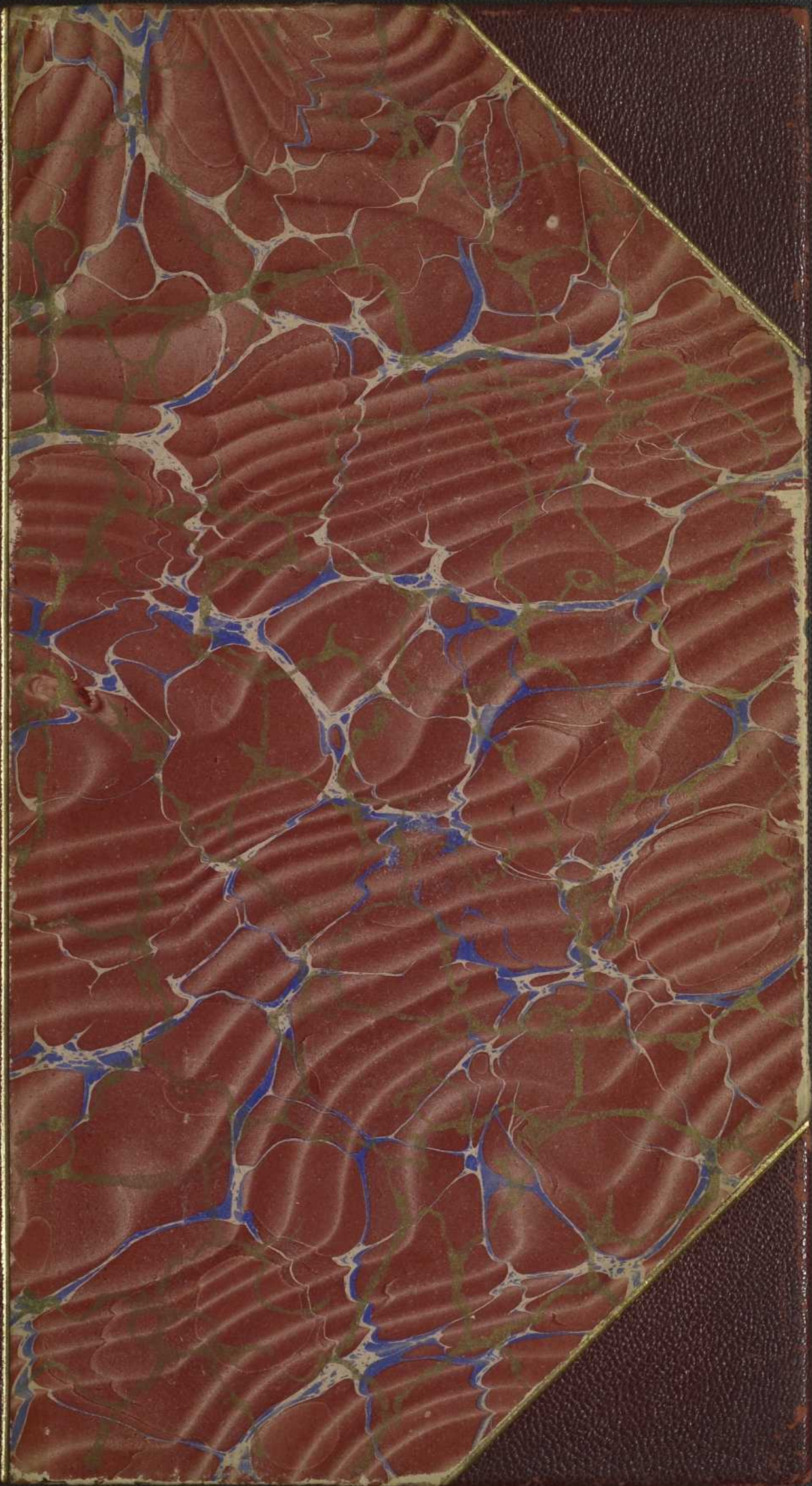
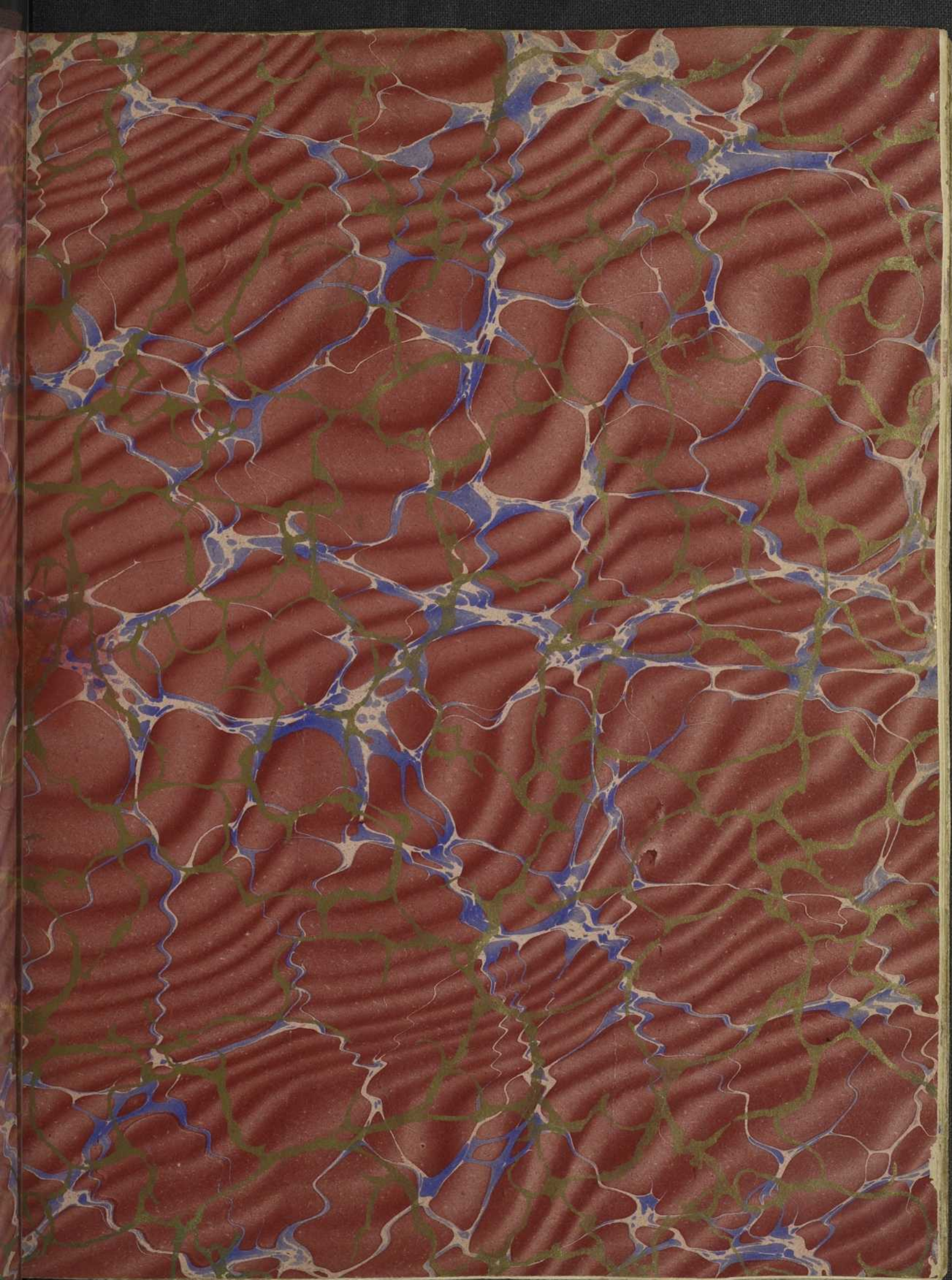
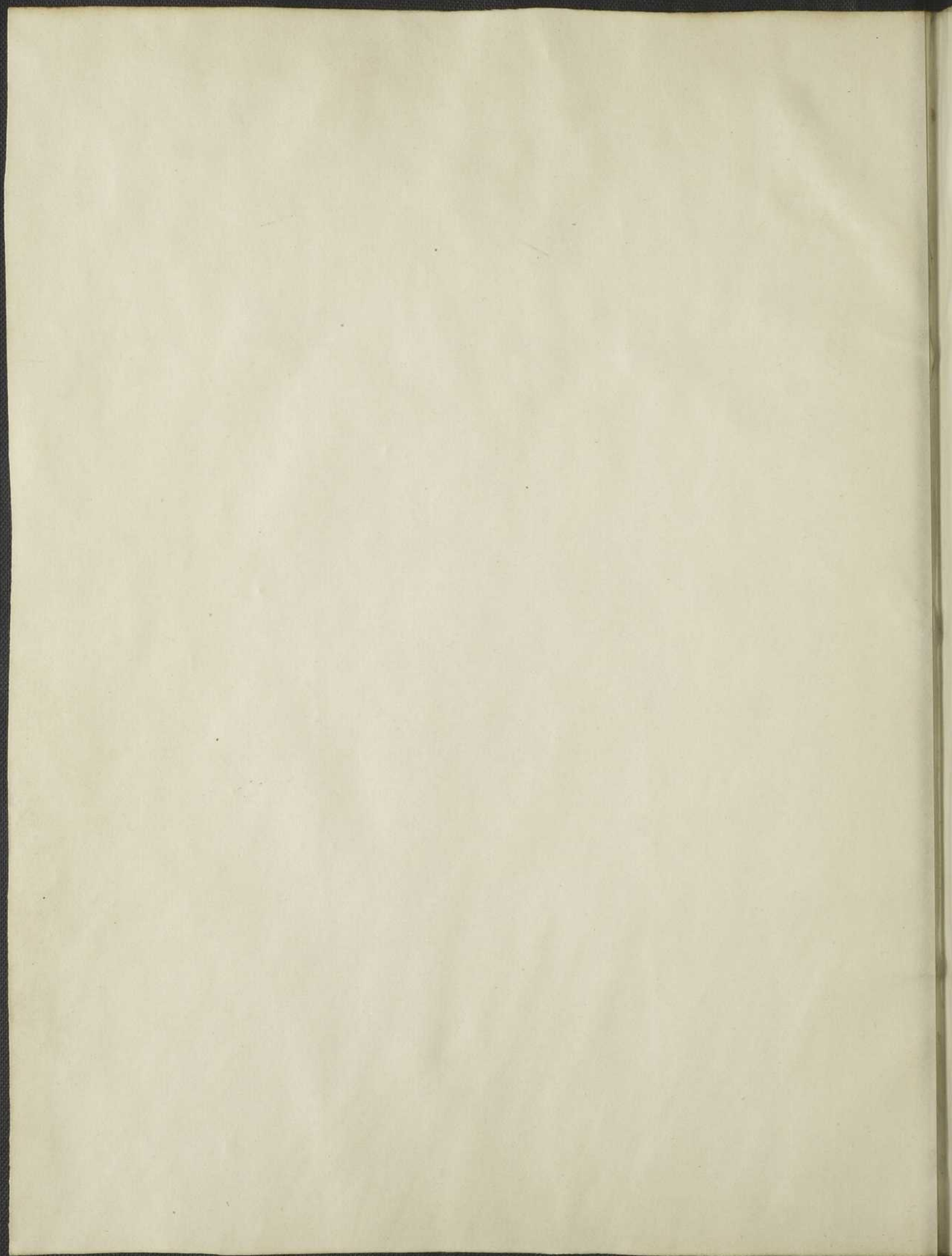


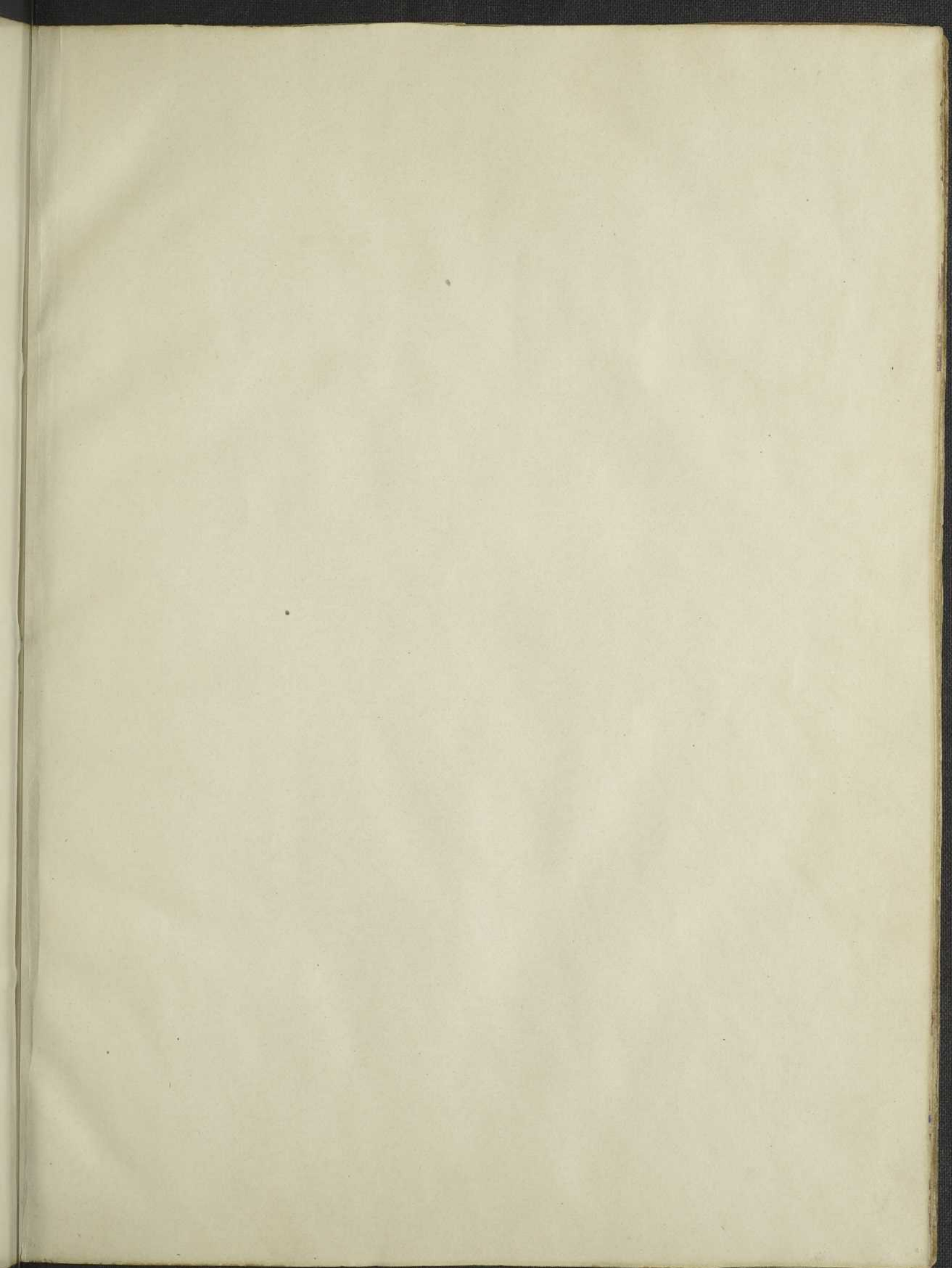
RES
AD
138

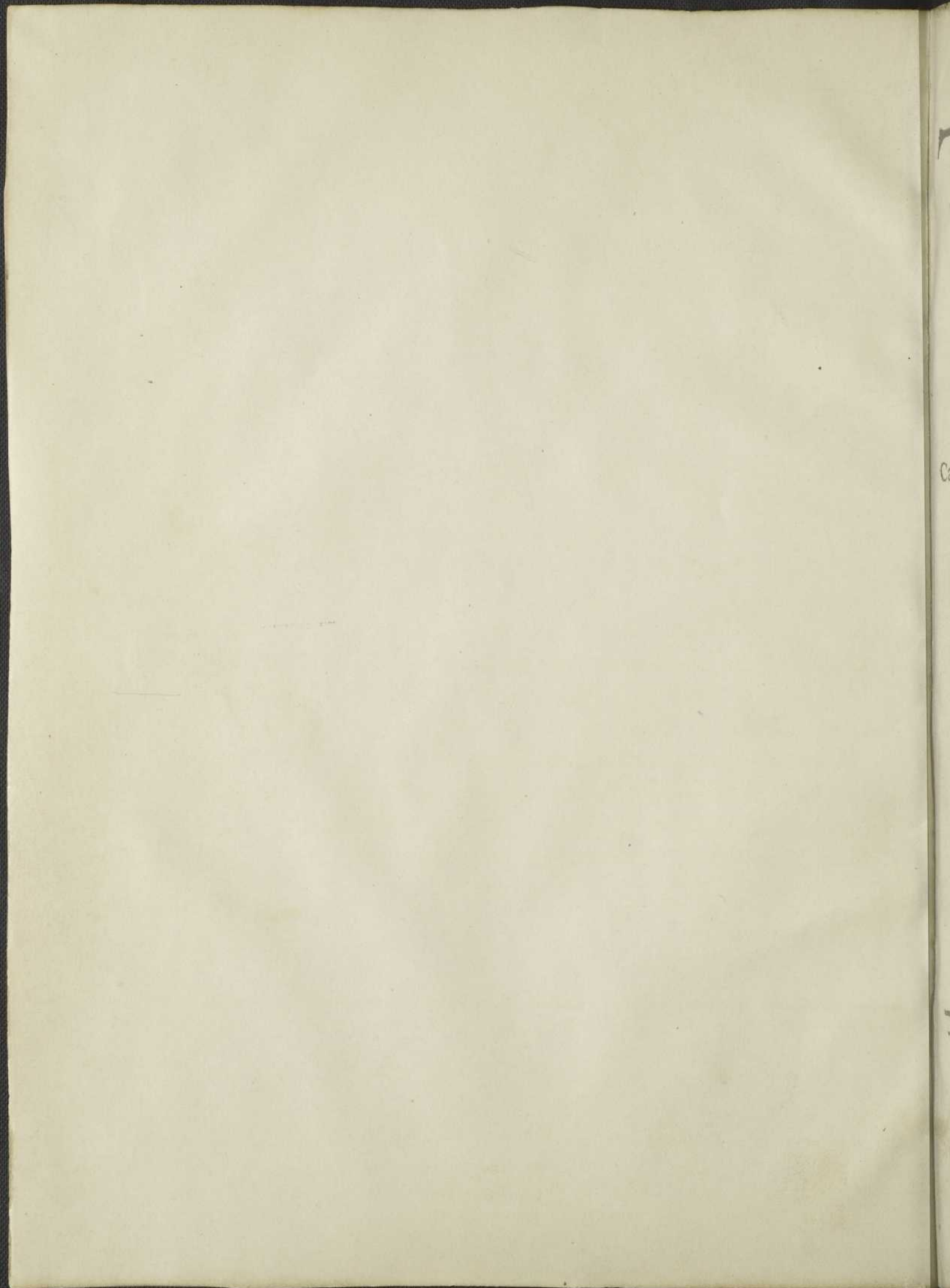












T H E

T R I A L

O F

DANIEL DISNEY, Esq;

Captain of a Company in His Majesty's 44th Regiment of Foot, and Town-Major of the Garrison of *Montreal*, at the Session of the Supreme-Court of Judicature, holden at *Montreal*, on *Saturday* the 28th Day of *February*, and thence continued by Adjournments to *Wednesday* the 11th Day of *March*, 1767, before the Honourable WILLIAM HEY, Esq; Chief-Justice of the Province of *Quebec*, upon an Indictment containing two Charges, the one for a Burglary and Felony, in breaking and entering Mr. *Thomas Walker's* House, at *Montreal*, on the Night of the 6th Day of *December*, in the Year 1764, with an Intention to murder the said *Thomas Walker*, the other for feloniously and of Malice aforethought cutting off the Right Ear of the said *Thomas Walker*, with Intention thereby to disfigure him, against the Form of the Statute of 22 and 23 Car. II. Cap. i. in that Case made and provided.

D. A. Benthall

Q U E B E C:

Printed by BROWN & GILMORE.

M,DCC,LXVII.

RES
AD
138

15

1767

T R I A L

OF

DAVID DICKINSON

Capitain of a Company in His Majesty's 4th Regiment of Foot Guards
Major of the Garrison of Montreal, at the Session of the Superior Court
of Judicature, holden at Montreal, on Saturday the 28th Inst. 1766
and thence continued by Adjournments to Wednesday the 31st Day
March, 1767, before the Honourable WILLIAM DE LA PRAIRIE, Esq.
Justice of the Province of Quebec, upon an indictment containing
Charges, the one for a Burglary and Felony, in breaking and entering
Mr. Thomas Walker's House, at Montreal, on the Night of the 21st
of December, in the Year 1765, with an intention to commit the
Thomas Walker, the other for feloniously and of Malice aforethought
killing off the Right Ear of the said Thomas Walker, with intent
to disgrace him, against the Person of the said Thomas Walker, and
Cap. i. in that Charge and indictment.

AND

VERG

Printed by BROWN & GILBERT

M.DCC.LXXII.

INTRODUCTION.

CAPTAIN DISNEY, with five other Gentlemen, residing in the District of *Montreal*, had been taken up in the Month of *November*, 1766, for the Cruel Assault committed, about two Years ago, upon Mr. *Thomas Walker*. They were apprehended by Virtue of Warrants of the Honorable WILLIAM HEY, Esq; his Majesty's Chief-Justice of the Province of *Quebec*, which were founded upon a long, minute, and positive Information given against them, upon Oath, before the said Chief-Justice, by *George McGovock*, a Soldier of the 28th Regiment of Foot, who declared himself to have been an Accomplice with them in that Affair, and to have been an Eye-witness of all the Proceedings in it. The Persons so apprehended immediately came to *Quebec*, and applied to the Chief-Justice to be bailed; and many of the principal Persons in the Province offered to become bound for their Appearance, at the ensuing Session of the Supreme Court, at *Montreal*, in order to take their Trials. But, by reason of the Magnitude of the Crime, (it being a Capital Offence, of a very odious Nature) and the Positiveness of the Charge against them, the Chief-Justice thought he was not at Liberty, consistently with the Rules of Law, to admit them to Bail; grounding his Opinion herein, both on the general Principles of the Law relating to Bail in criminal Cases, and on some very strong modern Authorities on this Subject, and particularly the two Cases of *Atton* and *Greenwood*, reported in Sir *John Strange's* Reports, Page 851 and 1138, which seem to be decisive in the Point. They were therefore committed to Custody, but confined in the easiest and most indulgent Manner possible in Mr. *William Grant's* House, at *Montreal*, which is said to be the best House in the Province; it having been suggested, as a Ground for this Indulgence, that the King's Prison at *Montreal* was in bad Repair, and not in a fit Condition to receive them. On the 28th Day of the *February* following, in the Year 1767, the Chief-Justice held a Session of the Supreme-Court of Judicature at *Montreal*, both for criminal and civil Matters, which was continued by several Adjournments to the Middle of *March*. And about the 8th or 9th Day of *March*, a Bill of Indictment, that had been presented to the Grand-Jury against Captain *Disney*, by the Attorney-General, was returned by them a true Bill; and on the 11th Day of the same Month, Captain *Disney* was tried upon this Indictment, and acquitted.



The whole Record of this Proceeding from the Bill of Indictment to the Acquittal and Discharge of the Prisoner, inclusively, is as follows:

PROVINCE of } **B** E IT REMEMBERED, That at the Session of the Supreme-Court of
 QUEBEC, ff. } Judicature of the said Province of Quebec, holden at Montreal, in the
 Province aforesaid, on the Twenty-eighth Day of February, in the Seventh
 Year of the Reign of our Sovereign Lord GEORGE the Third, of Great-Britain, and the Territories there-
 unto belonging, KING, Defender of the Faith, and so forth, before the Honourable WILLIAM HEY,
 Esquire, Chief-Justice of the said Province, assigned by Letters Patent of our said Sovereign Lord the King,
 under the Publick Seal of the said Province, to inquire by the Oaths of honest and lawful Men of the said
 Province, and by other lawful Ways, of all Treasons, Misprisions of Treason, Murders, Felonies, Burg-
 laries, Trespasses, and other Misdemeanours whatsoever committed within the said Province, and the said
 Treasons, Felonies, Burglaries, and other the Premises, to hear and determine according to the Laws and
 Customs of that Part of the Kingdom of Great-Britain called England, and the Ordinances of the said
 Province, and to deliver the Goals of the said Province of the Prisoners therein being, and to inquire by the
 Oaths of honest and lawful Men of the Province aforesaid, and by other lawful Ways, of all Civil Pleas,
 Actions, and Suits, as well real and personal as mixed, between our said Sovereign Lord the King and any
 of his Subjects, or between Party and Party and the said Pleas, Actions, and Suits, to hear and deter-
 mine, according to the Laws and Customs of that Part of the Kingdom of Great-Britain called England,
 and the Ordinances of the Province aforesaid, by the Oath of Samuel M'Kay, Esquire, Monsr. De St.
 Ours, Isaac Todd, Esquire, Monsr. Francis de Bellestre, Lewis Matterel, Esquire, Monsr. De
 Contrecoeur, Monsr. De Neverville, Thomas Lynch, Esquire, Monsr. De la Bruiere, John
 Livingston, Esquire, Mr. Jacob Jordan, Monsr. De Neverville, Monsr. De Normanville, Moses
 Hazen, Esquire, Monsr. Dailbout de Cuify, Mr. James Porteous, John Dumas, Esquire, William
 Grant, Esquire, Samuel Mather, Esquire, Monsr. Augustin Baillé, and Mr. John Jennison, honest
 and lawful Men of the said District of Montreal, in the Province aforesaid, being then and there sworn
 and charged to inquire for our said Sovereign Lord the King, touching and concerning all Treasons, Mis-
 prisions of Treason, Murders, Felonies, Burglaries, Trespasses, and other Misdemeanours, committed
 within the said District of Montreal, It is presented, in Manner and Form following, that is to say, Pro-
 vince of Quebec, District of Montreal, ff. The Jurors, for our Sovereign Lord the King, upon their
 Oath, present, That Daniel Disney, of the Town of Montreal, in the District of Montreal, in the Pro-
 vince of Quebec, Esquire, Captain in the Forty-fourth Regiment of Foot, on the sixth Day of December,
 in the fifth Year of the Reign of our Sovereign Lord GEORGE the Third, by the Grace of God, of
 Great-Britain, and the Territories thereunto belonging, KING, Defender of the Faith, and so forth, Be-
 tween the Hours of Eight and Nine of the Night of the same Day, with Force and Arms, at the Town
 of Montreal, in the District of Montreal, in the Province aforesaid, the Dwelling-house of Thomas
 Walker, Esquire, there situate, with divers other evil minded Persons, did, feloniously and burglariously,
 break and enter, with an Intent feloniously and of Malice a-fore-thought, him the said Thomas Walker,
 then and there being, to kill and murder against the Peace of our said Lord the King, his Crown and Digni-
 ty: And the Jurors aforesaid, upon their Oath aforesaid, Do further present, That the said Daniel Disney,
 on the said sixth Day of December, in the Year aforesaid, at the Town of Montreal aforesaid, in the
 District aforesaid, did, with divers others evil minded Persons, with Force and Arms, feloniously and
 of Malice a-fore-thought, and by lying in Wait, make an Assault upon the said Thomas Walker, in the
 Peace of God, and our said Lord the King, then and there being, and did then and there, feloniously
 and of Malice a-fore-thought, and by lying in Wait, cut off the Right Ear of the said Thomas Walker,
 with Intention thereby to disfigure the said Thomas Walker, against the Peace of our said Lord the King,
 his Crown and Dignity, and against the Form of the Statute in that Case made and provided: Where-
 upon the Provost-Marshal, of the Province aforesaid, was commanded that he have the Body of the said
 Daniel Disney, then being in the Custody of the said Provost-Marshal, for the Offence aforesaid, by Virtue
 of a certain Warrant to the said Provost-Marshal directed in that Behalf, by the aforesaid Chief-Justice
 of the said Province, before him the said Chief-Justice of the Province, on Wednesday the eleventh Day
 of March, at the said Court of Oyer and Terminer and General-goal-delivery, held by him the said Chief-
 Justice,

Justice, at the Court-house at Montreal aforesaid, in the District of Montreal aforesaid, in the Province aforesaid, on the Twenty-eighth Day of February aforesaid, and continued by Adjournment until the said eleventh Day of March next after following, to answer concerning the Premises: And on the said eleventh Day of March, the said Daniel Disney was brought to the Bar in his own proper Person by the Provost-Marshal aforesaid, and being then and there arraigned of the Premises above charged upon him in the Indictment aforesaid, and demanded whether or no he were guilty of the same, and how he would acquit himself thereof, he saith that he is not guilty of the same and that he thereof puts himself upon his Country for Good or Evil; And FRANCIS MASERES, Esquire, who prosecuteth for our said Lord the King in this Behalf, doth the like: Whereupon the Provost-Marshal aforesaid is commanded to cause to come forthwith before the Chief-Justice aforesaid, twelve good and lawful Men of the Neighbourhood of the Town of Montreal aforesaid, in the District of Montreal aforesaid, in the Province aforesaid, and who neither, &c. to recognize &c. and thereupon Thomas Cox, Randle Meredith, Alexander Patterson, Forest Oakes, Jacob Vanderheyden, John Dumoulin, Jonas Defaults, William Wier, Samuel Holmes, James Morrison, John Neagles, and George Young, were by the said Provost-Marshal impannelled for this Purpose, and being demanded, come, and being chosen, tried, and sworn, to say the Truth concerning the Premises, say upon their Oath, That the said Daniel Disney is not guilty of the Premises in the Indictment aforesaid charged upon him in Manner and Form, as the said Daniel Disney, for himself above by his Plea hath alledged, and that he did not withdraw himself for the same: And thereupon it is considered by the Court here that the said Daniel Disney, be acquitted of the said Indictment, and go hence without Day.

After



After the Prisoner had pleaded not guilty to the Indictment, and the Jury were duly sworn and charged to try the Issue, the Case was opened to the Court and Jury by FRANCIS MASERES, Esq; his Majesty's Attorney-General for the Province of *Quebec*, (who was the only Person of Counsel for the Crown on this Occasion) in some such Manner as hereafter followeth:

May it please your Honour, and you, Gentlemen of the Jury,

‘ IT is my Duty, as Prosecutor for the Crown, on the present Occasion, to lay open to you the Circumstances of the Crime with which the Prisoner at the Bar stands charged; which I am persuaded you will look upon as one of the most outrageous Violations of the Public Peace and Order that ever was brought before a Court of Justice: Nothing less than assaulting a Magistrate of unblemished Character in his own House, in the Night-time, with an Intention to murder him;—and this in Revenge for an Act done by him as a Magistrate, in Conjunction with three other Magistrates of the Province, in Support, as he thought, at least, of the Laws and Liberties of his Country.—If this is an Action that ought not to be the Subject of a Prosecution, surely nothing can deserve to be so: And if those who are charged with being guilty of it are just Objects of the Compassion of the Public, I know not what Offenders can excite their Indignation. It approaches in a great Degree to the most dangerous of all civil Crimes, High Treason itself, as it has an immediate Tendency to over-awe, to check, and even entirely to stop the Proceedings of the Magistrates of the Province in the Administration of Public Justice; without which our excellent Laws are but a dead Letter, and our boasted Liberties and Properties an empty Sound: And it was attended with Circumstances of deliberate Malice, Revenge, and Cruelty, that, in the Opinion of all Persons not destitute of the Feelings of Humanity, must make it compleatly odious: To which may be added the less important Circumstance of the cowardly Manner of its Execution, if the employing ten or twelve armed Men to surprise and attack one poor, unsuspecting, unarmed Man, sitting peaceably at Home in the Company of his Wife and Family, can entitle it to that Appellation.

‘ Gentlemen, I am sorry to observe further, that the Persons who committed this Outrage were Military Men: For surely this is an Aggravation of the Offence. It is in them an Act of Treachery: It is betraying the high and honourable Trust reposed in them by their King and Country, by employing to the Purposes of Revenge and Malice those Arms which had been put into their Hands for the Protection of their Fellow-Subjects, and the Maintenance of the Public Tranquillity.

‘ Gentlemen, I will now lay before you, in the first Place, the Occasion that gave rise to the Crime with which the Prisoner at the Bar stands charged, and afterwards the Manner and Circumstances of its Execution and the Share the Prisoner at the Bar took in it.

‘ When the Civil Government was established in this Province, in the Year 1764, a Number of Persons, in the District of *Montreal*, were commissioned by Governor MURRAY, to act as Justices of the Peace for that District, and new and great Powers of determining Matters of Civil Property, not belonging to those Magistrates in *England*, were given them by the great Ordinance of September 17th, of that Year, by which the Courts of Judicature were erected. Among the Persons so commissioned were Mr. *Thomas Walker*, Mr. *Dumas St. Martin*, Mr. *Livingston*, Mr. *Knipe*, and Mr. *Lambe*: These Gentlemen, as I am informed, all of them acted in their new Office with Honour and Integrity, and gave general Satisfaction to the People by their diligent Endeavours to promote their Welfare. There was one Abuse in particular which they earnestly laboured to reform, as it was then very generally and very severely felt by the Inhabitants of *Montreal*, and the Subject of frequent Complaints. This was the Oppression exercised by some Officers of the Army, under the Colour and Pretence of their Right of billeting Soldiers. The power of appointing Billets was often employed by them to serve the Purposes of gratifying their private Disgusts, and of extorting Money from the People. Three or four of the most drunken and riotous of the Soldiers would be sent to take up their Quarters at the House of a substantial Citizen, that was thought able to pay a good Price for an Exemption. This would alarm him, and oblige him to make the humblest and most earnest Intreaties to be

‘ excused

excused from receiving them; upon which an Intimation would be given him, that, if he would consent to pay Six or Eight Dollars a Month in Lieu of it, he might be excused, and the Soldiers with that Money would provide themselves other Quarters. This the poor Man would readily submit to (if he could by any Means raise the Money) rather than see his House taken up, his Furniture broken and spoilt, his Provisions wasted, and sometimes his Wife and Daughters insulted by such boisterous and profligate Inmates: And thus by paying the Tax required he would obtain his Exemption. They would then go to another Citizen or two, and by the like Menaces extort from them the like Contributions. Those were the Oppressions which Mr. Walker and his Fellow-Magistrates endeavoured to remove. Mr. Walker, in particular, drew out a Scheme for billeting the Soldiers, by which he made it appear, that there was no Necessity that more than two Soldiers should ever be quartered in one House, whereas there were several Houses at that Time that were burthened with five or six: So that the Hardships the People laboured under in this Respect were by no Means Evils of Necessity (in which Case they ought patiently to have been submitted to) but were mere Abuses of Power, to answer these sinister Purposes.

Gentlemen, in the Beginning of the Month of November, 1764, a Complaint, that took its Rise from this Power of billeting, was brought before Mr. Walker, Mr. Livingston, Mr. Dumas, and Mr. Lambe, the Justices of the Peace before mentioned, against Captain Benjamin Charnock Payne, of the 28th Regiment, which proved the immediate Occasion of Mr. Walker's Sufferings. Captain John Fraser, Pay-Master-General of the Troops in the District of Montreal, and one of the Prisoners now in Custody on Account of this Affair, had been billeted by Lieutenant-Colonel Christie, the Quarter-Master-General, on the House of one Mr. Reaume, a French Gentleman in Montreal, where he accordingly resided till the latter End of October, or Beginning of November, 1764, at which Time he was appointed to an Office by which he became entitled to, or at least possessed of, a House at the Public Expence; upon which he left his Quarters at Mr. Reaume's House, and went to live in the House so assigned him. Mr. Reaume, imagining his Billet was at an End, immediately invited Mr. Knipe, an English Gentleman, who was at that Time in the Commission of the Peace, and who occupied the Rooms underneath those possessed by Captain Fraser, and had hired those likewise of Mr. Reaume, at the Time that Captain Fraser was about to leave them, but had not yet taken possession of them, to come and take Possession of them according to his Agreement. But he was prevented from doing so by Captain Payne, who took Possession of them in the Name and Right of Captain Fraser, who insisted that he still retained a Right to these Quarters, and might either occupy them himself, if he so thought fit, or permit any other Person to occupy them in his Name. Mr. Reaume desired Captain Payne to resign them to Mr. Knipe, to whom he had let them; but Captain Payne refused to quit them, and insisted upon his Right to continue in them by Virtue of Captain Fraser's Billet. Mr. Knipe thought these Pretensions of Captain Fraser, to occupy these Quarters thus by Deputy, to be both hard and illegal, and wrote two or three Letters to him to complain of them: But, instead of receiving any kind of Satisfaction, he was answered in a Style of incredible and unsufferable Insolence. Upon this he applied to the other Justices for Redress; and Mr. Livingston, Mr. Dumas, and Mr. Walker, held a Court in Mr. Reaume's House, to inquire into the Affair; and being satisfied by the Depositions of Mr. Knipe and Mr. Reaume, that Mr. Knipe had, by a fair Agreement, hired the Apartments in Question of Mr. Reaume, long before Captain Payne came into them, and being of Opinion likewise that Captain Fraser's Right to them was at an End the Moment he became possessed at the Public Expence of another Lodging, which he thought a better one, they determined that Mr. Knipe had a legal Right to the Apartments, and that Captain Payne ought to resign them to him. And accordingly, in Conjunction with Mr. Lambe, a fourth Justice of the Peace, they signed a Warrant to a Bailiff, to command Captain Payne to quit that Lodging. In what Manner this Command of the Justices was to be enforced, I do not find to be certainly agreed: Those who are disposed to censure this Proceeding of the Justices, say that there was a Clause in the Warrant commanding the Bailiff to carry Captain Payne to Prison, if he refused to quit the Lodging, and should make Resistance; others inform me otherwise:

wise: This however seems to be certain, that it was never their Intention that Captain *Payne*, should be imprisoned. This will appear by the subsequent Part of their Conduct.

Gentlemen, I will not now minutely inquire how far these Proceedings of the Justices were legal, that is, how far they had Right to inquire into and determine this Contest between Mr. *Knipe* and Captain *Payne*, and to enforce their Decision of it (if they did so enforce it) by the Penalty of Imprisonment. But I will only observe that there seems to be a very reasonable Ground for supposing that all these Things were within their Jurisdiction, by Virtue of the Powers before-mentioned, given by the great Ordinance of *September 17, 1764*, to any two Justices of the Peace to hear and determine any Disputes concerning Matters of Civil Property, not exceeding the Value of Ten Pounds, which probably might take in the present Contest. Nor need we inquire whether or no the Decision they thought proper to make, that Captain *Payne* had no Right to these Apartments, was good in Point of Law: Though here, as well as before, I should incline to think that the Law was with them: For, if we consider that the being free from the Necessity of quartering Soldiers is one of the greatest and most valued Privileges of an *English Subject*—that it is one of the great Points of Liberty ascertained and confirmed for ever by that best of all Laws in the Statute-Book, the Petition of Right in the third Year of *Charles the First*—That all the Laws of *England* had been introduced into this Province by the great Ordinance of the 17th of *September, 1764*, and that these favourite and beneficial ones were promised by the King's Proclamation, in 1763—and that in *England* itself the Troops are only quartered in Public-Houses, but never in private ones; and that only by Virtue of a particular Act of Parliament, annually passed for that Purpose; we shall not wonder at the Unwillingness shewn by these worthy Magistrates to allow of the Legality of billeting Soldiers upon private Houses upon any other Ground but that of mere Necessity, or for any longer Time than such Necessity continued; of which, in the Case then before them, there could be no Pretence, since the Moment Captain *Frazer* received a House from the Government, in consequence of his new Employment, which by going to live in it he acknowledged to be better than his Quarters, it was evidently no longer necessary that those Quarters should belong to him. But whether they were right or wrong in their Opinions upon these Points is not very material. This is certain, that they meant to determine a Matter that they took to be within their Cognizance, and that they meant to determine it according to Law, and to do Justice to the Person they thought to be aggrieved. They therefore ought rather to have received the Thanks of their Fellow-Subjects for their faithful and spirited Discharge of their Duty, than to have become the Objects of so deep and deadly a Revenge.

This Warrant of the Justices of the Peace was served upon Captain *Payne* the next Day, or rather, if it be true that there was a Clause of Imprisonment in it, but half served by one of the Bailiffs of the District. For the Bailiff shewed it him, and required him to give up the Apartments to Mr. *Knipe*; but did not, upon the Captain's refusing to do so, offer to make him a Prisoner, or convey him to the Gaol. He neither laid hold on him, as is usual in Arrests, nor said to him, *You are my Prisoner*, nor told him that he had Orders to carry him to Prison. But Captain *Payne*, as if anxiously desirous of suffering an Indignity that might serve to irritate the Soldiers to a high Pitch, and dispose them to some desperate Act of Revenge against Mr. *Walker*, insisted upon going to Prison, and forced the Bailiff to shew him the Way thither. The Bailiff complied, and the Captain went to Gaol: And when he got there, the Keeper of the Prison was unwilling to receive him, because he had not a Warrant directed to himself to authorize him to do so. But the Captain insisted upon continuing in the Prison. In the mean Time the Bailiff went and acquainted the Justices with what had happened, who immediately sent him back to the Prison to acquaint Captain *Payne* that he was not a Prisoner in Consequence of their Warrant, that it never was their Intention to commit him to Prison, and that he might go out of the Prison when he pleased: And at the same Time they sent him a Billet to be quartered at Mr. *Crofton's* House, which was the very best Public-House in the whole Town, the Magistrates being unwilling, except where Necessity obliged them to it, to give Billets upon private Houses. Captain *Payne*, however, thought fit to continue in the Prison, notwithstanding these

Declarations from the Justices that he was at Liberty to leave it whenever he pleased; and that his Imprisonment might be the more public and make the deeper Impression on the Spirits of the Soldiers, he had Recourse to a more formal Method of obtaining his Discharge from it, by applying to the Chief-Justice of the Province for an *Habeas Corpus*: and by this Means he was set at Liberty.

When the Circumstances of this Affair came to be public, and it appeared that Captain *Payne* had been a voluntary Prisoner, and had continued so for several Days, it was by most People made the Subject of Mirth and Laughter. This enraged the Captain to a high Degree, and made him resolve to seek some immediate Revenge against the Justices, and most particularly against Mr. *Walker*, as having been the most active Man amongst them in all the Complaints about the billeting of Soldiers, and, as he imagined, the principal Promoter of the Warrant by which he was ordered to give up his Quarters, and in consequence of which he had committed himself to Prison. Soon after a Resolution was taken to punish Mr. *Walker* for his Insolence (that was the Language they made use of) by setting a Mark upon him, or by disfiguring him in some signal and disgraceful Manner: And some of the wickedest and most desperate Soldiers of the 28th Regiment, under the Direction of two Sergeants of the same Character, Sergeant *Meas* and Sergeant *Rogers*, were employed to put it in Execution.

Gentlemen, we shall produce a Witness that was himself employed in this Business, and was present at the Execution of it, and who is consequently well acquainted with all the Circumstances attending it. His Name is *George M'Govock*, and he is a Soldier of the 28th Regiment.

He will tell you, amongst other Things, Gentlemen, that on Monday the 3d of December, 1764, that is, three Days before the Perpetration of this Crime, he was desired by Sergeant *Meas* (who had before that Time acquainted him with the Design and engaged him to be an Actor in it) to go with him to Lieutenant *Tottenham's* House at *Montreal* (a Lieutenant and Adjutant of the 28th Regiment, who was deeply concerned in this Affair) to meet some Gentlemen who were Friends, as the Sergeant told him, to the Design of disfiguring Mr. *Walker*, though they were not of the 28th Regiment, and to take an Oath of Secrecy never to discover any of them if they should happen to be present at the Execution of it: That he accordingly went with Sergeant *Meas* to Lieutenant *Tottenham's*; and that when they got there, the Lieutenant himself opened the Door to them, and was accompanied by Captain *Difney*, the Prisoner at the Bar, and Lieutenant *Simon Evans*, of the 28th Regiment: That Lieutenant *Tottenham* said to him in the Passage, in the Presence of Captain *Difney*, Lieutenant *Evans*, and Sergeant *Meas*, some Words to this Purpose, *George, this Gentleman* (pointing to Captain *Difney*) *and others that are within, are desirous that you would promise that, if any of them should make any Attempt to disfigure Mr. Walker, you will never discover it, and that you would, for their further Security, take an Oath to keep it secret*: That thereupon he consented to take the Oath, and took it immediately, Captain *Difney* administering it to him on a Book which Lieutenant *Tottenham* produced, and which the Witness believes to have been a Bible. Lieutenant *Evans* at the same Time threatened him, that, if ever he discovered it, he should soon be made an End of, wherever he might happen to live, and that he himself would blow his Brains out. *Tottenham* thereupon said to *Evans*, that he need not be afraid of his discovering the Matter; for that Sergeant *Meas* and Sergeant *Rogers* knew him very well, and could answer for his being faithful.

After this Conversation in the Passage, Sergeant *Meas* and the Witness *M'Govock* went into the Parlour with Captain *Difney*, Lieutenant *Tottenham* and Lieutenant *Evans*; and there they saw the following Persons, Captain *John Campbell*, of the 27th Regiment, Captain *John Fraser*, the Person already spoken of, Lieutenant-Colonel *Christie*, Deputy-Quarter-Master-General, M. *St. Luc la Corne*, and Mr. *Joseph Howard*. He staid in this Room about a Quarter of an Hour, during which Time the Resolution taken to disfigure Mr. *Walker* was the general Subject of the Conversation. They all expressed their Approbation of this Design, and their Hopes that it would succeed. This Witness says that this Conversation was addressed to him or Sergeant *Meas*, or spoken with an evident Intention that they should hear it; and that Lieutenant *Tottenham*

‘ *Tottenham* further explained to him the Design of introducing him and Sergeant *Meas* into that Company to be that they might know that those Gentlemen who were there assembled were Friends to the Design of disfiguring Mr. *Walker*, and that therefore they might not be surprized or alarmed if they should see them engaged in the Execution of it, either before, or at the same Time with, and as Assistants to, the Gentlemen of the 28th Regiment.

‘ Sergeant *Meas* and the Witness then quitted the Parlour, after a Stay of something more than a Quarter of an Hour, and went, by Lieutenant *Tottenham*’s Direction, into the Kitchen to drink, and afterwards returned home about Nine o’Clock.

‘ Gentlemen, what I have here laid before you concerning this Conversation at Lieutenant *Tottenham*’s House, and the Oath of Secrecy administered to this Witness by the Prisoner at the Bar, I have spoken from the Deposition of this Witness, which I have here in my Hand and before my Eyes, with particular Care not to go one Jot beyond the Contents of it.

‘ Gentlemen, I must further inform you, that this Oath of Secrecy had a great Effect upon the Mind of this Witness; a Circumstance that adds considerably to the Credit of his Testimony. When he had made his first Deposition, which made mention only of Persons to whom this Oath of Secrecy did not relate (which Deposition he swore to before Mr. *Dumas St. Martin*, the Justice of Peace, on the eighth Day of last *September*) he was asked whether that Deposition contained all he knew of the Matter; upon which he declared that it did not, but said he would not reveal any more, because he could not do it without accusing certain other Persons that were concerned in that Affair, whom he conceived himself to be under an Obligation never to discover, in Consequence of an Oath of Secrecy he had taken for that Purpose. He was afterwards brought before his Honour the present Chief-Justice, to confirm and swear again to this Deposition in the Presence of Mr. *Walker* and myself. And his Scruple about the Oath of Secrecy being then mentioned as an Objection to his telling the rest of what he knew, he declared that he would be guided by the Opinion and Advice of the Chief-Justice and myself concerning the Obligation of this Oath: And upon our telling him that we thought such an Oath unlawful and void, that it was unlawful to take such an Oath, and still more unlawful to keep it, as it was contrary to a prior and stronger Obligation that every Man is under, for the Sake of the Public Good, to declare the whole of what he knows concerning any public Crimes when called upon to do so in the Course of a judicial Inquiry, he was persuaded to give up his Scruple and declare the rest of what he knew, which makes the Contents of his second Deposition. This Deposition I took down in the Course of a very long Examination in the Presence of his Honour the Chief-Justice and Mr. *Walker*; and can safely affirm that every Word of it came freely from the Witness without any Suggestions whatsoever from Mr. *Walker*; whose Conduct with Respect to this Witness, so far as I have been able to observe it, has been so very strict and delicate, that, instead of bribing him to swear as he should dictate to him, as Mr. *Walker*’s Enemies have given out, to invalidate this Witness’s Testimony, he has barely allowed him a necessary Maintenance since he has made those Depositions, (not without some Dissatisfaction and Complaints of the Witness on that Account) and has cautioned him over and over to say nothing but what he was absolutely sure of: And now, since this Witness has been at *Montreal*, he has not taken, as I believe, the justifiable Precaution (nor have I, nor any other Person to my Knowledge, taken it for him) of reading over to this Witness either of his Depositions in Order to refresh his Memory against the present Trial. We leave him to relate to you what he can himself recollect of the Circumstances of this cruel Transaction, unassisted either by our Admonitions or his own former Accounts of them. I will now proceed in the Narration of this unhappy Business.

‘ On *Tuesday*, the 4th of *December*, the Day after the Meeting above-mentioned at Lieutenant *Tottenham*’s House, a Plot was laid in Sergeant *Meas*’s House in the Presence of this Witness by Sergeant *Meas*, Sergeant *Rogers*, *John M’Laughlin*, *James Coleman*, and *Daniel Ashman*, Soldiers of the 28th Regiment, to way-lay Mr. *Walker* that very Night about the Dusk of the Evening upon his Return from his Store-House to his Dwelling-house, which were at the Distance of about a Furlong from each other. The Design was to beat and disfigure him. (The

‘ Word

Word constantly used in all their Consultations was, *To disfigure.*) And the Witness saw them go accordingly in the Evening into proper Places for accomplishing their Purpose, armed with Bayonets, and one of them with a Broad Sword. They staid upon the Parade in Hopes of meeting with Mr. *Walker*, till past Eight o'Clock, and then went Home, concluding that Mr. *Walker* must have gone Home by some other Way. And this Witness hear'd some of them that Evening give this Account of their Disappointment.

On the next Day, the *Wednesday*, another Design was concerted at Sergeant *Meas's* House, between the Hours of Ten and Eleven o'Clock in the Morning, to way-lay Mr. *Walker* again that Evening near his own Dwelling-house, in Order to beat and disfigure him. This Witness was present at Sergeant *Meas's* House at the Time this Design was concerted; and the Persons who concerted it were Sergeant *Rogers*, Sergeant *Meas*, *M^cLaughlin*, *Coleman*, *Ashman*, and *Philip Castles*, another Soldier of the 28th Regiment. And accordingly about Eight o'Clock that Evening these Persons did set out from Sergeant *Meas's* House to different Parts of the Town, in Parties of two Men each. *Rogers* and *Coleman* were in one of these Parties, and did meet with Mr. *Walker*, and were seen and taken Notice of by him, as he will inform you, as Persons, who, by their Looks and Behaviour, seemed to have some Design of attacking him. But they were prevented from doing it by the Appearance of some People that had happened to come out just at that Time and followed Mr. *Walker*, and who, these Ruffians apprehended, might interpose in his Defence or raise an Alarm in the Neighbourhood. They therefore returned to Sergeant *Meas's* House about Nine o'Clock. The Witness *M^cGovock* heard them afterwards give this Account of their Disappointment.

On *Thursday*, the 6th of *December*, the Assault was actually committed. And though they had hitherto, according to the Account of *George M^cGovock*, intended only to beat and disfigure Mr. *Walker*, in such a Manner as to leave a lasting Mark of Disgrace upon him, they now seem to have changed their Purpose to a safer and more compleat Revenge, by resolving first to murder him, and then to carry off one of his Ears in Triumph, as the *Indians* do the Scalp of an Enemy. That this was their Design at the Time of committing this Assault, will appear, not only from the Manner and Violence of the Blows they gave him, some wounding him on the Head with all their Force with Broad Swords, one with a Tomahawk, another with an Iron-Bar upon the Loins, with a Design to break his Back, but from the Words spoken by them at that Time, such as that they would finish and dispatch him, and their Declarations that they thought he had been dead before they left him. Those Words, and the Blows which they accompanied, and most of the Circumstances attending the Assault itself will be proved to you by the Testimony of Mr. *Walker* himself, as well as of the other Witness; and the Presence of Captain *Disney*, the Prisoner at the Bar, on that Occasion, to encourage and animate the Soldiers who gave the Wounds, will be proved to you by the united Testimony of Mr. and Mrs. *Walker*.

About a Quarter before Nine o'Clock at Night, as Mr. and Mrs. *Walker* were sitting in their Hall at Supper, a sudden Noise was hear'd at the Door, as of a Number of People striving hastily to get into the House. This Noise was occasioned by their violent Manner of opening the Outer-Door, though shut only upon a Latch. Mrs. *Walker* upon hearing it immediately cried out, *Entrez*, imagining it was a Number of *Canadians* coming to Mr. *Walker* upon Business as a Justice of Peace, as he had that whole Day had a great many such Applications: But almost in the same Instant, looking towards the Door, and seeing through the Glafs of the inner Door a Croud of black Faces rising one above another, as they stood on the Steps without, she cried out with the utmost Surprize, *Good God! What is this! This is Murder; this is the Army come to revenge themselves.* Mrs. *Walker* saw them first; because she sat with her Face to the Door. Mr. *Walker* sat at the other End of the Table, with his Back to the Door and very near it; I think he cannot have been more than four Feet from it, which is a Circumstance, Gentlemen, it will be proper you should attend to. While Mrs. *Walker* was crying out in the Manner I have mentioned, the Ruffians entered the Room, bursting open the inner Glafs-Door and breaking one of the Panes of Glafs; and Mrs. *Walker* clearly distinguished Captain *Disney*, the Prisoner at the Bar, to be one of them, notwithstanding the Crape he had over his Face, which is but an
indifferent

indifferent Disguise. Mrs. *Walker's* Exclamation made Mr. *Walker* turn his Head back at the Instant they were entering, which gave him an Opportunity of having one short, but full View of them, and at a very small Distance, before he received a Blow: And it was in this full and near View of them that he clearly distinguished Captain *Disney* amongst their Number. He also took such Notice of two other Faces among them, that he thinks he should know them again whenever he should see them: But he declares they are not any of the Prisoners now in Custody in this Place, nor any other Persons whose Names he is acquainted with.

Gentlemen, upon the Sight of these Assassins, Mr. *Walker* started up from his Chair, and in rising received a Wound on the Fore-Part of his Head with a Broad-Sword. This Wound was five Inches long, and was given with such a Force that one of Mr. *Walker's* Servants, who was then attending him and saw it given, concluded that it must be mortal to him. Mr. *Walker* however did not sink under it, but recollecting that his Arms were in his Bed-Chamber, he endeavoured to make towards it, in Hopes of making some Defence, and for that Purpose rushed into the Parlour which lay between the Hall and the Bed-Chamber. But he received so many Wounds from five or six of the Ruffians as he passed that he never could reach the Bed-Chamber, but sunk down, spent with Wounds and the loss of Blood, into an armed Chair that was standing in the further Corner of the Parlour adjoining to the Door of the Bed-Chamber. In this helpless Condition he received several more Wounds and Blows all over his Body, both with Bludgeons and sharp Weapons, and in particular one very dangerous Blow on the Bone of his left Leg with some Iron Weapon, which the Witness *M'Govock* will inform you was given him by one *Clark*, who was by Trade a Smith, who carried with him a Piece of Iron fitted to his Hand besides a Bludgeon. He continued in this Situation for a short Time, half a Minute, perhaps, or a Minute, almost deprived of his Senses, but was roused to make one more Attempt to defend himself by the Terror occasioned by the Threat of instant Death. For he heard a Voice, which seemed to come from the opposite Corner of the Room, pronounce these Words, *Damn him, let me come to him, and I'll dispatch the Villain with my Sword.* Upon this he looked up, and saw two Persons, whom he conjectured to be Officers, advancing towards him from the opposite Corner of the Room, from which the Voice had seemed to come, one of whom was armed with Pistols, and the other held a Small Sword in his Hand, which he pointed at Mr. *Walker's* Breast. This latter Person Mr. *Walker* believed to be the Prisoner at the Bar; but as his Eyes were then full of Blood from the many Wounds he had received, and his Mind in great Confusion, he will not take upon him to swear it was he. But *M'Govock* the Accomplice, who was present on this Occasion, will confirm the Suspicion of Mr. *Walker*, and inform you that he saw Captain *Disney* advance in that Manner, with his Sword drawn, towards Mr. *Walker*, and heard him pronounce those Words. Whoever it was, you will observe, Gentlemen, that it proves beyond a Doubt that the Intention of the Assassins at this Time was to murder Mr. *Walker*, and not barely to disfigure him. Mr. *Walker* resolved, though quite unarmed, to do what he could to defend himself, and accordingly advanced towards these two Persons and attacked them furiously with his Fists, and had the good Fortune to put aside the drawn Sword with his left Hand without receiving a Thrust from it. But he was immediately surrounded by the other Ruffians. One of these Seized him by the Throat; and Mr. *Walker* did the same to him, and at the same Time endeavoured to get near the Fire-Place in Order to take up the Shovel or Tongs for want of better Weapons. Upon this another of them took hold of his Right Thigh, and they both together endeavoured to lift him up and lay him on the Fire; the Terror of which cruel Death giving him new Strength and Spirit, he disengaged himself from them both, by suddenly putting his Hands against the Chimney-Piece, and pushing himself from it with all his Force. But in the Instant of his doing this he received a deep and dangerous Wound from another of the Assassins on the left Side of the Head near the Crown, which felled him to the Ground; and soon after, while he lay helpless on the Floor, he received another most violent Blow on his Loins, which would have broke his Back (as no Doubt it was intended to do) if it had not been for a large Silver Buckle in the Waistband of his Breeches, which received the Blow and somewhat broke the Force of it, which was such that the Buckle was

‘ very much bent by it. After this Blow on the Back, Mr. *Walker* continuing to lie helpless and almost motionless on the Floor, with his Face downwards, one of the Villains either knelt or sat upon his right Side, and cut off a Part of his right Ear, and endeavoured at the same Time to cut his Throat: But finding this to be difficult by Reason of the Motions Mr. *Walker* made to prevent it by squeezing his Head down close to his Shoulder, and putting up his left Hand (the little Finger of which was by this Means cut to the Bone) and being in a Hurry to get away, as the Neighbourhood began now to be alarmed, he made off with the Rest of his Companions without effecting it, and carried off the Ear in Triumph. They thought however that they had left Mr. *Walker* either dead or in a dying Condition: For Mr. *Walker* heard one of them say, just before they went off, *Damn him, he is dead*, and another say, *We have done for him*. And with good Reason indeed they might suppose so, since there are very few Men in the World that could have survived such a Number of Wounds and Blows as he had received, they being no fewer than Three Score, of which Eight were dreadful Wounds from sharp Weapons, and Fifty-two were Contusions.

‘ The Ear was immediately carried to Lieutenant *Tottenham*, as appeared by his own Examination, where he says that two Men in disguise and masked, or with their Faces blacked, came into his House about 9 o’Clock at Night, and throwing down a Piece of Flesh upon the Table, said, *There’s that Rascal Walker’s Ear*, and then withdrew without saying a Word more. Mr. *Welsh*, the Officer of General *Burton*’s Guard, and Mr. *Baker*, the Surgeons Mate of the Regiment, were at that Time with Mr. *Tottenham*: But it does not appear that they made any Attempt to stop the Men who brought them the Ear. As soon as they were gone, Mr. *Tottenham* wrapped the Ear up in a Piece of Paper, and sent Mr. *Welsh* with it to General *Burton*, who some Hours after sent it to Mr. *Lambe*, the Justice of Peace before-mentioned, to be disposed of as he should think proper.

‘ These Particulars of this Assault will all be proved to you by Mr. *Walker* himself without the Assistance of the Accomplice, whose Evidence however will confirm them and acquaint you with the Names of the principal Persons concerned in the Execution of them. He will tell you that the Blow on the Head that brought Mr. *Walker* to the Ground and quite subdued him, was given him by Sergeant *Meas* with a Tomahawk, and that the Person who gave him the Blow on his Back when he was down was *Thomas Donnelly*, who afterwards boasted of it in the Hearing of the Witness, and said he thought he had broke his Back; and that Sergeant *Rogers* was the Man that cut off his Ear and carried it off.

‘ While some of these Ruffians were employed in attacking Mr. *Walker* in the Manner that has been related, others of them were employed in assaulting and driving away the rest of the Family. Mrs. *Walker* and Miss *Heard* (who is since married to Mr. *Wade*, who was sitting at Supper with Mr. and Mrs. *Walker*, and *John Lilly*, Mr. *Walker*’s Clerk) escaped though the Kitchen into the Yard; where, not being pursued, they remained till the Affair was over. *John Lilly* was attacked by some of the Ruffians, who gave him three deep Cuts on the Head with a Broad-Sword, one of which knocked him down; but recovering himself pretty soon, he struggled with one of the Fellows and pushed him into a Window, and then rushed out at the Street-Door through the Midst of a Party of five or six more of the Ruffians that guarded it, in Order to alarm the Neighbours; to prevent which two of their Number pursued him, the rest crying out to them, *Damn him; shoot him; don’t let him escape*. But they did not overtake him. And *William Fontaine*, Mr. *Walker*’s Servant, who was waiting upon him at Supper at the Time of this Assault, was pursued by one of them with a naked Broad-Sword in his Hand into the Gallery: There he escaped the Fury of his Pursuer by leaping down from the Gallery into the Yard through some of the broken Rails. The Stroke aimed at him by his Pursuer fell upon the Rails of the Gallery, and, as he believed, upon his Coat, as he afterwards found it had been cut.

‘ Such, Gentlemen, were the Circumstances of this tragical Affair. Before I proceed to lay the Proofs of them before you, I will beg leave to mention a few Observations concerning the Nature of the Charges contained in the Indictment.

‘ The

‘ The first Charge in the Indictment is for a well-known and very high Offense at the Common Law, called a Burglary; which consists in breaking and entering a Man’s House in the Night-time with an Intent to commit a Felony. In the present Case it is charged that the Felony intended to be committed was a Murder, of which I believe, when you have heard the Proofs of the Particulars I have opened to you, you will have little Room to doubt. If this Intention in the Ruffians who assaulted Mr. *Walker* is proved to your Satisfaction, together with the Presence of the Prisoner at the Bar at this Transaction, you must find him guilty of this first Charge in the Indictment, which will render the Consideration of the second Charge of less Importance. But if it should appear to you that the Prisoner was concerned in this Affair, but that there was no Intention to murder Mr. *Walker*, (though this is what I cannot well suppose) the Prisoner must be acquitted upon the first Charge, and found guilty only upon the Second.

‘ The second Charge is founded upon the famous Act of Parliament for preventing malicious Maiming and Mutilation, passed in the 22d. Year of CHARLES the II. and usually known by the Name of the *Coventry-Act*, from the brave Sir *John Coventry*, whose Sufferings were the Occasion of making it. Concerning this Act of Parliament two very strange Opinions have been entertained by some Persons in this Province: The First is, that the Act of Parliament is not in Force in this Province; the Second, that, supposing it to be in Force here, the Injury done to Mr. *Walker* does not fall within it. I will endeavour to shew the Falseness of both these Opinions.

‘ It has been said in Support of the First of these Opinions, that this Law is not in Force in the other Provinces of *North-America*, and therefore ought not to be so here. This Conclusion is by no Means just. This Province has nothing to do with the other Provinces of *North-America*; nor indeed have those other Provinces any Connexion with each other. The Laws in each Province are different from those in every other, as the different Acts of their Assemblies (which have exercised a Legislative Authority in them) and the different Dates of their original Settlement by *English* Planters have contributed to vary them. And the Laws of all the Colonies are, from the same Causes, different from the Laws of *Great-Britain* itself. The common Principle, upon which they all seem to be established, I apprehend to be this; that every Set of *English* Planters, upon their first occupying and settling a new Colony, have carried with them the Laws of *England* then in Force at the Time of their leaving it to go to the new Colony: That this is the original System of Laws which they imported into the new Colony; and that this System was increased or varied either by new Acts of the *British* Parliament passed since the Settlement of the Colony, containing expresse Words extending to it, or by the Acts of their own Assemblies under the Powers communicated to them by the Royal Charters. Thus the Laws of *England* in Force in the Reign of JAMES the I. will be the Basis of the Laws of a Colony that was first settled in his Reign: And in such a Colony the *Coventry-Act*, which was made in the Reign of CHARLES II. will not of Necessity be a Part of the Law of the Colony, because that Act does not expressly mention the Colonies: It will therefore be, or not be, a Part of the Laws of such a Colony according as their Governor, Council, and Assembly shall have, or have not, adopted it, supposing that those provincial Legislatures have a legal Power to make Laws of that high Importance. And thus it may happen that in some of the *North-American* Colonies this Law may be in Force, and not in others. Whether in Fact it is in Force in any of them we need not here inquire. With Respect to this Province, it is certain that this excellent Act of Parliament is as much in Force here as *Magna Charta*, or the *Petition of Right*, or the Law of HENRY VIII. that takes the Benefit of the Clergy from Wilful murder of Malice aforethought, or any other the most useful or most respected Laws of *England*: For it is founded on the same Authority with them, namely, the Authority of the great Ordinance of the Legislature of this Country, General MURRAY and his Council, of September 17, 1764, by which they introduced into this Province, at one Stroke, the whole System of the Laws of *England* then in Force, and consequently amongst the rest this excellent Act of Parliament. That Ordinance institutes the present Court of King’s-Bench, or Supreme Court of Judicature, in which we are now assembled, and ordains that the Chief-Justice of the Province, who presides in it, shall hear and determine

‘ all .

all criminal and civil Causes agreeable to the Laws of *England*, which certainly must mean the Laws of *England* then in Being. And besides, the Chief-Justice's Commission, which you have heard read, runs in the same Style with this Ordinance, and directs him to hear and determine all Matters that come before him agreeably to the Laws of *England* and the Ordinances of this Province hereafter to be made. Either therefore this great Ordinance (upon which all the Proceedings of the Courts of Judicature in the Province, both civil and criminal, have been founded ever since the passing it) and likewise the Directions contained in the King's Commission to the Chief-Justice, are void and of no Authority, and none of the Laws of *England* are now in Force in this Province, but the *French* Laws that prevailed here before the Conquest are the only Laws that are really still in Force (as they certainly would have been if this Ordinance had not been made) or it must be allowed that this excellent and beneficial Law, called the *Coventry-Act*, was introduced here by that Ordinance, together with all the other Laws of *England* in Being at the Time of passing it.

The second Opinion, that the Injury done to Mr. *Walker* does not come within the *Coventry-Act*, though not so intirely destitute of all Colour of Reason as the former Opinion, will yet, I believe, upon Examination appear to be ill-grounded. The *Coventry-Act* says, that, whoever shall on purpose, and of Malice-aforethought, cut or disable the Tongue, put out an Eye, slit the Nose, cut off a Nose or Lip, or cut off or disable any Limb, or Member, of any Subject, with Intention in so doing to maim or disfigure him, shall be guilty of Felony without Benefit of Clergy. These are the Words of the Act, in which it is certain the Cutting off an Ear is not mentioned. But, Gentlemen, is it not plainly comprehended within the Word *Member*? To what Purpose, after enumerating the several Features of the Face, does the Statute add the Words *Limb or Member*, unless it be to extend its Protection to all the other Organs of the Body by using the most general and comprehensive Words the Language affords. Certainly by the Word *Limb* we must understand the larger Parts of the human Body that are separate from the Trunk, namely, the Arms and Legs, and perhaps the Hands and Feet, and by the Word *Member* the smaller Parts of it, such as the Fingers, and particularly the Ears, as being more likely to be the Object of a malicious Intention to disfigure by Reason of the Resemblance of such an Injury to a disgraceful Punishment in some Cases inflicted by the Law; which is the very Sort of Injury this Statute was intended to prevent.

Gentlemen, this Act of Parliament has always been reckoned a most excellent and salutary Law. It was passed in Opposition to the Court, as a Law of indispensable Importance, in the peaceable Part of the Reign of King CHARLES the II. in Consequence of a base piece of Cruelty committed upon Sir *John Coventry*, a Member of Parliament at that Time, by assaulting him in St. *James's* Park, and slitting his Nostrils. This was done, as it is generally supposed, at the Instigation of the Court, and probably of the King himself, in Revenge for some light Expressions thrown out by Sir *John Coventry*, in a Debate in Parliament, reflecting on the King's known Debauchery. Yet notwithstanding the Provocation given by this personal Reflection on the King, the Parliament thought this barbarous Assault such a flagrant Violation of all the Rules of Justice and Humanity, that they immediately prepared a Bill to render the Perpetrators of it incapable of receiving the Kings Pardon, and to make all future Offenders in the like Kind liable to be punished with Death; and to this Bill the King gave the Royal Assent. And it must be observed, that the Parliament that did this was not a factious ill-disposed Parliament, that took a Pleasure in proposing Things that might be disgustful to the Court; but it was that Parliament which, of all that ever sat in *England*, was most devoted to the Crown, and disposed to concur in almost every Motion and Proposition that came from it—which had repeatedly supplied that King with large Sums of Money, notwithstanding the continual Waste and Misapplication of them, and which, to gratify the Pride and Revenge of his first Minister, the Earl of *Clarendon*, and the rest of the vindictive Royalists that had returned from Exile, had passed several penal Laws (which still subsist) to persecute the Protestant Dissenters, had repealed the excellent Act obtained with so much Difficulty from CHARLES the I. for securing to the Nation a Meeting of Parliament at least once in three Years, and had almost established

passive

passive Obedience by a Law. Yet even this compliant Parliament thought this a necessary Law—— so necessary as to insist upon the passing it in Opposition to the Wishes of the Court. And ever since that Time it has met with the universal Approbation of all the *English* Nation, and has received so much Countenance from the Judges, and been deemed so highly remedial and beneficial to the Subject, that in the only two Cases that have happened upon it (one of which happened about a Year and a Half ago, and the other was the well known Case of *Cook* and *Woodburn*) it has met with a large and liberal Construction. This I am sure of, that neither of those Cases comes so clearly within the Spirit and Meaning of the *Coventry-Act* as the Case now before you does, which seems indeed to be the very Sort of Outrage that Act was designed to guard against: And it seems likewise to come within the Letter of it by giving the Word *Member* used in the Statute that, I will not say, liberal, but natural Interpretation that has been already mentioned. But these Considerations will, as I apprehend, become of little Consequence by the strong Proofs by which, I doubt not, you will be convinced that at the Time of committing the Assault the Ruffians who committed it had an Intention to murder Mr. *Walker*. I will now, Gentlemen, call the Witnesses for the Crown in Support of this Indictment, without trespassing any longer on your Patience.

WITNESSES for the CROWN.

THOMAS WALKER, *Esq*;

ON the sixth Day of *December*, about Half after Eight or near Nine of the Clock Mrs. *Walker* looked at her Watch, and in about fifteen Minutes after were called out to Supper; as we were sitting at Supper, I with my Back to the Street Door, heard a Noise at the Latch like somebody wanting to come in in a Hurry, on which Mrs. *Walker*, being at the Head of the Table, said, *entrez*; the outward Door was thrown open, and through the inner Glass Door I saw a great Number of People disguised, their Heads appeared one above another as they stood on the Steps (such as those in Court, pointing to a Number of People) They were disguised many different Ways, some of them little round Hats, others black Faces, others with Crape, and one with a Tuck of the Hair over the Cap and turn'd in at Top; they burst the inner Door coming in, and broke the Glass, forcing the Bolts of the Door; I turned my Head round on Mrs. *Walker*'s saying, *Good God, what's this, This is Murder!* I took so much Notice of two Faces that were black'd that I should know them if I was to see them again; but they were not any of those Gentlemen in Custody; have the Idea of them as of a Face drawn with a Pencil; had a distinct View of them. Many of them surrounded as if they would cut off the Communication of the Par-

lour. On turning round. I received a Stroke on my Head. At that Time I could not tell whether it was a Broad Sword or Bludgeon. When I had received this Stroke I rose up and passed through them to get into the Parlour, in order to pass through it into my Bed-Room, where my Sword and Pistols were, in order to make some Defense. I then received many Blows (but cannot tell how many) Passing through the Parlour Door, they following me in such a Hurry, burst open the Standing-door (they were Folding-doors) being so many of them. Coming to the further End of the Room, and striving to get into my Bed-Room, two Men stood at the Chamber Door, and foreclosing me, prevented my opening it; beat me so much, and with such a Number of Strokes. They closed me round with a Curtain, which I suppose prevented their Dashing my Brains out. Was some Time in the Corner, but how many Blows I received there cannot tell. But there was Fifty-two Contusions or Bruises. I was swelled from the Shoulders to the Fingers End, there was not a free Part all over my Body. I received a Wound on my Leg, but don't know when. Whilst in the Corner I had no Remembrance of being off my Feet; but seeing the Marks of my bloody Head against the Wall imagine I had lost my Senses; but remember hearing a Person say, *let me come to him, I will dispatch*

dispatch the Villain with my Sword; this was the first Thing I hard; and that roused me, and then was determined to sell my Life as dear as possible. Having seen Major *Disney*, not knowing that I had ever disoblighd him, I expected Life, till I heard those Words. Major *Disney* had a Crape on his Face, and I discovered his Face through the Crape. Believe by the Figure that it was he that made use of those Words, having seen him in the Room before I received so many Blows, but I cannot say positively that I knew his Voice, and do not recollect particularly what Drefs he was in. Before I received any Blows, or any Thing in the outward Room, I was fully convinced that was Major *Disney*. A Person made at me and I parryed the Blow with my left Hand and struck at him. At the Instant the Words were pronounced two or three People came up to me with Swords levelled, but do not know whether any Body made a Pass at me or not; but upon my taking Courage they retreated back: My Eyes were then full of Blood. They then closed; one collared me; I seized and held him, till another took me by the right Thigh, and strove to lift me and set me on the Fire, I then turned myself round, setting my Hands against the Chimney (the Marks of my five bloody Fingers are on the Jambs of the Chimney) and tore the Side of my Shoe with the Force, and in turning round I received a Stroke (which the Doctor said was that of a Tomahawk) which fell me to the Ground, senseless, how long I laid there cannot tell. The first Remembrance after that Stroke, was a severe Blow on my Loins, whether by a Tomahawke or Bludgeon I do not know, but feel it to this Day in bad Weather. After that Blow a Man kneel'd, or sat, on my right Side, and I felt as if he was attempting to cut my Throat; I then moved my Head and Shoulders and put my Hand up, thinking it was his Thumb, but found a sharp Instrument. And he cut the little Finger of my left Hand to the Bone; and it was a Fortnight before I knew that I had lost my Ear. I thought they had aimed to cut my Throat, and thought (at the Time) they had done it. After receiving that Wound I heard a Voice from one of those People present say, *the Villain's dead*; another said, *damn him, we have done for him*. A third Person spoke, but I could not rightly understand what he said, but heard some Words; then having lost my Senses can give no further Ac-

count; but when I did recollect found myself in the Arms of *William Fontaine* my Servant, and one Mr. *Pistolet*.

The bloody Clothes, Shirt, and the Ear in Spirits, were then brought into Court and exposed.

CROSS EXAMINATION.

Council for the Prisoner. Morrison.

Q. Who was at Table? *Walker*.

A. Mrs. *Walker* at the Head, Miss *Hurd*, now Mrs. *Wade*, and my Clerk.

Q. Did you see Major *Disney* enter?

A. Yes.

Q. What Part or when did he enter?

A. I don't know exactly.

Q. Did you get up when they entered?

A. Yes.

Q. Did you look at the People in getting up?

A. I had looked before.

Q. Do you know whether Major *Disney* struck?

A. I don't know. He knows best.

Q. How came you to know him?

A. By looking at him.

A Crape was then produced, and Mr. Walker put it on his Face.

Q. After you had received the Blow what became of Mrs. *Walker*?

A. Let them answer.

Q. Why could you not tell what became of them, did you not speak to your Wife, or any other Person?

A. No.

Q. Did not your Clerk or any other Person assist you?

A. No.

Q. Did not you think to protect your Wife?

A. No.

Q. Then you was stopped at the Corner by three or more, and they kept you for some Time, you don't know what Time?

A. I don't know.

Q. There was two of the Figures you would know?

A. Yes.

Q. Had you never any Opportunity of seeing them?

A. No, and perhaps may never see them again here.

Q. Pray did you see Major *Disney* in that Room, did he offer to strike?

A. No. Unless it was him that advanced with his Sword, On seeing that I jumped and parryed it, my Eyes being at that Time full of Blood.

Q. What were the others doing?

A. They

A. They were all striking. The first Thing I recollect were those Words which reanimated me.

Q. Cannot you guess how long you was in the Corner?

A. No I cannot say; I lost my Senses.

Q. But cannot you tell how long you was in the Corner without your Senses; me thinks it is very odd?

A. Had you received the same Number of Blows that I did you would not have been very bright I believe.

Q. You heard the Prisoner say, *let me come to him and I will dispatch him?*

A. I believe that to be Major *Disney*, but am not sure.

Q. You said those Words were spoke before the Sword was pointed?

A. I heard them. It was such a Figure as Major *Disney*; but my Eyes were full of Blood.

Q. Do you know who spoke those Words?

A. I do not know who spoke those Words, but heard the Voice from that Part of the Room, imagining it to be a Person that was directing.

Q. You said it was about three Minutes?

A. I do not ascertain the Time.

Q. Do you remember the Person that gave you the Blow on your Loins?

A. I do not.

Q. Did Major *Disney* give any Blows?

A. There were enough to do that Work besides Major *Disney*, and fitter for the Purpose.

Q. After the Struggling by the Fire I think you said you heard a Voice say, *damn him, we have done for him*; do you think that was Major *Disney*?

A. No.

Q. There was a third Person, what did he say?

A. Do not know. I believe I then lost my Senses.

Q. You recovered next Morning a little, did you recollect any Thing about Major *Disney*?

A. Yes I recollected Major *Disney* very well.

Q. Did you mention Major *Disney*?

A. No I don't recollect I did.

Q. You put the Sword by with your Hand?

A. I parried it.

Q. After you parried the Sword what became of him?

A. I struck at him and he retreated.

Q. You struck him?

A. Ask him, he knows if I struck him.

Major *Disney* answered, *No Sir you did not.*

Major *Disney* asked.

Q. Did you particularize any Person next Morning?

A. I did not know any other Person.

Q. But whether next Morning did you particularize him or any other Person?

A. Yes! I recollected one that looked like Lieutenant *Hamilton*, and a little Man like Lieutenant *Graham*, but did not mention it to any Person but to Mrs. *Walker* and a Friend.

The Court then put:

Q. If Mr. *Walker* was acquainted with Major *Disney*?

A. Yes, he used to visit at my House, and I used to be on Terms of Friendship, was very well acquainted with him, particularly on my first Tour to *Canada*, he being one of Mr. *Gage's* Family.

Council.

Q. When you saw Major *Disney* first it was surprizing you could not tell his Drefs?

A. I could not.

Q. Had he any Thing at all on his Head; or in what Manner was the Crape fastened?

A. I do not know, but think he had a Hat on.

The Council for the Crown then thought proper to call some Evidences, to prove that the Fact was really committed; fearing the Length of Time might have irradiated so base an Action out of the Minds of the Public, as they rather seemed to stifle and make it appear as an unpopular Prosecution, &c. &c. &c.

Mr. Boone, Evidence for the Crown.

Having been at Major *Walbrun's*, a Tavern on the Parade, I met a Parcel of Men running, amongst which was a Musician; I asked him what was the Matter, the Musician answered, *Mr. Walker was murdered*: I then went to *Walbrun's* and told it, and then went to Mr. *Walker's*, with other Company. I thought his Wounds very bad: I did not think him likely to live; saw his Wound on the Ear and Cheek very bad, and thought that the Wind Pipe was really cut. The Doctor thought it was dangerous. *Being asked on what Account? Answered,* He did not know; but the Doctor thought it dangerous, and the one on the Crown of the Head he thought was most dangerous.

Q. With what Instrument do you think the Wound was done?

A. I thought it must have been with a Broad Sword.

Q. Did you think they were all done with a Broad Sword?

A. They

A. They were to the best of my Knowledge.

Q. What length did you think?

A. Some appeared to be about three Inches and an Half, one very deep.

Q. Did you meet any People in the Street running away disguised?

A. Coming out of *Walbrun's* I saw some People running very fast; but did not see whether they were disguised. They were running from Mr. *Walker's* towards the Parade.

Q. Do you know any Thing further of that Business?

A. No.

Q. Did you ever hear any Person, or Major *Disney*, confess any Thing previous to that Affair?

A. No.

CROSS EXAMINATION.

Q. You went in with some other Gentlemen and saw him sitting in a Chair; do you recollect what Day, Year, &c.

A. I recollect the Year, not the Day.

Q. What Year?

A. About two Years ago.

Q. What Time of the Night?

A. About Nine of the Clock.

Major *Disney* then asked him, if he had ever heard him speak in Mr. *Walker's* Favour or against him?

A. No, never.

Monfr. Pistolet for the Crown.

Q. Did you see Mr. *Walker* the Night he was attacked, and what Hour?

A. Between Eight and Nine o'Clock I heard a great Noise. Mr. *Walker's* Servant, after climbing over the Wall, knocked at our Back-Door, the Kitchen.

Q. What did you do?

A. My Father opened the Door for the Servant, and was much surprised at his crying Mr. *Walker* was assassinated; on which I and my Father went to Mr. *Walker's* House to see what was the Matter; but my Father did not enter Mr. *Walker's* House, but I entered with the Servant, and found Mr. *Walker* stretched on the Floor.

Q. Had Mr. *Walker* his Senses when you entered?

A. He had not Time to answer. I heard some Cries in the Street, and feared that some of them were in or about the House, and finding myself alone, took a Resolution to go out of the House.

Q. Did you meet any of the Ruffians coming out of the House?

A. No.

Q. None that was disguised?

A. No.

Q. Did you find the House empty, only Mr. *Walker's* Family?

A. I only saw Mr. *Walker*. Mrs. *Walker* was out in some of the back Houses, as I heard some Cries.

Q. Who told you that the Assassins were about the House?

A. I was in the House and heard it said in the Street.

Q. What did they say?

A. They thought that some of the Persons might still be hid in some Part of the House.

Q. When you left the House did you return a second Time?

A. I would have entered, but Mr. *Lamb* at the Door hindered the People going in.

Q. What did you observe in that little Time when you saw Mr. *Walker*?

A. Nothing.

Q. Was there a great Quantity of Blood?

A. I saw Mr. *Walker* almost covered with Blood.

CROSS EXAMINATION.

Q. Your Father's House joins Mr. *Walker's*?

A. Only a Wall.

Q. Did you come into the House with Mr. *Walker's* Servant?

A. Found him lying on the Floor weltering in his Blood; came back second Time, but was prevented.

Q. Do you know what Day, Month and Year?

A. The sixth Day of December, 1764.

Q. Was there any Body with Mr. *Walker* in the Room when you entered?

A. No.

Q. Did you see Mr. *Boone*?

A. Yes, the second Time I think I saw Mr. *Boone* with Mr. *Lamb*.

Q. What Hour of the Night do you think it was when you entered the first Time in the House?

A. About Nine o'Clock; but I do not remember particularly.

Q. Do you think it was half after Nine that Time?

A. About that Time.

Monfr. St. Anges, for the Crown.

Q. Did you see any Person coming out from Mr. *Walker's* about the Time he was assassinated?

A. No. I saw Soldiers going from one End of the Street to the other.

Q. Were

Q. Were they disguised?

A. No, not in the Day, but in the Night. They had flapt Hats.

Q. Were they disguised in any other Manner?

A. They had long Blanket Coats.

Q. Did those Hats seem intended to cover their Faces? A. Yes.

Q. At what Time of the Night did they pass?

A. About Seven and Eight for two or three Days.

Q. Whether on the sixth Day of December did you see any Persons going to or coming from Mr. Walker's?

A. Yes, about seven o'Clock.

Q. Did you see any Person about the Time the Affair happened? A. No.

Q. Did you hear any Person speak about Mr. Walker that Evening? A. No.

CROSS EXAMINATION.

Q. At seven o'Clock in the Evening have you seen any People with Crape on their Faces?

A. Yes. I saw them after their coming out from Mr. Walker's. Discharged.

William McCarty, for the Crown.

Q. On the sixth Day of December, 1764, did you see, before the Assault on Mr. Walker, any Persons armed or disguised?

A. About half after eight of the Clock that Evening I saw six People turn round Mr. Howard's Corner, going towards Mr. Walker's.

Q. How were they dressed?

A. In Blanket Coats and Bonnets, or Handkerchiefs tied round their Heads. The first was a very tall Man, and had a Broad-Sword in his Hand that glistened; this was about half after eight o'Clock.

Q. did you hear them say any thing?

A. I heard them talk, but could not hear any thing. They marched two and two, and were about six or eight in Number.

CROSS EXAMINATION.

Q. Did they go towards Mr. Walker's?

A. Yes.

Q. Did you see any of their Faces black'd?

A. No. I saw their Backs.

Q. You say it was on the Sixth of December. Pray what Kind of Weather was it at that Time? Was it not the usual Weather for that Time of the Year? Were they dressed in any other Manner than the Time of the Year required?

A. I took them to be Panies, it was light Moon-light Nights.

Mrs. Martha Walker, for the Crown.

Q. What did you observe?

A. I observed first the Rattling at the Door; heard a Number of Foot-steps, and supposing it to be People, coming on Affairs of Justice, I cried out, *Entrez*, and seeing a Number of People one above another on the Steps without, cried, Good God, what's this? They rushed in all together, and I cried out, this is Murder! And the first Person I could see to know was Major *Disney*, and another, that seemed to enter first, I took for Lieutenant *Hamilton*, as he had been at the House before about a little Business.

Q. Did you see Major *Disney*?

A. Yes, I saw him one of the Hindmost, with red Breeches and Waistcoat, a *Canadian* Gown, and a Crape over his Face.

Q. You say that Major *Disney* had a Crape over his Face?

A. It was close to his Face, and I discovered the Features of his Face.

Q. He was one of the Hindmost; did you see him do any Thing?

A. No. Knowing Major *Disney* by Sight, and seeing the others dressed in red Breeches, and knowing another Person or two, I thought they were the Army coming to revenge themselves. Then Miss *Hurd* took hold of my Arm and dragged me out through the Kitchen, &c.

CROSS EXAMINATION.

Q. What Time of the Night was it?

A. About half an Hour before that Affair, one Mr. *McLean*, an intimate Friend of Captain *Frazer's*, came in without having any Business, at least as appeared to me, and not having any particular Intimacy at the House, it seemed something remarkable. He told a Story of some Person toward or below *Quebec* having been very ill used and abused, by a Parcel of *Canadians*, his Carriole taken away, &c. which surprised me much, as the *Canadians* were generally a very quiet People. After he had finished his Story he went out, and the Servant came and told us Supper was ready, and I looked at my Watch, and it was not the usual Hour: I told Mr. *Walker* he had better sup in the Parlour, being the Room we were then in, he not being well, and I would keep him Company; however we went out to Supper, and he was eating

eating a Bit of Toast when he received the Blows: It was then about three quarters after eight o'Clock.

Q. Can you recollect what Number?

A. Cannot recollect the exact Number.

Q. Did you see Major *Disney* the first?

A. No! Lieutenant *Hamilton*; but as he has never been accused by others I might be mistaken.

Q. How long did you remember remaining in the Yard?

A. About three Minutes; but cannot remember positively.

Q. What Situation was Mr. *Walker* in?

A. He was in a terrible Situation: I embraced him, and he seemed to know me.

Q. About what Time did you come in?

A. About three Minutes. I sent a Servant to see what Situation Mr. *Walker* was in; being impatient met him; he cried, *Oh my Master is all in Blood.*

Q. Can you recollect any Person that was in the Room?

A. No, not particularly.

Q. Can you ascertain the Time from the first Entrance of the People to the Time you came into the Parlour to Mr. *Walker*?

A. No: It might be three or four Minutes.

Q. Could it be more?

A. I don't know; it seemed very long to me.

Q. You observed the Waistcoat and Breeches, did you observe the Manner the Crape was tyed round his Face?

A. No.

Q. Had he a Hat on?

A. I do not know.

Q. Had he any Thing in his Hand?

A. He had a drawn Sword.

Q. You are sure it was drawn?

A. Yes, it glittered.

John Lilly, for the Crown.

Q. Was you present at Mr. *Walker*'s Table when the Assault was made?

A. Yes.

Q. What did you observe then, or how many Men?

A. Five or six.

Q. Did you know any of them by Resemblance?

A. No, I can't say that I could.

Q. Did you hear them say any thing?

A. No.

Q. Did you see any of them strike Mr. *Walker*?

A. Yes.

Q. With what?

A. A Broad-sword.

Q. How many Blows?

A. One. When I saw Mr. *Walker* struck I went to help him, then being attacked myself by a Man I drove him on a Trunk, and thinking Murther intended run out. The first Blow was given with a Broad-sword.

Q. What became of you after you pushed the Man on the Trunk?

A. After that I received two Blows on my Head.

Q. What became of you afterwards?

A. I got out at the Street Door.

Q. What did you see at the Street Door?

A. Five or six Persons standing at the Door, and five or six in the House.

Q. Their Drefs?

A. Blanket Coats, cropt Hats and black Faces, their Hats disfigured, that is, those in the House. As soon as I got out I cried Murther, and one of them cried, *fire at him, don't let him escape*, and two of them pursued me, and I said nothing, but run on, and went to the Foot of the Lane; they immediately returned again, and so did I, and went to one Mr. *Prevost*, a Cooper, almost opposite Mr. *Walker*'s House, and desired they would come, and said I believed that Mr. *Walker*'s Family were all murdered: There was Monfr. *Prevost*, another Person, and a Soldier of the 28th Regiment; they would not go, but took me by the Arm and pulled me into the House; they would hardly let me go out again; but I got out, and then saw People coming out from Mr. *Walker*'s, and took them to be the People that committed the Affair, and observed them going towards Mr. *Murray*'s: I followed them, and went into Mr. *Murray*'s.

Q. When did you go back to Mr. *Walker*'s?

A. I was pushed out of *Murray*'s House by one *McKillip*, who told me to go away as I kept bad Company; then *Murray* spoke to me, and I returned in about ten Minutes to Mr. *Walker*'s, and found him lying on the Floor, about a Foot and Half from the Fire, speechless.

Q. They exhorted each other to shoot you: Could you guess at any of them by Size or Shape?

A. I was all over Blood.

Q. Did you observe what Kind of Drefs?

A. Some Blanket-coats, others Coats white Sleeves, Faces blackt and cropt Hats. No body spoke within the House except Mr. *Walker*, crying Murder.

Q. How

Q. How long was it from the Time of the Beginning of the Action to the Time you went to Mr. *Feltz's*? (A *French Surgeon*.)

A. About a Quarter of an Hour.

Q. In what Time after did Mr. *Feltz* arrive at the House?

A. It was upwards of twenty Minutes before he arrived.

Q. How long did you take the Action to have lasted?

A. About seven or eight Minutes.

CROSS EXAMINATION.

Q. Had they Crapes or black Faces?

A. I do not know.

Q. Had any of them *Canadian Gowns*?

A. I did not observe.

Q. You was very particular in observing the Hats: Do you think it is possible that they could have Gowns without your Knowledge?

A. They might have, the People being in a Huddle together.

Q. Was you bye when Mr. *Walker* received the first Blow?

A. Yes.

Q. Were they not all in when Mr. *Walker* received the first Blow?

A. Yes. They were all one behind another, but within the Door.

Q. You run away into several Houses, and all that; saw several People coming out, which you imagine to be the People; and that it was about seven or eight Minutes the whole Transaction?

A. Yes, I imagine them to be the same People.

Q. Did you go to Doctor *Feltz*?

A. Yes.

Q. Who was with him?

A. Mrs. *Feltz* and Mr. *St. Luke*.

Q. When you came back to the House again, and entered the Room, and found Mr. *Walker* in the Condition he was in, was there any Body there?

A. Yes.

Q. Who?

A. *William Fontaine* Mr. *Walker's* Servant; but do not recollect any other Person.

Q. How long did you stay in the Room. Had you any Conversation with the Servant?

A. No, I found him in the same Situation as he had not moved.

Q. How long was it since you quitted the House first to the Time you found Mr. *Walker* lying weltering in his Blood, with his Servant?

A. It might be perhaps about twenty Minutes.

Jury. Q. Do you think it is possible that you could have known your most intimate Friend thus disguised?

A. I could not for the short Time I had, in the Situation I was in; but having longer Time I might.

Q. Pray was Mrs. *Walker* carried out before you left the Room?

A. I can not tell.

Counsel for the Crown.

Q. Pray did you mean you could not have known your Friend thus disguised on Account of the Confusion?

A. A Person unconcerned, or one that had not received the Blows, might have known them if he had known them before.

Q. Did you speak to Mr. *Walker*?

A. No, I did not speak to him.

Q. What Time did Mrs. *Walker* return after you returned?

A. In a little Space of time she came up to Mr. *Walker*.

Jury. Q. Did you know those three Gentlemen before the Affair happened?

A. Yes.

Court—Q. Did you know Major *Disney* before the Affair happened?

A. Yes.

William Fontaine, Servant to Mr. Walker, for the Crown.

Q. Was you present when Mr. *Walker* was assaulted, the sixth December, 1764.

A. I was.

Q. What Number of Men did you see enter the House?

A. Five or six.

Q. What Manner were they dressed?

A. Their Faces and their Hands blackt, different Dresses and different Sizes.

Q. What were their Hands and Faces blackt with?

A. I cannot tell if they were blackt with Crapes or Blacking.

Q. What had they on their Heads?

A. Small round Hats that had been cut.

Q. What Coats had they on?

A. Could not say for Coats: Their outward Garments were white.

Q. What Arms?

A. *Armes, Blanches*, or cutting Weapons: I can not tell if they were Swords or Cutlasses, but know they were cutting Weapons.

Q. Had they any other Arms?

A. When they came in I saw no other.

Q. Were

Q. Were they drawn? A. Yes.

Q. Did they enter with drawn Arms?

A. As soon as they entered I saw their Arms drawn.

Q. In what Manner did they come in; how was the Door fastened?

A. The outside and inside Doors were shut with Latches; they opened the outside one, and forced the Second, breaking a Pane of Glafs.

Q. Did you see them strike Mr. Walker?

A. Yes, I saw him struck.

Q. Was the Stroke sufficient in your Opinion to kill Mr. Walker?

A. Yes, I thought the Stroke would have caused his Death.

Q. How many did you see strike him, Mr. Walker? A. One or two.

Q. Did you know any of the Persons that entered?

A. I think I knew one of them.

Q. Who was he that you thought you knew?

A. I thought it was Capt. Frazer, by his Size, Corpulence, Manner of Behaviour, Shape of Body.

Q. By any other Marks did you know any other Person? A. No.

Q. Had that Person that you believed you knew, had he a Crape over his Face?

A. He was black in the same Manner as the others.

Q. Were his Hands black?

A. The Hands and Faces were black all of them.

Q. How long did you stay in the Room after the first Stroke given?

A. I saw Mr. Walker receive seven or eight Strokes.

Q. How long did you stay in the Room?

A. I can't tell exactly the Time, I saw them strike Mr. Walker and Mr. Lilly, and saw Mr. Lilly engaged with one of them against the Window, and at the same Time one of them would strike me, at which I run away, and the Man pursued me into the Gallery; being pursued so fast, I threw myself through the Rails of the Gallery. I saw a Stroke made with the Cutlafs next Morning, and found my Coat cut, but do not say that the Sabre cut it, but thought it to be the same Man that made a Stroke at me in the Room.

Q. Did you hear them say any Thing during the whole Time?

A. No, not one of them.

CROSS EXAMINATION.

Q. You saw Mr. Walker receive some Blows, and some aimed at Mr. Lilly: Pray where was Mrs. Walker?

A. Mrs. Walker made her Escape through the Kitchen.

Q. Did Mrs. Walker quit the Room before you? A. Yes.

Q. How long?

A. I cannot directly tell, I went out in a very little Time.

Q. Was it one Minute?

A. I cannot tell.

Q. How long was it from the first Time the Men burst the Street-door to that Time?

A. I cannot fix any Time.

Q. Could you fix it to a Minute? A. No.

Q. How long from the Time you threw yourself over the Rails till you returned again to your Master?

A. About five or six Minutes; perhaps more or less.

Q. What Situation did you find Mr. Walker in?

A. Spread before the Fire on a Carpet, stretched with his Hands on his Wounds (as described in Court) and had I not come he would have been suffocated in his Blood.

Q. Was there any Body in the Room when you returned? A. No, all alone.

Q. Did you know how long they had been gone before you returned?

A. No, not seeing any of them.

Q. Was Mrs. Walker in the Room before you came in? A. No.

Q. Was you the first Person that found your Master?

A. I was the first that took him up as he was on the Carpet.

Q. Could he speak?

A. No, He was not in a Situation to speak, for he could not support himself; when I let him go he fell down again.

Q. Did you see your Mistress come into the Room? A. Yes, a little Time after.

Q. About what Time?

A. I cannot say what Time.

Q. Was it in two or three Minutes?

A. I do not know.

Q. What Hour of the Night was it when these People first came into the House?

A. Between Eight and Nine; I cannot fix the Time.

Q. Was

Q. Was not your Master at Supper?

A. Yes, just set down to Supper.

Q. Was it the usual Time?

A. No fixed Time, within a Quarter or Half an Hour, some times sooner or later.

Q. You don't know any of those People but one?

A. No.

Q. Did you see any of the Waistcoats or Breeches of these People?

A. No, they having the Table and Stove between me and them when they came in.

Q. What Part of the Room was you in; by Master or Mistress?

A. I was on the left Side of my Mistress.

Q. When Mrs. Walker came in, how did she behave?

A. Came in crying out aloud.

Q. Did she speak to him?

A. Yes, she spoke to him, but do not know whether Mr. Walker answered or not.

Fury. Q. Did Mr. Walker receive any Wounds before Mrs. Walker went out?

A. He did receive one or more before she was gone out.

Mrs. Wiggans for the Crown.

Q. Do you remember the Assault made on Mr. Walker the 6th December, 1764?

A. I remember to have heard of it.

Q. Do you recollect any Persons disguised come in to your House about eight o'Clock?

A. Do not. I never heard of it till Mr. Crofton told me of it about eleven or twelve of the Clock at Night.

Q. You never heard it mentioned that such a Thing was designed?

A. No, never heard a Word of it: Indeed I never did.

Q. Did you not speak to Mrs. Mees, and advise her to go and lay the whole Affair open?

A. I did not see her the next Day.

Q. When you did see her, did you ever say that you advised her to go and reveal the whole Affair?

A. I say I never did say any such Thing.

Mrs. Case for the Crown.

Q. We are informed that you know a great deal of the Affair of Mr. Walker's Assault?

A. Yes, have heard of it.

Q. Did you see any Persons go into his House or coming from his House?

A. No.

Q. Did you hear any Persons declare that they would take Revenge of Mr. Walker for imaginary Insults before the Affair happened?

A. No! I am come here to answer relative to Mr. Disney, and no other Person.

Q. Did you never hear Mr. Disney make Use of any Expressions?

A. No.

Q. Do you know Mr. Disney?

A. Yes, like a Child living in Mr. Burton's Family.

Q. Did you never hear of any Expression made Use of against Mr. Walker?

A. No.

GEORGE MAGAYOCK for the Crown.

You are now called upon to give Testimony on this Occasion:

Q. Do you remember that Assault on Mr. Walker?

A. Yes.

Q. Was you present?

A. Yes.

Q. Was Major Disney the Prisoner present at it?

A. Yes.

Q. Was you a Soldier in the 28th Regiment?

A. Yes.

Q. Was there any Plan laid to disfigure Mr. Walker?

A. There was.

Q. When and where did you first hear of such a Design?

A. At Lieutenant Tottenham's.

Q. How long before the Action?

A. About six or seven Days.

Q. Did you hear any Thing of it before, and how long?

A. About six or seven Days I say.

Q. But had you heard any Thing of it before that Time?

A. Yes, amongst the Soldiers and Sergeant Mees.

Q. What did they say was intended to be done.

A. They had a Mind to cut and disfigure Mr. Walker on Account of his Treatment to Capt. Payne.

Q. When you went to Mr. Tottenham's who took you there?

A. Sergeant Mees.

Q. Did he say there were some Gentlemen not belonging to the 28th Regiment, and not to be surprised at seeing them, as they were Friends to the 28th, &c. for the disfiguring of Mr. Walker?

A. Yes, he did.

Q. What was the Purpose of his carrying you to Tottenham's?

A. He knocked at the Door, and Mr. Evans, Major Disney, and Mr. Tottenham, came out into the Passage.

G

Q. Did

Q. Did they speak to you?

A. Yes.

Q. What did they say, and who spoke to you?

A. Mr. *Tottenham*, who said there was some Gentlemen that I might see in there, Friends to the 28th, and not to be surprised, as there was one of the 27th Regiment that would be concerned in disfiguring Mr. *Walker*.

Q. Did any of them require you to be secret?

A. Yes, Mr. *Tottenham* told me I must take an Oath not to discover any of those Gentlemen I should see in the Parlour.

Q. Was any Day fixed at that Time?

A. No.

Q. Did any Body swear you?

A. Yes.

Q. Did they make you kiss the Book?

A. Yes.

Q. Who administered the Oath?

A. Major *Disney* (looking at the Prisoner)

Q. What was you to keep secret?

A. Not to be surprised, or discover any of those Gentlemen that I should see: If I should find them disfiguring Mr. *Walker* before the 28th Regiment had done it.

Q. When you had taken this Oath did they introduce you into the other Room?

A. Yes.

Q. Did Major *Disney* go into the Room?

A. Yes.

Q. What was the Subject of Conversation?

A. The chief was cutting Mr. *Walker*?

Q. In what Manner did they mention it?

A. They said they might meet him in the Street; but did not mention cutting his Ear.

Q. How many Minutes did you stay with them?

A. Not very long.

Q. Where did you go after?

A. Into Mr. *Tottenham*'s Kitchen.

Q. Did any Thing pass in Mr. *Tottenham*'s Kitchen?

A. No.

Q. Where did you go next?

A. To Sergeant *Mees*'s House.

Q. Was you ever sent for to Mr. *Tottenham*'s again?

A. No.

Q. Was you ever sent for to Mr. *Tottenham*'s before that Time, about that Business?

A. I was there several Times.

Q. Do you know any Thing of an Attempt made on *Tuesday* to disfigure Mr. *Walker*?

A. I know three Men that stood on the Parade, intending to meet Mr. *Walker* going or

coming from his Store, saying, if they could see him they would lose their Lives but they would cut or disfigure him.

Q. Did you hear them speak of that Affair on *Tuesday*?

A. Yes, they said they had missed him, but if they could they would meet him next Night.

Q. Did any of them go?

A. Yes two of them went next Night.

Q. Who were they?

A. *Coleman* and *James Rogers*.

Q. Where did they go?

A. To the Street leading to Mr. *Walker*'s below, between that and Mr. *Lamb*'s.

Q. How came they to place themselves there?

A. Because they had looked about the Store and could not find him.

Q. Did they expect to meet him at Mr. *Lamb*'s?

A. I suppose so.

Q. They were only waiting; were they armed?

A. Yes, with Swords, and one a Pistol.

Q. What Dresses?

A. Blanket Coats.

Q. Had they any Capes or any Thing on their Faces?

A. No.

Q. Did you not see them on their Stand?

A. Yes.

Q. At what Time did you see them standing to wait for Mr. *Walker*?

A. Before eight o'Clock.

Q. Did you hear them speak of it next Morning?

A. Yes they said they had seen him, but could do nothing, as another Man was coming behind him shortly after I had parted with them; they told me they did not attack him.

Q. Where did those People make ready to go on this Expedition?

A. At Sergeant *Mees*'s.

Q. Who?

A. Sergeant *Rogers*, Sergeant *Mees*, *Coleman*, *McLaughlin*, *Phillips*, *Castles*, *Rosburne*, *Daniel Ashman*, *Thomas Donnelly*, &c.

Q. These People all set out from Mr. *Mees*'s; at what Time?

A. A little before eight of the Clock.

Q. What Dresses were they in?

A. Blanket Coats, Faces covered with Black, *Coleman* with a Cape over his Face.

Q. Did you see these People go into Mr. *Walker*'s House?

A. Yes.

Q. Who

Q. Who went in first? *A. Coleman.*

Q. Did you see him strike Mr. Walker?

A. Yes, he was the Man that gave the first Blow.

Q. You saw Major *Disney* there? *A. Yes.*

Q. How was Major *Disney* dressed?

A. In a long Blanket Coat, a Crape over his Face.

Q. What Arms?

A. A Sword and a Stick.

Q. How many more Persons was there, besides those that went to Sergeant *Mees*?

A. About seven or eight.

Q. And do you know from whence they set out?

A. No.

Q. You did not hear it said?

A. Do not know.

Fury. Q. Did Major *Disney* speak; how did you know him?

A. By his Make and every Thing else; have known him many Years.

Q. Did you see Major *Disney* strike Mr. Walker?

A. I saw him draw his Sword out and run.

Q. How did he carry his Sword?

A. Under his Blanket-coat under his left Breast.

Q. Did you see him draw it?

A. I saw no Scabbard.

Q. Did you see him in the outward Room in the Hall?

A. Yes.

Fury. Q. Did you know that he was to be there?

A. No.

Q. Who gave the Wounds to Mr. Walker?

A. Coleman, then Rogers.

Q. What Resistance did Mr. Walker make?

A. He endeavoured to make through them, Coleman, Rogers, and Ashman.

Q. What Time did Major *Disney* advance with his Sword?

A. Before he fell; that is before I took Notice he was fallen.

Q. Where did Mr. Walker go after the first Blow?

A. He went into the next Room, and went into the Corner of the Parlour close to the Door of the other Room.

Q. Did you see him there? *A. Yes.*

A. I saw him engaged, that he could not make any Resistance, having received so many Blows.

Q. At that Time did you see Major *Disney*?

A. No.

Q. What did Mr. Walker then do?

A. He moved from thence to the Fire-place.

Q. What made him move to the Fire-place?

A. I suppose they jostled him in struggling.

Q. When he was near the Fire-place did you see him engaged with any body?

A. I saw John Clark, a Black-smith, strike him on the Leg with a Piece of Iron.

Q. Did that make him fall?

A. I suppose so.

Q. You said you saw Major *Disney* advance with his Sword, did he say any Thing?

A. He might perhaps say something, but I did not take Notice of him as others spoke; I did not positively hear him say any Thing.

Q. You saw Major *Disney* advance with his Sword, did he make a Thrust at him?

A. No.

Q. You say you went out of the Room; how long did you stay?

A. A short Time.

Q. Did you return, and what did you see?

A. I saw Rogers on him, and engaged in cutting off his Ear.

Q. Did you see him cut off his Ear?

A. Yes I did.

Q. Did you hear him say any Thing?

A. Nothing particular.

Q. Did you imagine Mr. Walker was killed when you quitted the House?

A. Yes we thought so.

Q. What made you and them think so?

A. Sergeant Rogers said he thought he was dead, that he thought he had cut his Throat, but however he had his Ear.

Q. Did you hear any one say they were sorry he was not dead?

A. Yes.

Q. Who said so?

A. Philip Castles and Ashman; they were sorry as there would have been no more said of the Affair.

Q. Did the Blow seem intended to kill?

A. Yes, and the Party thought they had killed him: I heard them say, *he's dead, the Rascal was not liked.*

Q. Which Way did they go after quitting the House?

A. They went in three Parties, one towards the Parade, another towards the Recollets Street, and one towards the Market-place.

Q. In which Party did Major *Disney* go?

A. I cannot say which of the three.

CROSS EXAMINATION.

A. Was you one of the Consultation?

A. Yes I was.

Q. You

Q. You agreed on a Plan to be sure?

A. Yes.

Q. I should be glad to know that Plan; was it to strive to cut and disfigure Mr. *Walker*; was it agreed at that Plan that his Ear was to be cut off?

A. No, not at that Time.

Q. I suppose you will give us an Account of the different Stations you were to act in?

A. There was no particular Thing mentioned at that Time to strive to cut and disfigure Mr. *Walker*.

Q. What particular Part was every one to have?

A. No particular Part to each, every one to do his best.

Q. Pray what Part was you to act?

A. Was to let Capt. *Payne* and *Tottenham* know if any of the Party were taken or wounded in the House.

Q. Did you execute that? A. Yes.

Q. You mentioned something about something previous to be executed, what was that?

A. *James Rogers*, *Coleman*, Sergeant *Mees* and *Daniel Ashman*, were to go on the Parade, in Order to way-lay Mr. *Walker* coming from his Store.

Q. How do you know?

A. I was on the Parade, but not with those People.

Q. Did you stay on the Parade all the Time they were there?

A. No, I did not, but I went to the House where they came when they returned, and could not find him.

Q. The next Day was there not another Plan laid; were the same Men there?

A. No, only two that I saw, Sergeant *Rogers* and *John Coleman*, one in one Corner and another in another.

Q. How long did they stay there?

A. Perhaps Half an Hour. I was at a House they came to, and they said they had seen him, but could not attack him as some Person was coming after. They did not stay three Quarters of an Hour.

Q. How do you know that?

A. Because they came to a House where I was.

Q. You said you was employed to carry Messages from Mr. *Walker*'s House to *Payne* and *Tottenham*; and who appointed you?

A. *Rogers* and *Mees*.

Q. What Time of the Night was it when you saw Capt. *Payne*?

A. A little before Eight.

Q. What Day of the Month, Year, &c.?

A. No Answer.

Q. What Year?

A. About two Years ago, but do not recollect the Particulars, as I made no Memorandum.

Q. What Hour of the Night was it?

A. Little before Eight, I think.

Q. When you carried the first Intelligence to Capt. *Payne*, Had you seen those People in Mr. *Walker*'s House? A. Yes.

Q. Pray what Part of this Tragedy had been acted before you gave this Information to Capt. *Payne*?

A. They were in the Parlour.

Q. Had Mrs. *Walker* fled out of the House before you returned, and the others?

A. They had all fled.

Q. Did you go into the Parlour?

A. Yes.

Q. Had Mr. *Walker* gone in? A. Yes.

Q. Had he received any Wounds before you went? A. Yes.

Q. Had he been knocked down? A. Yes.

Q. Then it was you went out? A. Yes.

Q. Before he fell?

A. Yes, when he fell.

Q. What did you say to *Payne* and *Tottenham*?

A. I told them that I had gone into the other Room, and that none of the Party was hurt or taken.

Q. What distance of Time was it before you returned to Mr. *Walker*'s?

A. A few Minutes, not two.

Q. Did you speak to him, and are you positive he was there? A. Yes.

Q. When you returned again what was become of Mr. *Walker*?

A. He was close by the Fire-place, quite overcome.

Q. In what position were the rest of the People?

A. A good many about him, and some at a Distance.

Q. What were they doing?

A. I saw *Rogers* cut his Ear off and the Blood run.

Q. Did he get any Blows?

A. I saw several strike him.

Q. What Manner did he lay?

A. He

A. He was not quite down, but lying on his Side.

Q. You say when you returned that People were about him, and saw Sergeant *Rogers* cut off his Ear?

A. He was not quite stretched out.

Q. Pray in what Position was Sergeant *Rogers*?

A. He was standing over him, and took a Knife out of his Breast and cut off his Ear.

Q. After you had seen this, according to your Description, after the Ear was cut off, did you see him receive any more Blows?

A. I did not see any Person strike him after that; it might be.

Q. How long did you stay there?

A. It was only a short Time.

Q. What did you do then?

A. I went off as well as the rest.

Q. Did you all go away? A. Yes.

Q. And pray how often did you go backwards and forwards between Mr. *Walker's* and Capt. *Payne's*?

A. Twice; the second Time I told him that *Rogers* had cut off Mr. *Walker's* Ear.

Jury.—Q. What was your Dress?

A. A Blanket Coat, Cap and Stick.

Q. Was your Face black'd? A. No.

Q. Nor Crape over it? A. No.

Q. Were your Hands black'd?

A. No.

Q. Were any of the Company's Hands black'd? A. Yes.

Q. Were they all? A. No.

Q. Whose Hands were black'd?

A. *Thomas Donnally* and *Resburne*, &c. I am sure there were six that had their Hands black'd, but do not recollect the rest.

Q. In what Manner were these People blackt?

A. With Grime and Grease.

Court.—Q. If after the Ear was cut off he returned after coming from Captain *Payne's*?

A. I did return.

Q. What Posture was Mr. *Walker* in when you returned?

A. He was lying on the Floor.

Q. How long did you stay after that, and the rest of the People; was it a Minute?

A. Yes it was.

Q. What was the Account you gave Captain *Payne*, &c.?

A. I said I had seen *Rogers* take his Ear off.

Q. What Reply did *Payne* make?

A. Go and get the Party off as soon as possible.

Q. Did you all go away together?

A. As fast as we could get out.

Q. Did Major *Disney* stay all the Time?

A. I don't know whether Major *Disney* staid all the While.

Q. Was he there when you came in the first Time?

A. Yes, I am sure of that.

Q. Was he there the second Time after your giving an Account?

A. I did not take Notice of him at that Time.

Q. Before you went out the first Time you told me that Mr. *Walker* had gone into the Room, and that Mr. *Walker* had received several Blows, and that Mr. *Walker* had received a Blow from a Man with an Iron Bar?

A. Yes, to be sure he did at that Time and after.

Q. That you went out after that Affair to tell Captain *Payne*? A. Yes.

Q. Did Mr. *Walker* receive any more Blows after receiving the Stroke with the Bar of Iron?

A. Yes.

Court.—Q. Was the Blow given by *Clark* before or after Major *Disney* advanced with his Sword?

A. Yes, it was before.

Q. Pray how were the People dressed?

A. All dressed in Blanket Coats, only *Philip Castles*.

Q. How many *Canadian* Gowns were there. Did you see?

A. There might be others under their Blanket Coats; I took no particular Notice of any but *Philip Castles*.

Q. You did not observe any others with *Canadian* Gowns but *Philip Castles*?

A. No.

Q. What had Major *Disney* on?

A. A long Blanket Coat.

Q. You spoke particularly about *Rogers*, *Coleman*, and other black'd Faces, pray was Major *Disney's* black or white?

A. A Crape over it and Fur Cap.

Q. Pray how was it fastened?

A. Tucked under his Cap.

Q. Did it hang loose about his Head?

A. No, pretty close to his Skin: I do not say positively.

Q. Did

Q. Did you hear him speak to any body else?

A. No, I did not hear him.

Fury.—Q. Did you hear one of them speak; you named one, who was it?

A. Lieutenant *Scott*.

Q. What did he say?

A. I know what. *Let me come up and I will teach him.*

Q. When did that Speech happen?

A. It was before his Ear was cut off.

Q. Was it before he received the Blow with the Iron Bar or not?

A. Before.

Q. Did Mr. *Scott* advance with his Sword in his Hand?

A. He held it up; it was a Broad-sword.

Q. At the Time that Major *Disney* advanced how near was you to him?

A. Not above four Feet from him.

Q. Did you hear him make use of any Expressions?

A. He might, but I did not hear him.

Q. After the whole Affair was over, and all these were retiring, pray what o'Clock was it?

A. I cannot be exact, but am sure it was before nine o'Clock. Have no Watch.

Court. Q. Do you know how long it was from the Beginning of the Affair until they all quitted the House?

A. It might be a Quarter of an Hour, more or less: I think it could not be more: I think it was.

Q. You said it was before Eight of the Clock?

A. It was before Eight o'Clock we quitted Sergeant *Mees's* House.

Q. You could not be long a going to Mr. *Walker's* House?

A. No, not very long; but I am sure it was not nine before the Affair was over.

Q. You say Major *Disney* had a long Blanket Coat, and pulled his Sword from out of his Breast; you saw him?

A. Yes, I saw him.

Q. Pray what Waistcoat had he under it?

A. I could not see, his Blanket Coat doubling over.

Court. Q. You set out from Sergeant *Mees's* with the Party? A. Yes.

Q. Did you see them dressing themselves?

A. Yes.

Q. Why was you the only Man not disguised?

A. Because I was to have no Hand in the Cutting, but to go backwards and forwards.

Q. Do you say all that left Sergeant *Mees's* were blackt?

A. All but two and myself.

Q. After the whole Affair was over you say you divided into three Parties? A. Yes.

Q. Where did you go?

A. I went a-cross the Parade and through St. Lawrence Gate.

Q. What became of your Party?

A. They went out of St. Lawrence Gate some of them.

Q. Where did the rest go?

A. Some went one Way, some another, some staid about *Tottenham's*.

Q. What became of the other Parties that went towards Mr. *Frazer's*; did you know where they went?

A. Only that one went one Way, and another the other.

Q. Pray what became of you?

A. I went to Sergeant *Mees's*: They came in at the *Quebec* Gate, then went out at the King's Store, and over the Wall, and then returned at a Sally-port.

Q. Was the *Quebec* Gate left open?

A. Yes it was.

Q. At this Transaction of the sixth *December*, were you at Sergeant *Mees's* before Roll-calling?

A. Yes, I was there an Hour before Roll-calling, and returned from Roll-calling to Sergeant *Mees's*, staid there a little, and then went to *Cafe's*.

Q. Did you stay ten Minutes?

A. Yes, between six and seven o'Clock.

Q. At *Cafe's*, was that the exact Time; answer?

A. I did not regard exactly the Time; I will not be positive; it might want a Quarter perhaps.

Q. After leaving *Cafe's* where did you go?

A. To Sergeant *Mees's* I say.

Q. What Road did you take?

A. Down by the great Church, and so to *Mees's*.

Q. So you went no where else? A. No.

Q. Did you see Capt. *Payne* at Sergeant *Mees's*?

A. Yes, a little before that Affair.

Q. How long had he been in Town?

A. I do not know; he did not tell us, nor did I ask.

Q. Did you drink together?

A. There was Rum.

Q. Who paid for it?

A. I

A. I did not pay for it.

Q. Was he disguised, was his Face blackt?

A. No.

Q. What Time did you see Capt. *Payne*?

A. We came out much the same Time, and Capt. *Payne* staid opposite the House of one *Bellair* with a Party.

Note. *Bellair's* is opposite the End of Mr. *Walker's* House.

Q. The second Time you went out to give Intelligence, was there any Person with them?

A. No, not any body.

Q. When you crossed the Parade did you meet any body?

A. Yes, one *Grub* a Soldier; I did not take any Notice of any Person but that Soldier.

Q. Did you see Capt. *Falconer*?

A. I did.

Q. Who was with him?

A. Lieutenant *Keough*.

Q. Were there any Soldiers with him?

A. I did not see any.

Q. What was he doing there?

A. Looking about as a Guard.

Q. Was he one of the Party, did he know of the Fact?

A. I suppose they did.

Q. How was he dressed?

A. In Blanket Coats.

Q. How armed?

A. Mr. *Keough* a Sword and long Stick, Capt. *Falconer* a Dagger and Pistol.

Q. How did he carry the Pistol?

A. In his Breast, Dagger by his Side.

Q. After you quitted Mr. *Walker's* House, going over the Parade, did not you run fast; was you walking or running?

A. I was walking at first, then I went pretty smartly.

Q. How near were you to Capt. *Falconer*?

A. I Went close to him.

Fury.) *Q.* What Waistcoat had he on?

Oakes) *A.* A red one.

Fury.) *Q.* Had he a Stock or Neckcloth?

Oakes) *A.* I do not know.

Court. *Q.* Where did Capt. *Payne* keep the Guard?

A. At *Bellair's*.

Q. Did you see him before you went into Mr. *Walker's*?

A. He came out with us from Sergeant *Mees's*.

Court. Did Capt. *Payne* come out with you?

A. Yes.

Q. Did he take guard there at that Time?

A. Yes he did.

Fury. *Q.* Where did you carry the Message to *Payne* and *Tottenham*?

A. Just at *Bellair's* House.

Gregory. *Q.* Why you said just now that you carried it to Capt. *Payne* at Sergeant *Mees's*.

A. No, I did not; you mistook me.

Fury. *Q.* Was Major *Disney* one that had his Hands blackt.

A. No, I did not observe.

Q. You must have observed when he came to present his Sword?

A. No, I did not.

This Witness being dismissed the Counsel for the Crown desired that Mr. Walker might relate a Circumstance corroborative of Part of Magovock's Testimony.

THOMAS WALKER.

I Drank Tea at *Thomas Lamb's*, Esq; then a Magistrate, on *Wednesday* Evening, and about eight o'Clock Mrs. *Walker* sent a Servant after me; coming from Mr. *Lamb's* in the narrow Part that leads to my House, I met two Men in Blanket Coats, with Clubs, who seemed very menacing. Mr. *Lamb* wanted to borrow two Volumes of *Shakespear*, and sent his Man after me, so that nothing happened from these People that Night.

James Case, of the 27th Regiment, for the Crown.

Q. Did you see People coming from Mr. *Walker's* House the 6th of *Decembre*, 1764?

A. Yes.

Q. The same Night?

A. Yes.

Q. Which Way did they seem to be going?

A. From Mr. *Walker's* House; between eight and nine.

Q. Was it before or after Roll-calling?

A. There is Roll-calling at Retreat-beating and eight o'Clock, but there was not that Day to my Knowledge.

Q. You guess the Time between eight and nine?

A. Yes.

Q. You say they were running as if they were running from Mr. *Walker's* House?

A. Yes.

Q. How many did you see?

A. Five.

Q. Did any body go in Pursuit of them?

A. Yes, one *Grubb*.

Q. Did you know any of them?

A. *Simon Evans*, Capt. *Payne*, and *Rogers*.

Q. Did *Payne* say any Thing to you?

A. Yes, he said go back again, but he did not, and *Rogers* cut him on the Head with something like a Broad-sword. I watched *Payne* and

and *Tottenham* into *Tottenham's* House.

Q. Did you see *Magovock*?

A. Yes, that Night I parted with him at seven or eight o'Clock at my House.

Q. Where did he go?

A. I cannot tell.

Q. Did he say any Thing about his Business?

A. Yes.

Q. What did he say?

A. You will hear something remarkable between this and next Morning.

Q. Did he say any Thing about Mr. *Walker*?

A. No, only that a great Event would happen.

Q. What Time did he come?

A. Between six and seven o'Clock; and was with me about an Hour.

Q. Did you see Major *Disney* that Evening?

A. No, cannot say it is him: Two People crossed the Parade, one tall, the other a little Man, about half after Eight.

Q. Who were those People; do you know them?

A. Neither was Major *Disney*. One a tall Man, the other a little Man.

CROSS EXAMINATION.

Q. Pray what Condition was *Magovock* in when he came to your House, was he drunk?

A. He was not very drunk.

Q. What do you call drunk; was he able to stand?

A. Yes.

Q. To walk?

A. Yes.

Q. Was he able to go about Business?

A. Yes.

Q. What Time was it that he left your House?

A. About half after seven o'Clock, *Magovock* asked me if he might lie in my House. I told him no.

Q. Why?

A. Because it was improper for a Soldier to lie out of his Quarters.

Q. How near together was it that you left the House?

A. About a Minute.

Q. Where did *Magovock* go?

A. Intending to go for his Quarters.

Q. What Street did you live in, was it in the Street Colonel *Christie* lived?

A. Yes.

Q. When he left your House did he go down that Street towards the River?

A. Yes.

Q. Where did you go when you parted with *Magovock*?

A. To the *Recollet's* Street; but stopped to talk with one *Johnson* in the Way, then went down directly to the Parade.

Q. When you came to the Parade what did you see?

A. I met them crying, *stop them, stop them, they have killed a Merchant*: And met *Payne*, *Evans*, and *Rogers*.

Q. How long was you coming from your Quarters to the Parade?

A. About three quarters of an Hour.

Court — Q. How do you know the Time; in what Manner did you divide your Time?

A. By Guess.

Q. When *Magovock* asked to lie in your House, do you think if you had consented he would have gone to Bed immediately?

A. No! The Man was sensible enough. *Henry Mertz, Soldier of the Royal Americans, for the Crown.*

Q. Did you see any Person the Night of the Assault going to or coming from Mr. *Walker's*?

A. The Evening, about Eight or Nine, I met a Number of disguised Persons, some blackt, some in Blanket Coats; but thought that they were going on some Frolic: Did not much mind them.

Q. Were they going towards Mr. *Walker's*?

A. Yes, towards.

Q. Did you know them?

A. I did not know them all, but some of them.

Q. Who did you know?

A. *John Mees*, *Coleman*, and *Daniel Ashman*.

Q. Where did you meet them?

A. Just in the main Street at the End of a little Street that leads to Mr. *Walker's* near to a Tavern that Mr. *Murray* keeps.

Q. Did you know any body else?

A. No.

Q. Was Major *Disney* there of that Party?

A. No.

Q. Did you see *Magovock* there?

A. I did see a Man like *Magovock*, with a Blanket Coat, and Stick in his Hand.

Q. You had known *Magovock* before this?

A. Yes.

Q. How long?

A. Three or four Years.

Q. You was well acquainted with his Person?

A. Yes: And to the best of my Opinion he was one of the Party.

Q. Those

Q. Those Persons that you knew again had they Disguises on their Heads?

A. Daniel Ashman had not.

Q. Did you speak to them.

A. Yes, I spoke to Ashman.

Q. What did he say?

A. Never you mind it.

Q. Did nothing else pass between you and Ashman?

A. Not at that Time.

Q. Did you see him again?

A. Yes, I saw him after.

Q. Where did you see him?

A. At a little Sally-port by the Governour's House.

Q. Was that Sally-port open?

A. Yes, it was open at a little after nine o'Clock.

Q. Who did you see with Daniel Ashman?

A. Sergeant Mees. Then I asked Ashman what they had been about, having heard something of the Affair; he said I believe we have done for Mr. Walker.

Q. You did not see Major Disney in that Group of fourteen or fifteen?

A. No, not to my Knowledge.

CROSS EXAMINATION.

Q. You did not speak to Magovock?

A. No.

Q. How did you know it was he?

A. Having drank with him very often, according to his Size, &c. so knew it was him.

Jury. Q. Had he any Thing remarkable to the rest?

A. No.

Q. You did not see his Face?

A. No.

Q. Nor hear him speak?

A. No.

Counsel for the Crown.

Q. Some of them had Capes over their Faces?

A. Yes some of them; Ashman had not, Coleman had something black, or a Cape over his Face.

Q. How near was you to them?

A. Half the Breadth of the Street.

Q. Could you know their Features notwithstanding their Faces being blackt and disguised?

A. No, being Moon-light.

The Counsel for the Crown not thinking any more Evidence necessary, rested the Matter here, and the Counsel for the Prisoner opened his Defence as follows:

N. B. There were three Gentlemen of Counsel for the Prisoner, Mr. GREGORY, Mr. MORRISON, and Mr. ANTILL.

The Prisoner's DEFENCE.

Counsel for the Prisoner.

After the long Evidence laid before the Court,

and from the vast Contradictions of Things that interfere with each other, I think that nothing ought to be rested on that Evidence: But as it is a Crime so below a Soldier, and for Fear the least Sully should remain on my Client, I will take up a little Time, and hope I shall be able to take that away, that he had the least Hand in it. I believe no Man can look on such a Crime with more Contempt than I do, &c.

We shall call a few Evidences.

Madam Landrieves for the Prisoner, as interpreted by a sworn Interpreter.

Q. Do you remember some Time in the Month of December, the sixth, being at a Ball at Doctor Robertson's?

A. Yes.

Q. What Time of the Day did you go?

A. At four o'Clock.

Q. Did you see Major Disney?

A. Yes.

Q. What Time did he come there?

A. At five or half after five.

Q. What Time did Major Disney stay there?

A. All the Evening.

Q. What Time did he go away?

A. Between three Quarters after nine and Ten.

Q. Did Major Disney go out of the Room from the Time he came in, till he went away?

A. No.

Q. Could he go out without your Knowledge?

A. No.

Q. How did you pass your Time?

A. At Half after four we began to boil Melasses, or make Tire.

Q. Major Disney, was he there?

A. Yes! and play'd a great many Pranks with me.

Q. What did you next?

A. We drank Tea.

Q. How long did the boiling of the Melasses last?

A. About three Quarters or an Hour.

Q. Did Major Disney drink Tea?

A. Yes.

Q. After having drank Tea what did you do?

A. We play'd at Blindman's-Buff.

Q. How long did that last?

A. Perhaps Half an Hour.

Q. After that did you dance?

A. Yes.

Q. Did Major Disney dance?

A. Yes! with me.

Q. How long did you dance?

A. Till

A. Till Supper.

Q. What Hour?

A. Half after eight or three Quarters.

Q. Did Major *Disney* dance all the Time till Supper?

A. Yes.

Q. Did Major *Disney* set down to Supper?

A. Yes, next to me.

Q. How long did you sit at Supper?

A. Till we heard the News that some People had ill-treated Mr. *Walker* at his House.

Q. Did Major *Disney* stay at Table till that Time?

A. Yes.

Q. What Time did he go away from thence?

A. A Man came from General *Burton* for Major *Disney*; because the Officers were called on that Occasion.

Q. About what Time was that?

A. About ten and half after.

Q. What became of Major *Disney*?

A. He went away.

CROSS EXAMINATION.

Q. Madam, were your Eyes fixed on Major *Disney* from six o'Clock to half after Nine?

A. No. I had them not more fixed on Major *Disney* than any other Person.

Q. Did you play at Cards?

A. No.

Q. Did you go out at any Time?

A. Yes, I was absent about five Minutes; I left Major *Disney* in the House, and found him there on Return, at three Quarters after Eight.

Q. Did you look at your Watch when you went out and returned, to know five Minutes?

A. No. But I said five Minutes, thinking that was more than the Time I took.

Q. Was you never absent but that one Time?

A. No.

Q. You are very sure you left him and found him on return?

A. Yes, very sure.

Q. Was there any Alteration in Major *Disney*'s Dress or Appearance from the Time you went when you returned?

A. No, he seemed just as fresh, and seemed to be as composed.

Q. How were the Company employed in the Time of your Absence?

N. B. A. They were sitting round the Stove till the Table was laid, &c. &c.

Mrs. Campbell, for the Prisoner.

Q. Do you remember where you spent the Evening the Night the Attack was made on Mr. *Walker*?

A. Yes.

Q. Where?

A. At Mr. *Robertson*'s.

Q. What Time did you go?

A. Half after three or four o'Clock.

Q. Did you see Major *Disney*?

A. Yes.

Q. What Time did he come?

A. Between half after four and five.

Q. When did he leave it?

A. Between three quarters after nine and ten.

Q. Did he stay there during the whole Time?

A. Yes.

Q. Without going out?

A. Yes.

Q. Do you think it possible that Major *Disney* could be absent without your Knowledge?

A. No: It is not possible.

Q. Who did Major *Disney* dance with?

A. Madam *Landrieves*.

Q. What was the Reason Major *Disney* left the House?

A. For the Affair of Mr. *Walker*; there came a Soldier to fetch him.

Q. From whom?

A. General *Burton*.

Q. At what Time were they informed of that Affair?

A. By the Soldier that came on the Part of General *Burton*, at nine o'Clock.

Q. Before or after Supper?

A. We were just at Table.

Q. Was it before or after Supper?

A. We were at Supper.

Q. Did you know it before Supper?

A. Yes.

Q. Who informed you?

A. Mr. *Howard*.

Q. Was Major *Disney* at Supper at that Time when *Howard* informed you?

A. He was.

Q. Had Major *Disney* been absent at all during the whole of coming in and going away?

A. No.

Q. Was you absent during the Time?

A. No.

Q. How did you pass the Time that Evening?

A. First, making *Tire*, then *Blind-man's-buff*, after that danced.

Q. How long?

A. Just till half after eight; till Supper.

Q. Who danced with you?

A. Mr. *Robertson*.

CROSS

CROSS EXAMINATION.

Q. What Reason did you regard Major *Disney* so that he could not go out without your Knowledge?

A. There were so few in Company that Major *Disney* could not be absent without my Knowledge.

Q. Did you never leave the Room to go into another?

A. Yes

Q. About what Time?

A. About half after four or five.

Q. The only Time?

A. Yes.

Q. How many Couple were there dancing?

A. Five Couple.

Q. Was the whole Company employed?

A. No, one Lady did not dance.

Q. Did you dance till Supper?

A. Yes.

Q. Did Major *Disney* dance the whole Time?

A. Yes.

Q. Whether in the Dances the whole Company were employed in dancing all the whole Time?

A. Yes.

Q. Did any of them sit down sometimes?

A. They were too few.

Q. What Dances?

A. *English* Country-dances.

Q. Were they all employed?

A. Yes.

Q. At what Time did you begin?

A. Half after seven.

Mr. Robertson, for the Prisoner.

Q. Do you recollect where you spent your Evening 6th *December*, 1764?

A. Yes! At my own House.

Q. What Company had you with you?

A. Captain *Campbell* and his Lady, Captain *Evans* and his Lady, Mrs. *Landrieves*, Mrs. *Howard*, Mrs. *White*, Major *Disney*, my Wife and myself.

Q. Was Major *Disney* there?

A. Yes.

Q. What Time did he come?

A. About five o'Clock.

Q. What Hour did he leave your House?

A. About three quarters after nine o'Clock.

Q. Was he absent from your House from the Time he came to your House to that Time?

A. He was not absent but two or three Minutes, from five o'Clock till that Time.

Q. How did you spend your Time?

A. Making *Tire*, then play'd Blind-man's-buff, then danced, then eat a little Supper.

Q. If after you began those Things Major *Disney* was of your Party?

A. Yes.

Q. Who did Major *Disney* dance with?

A. Madam *Landrieves*.

Q. Who did you dance with?

A. Mrs. *Campbell*.

Q. Pray do you know the Reason of his going away when he did?

A. An orderly Sergeant, or Soldier, from General *Burton*, came.

Q. Did he mention the Reason?

A. I don't recollect.

Q. Did you hear before then of any Accident happening to Mr. *Walker*?

A. Yes I did, about half an Hour before that Time.

Q. From the Time Major *Disney* came to your House, till the Time he left it, did you quit your House?

A. No: I staid there all the Time.

Q. Do you recollect any Lady being absent for about four or five Minutes?

A. Yes, Mrs. *Howard*, Mrs. *Landrieve*, and Mrs. *White*.

Q. Was Major *Disney* absent from that Time?

A. No, he was not absent during the whole Time.

CROSS EXAMINATION.

Q. Major *Disney* was in Company at your House for four or five Hours together?

A. From half after five till ten.

Q. He did not go out of your House till that Affair?

A. No. The Person that came told him that General *Burton* wanted him.

Q. You did not observe whether he was absent for a small Space of Time?

A. I did not observe; but he might be absent for a Minute.

Q. Whether you have a Memory that he was absent, or only mean to say that you think he was?

A. I don't know that he was.

Q. Did you ever miss him from the Company?

A. No.

Q. But he might be?

A. No.

Q. You was there the whole Time?

A. Yes.

Q. Did you go out of the Room into any other Part of the House?

A. Yes.

Q. Did you ever leave th Company any Part of the Time?

A. No

A. No never, but the Company changed Rooms.

Q. Is it usual for you to take such particular Notice of the Company?

A. There was so small a Company that none of them could be absent without my Knowledge.

Q. What Hour did you begin to dance?

A. About seven o'Clock.

Q. How long did you continue dancing?

A. Till Supper. I am positive from the Time, that Major *Disney* or any one else, could not quit the Room till Supper, without my Knowledge.

Mrs. Howard, for the Prisoner.

Q. Where did you spend the Evening, *Thursday*, sixth *December*, 1764?

A. At Mr. *Robertson's*.

Q. What Time did you go there?

A. About five o'Clock, or sooner.

Q. What Company was there?

A. Madam *Robertson*, Madam *Campbell*, Madam *Evans*, Madam *Landrieves*, &c.

Q. Major *Disney*, was he there?

A. Yes.

Q. How long did he continue?

A. I saw him there as long as I staid.

Q. How long did you stay?

A. Till a Quarter after eight, then went out to my own House, then returned in about four or five Minutes.

Q. Major *Disney*, was he there when you returned?

A. Yes.

Q. Who went with you?

A. Madam *Landrieves* and Mrs. *White*.

Q. Did you see any Alteration in his Dress or Manner when you returned?

A. No, none.

Q. Pray do you remember how Major *Disney* was dressed?

A. Plain Scarlet Coat with yellow Lapels.

Q. Have you seen that Major *Disney* quitted the House after your Return till he went away?

A. No.

Q. Was it possible that Major *Disney* could quit the House from your Return, till he was sent for?

A. No, it was not possible.

Q. How did you pass the Evening?

A. Making Tire.

Q. Who danced with you?

A. Capt. *Evans*.

Q. Who with Major *Disney*?

A. Madam *Landrieves*.

JOSEPH CASE.

Q. Was you sent by General *Burton* to fetch Major *Disney*?

A. I was sent by General *Burton*. A Number of Merchants came to General *Burton* and told him such an Affair had happened. The General comes to me and said, *Cafe, put on your Hat, and run to Major Disney, give my Compliments to him, and tell him I want to speak to him.* Not to come without him. I went to his House, not at Home; the Servant told me he believed he was gone to a Dance, and believed to Mr. *Robertson's*; made the Man take his Hat and go with me: Then went to Madam *Landrieve's*; he was not there; then went to Mr. *Robertson's*, three Servants were standing at the Door, I asked if Major *Disney* was there, the Servants said he had been there all the Evening.

Q. What Time was it you was there?

A. I believe about half after nine of the Clock. I told the Major, who did not stand to ask any Questions, but took his Hat and walked all the Way before, with a plain Suit of Clothes and a laced Hat, his Hair frized not the least disordered.

Q. Was you a Soldier at that Time?

A. Yes, in the 27th Regiment.

Mrs. Ermatinger, for the Prisoner.

Q. Do you recollect being at Mr. *Walker's* after the Affair?

A. Yes.

Q. Had you any Conversation at that Time with Mr. *Walker*, touching the Knowledge of those that committed the Affair?

A. Somebody asked Mr. *Walker* if he knew any Person; his Answer was, *That he did not; but believed that he knew Lieutenant Scott, by the Figure and Manner of his Cloaths; but only presumed.*

Mr. Samuel MaKay, of the Royal Americans, to the Character of Magovock.

Q. Do you know George *Magovock*?

A. Yes.

Q. Pray how long did you know him?

A. Ever since he came over; think it was in 1756. He was drafted. He was in the same Company I commanded.

Q. What is his general Character: Do you think he is a Man that can be taken for his Oath?

A. He has been flogged several Times for stealing: Well known by several Merchants when he was draughted. Mr. *Duncan* mentioned

tioned particularly *Magovock* as a good for nothing Fellow.

Jacob Moran, *Sergeant-Major, to the Character of Magovock.*

I have known him since the Beginning of 1758.

Q. What was his Character?

A. A Man of a very bad Character; has been flogged for several Crimes; have heard that he deserted once; that he used to steal sometimes: I can give none but a bad Character of him.

Farrel, *to his Character.*

Q. Pray do you know *George Magovock*?

A. Yes.

Q. How long?

A. Since the Year 1754: Well acquainted in *Ireland*.

Q. What is his general Character?

A. I never knew a good one, always a bad one: He was always a forsworn Man and Thief in the Royal Regiment; a Man not to be credited, and told a Story of his lifting, and swearing he was an *English* altho' an *Irish* Man, &c.

End of the Prisoner's Evidence.

After the Prisoner's Counsel had closed the Evidence in his Defence, the Attorney-General made a Reply, to nearly the following Purport, but less fully and with less Warmth.

May it please your Honour, and you, Gentlemen of the Jury,

I Beg leave to trouble you with a few Observations upon the Evidence that has been produced in the Prisoner's Defence. This Defence seems to consist of two Parts; the one is an Attempt to prove that the Prisoner was engaged in Company at Dr. *Robertson's* House, during the Time of the Assault upon Mr. *Walker*, and consequently that he could not be present at it; the other is an Endeavour to discredit the Witness *Magovock*, by suggesting that there are Contradictions in his Evidence, and by making him pass for a Man of a bad general Character. This, I think, is the Plan and Substance of the Defence.

As to the first Part of this Defence, the Presence of the Prisoner at another Place, I must begin by observing, that it is always looked upon as the worst and weakest Kind of Evidence that can be made use of in the Defence of an accused Person, and is seldom allowed to have any Weight in Opposition to a positive Charge, supported by Witnesses of Credit: And this for a very obvious Reason, because it is the easiest of any Sort of Evidence to be contrived by the Friends of the Prisoner in order to save him, if they are Persons, as too often is the Case, whose Attachment to his Welfare will lead them to transgress the Bounds of Truth in his Behalf. To make this Kind of Evidence in any Degree satisfactory, it is necessary that several strong Circumstances should concur. The Witnesses, who testify the Presence of the Prisoner at another Place at the Time of the Commission of the Crime, ought to be Persons of undoubted Credit, free from any Connections with the Prisoner (whether of Kindred, or Friendship, or Interest of any Kind) that may in the least tend to bias them in his Favour; the Place at which they saw him ought to be far distant from that where the Crime was committed, so far distant that it should be impossible, or next to impossible, for a Man to go from the one Place to the other in the Time between the Commission of the Crime and his being seen at the other Place: This Place ought likewise to be a public Place, where People who have no personal Acquaintance with each other meet by Accident, and the Persons who attest the having seen him there should be Persons unconnected and unacquainted with each other, as well as with the Prisoner. This would be a Proof of an Alibi that would deserve considerable Regard. Thus, if Captain *Disney* had been proved to be at *Quebec*, which is 180 Miles distant from *Montreal*, at the Time of committing this Assault, or within a few Hours, or half a Day, of that Time—and this, not by one or two Friends, who should say that they saw him there that Day in private, but by Witnesses that had no particular Acquaintance with him, and who should testify that they saw him at some public Place there, as, for Example, on the Parade exercising the Soldiers, or on the Market-place, or at Dinner with a numerous Company at the Governor's Table; and if the Witnesses who had sworn this should likewise tell you to what Cause or particular Circumstances it was owing that they could remember their having seen him

him there on the Day of this Assault, when they, probably, are not able to recollect on what Day they saw him immediately before, or immediately after, it:—— Such a Testimony would really be important, and might perhaps deserve to be set in Opposition to the positive Evidence of the Witnesses in Support of the Charge.—— But how different from this is the Alibi Evidence that you have heard! Three Ladies, and Dr. *Robertson*, have told you that Captain *Disney* spent the Afternoon and Evening with them at Dr. *Robertson's* House in *Montreal*, not Two Hundred Yards distant from Mr. *Walker's* House. Two of those Ladies, Mrs. *Howard* and Mrs. *Campbell*, are the Wives of two of the Prisoners now in Custody for this Affair; and the latter is likewise the Daughter of another of those Prisoners. The other Lady, Mrs. *Landrieves*, is a very intimate Acquaintance and Friend of Captain *Disney's*. And Dr. *Robertson* has given strong Proofs of his eager Desire to get both this and all the other Prisoners for this Affair discharged, and has gone much greater Lengths for this Purpose, than the mere Love of Justice and a Concern for accused Persons, apprehended to be innocent, usually carries Men to: He has, since the Chief-Justice has been in the Town holding the Sessions of the Supreme Court, been busily exercising his Office of a Justice of Peace with Respect to this Affair, by taking Depositions relating to it. I leave it to him to explain, or to you to conjecture, whether he could have any other Design in doing so, than to influence, in a clandestine Manner, the Minds of Men in Favour of these Prisoners, by setting up a Parcel of private Evidences taken thus before him, in Opposition both to that which should be offered to the Grand Jury and to that which should be given here publickly in Court before you, Gentlemen, in Support of the Prosecution. One of the Persons whom he has thus examined, has since made Oath before the Chief-Justice, in my Presence, that he had been thus examined, upon Oath, by this very Zealous Magistrate. Such, Gentlemen, are the Witnesses that are brought to support this Alibi.

Gentlemen, these Witnesses have not told you to what particular Circumstance it is owing that they remember so exactly the Manner in which they spent their Time on the 6th of *December*, 1764; without which it must needs appear strange that they should remember it so exactly. Can they tell where and in what Company, and in what Manner they spent their Time on the 6th of *December*, 1765, or even on the 6th of last *December*, though only three Months past? — Or can you, Gentlemen, those of you that were then in *Montreal*, remember distinctly where and how you spent your Afternoon and Evening on that very same 6th of *December*, 1764? If you cannot, is it not somewhat surprising that these Witnesses should be able to do it so exactly, without some particular Circumstance to induce them to take Notice at the Time, or soon after, of the Manner in which they spent that Day? This Circumstance I should have been glad to be informed of.—— Was it that they suspected that Captain *Disney*, or Mr. *Howard*, or Captain *Campbell*, or Mr. *Simon Evans*, or any other Person in that Company at Dr. *Robertson's*, would ever be accused or questioned about this Assault upon Mr. *Walker*?—— Such an early Suspicion, Gentlemen, would, in my Opinion, have been no small Presumption that some of that Company were guilty of it. What other Conjecture to form concerning the Cause of their remembering so well the Manner and Company in which they spent that Day I know not. 'Tis certain they have help'd us to no other.

But, Gentlemen, other Things in their Evidence afford Matter of Surprise. They not only remember of what Persons the Company consisted, and how they spent their Time, but declare that they are confident that Captain *Disney* was present in the Company during the whole Time that each of themselves was present there, though that Time was near five Hours.

Gentlemen, this bold Assertion deserves to be examined, in order that you may fully understand it, and assign to it its proper Degree of Credit, which I believe you will judge to be but little. It may be understood in two different Senses: It may mean either that these Witnesses had their Eyes continually fixed upon Captain *Disney*, so that he never was out of their Sight and Observation during the whole five Hours, which would indeed be a positive Assertion absolutely inconsistent with the Charge; or it may mean that they did not indeed keep the Prisoner continually in their Sight during that whole Time, but only that they saw him there at several different

different Times during their being together, and that they did not miss him or observe that he quitted the Company during that whole Time; and therefore that they, by Inference, conclude that he did not quit it, because, if he had done so, they think it highly probable that they must have taken Notice of it. 'Tis in this latter Sense the Evidence of these Witnesses must be taken: The other is too bold, or rather desperate, a Kind of Evidence for any People to deliver in a Court of Justice with any Expectation of being believed: And accordingly you must have observed, Gentlemen, that when the first Witness was asked whether she had her Eyes fixt continually upon Captain *Disney* during the whole Time (which she must have said if she had meant positively to affirm that he was there the whole Time) she readily answered that she did not keep her Eyes thus continually fixt upon him, but that she saw him there very often, and never observed that he left the Company, which she says she could not but have done if he had ever left them, because the Company was but small: And the other Witnesses answered in the same Manner. Now this is not a positive Assertion that Captain *Disney* was there all the Time: It is only a negative Proposition, or a Declaration that they did not observe him to leave the Company in all that Time, which is a very different Thing. For, Gentlemen, this Declaration, that they never observed him leave the Company, may be true, and yet the Inference they would draw from it, that he never left it, may not be so: He may have left the Company more than once, and they not have observed it, especially for so small a Time as five or six Minutes, which is sufficient for his attending a Transaction that happened only at the Distance of Two Hundred Yards from the Place where the Company was assembled. And therefore, Gentlemen, the Evidence of these Witnesses, supposing it to be strictly true, does not positively prove the Prisoner's Alibi, but only gives Room for a probable Inference in Support of it; which being but a Presumption, ought not to be set in Opposition to the positive Testimony of three Witnesses in Support of the Charge against him.

But, Gentlemen, we may go still further. This Evidence of the Prisoner's Alibi is not even a *very strong* Presumption. For where is the great Improbability of a Person's absenting himself once or twice from a Company of eleven Persons (which was the Number assembled at Dr. *Robertson's*) for a short Space of Time, such as five or ten Minutes, without being observed by the other Persons in the Company, and that too with such particular Attention that they shall be able to recollect it a long Time after?—Such a Want of Observation of the Motions of the rest of the Company, as not to recollect such little Absences of some one of them, is surely by no Means uncommon. Gentlemen, I appeal to yourselves, whether when you happen to be in a Company of a Dozen People for five Hours together, who are met together for the Sake of Mirth and Amusement, you are apt to watch each Person in the Company so very carefully that you can safely declare afterwards, upon Oath, which of them absented himself from the Company for a little While, and which did not, and can be sure that during the whole Time such or such a particular Person of the Company never left it, even for the Space of five or ten Minutes? Gentlemen, is it your Custom to watch your Company so narrowly? I believe I may say that it is not.——And in the present Case is not the Difficulty of observing and remembering these Particulars encreased by the Variety of Pastimes with which this Company amused themselves?—They were not all the while engaged in Parties at Cards, or in dancing, in which Case they might perhaps observe what became of their Partners and the others engaged at play with them: But they spent Part of the Time in making Syrup, Part of it in dancing, Part of it in drinking Tea, and Part of it, Gentlemen (which is worthy your Attention) in playing at Blind-man's-buff. Can they be supposed, during all those different Amusements to have been so very watchful of each other? They should at least have excepted those parts of the Time they were playing at Blind-man's-buff during which they acted the part of the blind-Man.

Gentlemen, I could not but admire the Rapidity and the Positiveness with which some of these Witnesses delivered their Evidence, particularly the first Witness. The Answer was ready almost before the Question was pronounced. I believe she never repeated her Creed or her Catechism more readily or nimbly. She told you the exact Times at which each different Amusement

began

‘ began, as readily and precisely as if she had been reading an Account of them from Minutes of that Afternoon’s Entertainment taken down at the Time. One Thing only escaped her uncommon Memory, till she was induced to recollect it, by a positive Question put to her concerning it. This was that she herself was absent from the Company for Part of the Time this Company has been said to continue together. Gentlemen, this Circumstance she forgot to tell you in her original Account; it was drawn from her in the Cross-examination. But when she did declare it, I make no Doubt, Gentlemen, that you observed the great Importance of it. Gentlemen, it tends to nothing less than to make her Evidence and that of Mrs. *Howard* (who was absent with her for that little Time) I say, it tends to nothing less than to make the Evidence of both these Witnesses (admitting it all to be strictly true) of little or no Effect in supporting the Prisoner’s Alibi. For observe only the Time of this Absence. This Witness and Mrs. *Howard* have both of them told you that it happened about three Quarters of an Hour after Eight o’Clock, that is, as near as can be judged, at the very Time of the Assault committed upon Mr. *Walker*. Just at this critical Time they left the Company and went to Mrs. *Howard*’s House for a Table-Cloth, leaving the Company employed in no common Amusement, such as Cards or Dancing, that might require the Presence of them all, but sitting round the Stove till the Supper should be ready: They staid away some little Time, which they think was about five Minutes, and then returned to Dr. *Robertson*’s. Gentlemen, this Time of their Absence may not improbably be a good deal more than five Minutes——perhaps a Quarter of an Hour, or twenty Minutes. Such Mistakes in the Measure of Time happen every Day, where People judge of it without looking at a Watch, as these Ladies have declared that they did.

‘ In this small Space of Time it was possible, for aught that is contained in the Evidence of these two Ladies, for Captain *Disney* to have quitted the Company and stepped Home to his Lodging, and, there making the little Alteration in his Dress, which was necessary to disguise him, to have gone into Mr. *Walker*’s House, and been present for two or three Minutes during the Assault upon him, to overlook and encourage the Persons employed in it. The Change of Dress for this Purpose would take up a very short Time. It was only throwing off his Coat, and slipping on a *Canadian* Gown instead of it, and putting a Cape over his Face and a cut-round Hat upon his Head with the Cape tucked in under it. This was the only Change made in his Dress from that in which he appeared at Dr. *Robertson*’s: For the Prisoner’s Witnesses have told you that he was that Day dressed in Scarlet, and Mrs. *Walker* observed that he had a red Waistcoat and red Breeches under his *Canadian* Gown.

‘ This slight Change of his Dress he might easily make, and be present at Mr. *Walker*’s House, for a few Minutes, then change his Dress again and return to Dr. *Robertson*’s, in the Compass of a very small Time. We may therefore consider the Evidence of those two Ladies as contributing very little to support the Prisoner’s Alibi. It must therefore rest principally upon the Testimony of Mrs. *Campbell*, a Lady that is the Wife of one, and the Daughter of another, of the Prisoners now in Custody for this Assault, and that of the very friendly Dr. *Robertson*, whose Zeal in the Defence of these Gentlemen has been so great as to lead him to take Depositions concerning this Affair, even since the Chief-Justice has been here in Town to hold this Session.

‘ Such, Gentlemen, is the Alibi to which you are desired to give Credit: An Alibi declaring the Prisoner to have been at a Place not Two Hundred Yards distant from the Scene of the Offence.—Pretended to be proved by four Witnesses, but in Truth not positively proved by any one of them. (none of them swearing that they had the Prisoner continually in Sight during the whole Time they were together) But grounded upon a Presumption only, and not a very strong one, that, if he had quitted the Room, though for a very small Space of Time, as five or ten Minutes, during any Part of the five Hours they were together, they must have taken Notice of it —— And even this poor Presumption is found, upon a Cross-examination, to be supported by only two of these Witnesses, the other two having confessed that they themselves were absent from the Company for a little Time, just at the critical Juncture of the Commission of the Crime—— And this Proof, imperfect as it is, made by Witnesses under a strong and evident Bias in the Prisoner’s Favour. This wretched Alibi you are required to believe in opposition to
‘ the

the positive Testimony of three Witnesses, two of whom are Persons of unblemished Character, and perfectly free from Prejudice against the Prisoner, and the third was an Accomplice in the Fact. You cannot, Gentlemen, remain long in Doubt which of these two Testimonies to prefer.

Gentlemen, I have said that Mr. and Mrs. *Walker* are perfectly free from Prejudice against the Prisoner. I will explain what I mean by that Assertion. It cannot be pretended that they are free from Resentment against the Prisoner: They must be exempt from human Passions if they were: But their Resentment arises merely from this very Injury with which he is now charged, and from their own certain Knowledge of his concern in it. That, and the Prisoner's Declaration before-hand, That he would be revenged upon Mr. *Walker*, for his Ill-treatment of Captain *Payne*, are the only Grounds that Mr. *Walker* has for any Resentment against Captain *Disney*. And such a Resentment cannot be called a Prejudice against Captain *Disney*, or in any Degree affect the Credibility of Mr. *Walker*'s Evidence on this Occasion, because the very Existence of such a Resentment supposes necessarily that of the Crime with which the Prisoner stands charged as the Cause and Ground of it. It might indeed affect Mr. *Walker*'s Evidence on any other Prosecution against Captain *Disney*, either for an Injury done to another Man, or for another Injury done to himself: But in the present Case it cannot have any such Effect. Till this unhappy Violence, or a very little Time before it, Captain *Disney* and Mr. *Walker* had lived upon good Terms with each other. Captain *Disney* himself has informed you that he did so: He has declared that he always entertained a Respect for Mr. *Walker* (that, I think, was his Expression) and expressed it in Conversation whenever he had Occasion to speak of him: And he has called a Witness to prove that he did so. And Mr. *Walker* has told you that he trusted so much to the Professions of Regard that Captain *Disney* had often made him, and was so conscious in his own Mind of his never having given him any Cause of Offence, that, when he distinguished him among the disguised Ruffians that were come to assault him, he was encouraged by the Sight of him to hope that his Life was not in Danger, and that the Mischief intended him was only a severe Beating, or Wounding, or something short of Death, in Revenge for the imaginary Insult upon Captain *Payne*, till he was forced to think otherwise by those dreadful and murderous Words, pronounced from the opposite Corner of the Room by the Man who advanced again him with a drawn Sword, *Damn him, let me come to him, and I'll dispatch him with my Sword.*

Gentlemen, this Evidence of Mr. and Mrs. *Walker*, appears to me to be so weighty, that, if the alibi Defence of the Prisoner had been supported by positive Evidence absolutely inconsistent with the Charge——if not two only, but all the four Witnesses had positively sworn, that at eight o'Clock exactly they had sat down to play at Whist with the Prisoner, and that they had never left the Table till the Messenger came from General *Burton* with the News of the Outrage committed upon Mr. *Walker*, but had been all the While either at the Table playing themselves, or near it, looking on upon those who did play, and that the Prisoner had never cut out, but had been one of the Players during the whole of that Time, so that he must have been continually before their Eyes——and if the Persons who testified this had not been the intimate Friends of the Prisoner, or the Wives and Daughters of the other Prisoners, but Persons entirely unconnected, and very little acquainted, with them——I say, Gentlemen, that if the alibi Defence of the Prisoner had been supported by such a positive Testimony instead of the imperfect and precarious Evidence which you have heard, yet still the Evidence in Support of the Charge would deserve to be preferred to it.——This may, at first Sight, seem a harsh Position: But it will be found upon Examination to be built upon a Principle of Candour and Charity, which directs us to think as favourably of human Nature as the Circumstances of the Case will permit us. Gentlemen, it would be a bad Dilemma for you to be reduced to, if you were really under a Necessity of disbelieving the Witnesses on one Side or the other, and consequently of supposing those on one of the Sides to be guilty of wilful Perjury. But if you were reduced to this Dilemma, to which Side would a moderately good Opinion of human Nature induce you to impute the Perjury? To those who give Evi-

dence to take away the Prisoner's Life, or to those who give Evidence to save it? Is it not more natural that Men should commit Perjury to rescue a Man from Danger than in order to effect his Destruction? In the former Case they may think perhaps that the Benevolence of the Intention with which they commit this Crime may somewhat extenuate the Guilt of it; in the latter Case they must feel that the Guilt of the Perjury is aggravated an Hundred-fold by the Wickedness of the Intention with which it is committed. The former is a Crime which Men of loose Principles may be supposed capable of committing, and which indeed is very frequently committed; the latter is a Crime too black for even wicked Men, and seldom or never known to have been practised. But, Gentlemen, you are fortunately not reduced to this Dilemma, since the Evidence advanced in the Prisoner's Favour has been shewn to be not irreconcilable with the Evidence in support of the Charge. The Prisoner may have spent that Evening in the Company of his three fair Witnesses, and yet have been absent for a short Time to partake in the Revenge taken against Mr. *Walker*, without being missed by them.

Gentlemen, that the Prisoner spent that Evening either in that Company at Dr. *Robertson's*, or in some other numerous Company, I think is highly probable. I should have imagined he had done so if he had produced no Witnesses to prove it: For it is but a reasonable Precaution for any Man to take, who intends to be concerned in any dangerous Transaction, for which he may afterwards come to be questioned. He thereby furnishes himself with a ready Defence against any Accusation of having been engaged in it that happens to be made in a loose and general Manner, without narrowly enquiring into Circumstances. How can it be supposed, will he say, that I was present at such a Transaction, when such and such Persons can testify that much about the Time at which it happened, or at least not above half an Hour, or an Hour, before or after it, I was in their Company, employed in Dancing or some other such innocent Amusement." Such a Defence will do very well to answer the Suspicions and Hints thrown out against him in common Conversation, and will pass with many People for a full Justification; and, perhaps, with a little Improvement (if the Witnesses are well disposed towards the Prisoner) by varying the Time and other Circumstances in the Manner requisite, it may meet with Credit even in a Court of Justice; whereas, if he had spent his Time at Home in a solitary Manner till the Time of committing the Crime, he could have nothing of this Kind to set up in Opposition to the Testimony in support of the Charge against him.

These, Gentlemen, are the Observations I thought it necessary to offer to you concerning this boasted Evidence of the Prisoner's Alibi, which makes the principal Part of his Defence. I am sensible they have taken up too much of your Time; but I knew not how to make them shorter. I hope therefore you will excuse this Prolixity, and at the same Time will further indulge me with Leave to make a few Remarks on the second Part of the Prisoner's Defence, which consists in an Endeavour to discredit the Witness *Magvock*.

Gentlemen, it is of no great Consequence in the present Prosecution what Degree of Credit this Witness deserves, as the Charge is supported by two Witnesses of indisputable Credit without him. However, I can see no Reason for treating his Evidence with the Contempt which the Gentlemen of Counsel with the Prisoner have affected to shew for it. He certainly is not a good Man: No Body has pretended that he was so: He owns that he was an Accomplice in this wicked Action, which no good Man could be concerned in: And Lieutenant *MaKay* has said, that, when he knew him in the Army, he was sometimes guilty of Theft, and has been punished for it by a Court-Martial. I readily believe this. But does this render what he says as a Witness in a Court of Justice of no Weight or Consequence? Does it follow, because a Soldier has been guilty of Theft, a Crime too common amongst them, that therefore he will be guilty of the great and deliberate Crime (one of the most heinous that can be committed) of swearing falsely in a Court of Justice to take away another Man's Life? Surely it does not: And the Law, Gentlemen, in the Case of Accomplices determines that it does not: For it allows their Evidence to be received against their Fellow-criminals, nay, to be alone the Ground of a Conviction, without any other positive Testimony, provided there is some concomitant Evidence arising from Circumstances to make it probable. Numbers of People have been con-

demned

demned upon such Evidence, and with the general Approbation of all the World: And there are now in *Quebec* Goal two Soldiers under Sentence of Death, for breaking open Mr. *Woolsey's* Cellar in the Night Time, and stealing a Cask of Wine from it, who were convicted upon the single Testimony of an Accomplice with them in the Fact, together with a Proof by Mr. *Woolsey* and his Clerk, that the Cellar had been broke open by somebody or other, and the Wine taken away. How much more then does such a Testimony deserve to be regarded, when it does not stand single, but is made use of only to confirm the positive Testimony of two other Witnesses of indisputable Credit, which is the Case with the Evidence of this Witness on the present Prosecution.

Gentlemen, the Credibility of a Witnesses Testimony does not depend merely upon the Goodness of his Character. The Probability of the Story he relates, the Agreement of it with other well-known Facts, the Minuteness and Particularity of the Circumstances he mentions, and his Illiterateness and Ignorance and utter Incapacity to invent them, if he was wicked enough to endeavour to do so, may make his Evidence deserve to be believed by those who have no Opinion of his Virtue. These, I presume, are some of the Grounds upon which the Law admits the Evidence of Accomplices, and allows it to have considerable Weight: And these are the Grounds upon which the Evidence of this Witness *Macgowock* deserves to be regarded. Gentlemen, can you suppose this Witness, who can neither write nor read, — I say, can you suppose him capable of inventing so long and particular a Story as he has related to you, and which is attended with some Circumstances so uncommon and surprising? Is it likely that he should think of so remarkable a Circumstance as that of the Consultation at Lieutenant *Tottenham's* House on the Monday preceding the Assault, in which the Prisoner at the Bar administered to him the Oath of Secrecy, unless these Things had really happened? Would he have refused to deliver his whole Evidence about this Matter at once in his first Deposition, if he had not been under the Restraint of such an Oath? Is there any Reason to suppose that he is so refined and ingenious a Villain, as to be able to invent such a Story about an Oath of Secrecy, merely to make himself pass for a Man of some Conscience, and give Credit to the rest of his Evidence? I cannot, for my Part, have either so bad an Opinion of his Heart, or so good an one of his Understanding, as to suppose this: His Testimony therefore deserves the same Degree of Credit as is usually given to the Evidence of Accomplices, notwithstanding the Endeavours that have been used to asperse his general Character. It remains that I make a few Remarks upon the Evidence he has delivered at this Trial, and the Inconsistencies which the Gentlemen of Counsel for the Prisoner have observed between the different Parts of it, and between some Parts of it and the Evidence of some of the other Witnesses.

One of these Contradictions is, that he said in his Cross-Examination that he carried the Intelligence concerning the Progress of the Assault upon Mr. *Walker* to Captain *Payne* and Lieutenant *Tottenham* at Sergeant *Mees's* House, whereas he had before said that Captain *Payne* and Lieutenant *Tottenham* were, during that Assault, standing in the Street in which Mr. *Walker's* House is situated, near the House of one *Bellair*, a Baker, which is almost directly over-against Mr. *Walker's* House. Gentlemen, I doubt not you must have observed that this Mistake was never made by the Witness, but by the Counsel that cross-examined him, who, throughout the whole Cross-Examination, endeavoured to confound the Witness and bewilder his Understanding, by asking him a Variety of Questions unconnected with each other and without any Method or Regard to the Order of Time, with a View to draw him in to make sudden Answers that might not be consistent with each other. But in this he was disappointed by the Steadiness and Clearness with which the Witness gave his Answers to all the Questions that were put to him. With Respect to the pretended Contradiction now under Consideration, the Witness's Evidence was really as follows: The Prisoner's Counsel had asked him whether he had seen Captain *Payne* before he went into Mr. *Walker's* House, to commit the Assault; to which the Witness answered that he had seen him before at Sergeant *Mees's* House, and that they had come out from thence at the same Time. After another Question or two, the Counsel asks him where it was he carried the Intelligence concerning the Progress of the Assault to Cap-
tain

tain *Payne* and Lieutenant *Tottenham*; and the Witness answers, in the Street near Mr. *Bellair's* House, which is almost over-against Mr. *Walker's*. Thereupon the Counsel pretends that this is inconsistent with his former Answer; for that in that he had declared that he had carried the Intelligence concerning the Assault to Captain *Payne* at Sergeant *Mees's* House. But the Witness immediately answered, that the Counsel had greatly mistaken him; for that he had never said any such Thing, but only that he had seen Captain *Payne* before at Sergeant *Mees's* House, and that Captain *Payne* had set out with them from that House: And this, Gentlemen, I dare say you observed to have been really his Evidence. Indeed this is a Mistake which it is absurd to suppose he could have made, unless he had been quite a Stranger to *Montreal*; because otherwise he could not but know that Sergeant *Mees's* House was at too great a Distance from Mr. *Walker's* for a Man to have gone thither twice with this Intelligence in the short Space of Time the Assault was carrying on in the Manner he had related; so that, if he had invented the whole Story, he would have assigned some nearer Spot of Ground for the Place at which Captain *Payne* and Lieutenant *Tottenham* waited to superintend and cover the Assault, and to receive the Intelligence he carried them concerning its Progress. In Truth that Part of Mr. *Walker's* Street which was near Mr. *Bellair's* House, and, within a Dozen Yards of Mr. *Walker's*, was the Spot he all along mentioned as the Place at which he delivered this Intelligence to Captain *Payne* and Lieutenant *Tottenham*, both in his Answers to the Questions put to him by the Court and in his Cross-Examination by the Prisoner's Counsel.

The next Contradiction imputed to him is, a Mistake in Point of Time. He said it was about eight o'Clock, or a little before, when the Russians left Sergeant *Mees's* House to go to Mr. *Walker's* to make the Assault, and that it was near nine o'Clock, but not quite nine, when the whole Affair was over: And yet he says in another Part of his Evidence that he believes the Assault did not take up above a Quarter of an Hour. Gentlemen, I confess there is this Inaccuracy in the Witness's Evidence, and am desirous that it should have its due Weight with you in the Prisoner's Favour. But can this much avail him?—Can the Mistake of a poor common Soldier concerning the precise Time of a Transaction he relates, when he judged of it only by guess and without either Watch or Clock, impeach the Credibility of his Testimony concerning the Transaction itself, when that Testimony is rational and consistent with itself in every other Particular? Certainly, Gentlemen, it cannot. Mistakes of half an Hour, or even a whole Hour, are frequently made by Men who observe Time much more carefully than such Persons as the Witness can be supposed to do; and indeed they hardly deserve to be called Mistakes, because the Difference of Clocks is sufficient to account for them. This seems to me to be so usual and natural, that, in my Apprehension, no Evidence whatsoever concerning the precise Time of any Action deserves to be much regarded, though delivered by the most respectable Witness, unless the Person who delivers it declares at the same Time that he looked at a Clock or a Watch at the Time the Action happened, or immediately before or after, or else took particular Notice that it happened at the same Time with some other regular Transaction that is always carried on at a fixed Hour, such as the ringing of the Bell of a Church or Convent for Morning or Evening Prayers, or some other such remarkable Circumstance. Without some such Circumstance I can easily imagine that the most honest and judicious Person in the World may mistake a full Hour in the Time of any Transaction he was present at, and should think it a mere Chance if he was exact. In the present Case the Witness said he believed it was a little before eight when they set out from Sergeant *Mees's* House to commit the Assault; in which, I am persuaded, he mistook the Time by more than half an Hour; for that it must really have been more than half an Hour after eight; at least by Mr. *Walker's* Clock; because Mr. and Mrs. *Walker*, and the Clerk and Servant, who have been examined in support of the Prosecution, fix the Time of the Assault pretty exactly. And where now is the great Wonder that a common Soldier, who had no Watch, and whose Mind was flurried with the Thoughts of a dangerous Expedition he was going to be concerned in, and with some strong Liquor he had taken to prepare himself for it, should think it was only eight o'Clock when in Truth it was half an Hour, or forty Minutes after?—I say, what is there to be surprised at in such a Mistake? More especially

especially when we consider that possibly the Clock at Sergeant *Mees's* House, if there was one there, or, if there was not, the Clocks in his Neighbourhood, by which he and his Family had judged of the Course of Time during that Day, might very well be forty Minutes slower than Mr. *Walker's*? Surely it deserves very little Consideration. Those trifling Inaccuracies, which may be so easily accounted for, seem to me on the Contrary to add Strength to the Evidence of a Witness rather than to render it less credible, since they shew that the Witness answers fairly and honestly what his Memory suggests to him, without having artfully framed a regular Story with every Circumstance in exact and perfect Order, that he might guard against the Possibility of a Surprise.

The next Contradiction insisted on by the Counsel for the Prisoner is that concerning the Prisoner's Dress. Mrs. *Walker* has said that he was dressed in a *Canadian Gown*, and the Witness *Macgovock* has said that he was dressed in a *Blanket-Coat*. Gentlemen, there is a real Inconsistency between these Testimonies. But, I believe, you will hardly think it of much Importance. It is easy for *Macgovock* to have mistaken the Dress of Major *Disney* amongst the Number of Persons he saw on that Occasion, and yet to be very certain of his Person; as the Person of a Man makes a much stronger Impression upon the Mind and Memory of a Spectator than his Dress. And it must be remembered that *Macgovock* has told you that Major *Disney* was not one of the Party that dressed themselves at Sergeant *Mees's* House, and set out from thence to go to Mr. *Walker's* (in which Case it might perhaps be expected that *Macgovock* should remember his Dress exactly) but was one of the additional Party that came in to assist and protect the former, whose several Dresses it can hardly be supposed that he can recollect with perfect Exactness.

But, Gentlemen, the main Foundation of this Objection to *Macgovock's* Testimony is by no Means favourable to the Prisoner, as will appear if we consider it a little further. The Objection I take to be as follows: *Macgovock's Evidence concerning Major Disney's Dress is contrary to Mrs. Walker's, and therefore false; and consequently the rest of his Evidence is likewise either false or doubtful.* What then, is it admitted that Mrs. *Walker's* Evidence concerning the Prisoner's Dress on that Occasion is true? Nothing more is wanted on the Part of the Prosecution. The Prisoner was present at the Assault in a *Canadian Gown* according to Mrs. *Walker's* Evidence; and *Macgovock* has been mistaken in his Dress, and deserves therefore no Credit in any other Part of his Testimony. Let then his whole Evidence be set aside as doubtful and good for nothing, since Mrs. *Walker's* Evidence is thus admitted to be true. — But if Mrs. *Walker's* Evidence is not allowed to be true — if the Person she saw there in a *Canadian Gown* was not Major *Disney*, but some other Person — then where is the Inconsistency of her Testimony with that of *Macgovock's*? She may have been mistaken in the Person she took for the Major, and yet the Major may have been there in a different Dress, that is, in a *Blanket-Coat*, according to *Macgovock's* Evidence. The most that can be made of this Objection, if a mistake about the Prisoner's Dress can be thought to be of such high Importance, is to get rid of the Evidence of one of these two Witnesses; in which Case the Prosecution will rest upon the Evidence of the other of them and of Mr. *Walker*.

These are, as far as I can recollect, the principal Contradictions in the Witness *Macgovock's* Evidence on which the Gentlemen of Counsel with the Prisoner have insisted: And, I presume, Gentlemen, after what has been offered to your Consideration by way of Reply to the Consequences that have been attempted to be drawn from them, that you will be clearly of Opinion that they do not materially affect the Credit of the other Parts of this Witness's Testimony. But, as has been before observed, the whole Evidence of this Witness might very well be set aside, if there was Reason for it, and yet the remaining Proof in support of the Prosecution would be more than sufficient to be the Ground of a Conviction, being the positive Testimony of two Witnesses of indisputable Credit, Mr. and Mrs. *Walker*, who have sworn that they saw the Prisoner in Mr. *Walker's* House at the Time of the Assault. This is a solid and substantial Proof in support of the Prosecution, which neither the imperfect presumptive Evidence of the Prisoner's Alibi, given by Witnesses strongly biassed in his Favour, and by the Wives and Daughters of his Fellow-Prisoners, nor the Mistakes of a third Witness (though they had been

as important as they have been shewn to be inconsiderable) can impeach. One Thing only can be alledged to diminish the Weight of it and plead somewhat in the Prisoner's Favour, which, I doubt not, Gentlemen, has already occurred to you: I mean the Circumstance of the Prisoner's being said to have been disguised by a Crape that covered his Face. This, it may be thought, must have made it difficult for Mr. and Mrs. *Walker* to discern the Features of his Face; without which it is possible, and, in Favour of Innocence, might perhaps be presumed, that they had mistaken some other Man that resembled the Prisoner in Size and Shape, to be the Prisoner himself; and that the Hurry of their Spirits on such an alarming Occasion had strengthened the Impression made by such a Resemblance and contributed to confirm them in this Mistake. This is, in my Opinion, the most important Consideration that can be offered in the Prisoner's Favour. But, Gentlemen, in Answer to it I must observe, that both Mr. and Mrs. *Walker* have sworn that they distinguished the Features of his Face; which takes away all Room for such a Mistake. And that it is by no Means difficult to discern a Man's Features through a Crape you will easily be convinced upon trial. Mrs. *Walker* has brought here into Court a Piece of Crape of the same Kind with that which was drawn over the Face of the Man she took to be the Prisoner (and which is of the same Kind that Officers wear upon their Arms for mourning) in Order to enable you to make this necessary Trial. Take this with you, Gentlemen, when you withdraw to consider of your Verdict on this important Occasion, and try yourselves how far it is capable of concealing a Person's Features. I believe you will find it to be but a poor Disguise, and will soon be of Opinion that Mrs. *Walker*, at the Distance of about ten Feet, and Mr. *Walker* at that of only four Feet, might very well have been able to discern the Features of the Person upon whom they fixed their Eyes to have been those of the Prisoner at the Bar.

The Attorney-General having ended his Reply, the Chief-Justice summed up the Evidence to the Jury, who, after withdrawing for about half an Hour, brought in their Verdict that the Prisoner was Not Guilty: and the Prisoner was thereupon discharged.

THIS Day personally appeared before me Isaac Todd, Esq; one of His Majesty's Justices of the Peace, Mr. John Welles, Merchant, and made Oath on the Holy Evangelists, That the annexed is an exact Copy of the Evidence on the Part of the Crown, and also on the Part of Daniel Disney, Esq; as taken down by him in Short-hand the Day of Tryal, at the Court-House in the City of Montreal, on Wednesday the Eleventh Day of March; and that there is not, to the best of his Knowledge and Belief, any Thing either added or diminished; and that what Evidence was delivered in French, was taken down as interpreted by Mr. Gallwey, sworn Interpreter.

(Signed)

JOHN WELLES.

Sworn before me, this 23d March, 1767.

(Signed)

ISAAC TODD.

F I N I S.

l
t
-
f
s

e

he
ed
g;
m
f;
m

