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PRODESSE & DELECTARE.

E PLURIBUS UNUM.

By SYLVANUS URBAN Gent.

L O N D O N :

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Account of Rebel Prisoners'try'd at York.

Account of the Proceedings in trying the
Rebel Prisoners at York.

ON the 2d the court sat at our castle
for the trial of the rebels.

PRESENT,

Lord Irwin,
Ld. Ch. Baron Parker
Sir Tho. Burnet
Sir Tho. Dennison
Mr Baron Clarke
Sir Wm St Quintin
Sir Rowland Winn
John Reed, Esq; *Ld Mayor*
of this City.

Sir Wm Wentworth
Mark Braithwaite LL.D.
Rev. Jaques Sterne D.D.
Rev. Sam Baker D.D.
Wm Herring, Esq;
John Knottesford, Esq;
Mr Francis Wood

David Rome was first brought to the
bar, and pleaded guilty; and then *Wm*
Conolly, who pleaded not guilty: When
the following gentlemen were sworn
upon the jury.

Mr Joen Hatfield of Hatfield
William Hoole of Tinsley
Sam. Stainforth of Attercliff-cum-
Darnal
Mathew Charlton of Hooton-Roberts
John Ball of Ashton
John Nodder of Eccleshall
Robert Wild of Wickersley
Gilbert Roberts of Sheffield
Richard Bingley of Bolton-upon-
Dearne
Benjamin Broomer of Rotherham
Timothy Rhodes of Brompton Byerley
Jonathan Gawtress of Wath.

who brought in their verdict guilty.

On the 3d the court being sat, *Ben*
Mason was brought to the bar, who
pleaded guilty; next *Charles Robinson*,
who pleaded not guilty; but upon trial he
was found guilty by the jury. Then *James*
M'Lachlan, *John M'Lachlan*, *John*
Beaton, *James Creighton*, *Jn Flint*, and
Alexander Goodbrand, were severally
brought to the bar, and all pleaded guilty.
Tho. M'Gennis pleaded not guilty; but
was found guilty upon his trial; as was
also *David Ogilvie*, but the latter was
recommended by the jury for mercy, on
account of his youth. The next call'd on,
were *John Porteous* and *John M'Quin*,

who pleaded guilty. *Wm Crosby* was
tried next, and found guilty. As was also
James Reid, a Scotch piper, but he was
recommended to the court for mercy, by
the jury.

On the 4th Sir *David Murray*, Bart,
(committed on his own confession, for
being engaged in the rebels service at the
battles of *Falkirk* and *Culloden*, and
apprehended at *Whitby*, as he was
endeavouring to make his escape in
disguise) was brought to the bar, and
pleaded guilty; as did also *Alex. Steele*,
John Cruikshanks, *James Thompson*,
Archibald Kennedy, and *Charles*
Gordon. *John Long* was called up next,
who pleaded not guilty; and it appearing
that he was only a menial servant,
employ'd by Mr *Stratton*, to whom he
was an assistant in carrying medicines to
the castle of *Carlisle*, and that he did not
act as a surgeon's mate of the rebel army,
he was acquitted. Then *Alex. Parker*,
David Webster, *Wm Smith*, *James*
Webster, and *Wm Hunter*, were brought
to the bar, who all pleaded guilty; *James*
M'Auley was tried next and found guilty;
John M'Gregor, *Peter Campbell*, *John*
Gaddes, *John Walker*. *Matthew*
Matthews, and *John Scot* pleaded guilty.
James Sparkes was brought to the bar,
and having pleaded not guilty, the
following gentlemen were sworn upon
the jury.

Mr Henry Wilkinson of Rotherham
Samuel Kirk of Kimberworth
Richard Tyas of Rotherham
Thomas Acklam of Dringhoe
John Olds of Ryse
John Hardy of Winestead
John Hart of South-Dalton
William Elliot of Walkington
William Nelson of Newbald
John Foster of Southburn
Christopher Layburn of Nafferton;
Robert Harwood of Walkington

who brought in their verdict guilty: It was
proved in the course of this trial, 'that
when the rebels were on their march

towards *Derby*, he went a mile and half out of town to meet them, conducted them in, shewed them to their quarters, and directed them particularly to Mr *Meynel's*, and other houses (Vol. 15. p.709) which they plundered.' *Michael Brady* was tried next, and found guilty; he was a serjeant of the *Manchester* regiment. His trial lasted three hours, in which it was proved, 'that he acted in that character at *Macclesfield*, and other places but deserted from them at *Manchester*, on their return; he behaved with great insolence in the course of the trial.' Then *Robert Stewart*, *Gilbert Barclay*, *Archibald Paton*, *Wm Grant*, and *John Barnaghy*, were severally call'd to the bar, who all pleaded guilty.

On the 6th came on at the castle, before the Lord Chief Baron *Parker*, Mr Baron *Clarke*, and other gentlemen named in the special commission, the trial of *George Hamilton*, a rebel officer, who pleaded not guilty. Mr *Lockhart*, his counsel, observ'd, 'that the unhappy gentleman at the bar would not give the court the trouble of hearing any evidence to disprove the charge; but, as reports had gone about the kingdom to his prejudice, representing him as being guilty of particular acts of cruelty and barbarity to the king's subjects, he had put himself upon his trial in order to remove those aspersions.'—It appeared that he was a captain in Col. *John Roy Stuart's* regiment, that he was in the rebels service before the battle of *Preston Pans*, and that he came into *Edinburgh* With the young chevalier, who seem'd to repose in him a particular confidence. A soldier, who was taken prisoner at *Preston Pans*, deposed, 'That he and several other prisoners, as well wounded as not, were put together in the *Canon-gate* church at *Edinburgh*; that Mr *Hamilton*, came to them there; and ask'd him and several others to list into the pretender's service, telling them, *That they had served the elector of H— long enough*; and, with his sword drawn, threaten'd to cut them, him and others to

pieces if they did not list.' Others proved, 'that he wore a white cockade, and appeared sometimes in Highland dress, a hussar's cap, broad-sword, and pistols; that he behaved as captain of hussars on the parade at *Carlisle*, when the pretender came there; that he levy'd the excise, land tax, and other cess; that he march'd into *England* as far as *Derby*, and in their retreat towards *Clifton* quarter'd at a small village, where he order'd his servant to take care of his portmanteau, which had a small box tied upon the top of it. This box a countryman took an opportunity of cutting off, carried it away, and hid it in a stone delph [*quarry*] for some days; upon opening it afterwards, he found therein Mr *Hamilton's* commission from the young chevalier as a captain, and another as deputy quarter-master general: The preamble runs thus, C—s P— of W—s, R—t of E—gl—d, &c. *To our true and well-beloved George Hamilton, Esq; greeting. We reposing full confidence in your courage; loyalty, and good conduct,* &c. There was also another paper, containing the form of the oath to be taken by all inch who should Hit into the rebels service; where in, besides swearing to be true to the pretender, and his successors, they also abjured his majesty *King George*. These, and several other papers, with the pocket books in which they were contain'd, were carried by the evidence who took them to Mr *Kendrick*, one of the bailiffs of *Wigan*, and Mr *Walmsly* a justice of peace for *Lancashire*, and sent by them to the *Duke of Newcastle*.'—An evidence, who was their guide in their retreat, and who was forced into that service at *Hay*, declared, 'That the prisoner threaten'd to hang him up, if he led them wrong: that he (*Hamilton*) was taken prisoner at the skirmish of *Clifton*, by one of the Queen of *Hungary's* hussars (as the evidence expressed it) who wounded him in the head and shoulders: That upon searching him there was a pocket book found upon him, containing memorandums of

publick money by him received, and several items of expences for the service of the rebels, particularly upwards of three pounds for levy money.'

The lord chief baron gave a short charge to the jury, in which he told that the evidence was so plain and clear, and as the prisoner at the bar had not attempted to make any defence, he thought it needless to trouble them with a recapitulation of what had been offer'd; whereupon they immediately brought in their verdict, guilty.

John Balantine pleaded not guilty. It appear'd, that he had acted as a piper in Capt. *James Stewart's* company in Lord *George Murray's* regiment. But several witnesses proving 'that he was forced into the service, by a party of the rebels, who took him by violence out of his bed, threatned to stab him if he did not go with them, and not allowing him time even to put on his cloaths; and that afterwards they plac'd a guard over him to prevent his escape; and several other circumstances appearing also in his favour, the jury acquitted him; upon which the poor fellow was in such a transport of joy, that he threw up his bonnet to the very roof of the court, and cry'd out, *My lords and gentlemen, I thank you! Not guilty! Not guilty! Not guilty! pray God bless King George for ever, I'll serve him all the days of my life;* and immediately ran out into the castle yard, with his irons on, took up a handful of channel water, and drank his majesty's health.

As soon as *Balantine's* trial was over, Sir *Thomas Parker* and Mr Baron *Clarke* withdrew, and Sir *Thomas Burnet*, and Sir *Thomas Dennison* took their seats; when *Charles Webster* was brought to the bar, and pleaded not guilty. It appear'd "That he was taken prisoner by some country people, who found him, straying in a field alone, with his arms and ammunition about him: That he confess'd to them he had been forced into the rebel service, upon which they confin'd him; and that during his

confinement, being told the rebels were coming that way, he answer'd, they might go where they would, for he would never join them more." And there being nothing against him but his own confession, he was acquitted.

Nicholas Karr was next try'd. It appear'd, "That he was a piper in *Glenbucket's* regiment, in which station he was prov'd to have acted by several witnesses till the arrival of the rebel army at *Carlisle*, where he deserted from them; and that from thence the regiment marched to *Derby*, and back again to *Carlisle* without any piper, and on their return found him there; but it appearing that he was originally forced into the rebels service, by a party who broke into his house, and threatned to stab him, if he did not go with them; and many other circumstances being in his favour, the jury acquitted him.

James Main, Wm Dempsy, George Mills, George Boyde, who was a servant of Lord *Kilmarnock's* 15 years, *Alex. M'Lean, John M'Lean, Peter Hay, John Duncan, Peter M'Donald, Angus M'Donald, Alex. Nichols, John Emsworth, Simon M'Kenzy, Wm Barclay, James Wishart, Wm Stephens*, and *John Bartlett*, pleading guilty. And then the court adjourned till the next morning.

On the 7th Sir *David Murray*, Capt. *George Hamilton*, and 45 more of the rebels, who had either been convicted or pleaded guilty, were brought to the bar to receive judgement. Lord Chief Baron *Parker* address'd himself to them in a very pathetic speech. He then pronounced that sentence *which the law required of him*, see p. 361.

The condemn'd prisoners being withdrawn, *Edw. Clavering, Wm Hay, Wm Frasier* (a Highlander, who not understanding *English*, spoke by an interpreter) and *Angus Campbell*, pleaded guilty.

Then *Duncan Stuart* was brought up to the bar, and having pleaded not guilty,

the following gentlemen were sworn upon the jury.

Mr Benjamin Boomer of Rotherham
 Timothy Rhodes of Brampton Byerley
 Mr Johnathan Gautross of Wath
 Henry Wilkinson of Rotherham
 Samuel Kirk of Kimberworh
 John Hardy of Winestead
 Richard Tyas of Rotherham
 Thomas Acklam of Dringhoe
 John Olds of Ryse
 John Hart of South Dalton
 Wm Elliot of Walkington.

On the trial it appeared "That the prisoner, *Duncan Stuart*, was a soldier in *Roy Stuart's* regiment; that he marched with the rebels to *Derby*; and that he mounted guard at *Carlisle*, when besieged by the D. of *Cumberland*, where he was taken prisoner." In his defence several witnesses were called, who deposed, "That he lived in a district of the Highlands called *Strathband* and *Garantelly* near *Dunkeld*, which district could raise about 350 men able to bear arms, out of which only one man joined the rebels voluntarily; but that a body of about 100 of the *Frasiers*, a clan of which Lord *Lovat* is chief, armed with guns, bayonets, and swords, came into that part of the country, where they entered the villages, and forced all the men able to bear arms, to go along with them, on pain of burning their houses; that all the men so collected were shut up every night, and a guard placed over, them, to prevent their desertion, till they reached *Edinburgh*, where they were drawn out and regimented; that a serjeant having deserted at *Moffat*, Col. *Roy Stuart* swore, if he was apprehended he wou'd shoot him with his own hand at the head of his regiment.' His witnesses being cross examined, it appear'd, "that he might have left the rebels as they had done, having all deserted, and that deserters who were retaken were not punished, only were strictly guarded; that tho' he once, near *Ashburne*, threw down his gun in sight of the regiment, and said he would go no farther,

(whereupon he had a guard set over him for a few hours) yet that he afterwards took his arms again, and acted as a soldier." The jury thereupon brought in their verdict, guilty.

Alexander Scot, and *Wm Scott*, were brought up next, being both charged in the same indictment, who also pleaded not guilty.

They both appeared to have been soldiers in *Roy Stuart's* regiment. One evidence deposed 'he saw them walking in *Carlisle* with guns, during the Duke of *Cumberland's* besieging it, and that they belong'd to *Roy Stuart's* regiment, as he himself did, but that he cou'd not say he ever saw them mount guard; and tho' they were in the same regiment, and the evidence marched in it to *Derby* and back again, he could not say that he ever saw them 'till their return to *Carlisle*; and that the reason he knew them to belong to *Roy Stuart's* regiment was, because he saw the regiment draw up and they were in it, but he could not say in what part.' Another evidence was very clear, "that he saw them both mount guard in *Carlisle*, whilst in possession of the rebels." The prisoners call'd no witnesses in their favour; but as there were only two produced against them, and as the law requires two credible witnesses to convict a man of high treason, their counsel endeavoured to invalidate the evidence of the first witness; but their testimony appearing satisfactory to the jury, they brought in their verdict guilty.

Daniel Duffe, and *David Wilkie* were next call'd up. Their defence was, "That they were forc'd into the rebellion:" but tho' their evidences proved they were originally forced, yet they could not give sufficient proof of the continuance of that force; for to clear a man of high treason in these circumstances it is not sufficient to prove that he was originally forced into such service, but he must also prove that such force continued till the time of his being apprehended and taken prisoner, and that he never had an opportunity of making his escape: And if such

opportunity can be made to appear, the first force in construction of law, will not avail him: Whereupon the jury found them guilty, but recommended them both to mercy.

John Jamys Jellens, and *Louis Foure*, were jointly tried upon one indictment. It appear'd, "that they were concerned with several rebels in plundering *Ld Lonsdale's* house of *Lowther Hall* in *Westmoreland*, where they were taken prisoner by the militia. They urged in their defence, "That they were *Frenchmen*; and that as such they ow'd no allegiance to the King of *England*; That there being open and declar'd war between *Great Britain* and *France*, they were not, nor could not, by the law of nations be deem'd rebels or traitors." This plea was strongly supported by *Mr Lockhart*, their counsel, who argued, "That to constitute a treason, there must be what the law calls *proditio*, and that from thence traitor is term'd *proditor*, but that where there was no protection implied, there could no allegiance be required; nor could there be any treachery, where there was no trust.'— The court seem'd unanimously to incline to this, as the prisoners were *prima facie*, *Frenchmen*; and put it upon the king's counsel to prove how they could be deem'd rebels. To do this a witness proved, "That *Jellens* came over a servant to a *Dutch* officer;" hence the king's council insisted, "That, as such, he came over not only peaceably, but also under the appearance of an ally and a friend to the government, and continued such for a considerable time; That this being the case he was under the protection of the crown of *England* as soon as he set foot on shore; and therefore, most certainly, from the time he had a claim to the king's

protection, his majesty had a right to his allegiance: That indeed, tho' he own'd no natural allegiance to the crown of *England*, yet undeniably he owed a local one; as his method of coming here was not *hostiliter*, but as a friend and ally.' *Mr Justice Burnet*, in the most candid and humane manner, acquainted the prisoners in *French*, with every thing material urg'd by the king's counsel; and interpreted to the jury what the prisoners said in their own defence, who strongly urged their being natives of *France*, and not subject to our laws. But it seeming to be the opinion of the court, that *Jellens* had aquired a local allegiance, the jury found him guilty: As to *Louis Foure*, there being no proof of his being seen in this kingdom, otherwise than in arms, he was acquitted: And the court ordered the gaoler to keep him as a prisoner of war.

In the course of this trial, an evidence was deposed, "that the prisoners could speak *English*." On this *Mr Justice Burnet* observed, "That if it could be prov'd that the prisoners both spoke *English* when they were taken, that indeed might be a circumstance deserving notice: but that as to their being able to speak *English* now, it was nothing to the purpose because in the course of so long a confinement, the very necessities of nature might have taught them some knowledge of our language. It appeared also by one of the evidences who apprehended them, that *Jellens* spoke *English* at that very time, but *Foure* did not understand it.'

The trials being over, the *Ld Chief Baron Parker* pronounced sentence of death upon the prisoners who had been tried that day. The whole number of rebels condemn'd is seventy.

(See a list of their names *Hist. Chron.*)