

Time of the High Treason, by him committed, was that of His Majesty's Subjects. I certainly expected that some Authorities would have been produced, to show that the Words "A Subject of our Lord the King" are essential in Indictments for Treason. It is not usual on these Occasions to throw the Burthen of Justification upon the Crown Officers, without producing some Ground more solid than the Opinion of the Prisoner's Counsel, which men of Nostrum be whatever promises the greatest Advantage to their Client, and looked for something more, and finding they are silent, I feel convinced that nothing can be produced; for I am too well acquainted with the Industry of the Gentlemen concerned for the Prisoner, to suppose that the fullest Researches have not been made. They have indeed said, that the Indictment against Francis Henry de la Motte contained an Averment that he was a Subject. This I readily Grant, but it is no Authority to prove, that these Words were essential in Indictments in general contain much Superfluous. Neither is it a Case in Point; for, it was not proved, nor was any Attempt made upon the Trial to prove that he was an Alien. La Motte, when Judgment was given, stood before the Court as a British Subject, for, as the contrary was not proved, the Judges were bound to presume him such; and therefore there was not Room for the Question, whether the Averment was right or wrong; and it was in Fact perfectly consistent with the Case as it then stood. The present Question is plainly this,--whether, on the Face of the Indictment there is sufficient to warrant a Judgment against the Prisoner, for High Treason; for, if there is, the Averment, "That he is a Subject" is clearly superfluous. It may be as well to insert it where the Truth of the Case will permit it; but I have not a doubt upon the Subject in the present Instance; this being clearly the Case of an Alien, for which Reason it was intentionally omitted, and by this Omission we have saved an Argument, which the Gentlemen would otherwise have held, to convince your Honor of the Absurdity of averring an Alien to be a British Subject. As the Case admitted of Discussion, whether the Averment was inserted or omitted, it was thought the safer Course to leave it out, because the Indictment contained sufficient to warrant the Judgment without it. This is what I shall endeavour to establish, but before I proceed to remark on the several Allegations of the Indictment, the Court will permit me to observe and to produce some Authorities to prove that the Averment "That the party is a Subject" is an Innovation upon the old Form of Indictments for High Treason.