

# TRIAL

## Colonel John Penruddock (1616–1655)

*Royalists in France, unaware they had been compromised by Cromwell's efficient secret service, planned an uprising for 8 March 1655. On the appointed day Royalist leaders issued proclamations across England; no support, however, materialized. In most cases, the rebels quickly fled. John Penruddock, however, attempted to stir the country into rising for Charles II. He marched across the south of England, crossing Hampshire, Wiltshire, Dorset, and Somerset before being met by Parliamentary troops in Devon on 14 March 1655. The Roundhead cavalry quickly destroyed Penruddock's force, and brought him to Exeter to face trial.*

Exeter, Thursday, 19 April 1655 [OS]

Upon Thursday, 19 April 1655, the Commissioners of Oyer and Terminer being sat in the Castle of Exon, summoned before them myself, Mr. Hugh Grove, Mr. Richard Reeves, Mr. Robert Duke, Mr. George Duke, Mr. Thomas FitzJames, Mr. Francis Jones, Mr. Edward Davis, Mr. Thomas Poulton, and Mr. Francis Bennett. Being all called to the bar, we were commanded to hold up our hands, and an indictment of High Treason was read against us. And being asked whether we would plead guilty or not guilty to the indictment, in the behalf of myself and of the gentlemen therein charged, I spoke as follows:

Penruddock: My lords, though my education has been such as not to give me those advantages which the knowledge of the laws would have assisted me with for the defending myself; yet upon the hearing this very indictment, my reason tells me that it is illegal, and therefore I do demand counsel that may dispute the illegality thereof.

Serjeant Glyn: Sir, you desire that which cannot be granted. Therefore give your answer whether you are guilty or not guilty of the treason of which you stand charged.

Penruddock: Sir, by your favour, it is that which has been granted to my inferiors; viz., to Mr. Lilburne and to one Rolf, a shoemaker. And I have as great a right to the laws as any person that sits here as my judge. I do therefore challenge it as my right. Judge Nicholas, whom I there see, will tell you he himself was counsel for this Rolf. And it is a hard case, if a free-horn gentleman of England cannot have the same privilege that his inferiors have had before him.

Attorney General:<sup>1</sup> Sir, there is a great difference between treason acting and acted; the latter is your case. Therefore flatter not yourself, and do not think your being mute shall save your estate in case of treason. For if you plead not to the indictment, sentence will be pronounced against you as if you had been found guilty of the fact you are charged with.

Penruddock: I observe your distinction. But all the logic you have shall not make me nor any rational man acknowledge that this was either acting or acted before it be proved. Sir, it is but a bare suspicion, and I hope you will not condemn me before I am convicted. I say the indictment is illegal, and I do demand counsel.

Attorney General: Sir, the Court must not be dallied withal. I do peremptorily demand of you, are you guilty or not guilty? If you plead, you may have favour; otherwise we shall proceed to sentence.

Penruddock: Sir, put case I do plead, shall I then have counsel allowed me?

Attorney General: Sir, the Court makes no bargains. Tefer yourself to us.

Hereupon my fellow-prisoners persuaded me to plead not guilty. Which being done, I demanded counsel, as being partly promised it. Mr. Attorney told me I could have none. Then I replied.

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<sup>1</sup> Sir Edmund Prideaux (–1659), Attorney-General for England (1649–1659)

Penruddock: Sir, *durus est hic sermo*; it is no more than I expected from you. But rather than I will be taken off un-heard, I will make my own defence as well as I can.

The jurors being then called, I challenged about 21 of the 35 I might have challenged. The rest of the gentlemen were sent from the bar; I was left alone upon my trial. And the jurors were so packed that, had I known them, the issue had been the same that it was. The jurors being sworn and the indictment again read, Mr. Attorney demanded what exception I could make to it.

Penruddock: Sir, I except against every part thereof; for I take it to be illegal *in toto composita*

Recorder Steel: Sir, it is not usual for any court to admit of general exceptions. Therefore we expect that you should make it to some particular.

Penruddock: Sir, I desire a copy of my indictment, and time until tomorrow to make my defence.

Attorney General: Sir, you cannot have it. The Court expects you should do it now.

Penruddock: Then if I cannot have time. If my general exception might have been admitted, it would have told you that there can be no High Treason in this nation, but it must be grounded either upon the Common Law or statute law. But this is neither grounded upon the Common Law or the statute; ergo, no treason (against a Protector, who has no power according to law). Neither is there any such thing in law as a Protector, for all treasons and such pleas are *propria causa regis*.

Serjeant Glyn: Sir, you are peremptory, you strike at the government; you will fare never a whit the better for this speech. Speak as to any particular exception you have to the indictment.

Penruddock: Sir, if I speak anything which grates upon the present government, I may confidently expect your pardon. My life is as dear to me as this government can be to any of you. The holy prophet David, when he was in danger of his life, feigned himself mad and the spittle hung upon his beard.<sup>1</sup> You may easily therefore excuse my imperfections.

And since I am now forced to give you my particular exception, more plainly, to the indictment, I am bold to tell you I observe in the latter part of the indictment you say I am guilty of High Treason by virtue of a statute in that case made and provided. If there be any such statute, pray let it be read; I know none such. My actions were for the King, and I well remember what Bracton says: *Rex non habet superiorem nisi Deum; satis habet ad poenam, quod Deum expectat ultorem*. And in another place he says *Rex habet potestatem et jurisdictionem super omnes qui in regno suo sunt. Ea quae sunt jurisdictionis et pacis, ad nullum pertinent, nisi ad regium dignitatem; habet etiam coercionem, ut delinquentes punint et coerceat*. Again he with *Omnes sub rege, et ipse nullo nisi tantum Deo; non est inferior sibi subjectis; non parem habet in regno suo*. This shows us where the true power is. You shall find also *That whoever shall refuse to aid the king when war is levied against him, or against any that keep the king from his just right, offends the law and is thereby guilty of treason*. Again, *All men that adhere to the king in personal service are freed from treason by law*.<sup>2</sup> And yet you tell me of a statute which makes my adhering to my king according to law to be High Treason? Pray let it be read.

Attorney General: Sir, you have not behaved yourself so as to have such a favour from the Court.

Penruddock: I require it not as a favour, but as my right.

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<sup>1</sup> I Samuel 21:13

<sup>2</sup> 11 Henry VII Chapter 1

Attorney General: Sir, you cannot have it.

Penruddock: If I cannot have it, these gentlemen that are the jurors have not offended you, their verdict reaches to their souls as to my life. Pray let not them go blind-fold, but let that statute be their guide.

Attorney General: Sir, the jury ought to be satisfied with what has been already said, and so might you too.

Penruddock: Sir, I thank you; you now tell me what I must trust to.

Mr. Attorney then made a large speech in the face of the Court, wherein he aggravated the offence with diverse circumstances, as saying I had been four years in France and held a correspondency with the King, my master, of whom I had learned the Popish religion. That I endeavoured to bring in a debauched, lewd young man and to engage this nation in another bloody war. And that if I had not been timely prevented, I had destroyed them (meaning the jurors) and their whole families. I interrupted him and said

Penruddock: Mr. Attorney, you have been heretofore of counsel for me. You then made my case better than indeed it was. I see you have the faculty to make men believe falsehoods to be truth, too.

Attorney General: Sir, you interrupt me. You said but now you were a gentleman.

Penruddock: I have been thought worthy heretofore to sit on the bench, though now I am at the bar.

Mr. Attorney then proceeded in his speech, and called the witnesses.

Penruddock: Sir, you have put me in a bear's skin, and now you will bait me with a witness. But I see the face of a gentleman here in Court (I mean Captain Crook) whose conscience can tell him that I had Articles from him which ought to have kept me from hence.

Captain Crook hereupon stood up, and his guilty conscience, I suppose, advised him to sit down again after he had made this speech; that is to say, he opened his lips and spake nothing. The several witnesses now came in. Mr. Dove, the Sheriff of Wiltshire, and others. My charity forbids me to tell you what many of them swore. I shall therefore omit that, and only tell you that one of our own party, and indeed I think an honest man, being forced to give his evidence, I said

Penruddock: My lords, it is a hard case that when you find you cannot otherwise cleave me in pieces that you must look after wedges made of my own timber.

The virtuous Crier of Blandford being asked what were the words I used in the proclaiming King Charles at the market, he said I declared for Charles II and settling the true Protestant religion, for the liberty of the subject, and privilege of Parliaments. Then I said to the Attorney General and the whole Court,

Penruddock: You said even now that I had learned of the King, my master, the popish religion and endeavoured to bring him in. Your own witness tells you what and whom I would bring in; and that it was the true Protestant and not the popish religion His Majesty is of and intends to settle.

I urged diverse cases to make the business but a riot, as my lord of Northumberland's, pretending that it was for the taking of taxes; and that the power was not declared to be where they say it is. I required the judges to be of counsel for me, and told them it was their duty. Commissioner Lisle told me I should have no wrong (but he meant right); but Judge Rolle and Nicholas confessed themselves parties, and therefore would say nothing.

Penruddock: If I had seen a crown upon the head of any person, I had known what had been treason. The law of England would have taken hold of me out of the respect it has to monarchy. There were no such land-marks before me, therefore I conceive I cannot be guilty of what I am

charged with. And my lord and Mr. Attorney, you here indict me for a treason committed at South Moulton in Devonshire; and gentlemen, you swear witnesses against me for facts done in other countries. Sarum, Blandford, and South Moulton are not in a parish. You puzzle the jurors with these circumstances; pray go to the kernel. And you, gentlemen of the jury, save your labour by taking those notes.

Mr. Attorney then addressed himself to the jury, and to be short after the space of half-an-hour long, gave them directions to bring me in guilty. This being done, I craved the favour from the Court that I might speak to the jury. Which being allowed, I said to them as follows, or to the same effect:

Penruddock: Gentlemen, you are called a jury of life and death; and happy will it be for your souls if you prove to be a jury of life. You have heard what has been said to make my actions treason, and with what vigour many untruths have been urged to you. I have made appear to you that there can be no treason but against the King; that the law knows no such person as a Protector. Mr. Attorney pretends a statute for it, but refuses the reading thereof either to me or you; vilifies me at pleasure, and tells you that I am a papist and would bring in the popish religion; and that if I had not been timely prevented I had destroyed you. I hope you are also satisfied of the contrary from the mouth of one of the bitterest witnesses.

You are now judges between me and these judges. Let not the majesty of their looks or the glory of their habits betray you to a sin which is of a deeper dye than their scarlet; I mean that sin blood, which calls to heaven for vengeance. Gentlemen, you do not see a hair on my head but is numbered, neither can you make any one of them, much less can you put breath into my nostrils when it is taken out. A sparrow does not fall to the ground without the providence of God, much less shall man, to whom He has given dominion and rule over all the creatures of the earth. Gentlemen, look upon me, I am the image of my Creator, and that stamp of His which is in my visage is not to be defaced without an account given wherefore it was.

I have here challenged, as I am a gentleman and free-born man of England, the right which the law allows me. I demanded a copy of my indictment and counsel, but it is denied me. The law which I would have been tried by is the known law of the land, which was drawn by the wise consultation of our princes and by the ready pens of our progenitors.

The law which I am now tried by is no law but what is cut out by the point of a rebellious sword, and the sheets in which they are recorded, being varnished with the moisture of an eloquent tongue, if you look not well to it may chance to serve for some of your shrouds. If the fear of displeasing others shall betray you to find me guilty of anything, you can at the most but make a riot of this.

Pray, by the way, take notice that the last Parliament would not allow the legislative power to be out of themselves. Seventeen of twenty in this very county were of that opinion, and deserted the House; they were your representative. If you should find me guilty, you bring them in danger, and in them yourselves. Have a care of being drawn into a snare. Gentlemen, your blood may run in the same channel with mine.

If what I have said do not satisfy you so as to acquit me; if you bring a special verdict, you do in some measure acquit yourselves, and throw the blood that will be spilt upon the judges. Consider of it, and the Lord direct you for the best!

The jury, after a quarter of an hour's retirement, brought me in guilty. The Lord forgive them, for they knew not what they did.

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Monday, 23 April 1655

...Serjeant Glyn, after a most bitter and non-sensical speech, gave sentence against us; viz., to be drawn, hanged, and quartered. A pretty exchange for unworthy Crook's articles for life, liberty, and estate, which I can prove, and will die upon. My trial held at least five hours. This is as much as at present I can remember of it; excuse the errors.

T.B. Howell, ed. *A Complete Collection of State Trials and Proceedings for High Treason* (London: Hansard, 1816), V:767–778. [modernized]