but it will be your duty to examine them in a regular judicial course, that is, by hearing the evidence, and forming your own judgment upon it.

And here, as I do not think it necessary to trouble you with observations upon the other branches of the statute 25 Edward III, the charge to the grand inquest might conclude; had not the particular nature of the conspiracy, alledged to have been formed against the state, been disclosed, and made matter of public notoriety by the reports of the two houses of parliament, now in every one's hands: but that being the case, I am apprehensive that I shall not be thought to have fulfilled the duty, which the Judge owes to the Grand Jury, when questions in the criminal law arise on new and extraordinary cases of fact; if I did not plainly and distinctly state what I conceive the law to be, or what doubts I conceive may arise in law, upon the facts which are likely to be laid before you, according to the different points of view in which those facts may appear to you.

It is matter of public notoriety that there have been associations formed in this county, and in other parts of the kingdom, the professed purpose of which has been a change in the constitution

(9 .)

tion of the commons house of parliament, and the obtaining of annual parliaments ; and that to some of these associations other purposes, hidden under this veil, purposes the most traiterous, have been imputed ; and that some of these associations have been supposed to have actually adopted measures of such a nature, and to have gone into such excesses, as will amount to the crime of high treason.

If there be ground to consider the professed purpose of any of these associations, a reform in parliament, as mere colour, and as a pretext held out in order to cover deeper designs—designs against the whole constitution and government of the country ; the case of those embarked in such designs is that which I have already considered. Whether this be so, or not, is mere matter of fact ; as to which I shall only remind you, that an inquiry into a charge of this nature, which undertakes to make out that the ostensible purpose is a mere veil, under which is concealed a traiterous conspiracy, requires cool and deliberate examination, and the most attentive consideration ; and that the result should be perfectly clear and satisfactory. In the affairs of common life, no man is justified in imputing to another a meaning contrary to what he himself expresses, but upon the fullest evidence. On the other hand, where the charge can be made out, it is adding to the crime meditated the deepest dissimulation and treachery, with respect to those individuals, who may be drawn in to embark in the ostensible purpose, as well as to the public, against which this dark mystery of wickedness is fabricated.

But if we suppose these associations to adhere to the professed purpose, and to have no other primary object, it may be asked, is it possible, and (if it be possible) by what process is it, that an association for the reform of parliament can work itself up to the crime of high treason ? All men may, nay, all men must, if they possess the faculty of thinking, reason upon every thing which sufficiently interests them to become objects of their attention, and among the objects of the attention of free men, the principles of government, the constitution of particular governments, and, above all, the constitution of the government under which they live, will naturally engage attention, and provoke speculation. The power of communi-

(10)

communication of thoughts and opinions is the gift of God, and the freedom of it is the source of all science, the first fruits and the ultimate happiness of society; and therefore it seems to follow, that human laws ought not to interpose, nay, cannot interpose, to prevent the communication of sentiments and opinions in voluntary assemblies of men; all which is true, with this single reservation, that those assemblies are to be so composed, and so conducted, as not to endanger the public peace and good order of the government under which they live; and I shall not state to you that associations and assemblies of men, for the purpose of obtaining a reform in the interior constitution of the British parliament, are simply unlawful; but, on the other hand, I must state to you, that they may but too easily degenerate, and become unlawful, in the highest degree, even to the enormous extent of the crime of high treason.

The process is very simple: let us imagine to ourselves this case: a few well meaning men conceive that they and their fellow subjects labour under some grievance; they assemble peaceably to deliberate on the means of obtaining redress; the numbers increase; the discussion grows animated, eager, and violent; a rash measure is proposed, adopted, and acted upon; who can say where this shall stop, and that these men, who originally assembled peaceably, shall not finally, and suddenly too, involve themselves in the crime of high treason. It is apparent how easily an impetuous man may precipitate such assemblies into crimes of unforeseen magnitude, and danger to the state: but, let it be considered, that bad men may also find their way into such assemblies, and use the innocent purposes of their association as the stalking horse to *their* purposes of a very different complexion. How easy for such men to practise upon the credulity and the enthusiasm of honest men, lovers of their country, loyal to their prince, but eagerly bent upon some speculative improvements in the frame, and internal mechanism of the government? If we suppose bad men to have once gained an ascendancy in an assembly of this description, popular in its constitution, and having popular objects; how easy is it for such men to plunge such an assembly into the most criminal excesses? Thus far I am speaking

(11)

speaking in general, merely to illustrate the proposition, that men who assemble in order to procure a reform of parliament may involve themselves in the guilt of high treason.

The notoriety to which I have alluded leads me to suppose, that the project of a convention of the people to be assembled under the advice and direction of some of these societies, or of delegations from them, will be the leading fact, which will be laid before you in evidence, respecting the conduct, and measures of these associations ; a project, which perhaps, in better times, would have been hardly thought worthy of grave consideration ; but, in these our days, having been attempted to be put in execution in a distant part of the united kingdoms, and, with the example of a neighbouring country before our eyes ; is deservedly become an object of the jealousy of our laws : it will be your duty to examine the evidence on this head very carefully, and to sift it to the bottom ; to consider every part of it in itself, and as it stands connected with other parts of it, and to draw the conclusion of fact, as to the existence, the nature, and the object of this project of a convention, from the whole.

In the course of the evidence you will probably hear of bodies of men having been collected together, of violent resolutions voted at these and at other meetings, of some preparation of offensive weapons, and of the adoption of the language, and manner of proceeding of those conventions in France, which have possessed themselves of the government of that country : I dwell not on these particulars, because I consider them, not as substantive treasons, but, as circumstances of evidence, tending to ascertain the true nature of the object which these persons had in view, and also the true nature of this project of a convention, and to be considered by you in the mass of that evidence ; which evidence it does not fall within the province of the charge to consider in detail ; my present duty is, to inform you what the law is upon the matter of fact, which in your judgment shall be the result of the evidence.

I presume that I have sufficiently explained to you that a project to bring the people together in convention, in imitation of those

those national conventions which we have heard of in France, in order to usurp the government of the country, and any one step taken towards bringing it about, such as, for instance, consultations, forming of committees to consider of the means, acting in those committees, would be a case of no difficulty that it would be the clearest high treason; it would be compassing and imagining the King's death, and not only his death, but the death and destruction of all order, religion, laws, all property, all security for the lives and liberties of the King's subjects.

That which remains to be considered is, the project of a convention having for its sole object the effecting a change in the mode of representation of the people in parliament, and the obtaining that parliaments should be held annually; and here there is room to distinguish. Such a project of a convention, taking it to be criminal, may be criminal in different degrees, according to the case in evidence, from whence you are to collect the true nature and extent of the plan, and the manner in which it is intended to operate; and it will become a question of great importance, under what class of crimes it ought to be ranged.

In determining upon the complexion and quality of this project of a convention, you will lay down to yourselves one principle which is never to be departed from, that alterations in the representation of the people in parliament, or in the law for holding parliaments, can only be effected by the authority of the King, Lords, and Commons, in parliament assembled. This being taken as a foundation, it seems to follow as a necessary consequence, that a project of a convention, which should have for its object the obtaining a parliamentary reform without the authority of parliament, and steps taken upon it, would be high treason in all the actors in it; for this is a conspiracy to overturn the government. The government cannot be said to exist, if the functions of legislation are usurped for a moment; and it then becomes of little consequence indeed, that the original conspirators, perhaps, had only meditated a plan of moderate reform: it is, in the nature of things, that the power should go out of their hands, and be beyond the reach of their controul. A conspiracy of this nature is therefore, at best, a conspiracy to overturn the

(13)

the government, in order to new model it, which is, in effect, to introduce anarchy, and that which anarchy may chance to settle down into; after the King may have been brought to the scaffold, and after the country may have suffered all the miseries which discord and civil war shall have produced,

Whether the project of a convention, having for its object the collecting together a power which should overawe the legislative body, and extort a parliamentary reform from it, if acted upon, will also amount to high treason, and to the specific treason of compassing and imagining the King's death, is a more doubtful question. Thus far is clear; a force upon the parliament must be immediately directed against the King, who is an integral part of it; it must reach the King, or it can have no effect at all. Laws are enacted in parliament by the King's Majesty, by and with the advice and consent of the Lords and Commons, in parliament assembled. A force meditated against the parliament, is therefore a force meditated against the King, and seems to fall within the case of a force meditated against the King, to compel him to alter the measures of his government: but, in that case, it does not appear to me that I am warranted by the authorities to state to you, as clear law, that the mere conspiracy to raise such a force, and the entering into consultations respecting it, will alone, and without actually raising the force, constitute the crime of high treason. What the law is in that case, and what will be the effect of the circumstance of the force being meditated against the King in parliament, against the King in the exercise of the royal function in a point which is of the very essence of his monarchy, will be fit to be solemnly considered, and determined when the case shall arise.

It may be stated to you as clear, that the project of a convention, having for its sole object a dutiful and peaceable application to the wisdom of parliament on the subject of a wished-for reform, which application should be entitled to weight and credit from the universality of it, but should still leave to the parliament the freest exercise of its discretion to grant or to refuse the prayer of the petition, (great as the responsibility will be on the persons concerned in it, in respect of the many probable, and all the possible, bad consequences of collecting a great number of
people

(14)

people together, with no specific legal powers to be exercised, and under no government but that of their own discretion,) cannot in itself merit to be ranked among that class of offences which we are now assembled to hear and determine.

Upon this last statement of the fact of the case, I am not called upon, and therefore it would not be proper for me to say more.

Gentlemen, You will now proceed upon the several articles of inquiry, which have been given you in charge: if you find that the parties, who shall be accused before you, have been pursuing lawful ends by lawful means, or have been only indiscreet, or, at the worst, if criminal, that they have not been criminal to the extent of those treasons to which our inquiries are confined, then say, that the bills which shall be presented to you are not true bills: but, if any of the accused persons shall appear to you to have been engaged in that traitorous and detestable conspiracy described in the preamble of the late statute; or, if without any formed design to go the whole length of that conspiracy, they have yet acted upon the desperate imagination of bringing about alterations in the constitution of the commons house of parliament, or in the manner of holding parliaments, without the authority of parliament, and, in defiance of it, by an usurped power, which should, in that instance, suspend the lawful authority of the King, Lords, and Commons, in parliament assembled, and take upon itself the function of legislation (which imagination amounts to a conspiracy to subvert the existing laws and constitution, differing from the former only in the extent of its object), you will then do that which belongs to your office to do.

In the third view of the case of the accused persons; that is, if you find them involved in, and proceeding upon, a design to collect the people together against the legislative authority of the country, for the purpose, not of usurping the functions of the legislature, but of overawing the parliament, and so compelling the King, Lords, and Commons, in parliament assembled, to enact a law for new modelling the commons house of parliament, or, for holding annual parliaments; and that charges of high treason are offered to be maintained against them upon this ground only; perhaps it may be fitting that, in respect of the extraordinary
nature

(15)

nature and dangerous extent and very criminal complexion of such a conspiracy, that case, which I state to you as a new and a doubtful case, should be put into a judicial course of inquiry, that it may receive a solemn adjudication, whether it will, or will not, amount to high treason, in order to which the bills must be found to be true bills.

Gentlemen, I have not opened to you the law of misprision of treason, because I am not aware that there are any commitments for that offence; and therefore I have no reason to suppose that there will be any prosecution for that offence. It consists of the concealment of treason committed by others (which undoubtedly it is every man's duty to disclose), and the punishment is extremely severe; but the humanity of modern times hath usually interposed, and I trust that the necessities of the present hour will not demand, that the law of misprision of treason should now be carried into execution.

Gentlemen, I dismays you with confident expectation that your judgment will be directed to those conclusions which may clear innocent men from all suspicion of guilt, bring the guilty to condign punishment, preserve the life of our gracious Sovereign, secure the stability of our government, and maintain the public peace, in which comprehensive term is included the welfare and happiness of the people under the protection of the laws and liberties of the kingdom.

The sheriff returned into the court the pannel of the Petit Jurors.

On Monday, October the sixth, the Grand Jury returned a true bill against Thomas Hardy, John Horne Tooke, John Augustus Bonney, Stewart Kyd, Jeremiah Joyce, Thomas Wardle, Thomas Holcroft, John Richter, Matthew Moore, John Thelwall, Richard Hodgson, and John Baxter, for high treason.

Not found against John Lovett.

On

(16)

On Tuesday, October the seventh, Thomas Holcroft voluntarily surrendered himself in Court, and was committed to Newgate.

At the request of the several prisoners the following gentlemen were assigned by the Court as their Counsel:—For,

Thomas Hardy,	Mr Erskine, Mr. Gibbs.
John Horne Tooke,	Mr. Erskine, Mr. Gibbs.
John Augustus Bonney,	Mr. Erskine, Mr. Gibbs.
Stewart Kyd,	Mr. Erskine, Mr. Gibbs.
Jeremiah Joyce,	Mr. Erskine, Mr. Felix Vaughan.
Thomas Holcroft,	Mr. Erskine, Mr. Gibbs.
John Richter,	Mr. Erskine, Mr. Gibbs.
John Thelwall,	Mr. Erskine, Mr. Gibbs.
John Baxter,	Mr. Erskine, Mr. Gurney.

Thomas Wardle, Matthew Moore, and Richard Hodgson, were not in custody.

On Monday, October the thirteenth, Mr. White, Solicitor for the Treasury, delivered to each of the prisoners a copy of the indictment, a list of the jurors impanelled by the sheriff, and a list of the witnesses to be produced by the crown for proving the said indictment.

On Friday, October the 24th, Thomas Hardy, John Horne Tooke, John Augustus Bonney, Stewart Kyd, Jeremiah Joyce, John Richter, and John Thelwall, were removed by habeas corpus from the Tower to Newgate.

SESSION

(17)

SESSION HOUSE IN THE OLD BAILEY,

Saturday, October 25th, 1794.

P R E S E N T,

Lord Chief Justice EYRE ;
Lord Chief Baron MACDONALD ;
Mr. Baron HOTHAM ;
Mr. Justice BULLER ;
Mr. Justice GROSE ;
And others his Majesty's Justices, &c.

Thomas Hardy, John Horne Tooke, John Augustus Bonney, Stewart Kvd, Jeremiah Joyce, Thomas Holcroft, John Richter, John Thelwall, and John Baxter, were arraigned upon the following indictment, and severally pleaded not guilty.

THE INDICTMENT.

Middlesex to wit—Be it remembered that at a special session of Oyer and Terminer of our Sovereign Lord the King of and for the county of Middlesex holden at the Session House on Clerkenwell Green in the said county on Thursday the second day of October in the thirty-fourth year of the reign of our Sovereign Lord George the Third by the grace of God of Great Britain France and Ireland King Defender of the Faith and so forth before the Right Honourable Sir James Eyre Knight Chief Justice of our said Lord the King of his Court of Common Pleas the Right Honourable Sir Archibald Macdonald Knight Chief Baron of our said Lord the King of his Court of Exchequer the Honourable Sir Beaumont Hotham Knight one of the Barons of our said Lord the King of his said Court of Exchequer the Honourable Sir Francis Buller Baronet one of the Justices of our said Lord the King of his said Court of Common Pleas the Honourable Sir Nash Grose Knight one of the Justices of our said Lord the King assigned to hold Pleas before the King himself the Honourable Sir Soulden Lawrence Knight one other of the Justices

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(18)

of our said Lord the King assigned to hold Pleas before the King himself and others their fellows Justices and Commissioners of our said Lord the King assigned by letters patent of our said Lord the King under his great seal of Great Britain made to them and others and any three or more of them (of whom one of them the aforesaid Sir James Eyre Sir Archibald Macdonald Sir Beaumont Hotham Sir Francis Buller Sir Nath Grose and Sir Soulden Lawrence our said Lord the King willed should be one) to inquire by the oath of good and lawful men of the county of Middlesex of all high treasons in compassing or imagining the death of our Lord the King levying war against our Lord the King in his realm or in adhering to the enemies of our said Lord the King in his realm giving to them aid and comfort in his realm or elsewhere and of all misprisions of such high treasons as aforesaid or of any of them within the county aforesaid (as well within liberties as without) by whomsoever and in what manner soever done committed or perpetrated when how and after what manner and of all other articles and circumstances concerning the premisses and every or any of them in any manner whatsoever and the said treasons and misprisions of treasons according to the laws and customs of England for this time to hear and determine by the oath of Benjamin Winthrop Esquire John Henry Schneider Esquire Edward Ironside Esquire Benjamin Kenton Esquire Rawson Hart Boddam Esquire John Aris Esquire William Pardoe Allett Esquire John Perry Esquire Henry Peter Khuff Esquire Thomas Winflow Esquire Thomas Cole Esquire Samuel Hawkins Esquire George Ward Esquire Thomas Boddam Esquire Joseph Lancaster Esquire Robert Wilkinon Esquire George Galway Mills Esquire Henry Wright Esquire John Hatchett Esquire Rowland Stephenson Esquire and John Campbell Esquire good and lawful men of the county aforesaid now here sworn and charged to inquire for our said Lord the King for the body of the said county touching and concerning the premisses in the said letters patent mentioned It is presented in manner and form as followeth (that is to say)

Middlesex to wit the Jurors for our Sovereign Lord the King upon their oath present that Thomas Hardy late of Westminster in the county of Middlesex shoemaker John Horne Tooke late
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(19)

of Wimbledon in the county of Surrey clerk John Augustus Bonney late of the parish of Saint Giles in the Fields in the county of Middlesex aforesaid gentleman Stewart Kyd late of London Esquire Jeremiah Joyce late of the parish of Saint Mary le Bone otherwise Marybone in the county of Middlesex aforesaid gentleman Thomas Wardle late of London gentleman Thomas Holcroft late of the parish of Saint Mary le Bone otherwise Marybone aforesaid in the county of Middlesex aforesaid gentleman John Richter late of Westminster in the said county of Middlesex gentleman Matthew Moore late of Westminster in the county of Middlesex aforesaid gentleman John Thelwall late of Westminster in the county of Middlesex aforesaid gentleman Richard Hodgson late of Westminster in the county of Middlesex aforesaid hatter and John Baxter late of the parish of Saint Leonard Shoreditch in the county of Middlesex aforesaid labourer being subjects of our said Lord the King not having the fear of God in their hearts nor weighing the duty of their allegiance but being moved and seduced by the instigation of the devil as false traitors against our said Lord the King their supreme true lawful and undoubted Lord and wholly withdrawing the cordial love and true and due obedience which every true and faithful subject of our said Lord the King should and of right ought to bear towards our said Lord the King and contriving and with all their strength intending traitorously to break and disturb the peace and common tranquillity of this kingdom of Great Britain and to stir move and excite insurrection rebellion and war against our said Lord the King within this kingdom and to subvert and alter the legislature rule and government now duly and happily established in this kingdom and to depose our said Lord the King from the royal state title power and government of this kingdom and to bring and put our said Lord the King to death on the first day of March in the thirty-third year of the reign of our Sovereign Lord the now King and on divers other days and times as well before as after at the parish of Saint Giles aforesaid in the county of Middlesex aforesaid maliciously and traitorously with force and arms &c did amongst themselves and together with divers other false traitors whose names are to the said Jurors unknown conspire compass imagine and intend to stir up move

(20)

and excite infurrection rebellion and war against our said Lord the King within this kingdom of Great Britain and to subvert and alter the legislature rule and government now duly and happily established within this kingdom of Great Britain and to depose our said Lord the King from the royal state title power and government of this kingdom and to bring and put our said Lord the King to death And to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid with force and arms on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after at the parish of Saint Giles aforesaid in the county of Middlesex aforesaid maliciously and traiterously did meet conspire consult and agree among themselves and together with divers other false traitors whose names are to the said Jurors unknown to cause and procure a convention and meeting of divers subjects of our said Lord the King to be assembled and held within this kingdom with intent and in order that the persons to be assembled at such convention and meeting should and might wickedly and traiterously without and in defiance of the authority and against the will of the parliament of this kingdom subvert and alter and cause to be subverted and altered the legislature rule and government now duly and happily established in this kingdom and depose and cause to be deposed our said Lord the King from the royal state title power and government thereof And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid and in order the more readily and effectually to assemble such convention and meeting as aforesaid for the traitorous purposes aforesaid and thereby to accomplish the same purposes they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid together with divers other false traitors whose names are to the Jurors aforesaid unknown

(21)

on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after with force and arms at the parish of Saint Giles aforesaid in the county of Middlesex aforesaid maliciously and traitorously did compose and write and did then and there maliciously and traitorously cause to be composed and written divers books pamphlets letters instructions resolutions orders declarations addressees and writings and did then and there maliciously and traitorously publish and did then and there maliciously and traitorously cause to be published divers other books pamphlets letters instructions resolutions orders declarations addressees and writings the said books pamphlets letters instructions resolutions orders declarations addressees and writings so respectively composed written published and caused to be composed written and published purporting and containing therein among other things incitements encouragements and exhortations to move induce and persuade the subjects of our said Lord the King to choose depute and send and cause to be chosen deputed and sent persons as delegates to compose and constitute such convention and meeting as aforesaid to be so holden as aforesaid for the traitorous purposes aforesaid And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid and in order the more readily and effectually to assemble such convention and meeting as aforesaid for the traitorous purposes aforesaid and thereby to accomplish the same purposes they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after with force and arms at the parish of Saint Giles aforesaid in the county of Middlesex aforesaid did meet consult and deliberate among themselves and together with divers other false traitors whose names are to the said Jurors unknown of and concerning the calling and assembling such convention and meeting as aforesaid for the traitorous purposes aforesaid and how when and where such convention and meeting should be assembled and held and by what means the subjects of our said Lord the King should and

(22)

might be induced and moved to send persons as delegates to compose and constitute the same And further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid and in order the more readily and effectually to assemble such convention and meeting as aforesaid for the traiterous purposes aforesaid and thereby to accomplish the same purposes they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid together with divers other false traitors whose names are to the Jurors aforesaid unknown on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after with force and arms at the parish of Saint Giles aforesaid in the county of Middlesex aforesaid maliciously and traiterously did consent and agree that the said Jeremiah Joyce John Augustus Bonney John Horne Tooke Thomas Wardle Matthew Moore John Thelwall John Baxter Richard Hodgson one John Lovett one William Sharp and one John Pearson should meet confer and co-operate among themselves and together with divers other false traitors whose names are to the said Jurors unknown for and towards the calling and assembling such convention and meeting as aforesaid for the traiterous purposes aforesaid and further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid together with divers other false traitors whose names are to the Jurors aforesaid unknown on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after with force and arms at the parish of St Giles aforesaid in the county of Middlesex aforesaid maliciously and traiterously did cause and procure to be made and provided and did then and there maliciously and traiterously consent and agree to the making and providing of divers arms and offensive weapons to
wit

(23)

wit guns muskets pikes and axes for the purpose of arming divers subjects of our said Lord the King in order and to the intent that the same subjects should and might unlawfully forcibly and traiterously oppose and withstand our said Lord the King in the due and lawful exercise of his royal power and authority in the execution of the laws and statutes of this realm and should and might unlawfully forcibly and traiterously subvert and alter and aid and assist in subverting and altering without and in defiance of the authority and against the will of the parliament of this kingdom the legislature rule and government now duly and happily established in this kingdom and depose and aid and assist in deposing our said Lord the King from the royal state title power and government of this kingdom and further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations afore said they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as afore said with force and arms on the said first day of March in the thirty-third year afore said and on divers other days and times as well before as after at the parish of Saint Giles afore said in the county of Middlesex afore said maliciously and traiterously did meet conspire consult and agree among themselves and with divers other false traitors whose names are to the said Jurors unknown to raise levy and make insurrection rebellion and war within this kingdom of Great Britain against our said Lord the King and further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations afore said they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as afore said on the said first day of March in the thirty-third year afore said and on divers other days and times as well before as after at the parish of Saint Giles afore said in the county of Middlesex afore said with force and arms maliciously and traiterously did meet conspire consult

(24)

and agree amongst themselves and together with divers other false traitors whose names are to the said Jurors unknown unlawfully wickedly and traiterously to subvert and alter and cause to be subverted and altered the legislature rule and government now duly and happily established in this kingdom and to depose and cause to be deposed our said Lord the King from the royal state title power and government of this kingdom and further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid and in order the more readily and effectually to bring about such subversion alteration and deposition as last aforesaid they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid together with divers other false traitors whose names are to the Jurors aforesaid unknown on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after at the parish of St. Giles aforesaid in the county of Middlesex aforesaid with force and arms maliciously and traiterously did prepare and compose and did then and there maliciously and traiterously cause and procure to be prepared and composed divers books pamphlets letters declarations instructions resolutions orders addresses and writings and did then and there maliciously and traiterously publish and disperse and did then and there maliciously and traiterously cause and procure to be published and dispersed divers other books pamphlets letters declarations instructions resolutions orders addresses and writings the said several books pamphlets letters declarations instructions resolutions orders addresses and writings so respectively prepared composed published dispersed and caused to be prepared composed published and dispersed as last aforesaid purporting and containing therein (amongst other things) incitements encouragements and exhortations to move induce and persuade the subjects of our said Lord the King to aid and assist in carrying into effect such traitorous subversion alteration and deposition as last aforesaid and also containing therein amongst other things information instructions and directions to the subjects of our said Lord

Lord

(25)

Lord the King how when and upon what occasions the traitorous purposes last aforesaid should and might be carried into effect and further to fulfil perfect and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid they the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter as such false traitors as aforesaid together with divers other false traitors whose names are to the Jurors aforesaid unknown on the said first day of March in the thirty-third year aforesaid and on divers other days and times as well before as after at the parish of Saint Giles aforesaid in the county of Middlesex aforesaid with force and arms maliciously and traitorously did procure and provide and did then and there maliciously and traitorously cause and procure to be provided and did then and there maliciously and traitorously consent and agree to the procuring and providing arms and offensive weapons (to wit) guns muskets pikes and axes therewith to levy and wage war insurrection and rebellion against our said Lord the King within this kingdom against the duty of the allegiance of them the said Thomas Hardy John Horne Tooke John Augustus Bonney Stewart Kyd Jeremiah Joyce Thomas Wardle Thomas Holcroft John Richter Matthew Moore John Thelwall Richard Hodgson and John Baxter against the peace of our said Lord the now King his crown and dignity and against the form of the statute in that case made and provided.

Mr. Attorney General stated to the court, that he had been informed by the counsel for the prisoners, it was their intention the prisoners should be tried separately. It was therefore his intention to proceed first on the trial of Thomas Hardy.

At the request of the prisoners' counsel, the court adjourned to Tuesday, October the 27th.

SESSION

SESSION HOUSE IN THE OLD BAILEY,

Tuesday, October 27th.

P R E S E N T,

Lord Chief Justice EYRE ;

Lord Chief Baron MACDONALD ;

Mr. Baron HOTHAM ;

Mr. Justice BULLER ;

Mr. Justice GROSE ;

And others his Majesty's Justices, &c.

Counsel for the Crown.

Mr. ATTORNEY GENERAL,

Mr. SOLICITOR GENERAL,

Mr. Serjeant ADAIR,

Mr. BEARCROFT,

Mr. BOWER,

Mr. LAW,

Mr. GARROW,

Mr. WOOD.

Counsel for the Prisoner.

The Hon. THOMAS ERSKINE,

Mr. GIBBS.

Assistant Counsel.

Mr. DAMPIER,

Mr. FELIX VAUGHAN,

Mr. GURNEY.

Solicitor.

JOSEPH WHITE, Esq. Solicitor for the affairs of his Majesty's treasury.

Solicitors.

Messrs. GEORGE and ROMAINE WILLIAM CLARKSON, of Essex-street.

The court being opened and Thomas Hardy fet to the bar, the Jurors returned by the Sheriff were called over.

Major Rhode, Esq. challenged by the prisoner.

Thomas Martin, Oil-man, not a freeholder of the county of Middlesex.

George Jefferys, Jeweller, not a freeholder.

Hugh French, Esq. challenged by the prisoner.

Robert Mellish, Ship-builder, challenged by the prisoner.

William Harwood, Esq. challenged by the crown.

James

(27)

James Hagarth, Esq. challenged by the prisoner.
Robert Lewis, Esq. excused on account of illness.
John Walker, Esq. not a freeholder.
George Wade, Stock-broker, challenged by the crown.
Thomas Buck, Esq. sworn.
Thomas Ayliffe, Esq. challenged by the prisoner.
Thomas Wood, Esq. sworn.
Mark Hudson, Esq. challenged by the prisoner.
John Mandell, Gent. challenged by the prisoner.
Henry Bullock, Brewer, challenged by the crown.
John Powfey, Carpenter and Surveyor, challenged by the prisoner.
George Capes, Esq. challenged by the prisoner.
Thomas Rhodes, Cow-keeper, challenged by the prisoner.
Edward Helme, Esq. challenged by the prisoner.
Jeffery Holmes, Esq. challenged by the crown.
William Frazer, Esq. sworn.
Aplley Pellat, Ironmonger, not a freeholder.
Hugh Reynolds, Esq. challenged by the prisoner.
Thomas Harrison, Cow-keeper, challenged by the prisoner.
Daniel Goffet, Esq. not a freeholder.
Richard Meaux, Esq. not a freeholder.
Dicker Saunders, Esq. one of the people called quakers.
Calvert Clapham, Gent. not a freeholder.
John Leader, Gent. challenged by the prisoner.
John Gueft, Esq. excused on account of illness.
Charles Fourdrinier, Stationer, not a freeholder.
Adam Steinmetz, Biscuit-baker.
Mr. Attorney General. Are you a natural born subject?
Mr. Steinmetz. Yes.—Sworn.
Alexander Baxter, Esq. not a freeholder.
Richard Child, Distiller, not a freeholder.
Jeremiah Blakeman, Timber Merchant, challenged by the prisoner.
Robert Kilby Cox, Esq. challenged by the prisoner.
Richard Hunt, Esq. not a freeholder.
James Payne, Esq. challenged by the crown.
Newell Connop, Distiller, sworn.
John Mercer, Mealman, sworn.

John

(28 [

John Rixon, Cooper, challenged by the crown.

Thomas Sayer, Esq. sworn.

Richard Carter, Esq. sworn.

Edward Hale, Gent. challenged by the prisoner.

George Fillingham, Esq. challenged by the prisoner.

Samuel Rudge, Esq. not a freeholder.

William Perry, Esq. challenged by the prisoner.

Richard Gough, Esq. challenged by the prisoner.

Joshua Brookes, Dealer in Birds, not a freeholder.

Thomas Lawrence, Esq. not a freeholder.

Thomas Skipp Dyott Bucknell, Esq. challenged by the prisoner.

John Blackburn, Esq. challenged by the prisoner.

Samuel Mills, Weaver.

Mr. Mills. My father left in his will all his estate to my brother and me, and appointed trustees, and we are not, by the will, to be of age till we are thirty-five.

Joseph Bird, Esq. not a freeholder of Middlesex.

Thomas Powell, Esq. challenged by the prisoner.

William Emerson, Esq. not a freeholder.

James Cook, Esq. not a freeholder.

Nathaniel Stonard, Brewer, sworn.

Joseph Mawley, Gent. not a freeholder.

Thomas Allen, Brewer, challenged by the prisoner.

John Baker, Esq. challenged by the prisoner.

William Row, Esq. not a freeholder.

James Smith, Esq. challenged by the prisoner.

Bryan Marshall, Gent. challenged by the prisoner.

Joseph Nichol, Gentleman Farmer, sworn.

Thomas Bird, Distiller, not a freeholder.

Robert Vincent, Esq. not a freeholder.

David Roberts, Esq. challenged by the prisoner.

George Brookes, Esq. not a freeholder.

William Arnold, Esq. not a freeholder.

Thomas Nixon, Esq. not a freeholder.

Thomas Smith, Esq. challenged by the prisoner.

John Charrington, Esq. sworn.

George Rigby, Esq. not a freeholder.

Thomas Allen, Esq. challenged by the prisoner.

Andrew

(29)

Andrew Burt, Esq. challenged by the crown.
Charles Smith, Distiller, challenged by the prisoner.
Archibald Paxton, Wine Merchant, challenged by the prisoner.
Ralph Keddy, Esq. not a freeholder.
John Hartsley, Esq. not a freeholder.
William Nicoll, Farmer, challenged by the prisoner.
Edward Franklin, Farmer, excused on account of illness.
Michael Henly, Coal Merchant, challenged by the prisoner.
John Thompson, Brewer, challenged by the prisoner.
Joseph Ainslie, Esq. sworn.

THE JURY.

Thomas Buck,	Thomas Sayer,
Thomas Wood,	Richard Carter,
William Frazer,	Nathaniel Stonard,
Adam Steinmetz,	Joseph Nichol,
Newell Connop,	John Charrington,
John Mercer,	Joseph Ainslie.

Mr. Thomas Shelton, (Clerk of the Arraignment). Thomas Hardy, hold up your hand.

Gentlemen of the Jury, the prisoner, Thomas Hardy, stands indicted, together with John Horne Tooke, &c.—(*Here the Clerk of Arraignment read the indictment.*)—Upon this indictment he hath been arraigned, and upon his arraignment hath pleaded not guilty, and for his trial hath put himself upon God and the country, which country you are. Your charge is to enquire whether he be guilty of the high treason whereof he stands indicted, or not guilty. If you find him guilty, you are to enquire what goods or chattels, lands or tenements, he had at the time of the high treason committed, or at any time since. If you find him not guilty, you are to enquire whether he fled for it; if you find that he did fly for it, you shall enquire of his goods and chattels as if you had found him guilty. If you find him not guilty, and that he did not fly for it, say so, and no more, and hear your evidence.

(30)

The Indictment was opened by Mr. WOOD.

MR. ATTORNEY GENERAL.

May it please your Lordship and Gentlemen of the Jury,

In the course of stating what I have to offer to your most serious attention in this great and weighty cause, affecting, as it certainly does, the dearest interests of the community, affecting, as you will remember throughout this business, every interest which can be valuable to the prisoner at the bar, I shall have frequent occasion to call that anxious attention to the different parts of the indictment, which has just been opened to you. I forbear to do so at this moment, because I think that attention will be more usefully, both with respect to the public, and to the prisoner, given and required in another part of what I am to address to you.

Gentlemen, the prisoner, who is before you, stands charged (to state the indictment generally) with the offence of compassing his Majesty's death; he was committed, upon that charge, by his Majesty's Privy Council: I will explain to you presently why I state this and the following facts. In consequence of the apprehension of this prisoner, of several others charged by this indictment, and of others, whose names do not occur in this indictment, proceedings of some notoriety were had in Parliament, and an act passed, empowering his Majesty to detain such persons as he suspected were conspiring against his government. That act has asserted that a traitorous and detestable conspiracy had been formed for subverting the existing laws and government of the country, and for introducing that system of anarchy and confusion, which had so fatally prevailed in France; the act, upon the spur of the emergency, which it contemplated, authorised the detention without bail, mainprize, or discharge of the persons then in prison for high treason, or treasonable practices, or who should afterwards be committed, for high treason or treasonable practices, by warrants from the Privy Council or Secretary of State, till the first of February 1795.

Gentlemen, this measure, which did not suspend the operation of the Habeas Corpus Act, that great palladium of English liberty, but with reference to particular persons, under particular commitments, for particular offences, is a measure, never adopted in
this

(31)

this country by Parliament but in cases, in which it is understood, after giving all possible attention to secure the right of the subject from being broken in upon, to be of the last possible necessity, and which has been repeatedly put in force, in the best of times, in such cases, where the wisdom of Parliament apprehended that it was matter of their duty to provide that the nation should part with its liberty for a while, that it might not lose it for ever.

Gentlemen, appearing before you this day in discharge of that duty, which I have been commanded to execute, and the execution of which appears to me to be absolutely necessary, you will collect from the fact that I do appear here this day, that, according to the true constitutional meaning of such an act of Parliament, it is not that the trial of such persons shall be delayed during the period of the suspension of the act, but that the act shall, with reference to the time of trial, be allowed, in the right execution of it, an operation only to that extent, in which the due consideration of the public safety, tempered with a due attention to the liberty of the individual subject, may require.

Gentlemen, the proceedings of the legislature having been such as I have stated to you, his Majesty, constitutionally advised in the exercise of his duty, as the great conservator of the public peace, directed a commission to issue to inquire whether any such treasons, as the presumption of such a traitorous conspiracy must necessarily suppose to have existed, had been committed by any persons, and by whom. In the execution of the duties of that commission a Grand Jury of this county, upon their oaths, have declared that there is ground of charge against the person at the bar, and against others, sufficient to call upon them, in a trial to be had before you, their country, to answer to an accusation of high treason in compassing his Majesty's death.

Gentlemen, I have stated these circumstances that I may convey to you, in as strong terms as I can express it, this observation, that, as the proceedings of Parliament ought to have had (and I am persuaded, from the deliberation which they gave the subject, that they had) no influence upon the judicial mind of the Grand Inquest, neither ought these proceedings to affect your inquiries, or to induce you to any determination, which you are to make upon the issue, which you are now sworn to try.

Gentlemen,

(32)

Gentlemen, there is no one circumstance of any proceedings before Parliament, with reference to which you ought to suffer yourselves to be influenced in the trial of this issue. It is obvious that such proceedings, as were had in Parliament, providing for great emergencies, may be required and authorized by the genuine spirit of the constitution, even in cases in which a Grand Jury might not, upon any thing that could be offered to their consideration, be justified in finding a bill: it is much more obvious that, in a proceeding before you, a consideration of the wisdom and propriety of the acts of the legislature is not called for.

You therefore, Gentlemen of the Jury, will consider the prisoner as standing before you in full possession of an absolute right to the presumption of innocence, notwithstanding he is charged with guilt by this indictment, as you will hear, except so far as that presumption is met by the single simple fact, that he has been accused by a Grand Jury of his country.

Gentlemen, before I conclude these general observations, you will permit me to say, on the other hand, that, if there has been any thing that has fallen under your observation, by act, or publication—any attempt to make any impression upon the minds of those who are this day impannelled to try this great cause, to disparage that advice, which, under the most responsible sanction, may be given you in matter of law, to work in your minds any prejudice either against the prisoner, or on the prisoner's behalf; on the one hand I am perfectly sure that your integrity will be security to the public, that you will not permit any attempt of that kind to have any operation: on the other hand, Gentlemen of the Jury, I am equally sure that I need not ask from an English Jury, that they would permit no such attempt to influence them against the prisoner at the bar, no, not even an injudicious or ill executed attempt to influence them in his favour.

Gentlemen, in order to understand the law of treason, and the indictment, I shall take the liberty first to state to you the character which I apprehend the King, for the protection of whose person and government the statute in question was made, has in the state and constitution of this country.

Gentlemen, the power of the state, by which I mean the power of making laws, and enforcing the execution of them when made,

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(33)

is vested in the King; enacting laws, in the one case, that is, in his legislative character, by and with the advice and consent of the Lords Spiritual and Temporal, and of the Commons in Parliament assembled, assembled according to the law and constitutional custom of England; in the other case, executing the laws, when made, in subservience to the laws so made, and with the advice, which the law and the constitution hath assigned to him in almost every instance, in which it has called upon him to act for the benefit of the subject. The King's authority, under the check of constitutional and legal provisions, and limitations, convenes and regulates the duration and existence of Parliament, convening those whom, according to the law and custom of the country, he is bound to convene. The King, in his Parliament, sitting in his royal political capacity, and the Lords and Commons there assembled, form the great body politic of the kingdom, by which is exercised sovereign authority in legislation. Gentlemen, whilst the present law, the present constitution, and present government of Great Britain, exists, no law can be made but by that authority; no legislative power can be created against the will, and in defiance of, that authority. Whether in any, or in what circumstances, an attempt to create such a power is a treason forbidden by the statute of the 25th of Edward III. I propose to examine presently.

Gentlemen, as in the King the power of legislation is vested, as well as the executive power of the state, to be exercised with consent and advice, to be exercised according to those laws, which are the birthright and inheritance of the subject, having upon him the care and protection of the community; to him, in return, the allegiance of every individual is, according to the law of England, due; that allegiance, by which the subject is bound, in the language of the statutes of this country, to defend him "against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, his crown, or his dignity."

Gentlemen, to ascertain to whom this care and protection is committed—to ascertain to whom this allegiance is due, the breach of which, according to the venerable Lord Hale, constitutes high treason, is necessary to the peace of the community—

(34)

to ascertain and to define accurately what constitutes a breach of that allegiance, is essentially and absolutely necessary to the security of all that our ancestors have claimed, demanded, and insisted upon, as the ancient, undoubted rights and liberties of our country.

Gentlemen, the former of these objects is secured by the law and constitutional custom of England ; that law, which alike secures to you every right, whether it be a right of person, or of property. It has made the crown, which his Majesty wears, hereditary, (and I beg your attention to that) subject to limitation by Parliament. The latter object has been most anxiously secured by the statute referred to in the indictment, which brings forward the charge, the truth of which you are now to try.

Gentlemen, the King having this hereditary crown, the law and constitution have also ascertained his duties—those duties, which it is incumbent upon him to execute, for the benefit of the subject, in the execution of which duties they have aided him with counsel, and in consideration of which duties they have clothed him with dignity, and vested him with high prerogatives. With respect to the duties of the King, they attach upon him the instant he becomes such ; from the moment that his title accrues, in the same instant the duty of allegiance (the breach of which is high treason) attaches to it ; he recognizes these as his duties in that oath, to which, throughout this business, I must again call your attention, in that oath which he is bound to take upon him, at his coronation, to promise and swear “ to govern “ the people of this country,” (mark the words, Gentlemen) “ according to the statutes in Parliament agreed upon, and the laws “ and customs of the same ; that to his power he will cause law “ in justice and mercy to be administered ; that he will maintain “ the laws of God and the true profession of religion established “ by law.”

Gentlemen, this oath, stated by that great and venerable constitutional Judge, Mr. Justice Forster, to be a solemn and a public recognition, not only of the duties of the King, but of the fundamental rights of the people, imposeth upon him (and throughout this case it cannot be too strongly recollected that it imposeth upon him) the most sacred obligation to govern according to the

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