DUBLIN DEFENDERS.

December 22nd, 1795.

TRIAL OF JAMES WELDON, FOR HIGH TREASON,

Before the Court holden under a Commission of Oyer and Terminer, and general Gaol delivery, in and for the County of the City of Dublin, in Ireland, on Monday, December 21st, and Tuesday, December 22nd. 36 *Geo. III.*, A. D. 1795.

COMMISSION.—MONDAY, DECEMBER 14TH, 1795.

IN the latter end of the month of August, 1795, several persons were taken into custody in the city of Dublin, upon charges of High Treason, and in the ensuing commission of Oyer and Terminer held in October, bills of indictment were preferred against them, and others not then in custody, which were returned by the grand jury to be true bills.

The prisoners in custody were then brought to the bar of the court, for the purpose of having counsel and agents assigned.

In the interval between the October commission and the December, a person of the name of James Weldon was apprehended upon a charge of High Treason, and he, together with such as had been previously in custody, were served with copies of the indictments and the captions thereof, five days before the first day of this commission.

This day the prisoners who had been in custody at the last commission were severally arraigned, and pleaded Not Guilty.

On the 21st of December several arguments took place as to the jury, and on the 22nd the trial came on. The Attorney-General stated the case, and examined many witnesses, but especially one William Lawler, a gilder. The crown examination was leading and unfair throughout. CURRAN said:—

My lords, and gentlemen of the jury, I am of counsel in one of those cases in which the humanity of our law is, very fortunately, joined with the authority and wisdom of the court in alliance with me for the purposes of legal protection. Gentlemen, I cannot, however, but regret, that that sort of laudable and amiable anxiety for the public tranquillity, which glows warmest in the breasts of the best men, has, perhaps, induced Mr. Attorney-General to state some facts to the court and the jury, of which no evidence was attempted to be given. And I make the observation only for this purpose, to remind you, gentlemen, that the statement of counsel is not evidence—to remind you, that you are to give a verdict, upon this solemn and momentous occasion, founded simply upon the evidence which has been given to you; for such is the oath you have taken. Gentlemen, I make the observation, not only in order to call upon you to discharge any impressions not supported by testimony, but to remind you also of another incontrovertible maxim, not only of the humane law of England, but of eternal justice upon which that is founded—that the more horrid and atrocious the nature of any crime charged upon any man is, the more clear and invincible should be the evidence upon which he is convicted. The charge here is a charge of the most enormous criminality that the law of any country can know —no less than the atrocious and diabolical purpose

of offering mortal and fatal violence to the person of the Sovereign, who ought to be sacred. The prisoner is charged with entertaining the guilty purpose of destroying all order, and all society, for the well-being of which the person of the King is held sacred. Therefore, gentlemen, I presume to tell you, that in proportion as the crime is atrocious and horrible, in the same proportion ought the evidence to convict be clear and irresistible. Let me, therefore, endeavour to discharge the duty I owe to the unfortunate man at the bar (for unfortunate I consider him, whether he be convicted or acquitted), by drawing your attention to a consideration of the facts charged, and comparing it with the evidence adduced to support it.

The charge, gentlemen, is of two kinds—two species of treason founded upon the statute 25 Edward III. One is, compassing the King's death; the other is a distinct treason—that of adhering to the King's enemies. In both cases, the criminality must be clearly established, under the words of the statute, by having the guilty man convicted of the offence, by provable evidence of overt acts. Even in the case, and it is the only one, where by law the imagination shall complete the crime, there that guilt must be proved, and can be provable only by outward acts, made use of by the criminal, for the effectuation of his guilty purpose. The overt acts stated here are, that he associated with traitors unknown, with the design of assisting the

French, at war with our government, and therefore a public enemy. 2ndly, consulting with others, for the purpose of assisting the French. 3rdly. consulting with other traitors to subvert the government. 4thly, associating with Defenders to subvert the Protestant religion. 5thly, enlisting a person stated in the indictment to assist the French, and administering an oath to him for that purpose. 6thly, enlisting him to adhere to the French. 7thly, corrupting Lawler to become a Defender. 8thly, enlisting him by administering an oath, for similar purposes. In order to warrant a verdict convicting the prisoner, there must be clear and convincing evidence of some one of these overt acts, as they are laid. The law requires that there should be stated upon record such an act as in point of law will amount to an overt act of the treason charged, as matter of evidence, and the evidence adduced must correspond with the fact charged. The uniform rule which extends to every case applies to this, that whether the fact charged be sustained by evidence is for the conscience and the oath of the jury, according to the degree of credit they give to the testimony of it. In treason, the overt act must sustain the crime, and the evidence must go to support the overt act so stated. If this case were tried at the other side of the water, it does not strike me that the very irrelevant evidence given by Mr. Carleton could have supplied what the law requires—the concurring testimony of

two witnesses. I cannot be considered, indeed I should be sorry, to put any sort of comparison between the person of Mr. Carleton and the first witness who was called upon the table. Gentlemen of the jury, you have an important province indeed —the life or death of a man—to decide upon. But previous to that, you must consider what degree of credit ought to be given to a man under the circumstances of that witness produced against the prisoner. It does appear to me, that his evidence merits small consideration in point of credibility. But even if he were as deserving of belief as the witness that followed, and that his evidence were as credible as the other's was immaterial, I shall yet rely confidently, that every word, if believed, does leave the accusation unsupported. Gentlemen, I will not affront the idea which ought to be entertained of you, by warning you not to be led away by those phantoms which have been created by prejudice, and applied to adorn the idle tales drunk down by folly, and belched up by malignity. You are sensible that you are discharging the greatest duty that law and religion can repose in you, and I am satisfied you will discard your passions, and that your verdict will be founded, not upon passion or prejudice, but upon your oaths and upon justice. Consider what the evidence in point of fact is—Lawler was brought by Brady and Kennedy to Weldon, the prisoner, in Barrack-street; what Brady said to him before, if it had

been of moment in itself, I do not conceive can possibly be extended to him, who did not assent to the words, and was not present when they were uttered. Lawler was carried to the prisoner at the bar to be sworn; and here give me leave to remind you. what was the evidence—to remind you that the expressions proved do not bear that illegal import which real or affected loyalty would attach to them, and therefore you will discharge all that cant of enthusiasm from your minds. I wish that I were so circumstanced as to be entitled to an answer, when I ask Mr. Attorney-General, what is the meaning of the word Defender? I wish I were at liberty to appeal to the sober understanding of any man, for the meaning of that tremendous word. I am not entitled to put the question to the counsel or the court—but I am entitled to call upon the wise and grave consideration of the court to say whether the zeal of public accusation has affixed any definite meaning to the word? I would be glad to know, whether that expression, which is annexed to the title of the highest magistrate, marking his highest obligation, and styling him the DEFENDER of the religion of the country, in common parlance acquired any new combination, carrying with it a crime, when applied to any other man in the community? Let me warn you, therefore, against that sort of fallacious lexicography which forms new words, that undergoing the examination of political slander or intemperate

zeal, are considered as having a known acceptation. What is the word? A word that should be discarded, when it is sought to affix to it another meaning than that which it bears in the cases where it is used. Let me remind you that a Defender, or any other term used to denote any confraternity, club, or society, like any other word, is arbitrary, but the meaning should be explicit. And therefore with regard to this trial, you are to reject the word, as having no meaning, unless, from the evidence, you find it has in the mind of the party a definite explication; for observe that the witness, such as he is—such as he was, with all his zeal for the furtherance of justice, which he was once ready to violate by the massacre of his fellow-subjects—with all his anxiety for his sovereign's safety, whom he was once ready to assassinate, he, I say, has not told you, that either Brady or Kennedy, or any other person, said what the principles were that denoted a Defender. But I will not rest the case of my client upon that ground. No; it would be a foolish kind of defence, because words might be used as a cloak, and therefore might be colourably introduced. You, gentlemen, are then to consider what this oath, this nonsensical oath, which so far as it is intelligible is innocent, and so far as it is nonsense, can prove nothing; you are to consider, whether innocent and nonsensical as it may appear, it was yet a cover and a bond for treasonable association. It

is not in my recollection, that any evidence was given, that the oath was conceived in artfully equivocal expressions, for forming, under the sanction of loyal language, a treasonable association. Is one of the parties laughing, evidence that it was treasonable, or the bond of a criminal confederation? It is not. Is it treasonable to say, "that were the King's head off to-morrow, the allegiance to him would be at an end?" It is not. The expressions may bring a man into disrepute—to lead the mind of a jury into a suspicion of the morality of the man who used them—but nothing more. It may be asked, why should there be any thing insidious? Why but to cover a treasonable purpose, are all these suspicious circumstances? It is not for me, nor is it the prisoner's duty, to account for them in defending himself against this charge, because circumstances are not to render innocence doubtful; but it is full proof establishing the guilt and the treason indubitably which the law requires. Therefore I submit that even if the evidence could be believed, it does not support the overt acts. Was there a word of violating the person of the King? Any affected misrepresentation or any abuse of government? Have you heard a word stated of the King not being an amiable King? Any words contumeliously uttered respecting his person—disrespectful of his government—expressive of any public grievance to be removed, or good to be attained? Not a word of such a subject—nothing

of the kind is proved by this solitary witness, in all his accuracy of detail.

Was there any proposition of assisting the French, in case they invaded this kingdom? To support that charge a nonsensical catechism is produced. There it is asked, "Where did the cock crow when all the world heard him?" What kind of old women's stories are these to make an impression upon your minds? Well, but what does that mean? Why, can you be at a loss? It means to—kill the King! Look at the record—it charges the persons with compassing the King's death, and the question about the crowing of a cock is the evidence against them.

Gentlemen, you all know, for you are not of ordinary description, that the statute of Edward III. was made to reduce vague and wandering treasons —to abolish the doctrine of constructive treason, and to mark out some limited boundaries, clear to a court and jury. If a man has been guilty of disrespect in point of expression to the government or the crown, the law has ascertained his guilt and announced the punishment. But all the dreadful uncertainty intended to be guarded against by the statute, and which before the passing of the statute had prevailed in case of treason, and which had shed upon the scaffold some of the best blood in England, would again run in upon us, if a man were to suffer an ignominious death under such circumstances as the present,—if equivocal

expressions should be taken as decisive proof, or if dubious words were to receive a meaning from the zeal of a witness, or the heat, passion, or prejudice of a jury. The true rule by which to ascertain what evidence should be deemed sufficient against a prisoner is, that no man should be convicted of any crime except upon the evidence of a man subject to an indictment for perjury, where the evidence is such as if false, the falsehood of it may be so proved as to convict the witness of perjury. But what indictment could be supported for a laugh, a shrug, or a wink? Was there any conversation about killing the King? No: but there was a laugh—there was an oath to which we were sworn—and then—there was a wink; by which I understood, we were swearing one thing, and meant another. Why, gentlemen, there can be no safety to the honour, the property, or the life of a man, in a country where such evidence as this shall be deemed sufficient to convict a prisoner. There is nothing necessary to sweep a man from society, but to find a miscreant of sufficient enormity, and the unfortunate accused is drifted down the torrent of the credulity of a well-intending jury. See how material this is; Weldon was present at only one conversation with the witness. It is not pretended by the counsel for the crown, that the guilt as to any personal evidence against Weldon does not stand upon the first conversation. Was there a word upon that conversation of adhering

to the King's enemies? It was stated in the case, and certainly made a strong impression, that Lawler was enlisted, in order to assist the French. I heard no such evidence given. The signs of what he called Defenders were communicated to him; the oath which he took was read, and he was told there would be a subsequent meeting, of which the witness should receive notice from Brady.

Gentlemen, before I quit that meeting at Barrack-street, let me put this soberly to you, What is the evidence upon which the court can leave it to you to determine that there is equivocation in the oath? It must be in this way: you are to consider words in the sense in which they are spoken, and in writings words are to be taken in their common meaning. Words have sometimes a technical sense for the purposes of certainty: they may also be made the signs of arbitrary ideas, and therefore I admit a treasonable meaning may be attached to words which, in their ordinary signification, are innocent. But where is the evidence, or what has the witness said to make you believe, that these words in the oath were used in any other than in the common, ordinary acceptation? Not a word, as I have heard. Weldon can be affected only personally, either, first, upon acts by himself, or by other acts brought home to him from the general circumstances of the case. I am considering it in that two-fold way, and I submit, that if it stood upon the evidence respecting the

conduct of the prisoner at Barrack-street alone, there could not be a doubt as to his acquittal. It is necessary, therefore, that I should take some further notice of the subsequent part of the evidence. The witness stated, that Weldon informed him, that there would be another meeting, of which he, the witness, should have notice. He met Brady and Kennedy: they told him there was a meeting at Plunket-street; and here give me leave to remind the court, that there is no evidence that there was any guilty purpose in agitation to be matured at any future meeting—no proposal of any criminal design. There ought to be evidence to show a connexion between the prisoner and the subsequent meeting, as held under his authority. It is of great moment to recollect, that before any meeting Weldon had left town, and, in the mention of any meeting to be held, let it be remembered he did not state any particular subject, as comprehending the object of the meeting. What happened? There certainly was a meeting at Plunket-street; but there was not a word of assisting the French—of subverting the religion—of massacring the Protestants—of any criminal design whatever. There was not any consultation upon any such design. I make this distinction, and rely upon it, that where consultations are overt acts of this or that species of treason, it must be a consultation by the members composing that meeting; because it would be the most ridiculous nonsense, that a conversation

addressed from one individual to another, not applied to the meeting, should be called a consultation: but, in truth, there is no evidence of anything respecting the French, except in Stoney-batter. There, for the first time, the witness says he heard any mention of the French. Here, gentlemen of the jury, let me beseech you to consider what the force of the evidence is. Supposing that what one man said there to another about assisting the French, to have been criminal, shall Weldon, who was then for a week a hundred miles from the scene, be criminally affected by what was criminally done at Stoney-batter? It is not only that he shall be criminally affected by what was criminally done, but even to the shedding of his blood, shall he be affected by what any individual said, who casually attended that meeting! Have you any feeling of the precipice to which you are hurried, when called upon to extend this evidence in such a manner?—without any one person being present with whom the prisoner had any previous confederation! You will be very cautious, indeed, how you establish such a precedent. How did Weldon connect himself with any other meeting? Why, he said, there will be another meeting, you shall have notice—it would be going a great way to affect him in consequence of that. I lay down the law with confidence, and I say there is no doctrine in it so well ascertained and established, as that a man is to be criminally affected only by his own acts—the man to be

charged must be charged with overt acts of his own. There is no law—no security—no reason in that country where a man can be mowed down by foolishly crediting the evidence, not of acts of his own, but of the acts of others, constructively applied to him, who did not attend the meeting, nor was even aware of it. If a man was to be exposed to the penalties of treason hatched and perpetrated in his absence, every member of society becomes liable to be cut off by mere suspicion. I say, no man could go to his bed with an expectation of sleeping in it again if he were liable to be called upon to answer a charge of suspicious words, spoken when he was a hundred miles off, by miscreants with whom he had no connexion. Good God! gentlemen, only take asunder the evidence upon which you are called upon to take away the life of this man:—"You, Weldon, are chargeable, and shall answer with your blood, for what was done at Stoney-batter." "Why, that is very hard, gentlemen, for I was not there—I was an hundred miles off." "Yes, but you were there in contemplation of law, consulting about the abominable crimes of compassing the King's death, and adhering to his enemies." "How, gentlemen, could I be there?—I knew not that there was any such meeting—I was not present at it." "Aye, but you were there in contemplation of law, because you told Lawler, that Brady would inform him, when there would be a meeting in Thomas-street; and because you

told him so, you shall be answerable with your life for what is done, at any meeting, at any distance of time, at any place, by strangers whom you have never seen or heard of. You have written your name, you have indorsed the treasonable purpose, and through whatever number of persons it may pass, the growing interest of your crime is accumulating against you, and you must pay it with your blood, when it is demanded of you."

Gentlemen, before we shall have learned to shed blood in sport—while death and slaughter are yet not matter of pastime among us, let us consider maturely, before we establish a rule of justice of this kind. Terrible rules, as we have seen them to be, when weighed upon the day of retribution. I confess it is new to me. Whatever doctrines I have learned, I have endeavoured to learn them from the good sense and humanity of the English law; I have been taught, that no man's life shall be sacrificed to the ingenuity of a scholium, and that even he who has heedlessly dropped the seed of guilt, should not answer for it with his blood, when it has grown, under the culture of other hands, from folly to crime, and from crime to treason; he shall not be called upon to answer for the wicked faults of casual and accidental folly. No, gentlemen; I say it with confidence, the act which makes a man guilty must be his own; or if it be by participation it must be by actual participation, not by construction; a construction which leads to an

endless confounding of persons and things. If I do an act myself, I am answerable for it: if I do it by another, I am answerable also. If I strike the blow, I am answerable: if I send an assassin, and he strikes the blow, it is still my act, and I ought to be charged with the criminality of it. But if I go into a society of men, into a club, or play-house, and a crime be there committed, there is no principle of law which shall bring home to me the guilty conduct of those men which they may pursue at any distance of time. What protection can a miserable man have from my discharging perhaps the ineffectual office of my duty to him, if the rule laid down, that every word he said, or was said by a man with whom he ever had a conversation, shall affect him at any distance of time? Consider what will be the consequence of establishing the precedent, that a man shall always be responsible for the act of the society to which he has once belonged. Suppose a man heedlessly brought into an association where criminal purposes are going forward—suppose there was, what has been stated, a society of men calling themselves Defenders, and answering in fact to the very singular picture drawn of them. Will you give it abroad, that if a man once belongs to a criminal confederacy; his case is desperate—his retreat is cut off—that every man once present at a meeting to subvert the government, shall be answerable for every thing done at any distance of time by this flagitious

association? What is the law in this respect? As in the association there is peril, so in the moment of retreat there is safety. What could this man have done? He quitted the city—he went to another part of the kingdom, when the treasonable acts were committed; yes, but he was virtually among them! What constitutes a man virtually present, when he is physically absent? What is the principle of law by which he shall be tried? It can alone be tried by that, by which the mandate or authority of any man is brought home to him. By previously suggesting the crime, by which he becomes an accessary before the fact, and therefore a principal in treason; for by suggesting the crime he proves the concurrence of his will with that of the party committing the crime. This is a maxim of law: that which in ordinary felonies makes a man an accessary, in treason will constitute him a principal, because in treason there are no accessaries. Suppose a meeting held for one purpose, and a totally distinct crime is committed, are those who were at the first meeting accessaries? Certainly not; because they must be procurers of the fact done. To make a man a principal, he must be *quodammodo* aiding and assisting — that is not proved. What, then, is the accessorial guilt? Did the prisoner write to the others? Does he appear to be the leader of any fraternity—the conductor of any treasonable meeting? No such thing. I say when he quitted Dublin he had no intention of

giving aid or countenance to any meeting; the connexion between him and the societies ceased, and there is no evidence that he had any knowledge of any of their subsequent acts. Unless there be positive evidence against him, you ought to consider him out of the sphere of any association. But still you make him answerable for what was done. If you do that, you establish a rule unknown to the sense or humanity of the law; making him answerable for what was done, not by himself but by other persons.

Gentlemen, I feel that counsel, anxious as they ought to be, may be led further than they intend; —in point of time I have pressed further than I foresaw upon the patience of the jury and the court. I say the object of this part of the trial is whether the guilt of any thing which happened in that society be in point of law brought home to the prisoner? I have endeavoured to submit that the charge ought to be clear, and the evidence explicit, and that though the meetings at which Lawler attended were guilty, yet the prisoner, being absent, was not affected by their criminality. Give me leave now, with deference, to consider the case in another point of view. I say then, from what has appeared in evidence, the meetings themselves cannot in the estimation of the law be guilty. If these meetings are not provably guilty of treason, there can be no retroactive guilt upon the prisoner, even if the communication between

them and him were proved. If there be no direct and original guilt—if they do not that, which, if done by him, would amount to an overt act of treason, *a fortiori*, it cannot extend to him. Therefore, let me suppose, that the prisoner was at the time present at these meetings. Be pleased to examine this, whether if he were, the evidence given would amount to the proof required. I conceive that nothing can be more clear than the distinction between mere casual, indiscreet language, and language conveying a deliberated and debated purpose. To give evidence of overt acts, the evidence must be clear and direct. How is Hensay's case?* A species of evidence was adduced, which it was impossible for any man to deny—actual proof of correspondence found in his own writing and possession. How was it in Lord Preston's case?† Evidence equally clear of a purpose acted upon—going to another country for that treasonable purpose. In every case of which we read memorials in the law, the act is such, that no man could say it is not an overt act of the means used by the party in effectuation of his guilty intent. But I said, that a deliberate purpose, expressed and acted upon, is different from a casual, indiscreet expression. Suppose now, that the meeting were all indicted for compassing the King's death, and that the overt act charged is,

* 19 Howell's State Trials, 1341.

† 12 Howell's State Trials, 646.

that they consulted about giving aid to the King's enemies, actually at war; the guilt of all is the guilt of each—there is no distinction between them. If that meeting held that consultation, they are all guilty of that species of high treason. But if the evidence were, that at that meeting which consisted of as many as are now here, one individual turned about to another, and said, "we must get arms to assist the French, when they come here." Would any reasonable man say, that was a consultation to adhere to the King's enemies?—a mere casual expression, not answered by any one—not addressed to the body. Can it be sustained for a moment in a court of justice, that it was a consultation to effect the death of the King, or adhere to his enemies? No, gentlemen, this is not matter of any deep or profound learning—it is familiar to the plainest understanding. The foolish language of one servant in your hall is not evidence to affect all the other servants in your house—it is not the guilt of the rest. I am aware it may be the guilt of the rest; it may become such. But I rely upon this; I address it to you with the confidence that my own conviction inspires, that your lordships will state to the jury, that a consultation upon a subject is a reciprocation of sentiment upon the same subject. Every man understands the meaning of a consultation; there is no servant that cannot understand it. If a man said to another, "we will conspire to kill the King," no

lacquey could mistake it. But what is a consultation? Why such as a child could not mistake if it passed before him. One saying to another, "We are here together, private friends—we are at war—the French may land, and if they do, we will assist them." To make that a consultation there must be an assent to the same thought; upon that assent, the guilt of the consultation is founded. Is that proved by a casual expression of one man, without the man to whom it was directed making any answer, and when, in fact, every other man but the person using the expression was attending for another purpose? But if there be any force in what I have said, as applied to any man attending there, how much more forcible will it appear, when applied to a man who was an hundred miles distant from the place of meeting. If the law be clear, there is no treason in hearing treasonable designs and not consenting thereto (though it be another offence), unless he goes there, knowing beforehand what the meeting was to be. Here, gentlemen, see how careful the law is, and how far it is from being unprovided as to different cases of this kind. If a man go to a meeting, knowing that the object is to hatch a crime, he shall be joined in the guilt. If he go there and takes a part, without knowing previously, he is involved; though that has been doubted. Foster says, "this is proper to be left to the jury, though a party do or say nothing as to the consultation." If, for instance, a

man, knowing of a design to imprison the King, go to a meeting to consult for that purpose, his going there is an obvious proof of his assent and encouragement. This is the law, as laid down by one of the most enlightened writers in any science. Compare that doctrine with what Mr. Attorney-General wishes to inculcate, when he seeks to convict the prisoner. There was a meeting in Barrack-street, and it was treason, because they laughed. As Sancho said, they all talked of me, because they laughed. But, then, there is a catechism. Aye, what say you to that? The cock crew in France;—what say you to that? Why, I say, it might be foolish, it might be indecent to talk in this manner. But what is the charge?—that he consulted to kill the King. Where was it he did that?—at Cork! But did he not assist? No; he was not there. But he did assist, because he communicated signs, and thus you collect the guilt of the party, as the coroner upon an inquest of murder, who thought a man standing by was guilty. Why?—because three drops of blood fell from his nose. This was thought to be invincible proof of his guilt. It reminds me also of an old woman who undertook to prove that a ghost had appeared. "How do you know there was a ghost in the room?" "Oh! I'll prove to you there must have been a ghost—for the very moment I went in, I fainted flat on the floor!" So, says Mr. Attorney-General, "Oh, I'll convince you, gentlemen, he

designed to kill the King, *for he laughed.*" Weldon was chargeable with all the guilt of the meeting—he laughed when the paper was read, and said, "When the King's head was off, there was an end of the allegiance." In answer to that, I state the humane good sense of the law, that, in the case of the life of a traitor, it is tender in proportion to the abomination of the crime; for the law of England, while it suspended the sword of justice over the head of the guilty man, threw its protection around the innocent, to save his loyalty from the danger of such evidence. It did more—it threw its protection around him whose innocence might be doubted, but who was not proved to be guilty. The mild and lenient policy of the law discharges a man from the necessity of proving his innocence, because otherwise it would look as if the jury were empannelled to condemn upon accusation, without evidence in support of it, but merely because he did not prove himself innocent. Therefore, gentlemen, I come round again to state what the law is. In order to make a general assembling and consultation evidence of overt acts, there must be that assembling; and the guilt must be marked by that consultation, in order to charge any man, who was present and did not say anything concurring, with the guilt of that consultation. It is necessary that he should have notice that the guilty purpose was to be debated upon—that the meeting was convened for that purpose.

But let me recal your attention to this, and you will feel it bearing strongly upon that case. The silence of a man at such a meeting is not criminal to the degree here charged. Then suppose his disclaimer necessary—suppose the law considered every man as abetting what he did not disavow—remember that the wretch now sought to be affected by his silence at a meeting, was one hundred miles distant from it. There might have been a purpose from which his soul had recoiled. Is this then evidence upon which to convict the prisoner? There is no statement of any particular purpose—no summons to confer upon any particular purpose—no authority given to any meeting by a deputy named; and let me remind you, that at the last meeting, if there were the gossipings and communications you have heard, there was not any one man present who attended the first meeting, nor is there any evidence to show that the prisoner had ever spoken to any one man who attended the last meeting, upon any occasion; and yet the monstrous absurdity contended for is, that although Weldon proposed no subject for discussion—although he proposed no meeting—although he did not know that any purpose was to be carried into effect, because he was then one hundred miles off, he is still to suffer for the foolish babble of one individual to another. You are to put all proceedings together, and out of the tissue of this talk, hearsay, and conjecture, you are to collect

the materials of a verdict, by which you directly swear that the man is guilty of compassing the King's death. But suppose a man were to suggest a treasonable meeting—that the meeting takes place, and he does not go—the first proposal may amount to an evidence of treason, if it went far enough, and amounted to an incitement. But suppose the meeting held be a distinct one from that which was suggested, and the party does not attend, it appears to me, that the act of that meeting cannot be considered as his overt act. The previous incitement must be clearly established by evidence, and I rely upon it, that the subsequent acts of that meeting, to which I am supposing he did not go—particularly if it be a meeting at which many others were present who were not at the first—I rely upon it, I say, that no declaration of any man (and more decidedly, if it be by a man not privy to the original declaration), can be evidence upon which a jury can attach guilt to the party. It is nothing more than misfeasance, which is certainly criminal, but not to the extent of this charge. To affect any man by subsequent debate, it must be with notice of the purpose, and if the meeting be dictated by himself it is only in that point he can be guilty; because if you propose a meeting for one purpose, you shall not be affected by any other—no matter what the meeting is—however treasonable or bad. Unless you knew before for what purpose they assembled,

you cannot be guilty virtually by what they have done.

Gentlemen, I do not see that any thing further occurs to me upon the law of the case, that I have not endeavoured in some way to submit to you. Perhaps I have been going back somewhat irregularly. Gentlemen, there remains only one, and that a very narrow subject of observation. I said that the evidence upon which the life, and the property of a man should be decided and extinguished, ought to be of itself evidence of a most cogent and impressive nature. Gentlemen, does it appear to you that the witness whom you saw upon the table comes under that description? Has he sworn truly? If he has, what has he told you? As soon as he discovered the extent of the guilt he quitted the fraternity. Do you believe that? Hart told him that ALL the Protestants were to be massacred. "I did not like," said he, "the notion of massacring ALL." Here is the picture he draws of himself—he an accomplice in the guilt. I did not ask him—"Have you been promised a pardon?" I did not ask him—"Are you coming to swear by the acre?"—but I appeal to the picture he drew of himself upon the table. What worked his contrition? Is it the massacre of one wretch? He was unappalled at the idea of dipping his hands, and lapping the blood of *part* of the Protestant body—it was only heaps of festering dead that nauseated his appetite, and

worked his repentance and conversion. Is your verdict to be founded upon the unsupported evidence of a wretch of that kind? His stomach stood a partial massacre—it was only an universal deluge of blood that made him a convert to humanity! And he is now, the honest, disinterested, and *loyal* witness in a court of justice! What said he further? "As soon as I found from Hart, their schemes, I went to Mr. Cowan." You saw, gentlemen, that he felt my motive in asking the question. "You abandoned them as soon as you found their criminality?" Because, had he answered otherwise, he would have destroyed his credit; but as it is, he has thrown his credit, and the foundation of it, overboard. If Lawler be innocent, Weldon must be so. He saw that, and, therefore, he said he thought it no crime to kill the King. Therefore, gentlemen, my conscience told me, that if he felt no remorse at plunging a dagger into the heart of his King, he would feel no trembling hesitation at plunging a dagger into the breast of an individual subject, by perjured testimony. Those workings of the heart which agitate the feelings at the untimely fate of a fellow-creature touch not him, and he could behold with delight the perishing of that man who had a knowledge of *his* guilt. He has no compunction, and he betrays no reluctance at drinking deep in the torrent of human blood, provided it leaves a remnant of the class. What stipulation can you make between a wretch of

that kind and the sacred obligation of an oath? You are to swear upon his oath; a verdict is not to be founded upon your own loyalty—not upon what you have seen or heard spoken disrespectfully of the government or the King. Your honest, pure, and constitutional verdict can be founded only upon that sympathy that you feel between your own hearts and the credibility of the witness. It is a question for you. Will you hazard that oath upon the conscience of such a man? A man influenced by hope and agitated with fear—anxious for life and afraid to die, that you may safely say, "We have heard a witness, he stated facts which we could not believe; he is a wretch, for he thought it no crime to murder his King; and a partial massacre appeared to him to be meritorious!" Is it upon the testimony of that nefarious miscreant—the ready traitor—the prompt murderer—I retract not the expression, if I did, it would be to put in its place a word of more emphatic and combined reprobation; is it upon that evidence, I say, you will pronounce a verdict, establishing the most aggravated degree of criminality known to our law, upon the person of that man, supposed by the law to be innocent, until his guilt be proved? I know not whether the man be a good subject or a bad one: it is not necessary for me to know nor for you to inquire; but I exhort you finally to remember, that in Great Britain, so anxious has the law been to guard against the

perfidiousness of such men, that no less than two concurrent witnesses are necessary there in cases of treason. I call not upon you to adopt that law; but to show you the principle, that there should be strong evidence satisfying the mind of a jury. I commit the decision of this case to your consciences, not to your humanity—I commit it to your determination upon the sound principles of justice aud law.

After Mr. CURRAN had sat down, he rose again, and said he had closed without stating any evidence, from a conviction that it would be unnecessary; and added—"It is desired to produce some evidence which I will not oppose in a case of life. There is evidence to show that Lawler is not credible."

CURRAN examined witnesses to this effect, but Weldon was found GUILTY, and though Leary, another prisoner, was acquitted, under precisely similar facts, Weldon was hanged.