

principles of civil liberty, the law of treason, you will find him perpetually contending, and contending with effect, that although the crown had proved the facts charged, it had not shown the evil design, the corrupt purpose, without which the facts are nothing.

Let us hear what he says to the jury in the case of Lord George Gordon.

"You must find that Lord George Gordon assembled these men with that traitorous intention—you must find not merely a riotous, illegal petitioning—not a tumultuous, indecent importunity to influence parliament—not the compulsion of motive, from seeing so great a body of people united in sentiment and clamorous supplication—but the absolute unequivocal compulsion of force, from the hostile acts of numbers united in rebellious conspiracy and arms.

This is the issue you are to try; for crimes of all denominations consist wholly in the purpose of the human will producing the act: *Actus non facit reum nisi mens sit rea*—the act does not constitute guilt, unless the mind be guilty. This is the great text from which the whole moral of penal justice is deduced; it stands at the top of the criminal page, throughout all the volumes of our humane and sensible laws, and Lord Chief Justice Coke, whose chapter on this crime is the most authoritative and masterly of all his valuable works, ends almost every sentence with an emphatical repetition of it.

The indictment must charge an open act, because the purpose of the mind, which is the object of trial, can only be known by actions; or, again to use the words of Foster, who has ably and accurately expressed it, 'the traitorous purpose is the treason, the overt act, the means made use of to effectuate the intentions of the heart.' But why should I borrow the language of Foster, or of any other man, when the language of the indictment itself is lying before our eyes? What does it say? Does it directly charge the overt act as in itself constituting the crime? No. It charges that the prisoner 'maliciously and traitorously did compass, imagine, and intend to raise and levy war and rebellion against the king;' this is the malice pre-pense of treason;—and that to fulfil and bring to effect such traitorous compassings and intentions, he did, on the day mentioned in the indictment, actually assemble them, and levy war and rebellion against the king. Thus the law, which is made to correct and punish the wickedness of the heart, and not the unconscious deeds of the body, goes up to the fountain of human agency, and arraigns the lurking mischief of the soul, dragging it to light by the evidence of open acts. The hostile mind is the crime; and, therefore, unless the matters which are in evidence before you, do beyond all doubt or possibility of error, convince you that the prisoner is a determined traitor in his heart, he is not guilty."

In that case it was proved that the prisoner incited the acts which produced the consequences complained of. Yet he was