

T H E

T R Y A L

O F

*Thomas Earl of Macclesfield,*

I N T H E

H O U S E o f P E E R S,

F O R

High Crimes and Misdemeanors;

U P O N A N

I M P E A C H M E N T

B Y T H E

Knights Citizens and Burgesſes in Parliament aſſembled, in the Name of themſelves and of all the Commons of *Great-Britain*. Begun the 6th Day of *May* 1725, and from thence continued by ſeveral Adjournments until the 27th Day of the ſame Month.

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*Published by Order of the Houſe of P E E R S.*

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L O N D O N :

Printed by *Sam. Buckley* in *Amen-Corner*. 1725.

T R Y A L

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Yveson Earl of Marischal

IN THE

HOUSE of PEERS

o r

High Crimes and Misdemeanors

done

IMPEACHMENT

o r

Articles of Impeachment against the said Earl of Marischal, and the said Earl of Marischal's Answer thereto, and the Proceedings thereupon, in the House of Peers, in the Year of our Lord one thousand six hundred and eighty one.



Printed by W. Wood, in Strand, near the Temple Church

1700

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T H E  
T R Y A L  
O F

T H O M A S,  
E A R L O F M A C C L E S F I E L D,

Begun in the House of LORDS, on *Thursday, May 6. 1725.*

The F I R S T Day.



*ABOUT Eleven of the Clock, the Lords being seated in their House, the Managers for the House of Commons being in the Conveniences made for them at their Lordships Bar, Thomas, Earl of Macclesfield, having a Stool plac'd for him within the Bar, and his Counsel, viz. Mr. Serjeant*

*Probyn, Doctor Sayer, Mr. Lingard, Common-Serjeant of the City of London, Mr. Robins, and Mr. Strange, standing near him at the Bar, the Serjeant at Arms made Proclamation as follows :*

*Serj. at Arms. Oyez, Our Sovereign Lord the King, strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.*

*Then the Serjeant at Arms again made Proclamation as follows :*

*Serj. at Arms. Oyez, Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the Name of Themselves, and of all the Commons of Great Britain, against Thomas, Earl of Macclesfield; all Persons concern'd are to take Notice, that he now stands upon his Tryal, and they may come forth in order to make good the said Charge.*

*Then the Clerk-Assistant, by Direction of the Lord-Chief-Justice King, Speaker of the House of Lords, read the Articles of Impeachment, the Earl of Macclesfield's Answer, and the Replication of the House of Commons, as follows :*

A R T I C L E S

*Exhibited by the Knights, Citizens, and Burgeses in Parliament Assembled, in the Name of Themselves, and of all the Commons of Great Britain, against Thomas, Earl of Macclesfield, in Maintenance of their Impeachment against him for High Crimes and Misdemeanors.*

**W**H E R E A S the Office of Lord Chancellor of Great Britain is an Office of the Highest Dignity and Trust, upon the impartial and uncorrupt Execution whereof the Honour of the Crown, and the Welfare of the Subjects of this Kingdom greatly depend: And whereas *Thomas, Earl of Macclesfield*, in or about the Month of *May*, in the Year of our Lord, One thousand seven hundred and eighteen, by the great Grace and Favour of His most Excellent Majesty, was consti-

tuted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the usual Oath for the due Execution of that High Office, whereby he did swear well and truly to serve our Sovereign Lord the King, and His People, Poor and Rich, after the Laws and Usages of this Realm, and such other Oaths as have been accustomed; and the said Earl continued in this great Office until about the Month of *January*, in the Year of our Lord, One thousand seven hundred and twenty four, and in Right thereof was intrusted with the Nomination and Admission to the Offices of Master of the Court of Chancery, which Masters of the said Court are Officers of great Trust sworn to serve the King and his People, and associated to the Lord Chancellor for his Assistance in the due Administration and Execution of Justice in the said Court: And whereas His Majesty, upon the said Earl's being appointed to the Office of Lord Chancellor, did, of His Grace and Bounty, bestow upon the said Earl the Sum of Fourteen thousand Pounds, or some other great Sum, and did likewise grant unto *George Parker Esq;* now commonly called Lord *Parker*, Eldest Son and Heir Apparent of the said Earl, a Yearly Pension of Twelve Hundred Pounds, payable out of His Majesty's Receipt of the Exchequer, during the joint Lives of His Majesty and the said Lord *Parker*, determinable upon His Majesty's making a Grant to the said Lord *Parker*, in Possession of the Office of one of the Tellers of His Majesty's Exchequer, for the Term of his Natural Life, which Office being of the Yearly Value of Fifteen hundred Pounds, or upwards, has been since granted by His Majesty unto the said Lord *Parker* for his Life, who in or about the Month of *July*, in the Year of our Lord, One thousand seven hundred and nineteen, was duly admitted to and doth still Enjoy the same; and the said Earl, during the Time of his continuing Lord Chancellor of *Great Britain*, did not only enjoy the usual Salary, Fees, and Profits belonging to his Office, of a very great Annual Value, but also did continue to receive an Annual Pension of Twelve hundred Pounds, which His Majesty in or about the Month of *June*, in the Year of our Lord One thousand seven hundred and sixteen, had granted to him and his Assigns, during His Majesty's Life; and did likewise receive from the Crown a further Annual Allowance of Four thousand Pounds, and many other Advantages: Yet the said *Thomas, Earl of Macclesfield*, not being satisfied with this large and ample Revenue, nor regarding the Obligation of his Oath, or the Duty of his high and important Office, but entertaining wicked and corrupt Designs and Views, to raise and procure to himself excessive and exorbitant Gain and Profit, by divers unjust and oppressive Practices and Methods herein after mentioned, whilst he continued in the said Office of Lord Chancellor, did Illegally, Corruptly, and Extorsively take and receive to his own Private Use the following or some other great Sums of Money.

## ARTICLE I.

That *Richard Godfrey*, Esq; having Contracted with *Sir Thomas Gery*, One of the Masters of the Court of Chancery, for the Purchase and Surrender of his Office, at the Price of Five thousand Pounds, or some other Great Sum of Money; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Richard Godfrey* into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *Richard Godfrey* the Sum of Eight hundred and forty Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the Court of Chancery, and to the Intent that the said *Richard Godfrey* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court, and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *Richard Godfrey* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *Sir Thomas Gery*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

## ART. II.

That the Office of One of the Masters of the said Court of Chancery becoming Vacant by the Death of *Samuel Browning*, Esq; One of the late Masters of the said Court; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *James Lightboun*, Esq; into the said Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *James Lightboun* the Sum of Six thousand Pounds, or some other great Sum of Money, in Consideration of, and for the Admitting him into such Office, and to the Intent that the said *James Lightboun* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court, and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *James Lightboun* into the Office of One of the Masters of the said Court of Chancery, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

## ART. III.

That *John Borret*, Esq; having Contracted with *John Meller*, Esq; One of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Nine thousand Pounds, or some other great Sum of Money; The said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *John Borret* into the Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take and Receive of and from the said *John Borret* the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *John Borret* should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; And

the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same Infamous and Corrupt Nature, did admit and swear the said *John Borret* into the Office of One of the Masters of the said Court of Chancery, upon the Surrender of the said *John Meller*, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him Reposed, contrary to the Duty of his Office, and against the Good and Wholesome Laws and Statutes of this Realm.

## ART. IV.

That *Edward Conway*, Esq; having contracted with *John Orlebar*, Esq; one of the late Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Edward Conway* into the Office of one of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Edward Conway*, the Sum of Fifteen hundred Pounds, or some other Sum of Money, for the Admitting of him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Edward Conway* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Edward Conway* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *John Orlebar*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## ART. V.

That *William Kynaston*, Esq; having contracted with *William Rogers*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Six thousand Pounds, or some other great Sum of Money, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *William Kynaston* into the Office of one of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *William Kynaston*, the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *William Kynaston* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *William Kynaston* into the Office of one of the Masters of the said Court of Chancery, upon the Surrender of the said *William Rogers*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## ART. VI.

That *Thomas Bennet*, Esq; having contracted with *John Hiccocks*, Esq; one of the Masters of the Court of Chancery, for the Purchase and Surrender of his said Office, at the Price of Seven thousand five hundred Pounds,

Pounds, or some other great Sum of Money; the said *Thomas* Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of the said *Thomas Bennet* into the Office of One of the Masters of the said Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Thomas Bennet*, the Sum of Fifteen hundred and seventy five Pounds, or some other Sum of Money, for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Thomas Bennet* should Have, Exercise, and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Thomas Bennet* into the Office of One of the Masters of the said Court of Chancery, upon the Surrender of the said *John Hiccocks*, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## A R T. VII.

That the Office of one of the Masters of the said Court of Chancery, becoming vacant by the Death of *William Fellows*, Esq; One of the late Masters of the said Court, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, and before the Admission of *Francis Elde*, Esq; into the said Office of One of the Masters of the Court of Chancery, did, by colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive of and from the said *Francis Elde*, the Sum of Five thousand two hundred and fifty Pounds, or some other great Sum of Money, in Consideration of, and for the Admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Francis Elde* should Have, Exercise, and Enjoy the same, which said Office touches and concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in Pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Francis Elde* into the Office of One of the Masters of the said Court of Chancery, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## A R T. VIII.

That the Office of One of the Masters of the said Court of Chancery becoming vacant by the Death of *John Borret*, Esq; One of the late Masters of the said Court, who died insolvent, greatly indebted to the Suitors of the said Court, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, without securing a just Satisfaction to the said Suitors, for their Debts, and before the Admission of *Mark Thurston*, Esq; into the said Office of One of the Masters of the Court of Chancery, did, by Colour of his Office of Lord Chancellor, Illegally, Corruptly, and Extorsively, Insist upon, Take, and Receive, of and from the said *Mark Thurston*, the Sum of Five thousand two hundred and fifty Pounds, or some other great Sum of Money, in Consideration of and for the admitting him into such Office of a Master of the said Court of Chancery, and to the Intent that the said *Mark Thurston*, should Have, Exercise and Enjoy the same, which said Office Touches and Concerns the Administration and Execution of Justice in the said Court; and the said *Thomas*, Earl of *Macclesfield*, being Lord Chancellor, in Pursuance and Execution of the said wicked and corrupt Bargain, or in pursuance of some other Bargain or Agreement of the same infamous and corrupt Nature, did admit and swear the said *Mark Thurston* into the Office of One of the Masters of the said Court of Chancery, in Breach and Violation of his Oath, as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## A R T. IX.

That whereas *Thomas Bennet*, Esq; in or about the Month of *August*, in the Tenth Year of His Majesty's Reign, was possess'd of an Office in the Court of Chancery, called the Office of Clerk of the Custodies, for the Term of his Life, by Virtue of his Majesty's Letters Patents under the Great Seal of *Great Britain*, which Office is an Office of Trust in the said Court, in the Gift and Disposal of the Crown by Grant under the Great Seal, and concerns the writing and making Commissions to inquire of Ideots and Lunaticks, and the Process thereupon, and Letters Patents for the Custody of the Bodies of Ideots and Lunaticks, and the keeping, entring, and transcribing Orders, Reports, and Accounts made and declared touching Ideots and Lunaticks, and their Estates in the said Court of Chancery; and the said *Thomas Bennet* having agreed with *Hugh Hamersley*, Esq; to resign the said Office, in order to obtain His Majesty's Royal Grant of the said Office to the said *Hugh Hamersley*, the said *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, did refuse to permit or accept of such Resignation, until the said *Thomas Bennet* had agreed to pay unto the said *Thomas*, Earl of *Macclesfield*, or unto his Use, One hundred and five Pounds, or some other Sum of Money, as a Consideration for the same, and, by Colour of his Office of Lord Chancellor, did Illegally, Corruptly, and Extorsively Insist upon, Take, and Receive, of and from the said *Thomas Bennet*, the said One hundred and five Pounds, or some other Sum for and in Consideration of the permitting and accepting such Surrender of the said Office, in order to and for the obtaining and procuring a New Grant of the said Office to the said *Hugh Hamersley*; and in pursuance thereof, the said *Thomas*, Earl of *Macclesfield*, then being Lord Chancellor, and One of the Lords Justices of this Kingdom, during His Majesty's Absence, did accept, or cause to be duly accepted, the Resignation of the said *Thomas Bennet* of the said Office, and by his Interest and Recommendation did obtain and procure His Majesty's Royal Warrant for preparing and passing His Majesty's Grant of the said Office, under the Great Seal, to the said *Hugh Hamersley* for the Term of his Life; which Grant afterwards, in or about the Month of *September*, in the Tenth Year of His Majesty's Reign, did accordingly pass the Great Seal, then in the Custody of the said Earl, for which all the usual and accustomed Fees were paid, over and besides the said One hundred and five Pounds, in great Deceit of the Crown, in Breach and Violation of his Oath as Lord Chancellor, and of the several great Trusts then in him reposed, contrary to the Duty of his Office, and against the good and wholesome Laws and Statutes of this Realm.

## A R T. X.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, did Illegally and Corruptly Ordain, Name, and Make divers other Officers and Ministers of His Majesty, for Gift and Brocage, and did likewise Illegally and Corruptly sell divers other Offices, touching and concerning the Administration and Execution of Justice in the Court of Chancery, to several Persons, for divers great Sums of Money, which the said Earl did receive from the said Persons for their respective Admissions into such Offices, and before they were admitted thereinto, and in order that the said Persons should Have, Exercise, and Enjoy the same, in great Breach of the Trust in him reposed, and of his Oath as Lord Chancellor, contrary to the Duty of his Office, and against the Laws and Statutes of this Realm.

## A R T. XI.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued in the Office of Lord Chancellor of *Great Britain*, in order to advance and increase the Illegal and Corrupt Gain, arising to himself from the Sale and Disposal of the Offices of Masters of the Court of Chancery, in Violation of the great Trust reposed in him for the Care and Protection of the Suitors of the said Court, whose Money and Effects were, by Orders of the said Court, lodged in the Hands of the Masters of the said Court of Chancery, did admit several Persons to the said Offices of Masters of the said Court of Chancery, who, at the Time of such their Admissions,

Admissions, were of small Substance and Ability, very unfit to be trusted with the great Sums of Money and other Effects of the Suitors of the said Court, lodged in their Hands by the Orders of the said Court; and did publickly in open Court, when he sat there as Lord Chancellor, falsly represent the said Persons, so by him admitted to the Offices of Masters of the said Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors of the said Court.

## A R T. XII.

That whilst the said *Thomas*, Earl of *Macclesfield* executed the said Office of Lord Chancellor, an unjust and fraudulent Method was practised in the Court of Chancery upon the Sale of the Offices of Masters of the said Court, and upon the Admissions of new Masters, that the Prices or Sums of Money agreed to be paid for the Purchase of the said Offices, and for the Admissions thereinto, were satisfied and paid out of the Monies and Effects of the Suitors of the Court deposited in the Hands of the respective Masters, surrendering their Offices, or dying, either by way of Retainer of the Purchase Money in the Hands of the Master resigning, or of replacing the Money disbursed for such Purchase or Admission by the succeeding Master, out of the Money and Effects of the Suitors coming into his Hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions thereinto, during the Time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to Contract for the said Offices, upon a Prospect of the easie Method of paying for the Purchase of the same, by means whereof great Deficiencies have incurred in the Offices of several Masters of the said Court, admitted by the said *Thomas*, Earl of *Macclesfield*, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well informed thereof, and fully acquainted therewith, yet the said *Thomas*, Earl of *Macclesfield*, in order to increase his own unjust and corrupt Profit in the selling the said Offices, and the Admissions thereto (which in consequence of this evil Practice was raised and received by him out of the Effects of the Suitors, for whom he was intrusted) did not at any Time, whilst he continued in his Office of Lord Chancellor, use or take any Measures to reform the said Abuse, or to prevent the same, either by causing proper Schedules to be taken of the Money and Effects of the Suitors delivered over and Transferred, or by appointing any Person, in his Behalt, to inspect or supervise the Transfers or Deliveries thereof, or in any other Manner; But on the Contrary, the said *Thomas*, Earl of *Macclesfield*, Unjustly, Corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Masters, and of their Accounts did Appertain) did suffer the said Fraudulent Practice to proceed and be exercised without any Controul or Check, whereby great Embezlements have been made of the Suitors Money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their respective Ballances owing upon their Accounts, in breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Suitors, to the Dishonour and Discredit of the said Court, and to the great Injury and Defrauding of the said Suitors, in a Court of Equity, Established for their Relief and Protection.

## A R T. XIII.

That *Fleetwood Dormer*, Esq; one of the Masters of the Court of Chancery, having Embezled great Part of the Money and Effects belonging to the Suitors of the said Court, with which he was Intrusted by the said Court, and disposed of the same for his own Private Advantage, by Means whereof there became, and still Continues a great Deficiency in that Office, to the Amount of Twenty five thousand Pounds, or some other great Sum; and the said *Fleetwood Dormer*, having Absconded and for some time Absented himself, Application was made to the said Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, to secure the Person of the said *Fleetwood Dormer*, and to take proper Methods for Compelling the said *Fleetwood*

*Dormer* to make Satisfaction to the Suitors for the Money and Effects, which he had so Embezled, yet the said Earl, from an Apprehension, that a Publick Discovery of the said Deficiency might lessen the Unjust Gain he proposed to make to himself, by selling and disposing of the said Offices of Masters of the said Court, neglected and declined either to secure the Person of the said *Fleetwood Dormer*, and his Estate and Effects, or to make a proper Enquiry into the said Deficiency: But on the Contrary, the said Earl, whilst he Continued Lord Chancellor of *Great Britain*, did Endeavour, by many Indirect Practices, to conceal from the Suitors of the Court, the true State and Condition of the said Office, as well with respect to the Effects of the said *Fleetwood Dormer*, as to the Debt due from him to the Suitors of the Court; And upon Motion made in the said Court of Chancery (after the said Earl knew that the said *Fleetwood Dormer* had so Absconded) on behalf of some of the Suitors of the Court, to have their Effects Transferred from the said *Fleetwood Dormer* to some other Master, for the better Securing thereof, the said Earl of *Macclesfield*, in order to delude the Suitors of the said Court into a Belief that their Effects were safe, and thereby to prevent a Publick Enquiry, then sitting as Lord Chancellor in open Court, did say, That the said Parties need not be in haste, and did at the same time falsly and deceitfully Declare, that the said *Fleetwood Dormer* was only gone to take the Air in the Country, and that he would return in a little time, and all would be well, or to that Effect.

## A R T. XIV.

That the said *Fleetwood Dormer*, having towards Satisfaction of the Suitors of the said Court, assigned to *Henry Edwards*, Esq; (who Succeeded him in his Office of Master of the said Court of Chancery) a Debt of Twenty four thousand and forty six Pounds Four Shillings, or some other great Sum due from *William Wilson*, a Banker to the said *Fleetwood Dormer*, to the intent that the Money received on Account thereof should be applied and disposed of, as the said Court of Chancery should Order and Direct, the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, for the Unlawful Purposes aforesaid, without Regard to the Interest of the said Suitors, by colour of his Office, did, in an Unwarrantable, Clandestine, and Unusual Manner, Authorize, Direct, and Establish a precarious and trifling Composition with the said *William Wilson*, upon the Terms of the said *William Wilson's* paying the Sum of Fourteen hundred sixty three Pounds, two Shillings and a Penny, and assigning Ten thousand Pounds, part of a Debt of Twenty two thousand and sixty Pounds, twelve Shillings and five Pence, pretended to be due to the said *William Wilson* from *Edward Poulter*, or to that Effect, in Discharge of the said Debt; and to that End, upon the Report of *John Hiccocks*, Esq; then one of the Masters of the said Court, without any Attendance order'd or had thereupon, and without Notice to the said Suitors, did, by a private Order not made in open Court, order the said *Henry Edwards* to accept of the said Composition, in full Discharge of the said Debt, which said *Edward Poulter* was a Person insolvent, and has since absconded for Debt, and none, or but a very small part of the said Ten thousand Pounds, has been or is ever likely to be received.

## A R T. XV.

That the said *Thomas*, Earl of *Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, to carry on his Corrupt and Unjust Purposes, and to conceal the Deficiency that was in the Office of the said *Fleetwood Dormer*, did, in or about the Month of *February*, in the Year of our Lord, One thousand seven hundred and twenty, order the several Masters of the said Court of Chancery to bring in their Accounts of the Cash, Effects, and Securities in their Hands belonging to the Suitors of the Court, not with a Design of Examining their Accounts, or Securing the Estate and Effects of the Suitors, but with an Intent to Terrify the said Masters, and thereby oblige them to contribute great Sums of Money towards answering the Demands that should, from Time to Time, be made upon the said Office; for which Purpose, he the said Earl did at several Times represent, or cause to be represented to the said Masters, that if they refused so to do, the Money and Effects of the Suitors would

# The Tryal of Thomas, Earl of Macclesfield.

be taken out of their Hands, and the said Masters deprived of making any Profit of the same; by which Practices the said Earl, being then Lord Chancellor of *Great Britain*, by colour of his Authority, did persuade and induce Nine of the Masters of the said Court of Chancery, to pay Five hundred Pounds each for the Purposes aforesaid, several of whom paid the same out of the Money or Effects of the Suitors in their Hands; but after such Payments, the said *Thomas*, Earl of *Macclesfield* did not oblige the said Masters to deliver in their Accounts in Pursuance of such his said Order.

## A R T. XVI.

That *Elizabeth Chitty*, Widow, having obtained an Order of the Court of Chancery, on or about the Seventeenth Day of *March*, in the Tenth Year of His present Majesty's Reign, made by the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, whereby *Henry Edwards*, Esq; One of the Masters of the said Court of Chancery, who succeeded *Fleetwood Dormer*, Esq; in the said Office, was ordered to pay her the Sum of One thousand Pounds, Part of the Sum of Ten thousand Pounds, or other great Sum of Money, formerly paid into the Hands of the said *Fleetwood Dormer*, as a Master of the said Court, and by the said Order mentioned to be then in the Hands of the said *Henry Edwards*; and the said *Henry Edwards* complaining to the said Earl, that the making Orders upon him to pay Money which had been received by the said *Fleetwood Dormer*, was a very great Hardship upon him the said *Henry Edwards*, in regard he had not any Money or Effects in his Handsto answer such Demands, the said Earl of *Macclesfield*, being then Lord Chancellor, in further prosecution of his Unjust and Corrupt Purposes, did, by Colour of his Authority, endeavour to prevail with the Masters of the said Court of Chancery, to raise the said Sum of One thousand Pounds out of their Effects, by representing to them, that a Discovery of the Deficiency in the said Office might occasion a Parliamentary or Publick Enquiry into the Nature and Condition of their Offices, and hazard the Forfeiture of the same, by reason of their having bought the said Offices contrary to Law, which the said Earl then declared would affect him, but themselves much more, or to that Effect; but the said Masters refusing to raise the said Sum of One thousand Pounds, the said Earl of *Macclesfield* did order his Secretary *Peter Cottingham*, Esq; to pay the said One thousand Pounds; who, in pursuance of the said Earl's Directions, in or about the Month of *July*, One thousand seven hundred and twenty four, did pay the same to *Ascan Christopher Lochman*, for the Use of the said *Elizabeth Chitty*; and the said Earl of *Macclesfield*, upon Application made to him by the said *Ascan Christopher Lochman*, for Payment of the said Money, did acquaint him, that he, the said Earl, had given Directions to his Secretary for Payment of that Sum, but at the same time declared to the said *Ascan Christopher Lochman*, that he, the said Earl, belived this would be the last Payment she was like to receive out of the said Money paid into the Hands of the said *Fleetwood Dormer*, for the Residue thereof was in great Danger of being lost, by reason of the Deficiency in the Effects of the said *Fleetwood Dormer*, or to that Effect. Notwithstanding all which Proceedings, in this and several other Articles mentioned, upon a Motion made in the Court of Chancery before the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor, on or about the Fifth Day of *December* last, in a Cause there depending between *Jane Harper*, Plaintiff, and *Thomas Case*, and others, Defendants, relating to the Sum of Two hundred and sixty Pounds, or some other Sum, deposited in the Hands of the said *Fleetwood Dormer* before his absconding, and which was then apprehended in great Danger of being lost, the said *Thomas*, Earl of *Macclesfield*, then sitting in Court as Lord Chancellor, did Publickly, Falsely, and Deceitfully declare, That he had heard there was a Deficiency in the Office of the said *Fleetwood Dormer*, but that he, the said Earl, knew nothing of it, only as publick News, or to that Effect; and thereupon did order, that the said *Henry Edwards* should examine in what Manner the said Two hundred and sixty Pounds was deposited with the said *Fleetwood Dormer*, and whether there was likely to be a Loss of any Money deposited with the said *Fleetwood Dormer*.

## A R T. XVII.

That notwithstanding the said Earl of *Macclesfield* well knew, that there was a very great Deficiency and Loss by the Failure of the said *Fleetwood Dormer*, and that the said *Henry*

*Edwards*, his Successor, had not sufficient in his Hands to pay the whole Money due to the Suitors of the Court, that had been received by the said *Fleetwood Dormer* on their Account; yet the said Earl of *Macclesfield*, being Lord Chancellor, in order to carry on his Unjust Designs of concealing the said Deficiency, and to prevent any publick Enquiry that might arise from the just Complaints of the Suitors of the said Court, did, from time to time, in manifest and wilful Violation of the Trust reposed in him, make Orders on the said *Henry Edwards* for Payment of the Money belonging to several particular Suitors, which had been lodged in the Hands of the said *Fleetwood Dormer*; In Obedience to which Orders several Sums were paid, without regard to, or consideration of the Proportion which the rest of the Suitors were Entitled to, out of the Effects of the said *Fleetwood Dormer*, whereby many of the said Suitors lost the Benefit of their proportionable Share, to which in Justice they were Entitled.

## A R T. XVIII.

That the said *Thomas*, Earl of *Macclesfield*, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their Power, from Time to Time, and at their Pleasure to dispose of and employ the Money and Effects belonging to the Suitors of the said Court, which were intrusted with them respectively, and more particularly, that the Deficiency appearing in the Office of *Fleetwood Dormer*, Esq; One of the Masters of the Court of Chancery, was chiefly occasioned by his the said *Fleetwood Dormer's* having taken upon himself unduly to Dispose of and Employ the Money and Effects belonging to the Suitors of the said Court, which were Intrusted in his Hands; and notwithstanding that, soon after the said *Fleetwood Dormer* became Insolvent, it was represented and proposed to the said *Thomas*, Earl of *Macclesfield*, then Lord Chancellor of *Great Britain*, in order to prevent for the Future any Losses that might happen to the Suitors of the said Court, that the several Effects and Securities belonging to the Suitors should be placed out in such Manner, as that the Power of Disposing; Employing, or in any manner Trading with the same, might be totally taken away from the said Masters, for the Effecting of which just Design, a particular Method was laid before the said Earl; and it was also further proposed, that the said Masters should give some reasonable Security to answer the Balance of such Cash, as should, from Time to time be in their Hands; and notwithstanding the said Earl was Credibly Informed, that the Sufficiency of some other of the said Masters was very much suspected, yet the said *Thomas*, Earl of *Macclesfield*, whilst he was Lord Chancellor of *Great Britain*, contrary to the Duty of his Office, and thereby proposing to make unlawful Gain to himself by the Disposal and Sale of the Offices of Masters of the said Court of Chancery; and in order to Induce Persons to give him, the said Earl, a greater Price or Reward for their being admitted to the same, did not Require or Demand any Security whatsoever, to be given by any of the said Masters, upon their being admitted to their Offices, or at any other Time; and the said Earl, with the same Corrupt View and Intention, and to keep up the Price of the said Offices, totally neglected to Enquire into the Accounts of the said Masters, and did Fraudulently, Unjustly, and in Breach of the Trust reposed in him, Permit and Encourage the Masters of the said Court, to Employ and Traffick with large Sums of Money belonging to the Suitors of the said Court, and to make Interest thereof for their own unjust Gain and Profit; and the said Earl, after such Proposal made to him, as aforesaid, or at any other Time, during his Continuance in the said Office, did not take any Care that the Effects of the said Suitors should be placed out in such Manner, as to prevent the Masters from Trafficking therewith, or that the said Masters should give such Security, as was proposed; by Means whereof great Deficiencies, to the amount of many Thousand Pounds, have been, through such Default of the said Earl, occasioned in the Offices of several other of the Masters, to the great Loss and Injury of the Suitors of the said Court.

## A R T. XIX.

That whereas his most Sacred Majesty, out of his Fatherly Goodness to His People, did, in or about the Month of *November* last, direct an Enquiry to be made into the Accounts of the Masters of the said Court of Chancery, to the Intent that proper Methods might be taken for the Security of the Suitors of the said Court; the said *Thomas*, Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*,

and One of His Majesty's most Honourable Privy Council, in order to Obstruct the same, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the said Masters, In Breach of the several great Trusts reposed in him, did give Advice and Encouragement to the said Masters to Assist and Supply each other with Money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient, and that if they made a Bold Stand now, it might prevent a Parliamentary Enquiry, or to that Effect; and did persuade several of them to make false Representations of their Circumstances to His Majesty, by adding a Subscription to their respective Accounts deliver'd to the said Earl, to be laid before His Majesty, to the Effect following (*viz.*) That they were able to answer the Money and Securities in their Hands, and were willing to pay the same to such Persons as were Entitled thereunto, although the said Earl knew, or had good reason to believe, that several of the Masters were not then able to answer the Ballance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of the Suitors in their Hands, some of the said Masters, according to such Advice and Encouragement given by the said Earl, did Supply others of them with Cash and Effects, to make a false shew and appearance of their Ability and Readiness to answer the Ballance of their Accounts.

## A R T. XX.

That the said *Thomas, Earl of Macclesfield*, whilst he continued in the Office of Lord Chancellor of *Great Britain*, in Breach of the Trust reposed in him, and contrary to the Duty of his Office, did, at several times, borrow and receive of some of the Masters of the said Court, several great Sums of the Money belonging to the Suitors of the said Court, deposited in the Hands of such Masters, and did make use thereof for his own private Service and Advantage, so long as he had occasion for the same.

## A R T. XXI.

That the said *Thomas, Earl of Macclesfield*, whilst he continued Lord Chancellor of *Great Britain*, did, in an illegal and arbitrary Manner, extend the Power and Authority of Lord Chancellor, and of the Court of Chancery, beyond their lawful and just bounds, and did arbitrarily and illegally assume to himself, as Lord Chancellor, and by Colour of his Office, an unjust and unlimited power of dispensing with, suspending and controlling the Statutes of this Realm, made for the Security and Preservation of the Estates and Properties of the Subjects of this Kingdom, to the great Oppression of the Suitors of the said Court, in subversion of the Laws and Statutes of this Realm, in manifest Breach and Violation of the Rights and Liberties of his Majesty's good Subjects, and of his own most solemn Oath, as Lord Chancellor of *Great Britain*; and more especially, when *Francis Tyssen, Esq;* deceased, being seized, and possessed of a real Estate of the Value of three thousand Pounds *per Annum*, or some other great annual Value, did, by his last Will and Testament in writing, duly executed, in or about the Month of *October*, one thousand seven hundred and seventeen, give and devise all his said real Estate to the Child his Wife was at that time *enfeint* with (if such Child should be a Son) for his Life, without Impeachment of Waste, with Remainders to the first, and other Sons of the said Infant in Tail Male, and did likewise by such Will expressly nominate and appoint his the said Testator's Wife, *Rachel Tyson*, to be the Guardian of all his Children, during their respective Minorities, if she should so long continue a Widow; and the said *Francis Tyssen*, soon after died, leaving one Daughter, and the said *Rachel*, his Widow, with Child, after whose Decease the said *Rachel* was delivered of such Child, being a Son, afterwards named *Francis John Tyssen*, in whose Right by virtue of the said Will, and of the Statute made in the Twelfth Year of the Reign of King *Charles the Second*, intituled, *An Act for the taking away the Court of Wards and Liveries, and Tenures in Capite, and by Knights Service, and purveyance, and for settling a Revenue upon His Majesty in lieu thereof*; the said *Rachel Tyson* did lawfully take into her Care and Custody her said Infant Son, and the Estate so devised to him, or was willing and endeavoured so to do, and to undertake the management of his said Lands and Tenements for his best Advantage, and demeaned herself therein without any Misbehaviour; yet the said *Thomas, Earl of Macclesfield*, being then Lord Chancellor of *Great Britain*, under Colour of his Office and authority, did, by several Orders made by him,

in the Months of *January* and *February*, in the Fifth Year of his Majesty's Reign, or in one of them, illegally and arbitrarily, and in direct contravention of the Statute made in that Behalf, remove and exclude the said *Rachel Tyson*, the Guardian of the said Infant, and also *John Nicholas Esq;* (a Person of good Substance and Ability, nominated by the said *Rachel Tyson* to be Receiver of the Rents and Profits of the said Infant's Estate, and approved by *Robert Holford, Esq;* one of the Masters of the said Court, and for that purpose, who had given sufficient Security for the due Execution of his said Trust) from the Management and Receivership of the said Infant's Estate; and did, by such Orders, unduly and injuriously nominate and appoint *Robert Doyley, Esq;* a Creature and Confident of his own, and a Person altogether unfit and unqualified for so great a Trust, to be Receiver of the Rents and Profits of the said Infant's Estate, and to have a Salary for the same with a Power to let such Part of the said Estate, as was or should become untenanted, with the Approbation of the said *Robert Holford*, although the said *Rachel Tyson* did expressly object unto, and oppose such Appointment of the said *Robert Doyley*, and did insist to have the Benefit and Exercise of her Right in that Respect, as the Guardian appointed and intrusted by her late Husband; and the said *Robert Doyley*, after he was so admitted into the said Receivership, did for several Years receive the Rents and Profits of the said Infant's Estate, to the Amount of about Ten Thousand Pounds, or other great Sum, and in his Life-time did embezzle and convert to his own Use great Part thereof; and in or about the Month of *November*, One thousand seven hundred and twenty two, died insolvent and indebted to the said Infant and his Estate in the Sum of Two thousand six hundred Pounds, or other great Sum, upon the Ballance of his Account, no Part whereof has hitherto been satisfied or paid; and the said *Thomas, Earl of Macclesfield*, in further Abuse of his Power, and in contempt of the Laws and Statutes of this Realm, when upon Debate of the Matter in the said Court of Chancery, before the said Earl, being then Lord Chancellor, in the Month of *January* or *February*, in the Fifth Year of His Majesty's Reign, or in one of them, it was insisted upon, in Behalf of the said *Rachel Tyson*, by her Council of great Ability and Experience in the said Court, that such the Proceedings of the said Earl, as Lord Chancellor, were a reviving the Power of the Court of Wards, and were not supported or warranted by any Precedent in the Court of Chancery, he, the said *Thomas, Earl of Macclesfield*, then sitting in the Court as Lord Chancellor, did not only persist in such his Appointment of the said *Robert Doyley*, but did also arbitrarily, and in Defiance of the said good and beneficial Statute, say and declare, in open Court, that then he would make a Precedent in that Instance, or he, the said Earl, declared and expressed himself to that Effect; which Actings, Proceedings, and Declarations of the said Earl, have been and were not only very injurious and prejudicial to the Right and Interest of the said *Rachel Tyson*, as Guardian, and to the great Damage and Loss of the Infant *Francis John Tyson*, and a notorious Violation of Property, but were also a dangerous Exercise of illegal and arbitrary Power, to the Destruction of the Laws and Constitution of this Realm, in manifest Breach of his Oath as Lord Chancellor, and in great Abuse of his Authority.

And the said Knights, Citizens, and Burgeses, by Protestation, saving to themselves the Liberty of exhibiting, at any Time hereafter, any further Articles, or other Accusation or Impeachment against the said *Thomas, Earl of Macclesfield*, and also of replying to his Answers which he shall make unto the said Articles, or any of them, and of offering Proof to all and every the aforesaid Articles, and to all and every other Articles, Impeachment, or Accusation, which shall be exhibited by them, as the Case shall, according to the Course of Parliament, require, do pray, that the said *Thomas, Earl of Macclesfield*, may be put to answer the said Crimes and Misdemeanors, and that such Proceedings, Examinations, Tryals, and Judgments, may be thereupon had and given, as is agreeable to Law and Justice.

The ANSWER of *Thomas, Earl of Macclesfield*, to the ARTICLES exhibited by the Knights, Citizens, and Burgeses in Parliament assembled, in the Name of themselves, and of all the Commons of *Great Britain*, in Maintenance of their Impeachment against him for high Crimes and Misdemeanors, supposed to have been by him committed.

THE said Earl saving to himself all Advantage of Exception to the said Articles, and of not being prejudiced by any Words or want of Form in this his Answer, and also saving



to himself all Benefit and Advantage of the Act for the King's most gracious, general, and free Pardon herein after mentioned, and all Rights and priviledges belonging to him as one of the Peers of this Realm, for Answer to the said Articles saith, That he having for several Years executed the Office of Chief Justice in the Court of King's-Bench, His Majesty of His Royal Grace and Favour was pleased, the Tenth Day of *March*, One Thousand seven hundred and fifteen, to advance the said Earl to the Dignity of a Peer of this Realm, and created him Baron of *Macclesfield*; and, in regard to his Circumstances at that Time, was further pleased, for the better Support of that Honour, to grant to the said Earl the Pension of Twelve hundred Pounds *per Annum*, in the Articles mentioned, payable at the Receipt of the Exchequer; and His Majesty was then likewise pleased to declare His Royal Intentions of giving to the said Earl's only Son, *George Parker*, for his Life, an Office of considerable Profit, when a proper Opportunity should offer; That in the Beginning of *May*, in the Year One thousand seven hundred and eighteen, he the said Earl, was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was sworn before His Majesty in Council the Fourteenth Day of that Month, when the following Oath, being the usual Oath of Lord Chancellor, was administered to him, (*viz.*)

**Y**OU shall swear, that you shall well and truly serve our Sovereign Lord the King, and his People, in the Office of Chancellor of Great Britain; and you shall do Right to all manner of People, Poor and Rich, after the Laws and Usages of this Realm; and truly you shall Counsel the King, and his Council you shall laim and keep; and you shall not know nor suffer the Hurt or Disberiting of the King, or that the Rights of the Crown be decreased by any Means, as far forth as you may lett, and if you may not lett it, you shall make it clearly and expressly known to the King, with your true Advice and Counsel; and that you shall do and purchase the King's Profit in all that you may; All which you shall do to the best of your Skill and Knowledge,

As God shall help you.

And the said Earl at the same Time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth; and the said Earl doth admit, That, during his Continuance in the said Office of Lord Chancellor, he did Enjoy the usual Salary, Fees, and Profits belonging to such Office, which, he says, are of much less annual Value than they are generally (as he believes) esteemed to be; And that His Majesty was pleased to grant him the Salary or Allowance of Four thousand Pounds *per Annum*, in the Articles mentioned, during such Time as he should Continue to be Lord Chancellor; but the same is so far from being particular in the Case of the said Earl (as the said Articles would insinuate) that it is no other than what hath been for many Years past constantly granted to, and enjoyed by his Predecessors in the said Office; and the said Earl doth likewise admit, That His Majesty did, of His Royal Grace and Bounty, sign a Warrant for Payment of the Sum of Fourteen thousand Pounds mentioned in the said Articles, to the said Earl, out of the Receipt of the Exchequer, whereof Two thousand Pounds was the constant usual Allowance from the Crown to the Lord Chancellor or Lord Keeper, for and towards the Expences in entring upon the said Office; and the Residue of the said Fourteen thousand Pounds, over and above the usual Fees and Deductions upon Payment thereof, was His Majesty's Royal Munificence to the said Earl, and the same was received by him accordingly; And the said Earl doth likewise, with the greatest Gratitude, own, that about the same Time, his said Son being then of a proper Age, and desirous to go abroad to travel, His Majesty was pleased to grant to the said *George Parker* the Yearly Pension of Twelve hundred Pounds, payable out of the Receipt of the Exchequer, during the joynt Lives of His Majesty and the said *George Parker*, determinable upon His Majesty's granting to him, the said *George Parker*, in Possession or Reversion, the Office of One of the Tellers of the Exchequer, for Life, and his coming into the actual Possession thereof and which the said Earl likewise admits has been since granted to his said Son, and that he came into the actual Possession thereof in or about *July*, One thousand seven hundred and nineteen, whereby the said Yearly Pension is determined; And the said Earl saith, That, during his continuance in the said Office of Lord Chancellor, or at any other Time, he never once had a Design, or View, or Wish to raise to himself any Exorbitant Gain or Profit, much less used or ever thought of using any Unjust or Oppressive Methods to Extort or Obtain any Sum whatsoever, as in the said Articles is suggested, but such Views and Practices are inconsistent with the whole Tenor of

his Life and Actions; And in case it shall be thought proper for the said Earl to lay before your Lordships an Account of his Estate and Fortune, and of the considerable Sums of Money he has distributed for the Relief and Support of others, it will appear that he is not such a Designing, Avaritious, and Oppressive Man, as in the said Articles he is represented; And the said Earl humbly hopes, that he shall be allowed, in this his Answer, to distinguish between Acts themselves; and the Inferences drawn from them by the said Articles, and that whenever he admits any Fact, he may not be understood to admit that such Fact was by him done or committed upon such Motives, and with such Designs, or in such Manner, as is suggested in the said Articles, And with this Reservation he answereth, as followeth: By way of General Answer to such of the said Articles, as relate to the making any Present by Persons admitted to the Office of Masters in Chancery; The said Earl doth say, That the same has been long used and practised in the Time of his Predecessors, in the said Office, and that such Presents have been reckoned amongst the ancient and known Perquisites of the Great Seal, and the making and accepting thereof has been Notorious to all the World; and never before looked upon to be Criminal or Complained of as such; And the said Earl humbly hopes, that the giving or receiving of a Present on such Occasion is not Criminal in itself, or by the Common Law of this Realm, and that there is not any Act of Parliament whatsoever, by which the same is made Criminal, or subject to any Punishment or Judgment, which can be prayed in this Prosecution; And the said Earl thinks himself obliged humbly to lay this before your Lordships, not only in his own Defence, but in Vindication of the Honour of so many Great and Excellent Men, who have been his Predecessors in the said Office, and have all along done the same, for which the said Earl is now complained of; and of others having been Lords Chief Justices of the King's Bench and Common Pleas, Masters of the Rolls and other Judges, who have likewise received Presents in Money, upon the Admission of the several and respective Officers under them, in several Courts of Justice, and who, the said Earl is assured, never apprehended themselves to be Guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm.

To the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Articles, The said Earl further saith, That long before the Twenty fourth of *July*, One thousand seven hundred and twenty one, He did Admit and Swear *Richard Godfrey*, *James Lightboun*, *John Borrett*, and *Edward Conway* Esquires, into the Offices of Masters of the Court of Chancery, and every One of them did Freely and Voluntarily, and of their Own Accord, as former Masters had done to the Predecessors of the said Earl, send to the said Earl a Present upon Occasion of the respective Admittances, which the said Earl accepted, and that after the said Twenty fourth of *July*, One thousand seven hundred and twenty one, he did Admit and Swear *William Kynaston*, *Thomas Bennet*, and *Francis Elde* into the Offices of Masters of the Court of Chancery, and saith, That every of the said Persons last Named did Freely and Voluntarily, and of their Own Accord, in like Manner, send a Present to the said Earl upon Occasion of their respective Admittances, but saith, That it being pretended by the said *Kynaston* and *Bennet*, that they were by such Presents disabled from Answering so much of the Money due from them to the Suitors of the Court, he the said Earl did afterwards, and before the Impeachment deliver the Present so sent him by the said *William Kynaston*, being Fifteen hundred seventy five Pounds; and also the Present so sent him by the said *Thomas Bennet*, being the like Sum of Fifteen hundred seventy five Pounds, into the Court of Chancery, in open Court, to be applied for the Benefit of the Suitors, as the Court should Direct, and that the said Earl retained of the Present so sent him by the said *Francis Elde*, no more than the Sum of One Thousand eight hundred and fifty Pounds.

VIII. To the Eighth Article the said Earl further saith, That in *July* last the Office of one of the Masters of the said Court became Vacant by the Death of *John Borrett*, Esq; who died Intestate, but whether Solvent or not, he cannot say, but upon Notice of his Death, the said Earl did at First desire *Richard Godfrey*, Esq; One of the Masters of the said Court, who had been very well acquainted with the said Mr. *Borrett*, and his Affairs, and afterwards the said Mr. *Godfrey* and *John Bennet* Esquire, another of the Masters of the said Court, to inquire into his Effects, and to take what Care they could about the same, who, after some Inquiry, informed the said Earl, that they believed there would be no Deficiency, and Secured a

Considerable Part of the Effects of the said Mr. *Borrett*, and Entred a Proper Caveat in the Prerogative Court, to prevent Administration being granted to any Persons who might Embezzle the said *Borrett's* Estate; and afterwards, at the Request of the said Earl, proceeded so far, as to Obtain a Sentence in the said Prerogative Court, for Administration to be granted, for the Benefit of the Suitors of the Court, to them, the said Mr. *Bennet* and Mr. *Godfrey*, which was afterwards upon their Waving thereof, Granted to Mr. *Paxton*, as the said Earl believes, but the said Earl thought it proper and necessary to Admit another Master in his Place, to Carry on the Business of the Court, and to be Intituled to Demand the Effects of the Suitors, from the Representative of the said Mr. *Borrett*, when one should be appointed; and therefore, about the Fifth Day of *August* last, did Admit and Swear *Mark Thurston*, Esq; into the said Office, Vacant by the Death of the said *Borrett*, and the said Earl Admits the said *Mark Thurston* did upon that Occasion Freely and Voluntarily, and of his own Accord, send a Present, whereof Two thousand Pounds and no more were Retained.

IX. In Answer to the Ninth Article the said Earl saith, That he believes *Thomas Bennet*, Esq; in this Article named, was Possessed of the Office of Clerk of the Custodies, in the Article described, and that such Office is in the Gift and Disposal of the Crown, by Grant under the Great Seal, but denies that he did at any time Insist upon the Sum of One hundred and five Pounds, or any other Sum of Money, to permit or accept of the Resignation of the said *Thomas Bennet*, or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum on that Account; But saith, That although the said Office be usually granted by the Crown, yet it has always been looked upon to be the Right of the Lord Chancellors, or Lord Keepers, to Recommend to that, and other Offices under the Great Seal, and to Approve and Allow of the Deputies to Execute the same; and, upon such Recommendations and Approving of Deputies, have accepted Presents, and looked upon the same as their Right; and further saith, That there have been Two of such Offices granted in his Time, One of which appearing to him to be a Case wherein the Party had suffered great Hardship, the said Earl passed the same without any Present whatsoever, though the Office be of Considerable Value; the other was the Case of *Mr. Hamersley*, in the Articles mentioned, in which the said Earl owns he did Accept a Present.

X. In Answer to the Tenth Article the said Earl saith, The same is conceived in such General Terms, that it is not to be expected he should give any particular Answer thereto; However, he saith, That, during the whole Time of his being Lord Chancellor, he never Once took any Money, Present, or Gratuity whatsoever, for or upon Account of the Naming, Making, or Admitting any Officer whatsoever, other than before particularly named, Except in the Curfitor's Office, where he owns he has done, as was done by all his Predecessors before him.

XI. In Answer to the Eleventh Article the said Earl saith, That the same not containing any Particular Charge, he apprehends himself not obliged to give any Particular Answer thereto; but however, in General, does say, That he never did Admit any Person into the Office of a Master of the Court of Chancery, but who was either known to be of Substance and Ability, and fit to be Trusted in such Office, or, upon a proper Inquiry, very well recommended to him as such; and, whenever there have been several Candidates, the said Earl has Constantly given the Preference to him that he thought would best Discharge the Office, and most for the Honour of the Court, and the Advantage of the Suitors; and believes that he may, upon some Occasions, have declared, that he thought the then Body of Masters as Good, with respect both to their Estates, and Ability for Discharge of the Office, and their In-

tegrity, as had been at any time before, or to that Effect, and what he did say to that Purpose, he thought to be really true.

XII. To the Twelfth Article the said Earl saith, That if there was any such Practice as is mentioned in the Article, of paying for the Places of the Masters out of the Money and Effects belonging to the Suitors of the Court, he was totally ignorant of it; but admits, that he did not, nor did any of his Predecessors, that ever he heard or believes, give any particular Directions for Schedules to be made of the Money and Effects of the Suitors of the Court to be delivered over to the succeeding Masters, but believes, that in Virtue of the General Order of Transfer made of course upon every Admittance, such Schedules were made between the New Masters and their Predecessors, or the Representatives of their Predecessors; and if the ill Consequences, in the Articles alledged, had followed from such Practice, or the not ordering such Schedule, which he does not Admit, he Insists that the same could not render him Criminal.

XIII. In Answer to the Thirteenth Article the said Earl saith, That after *Christmas*, in the Year One thousand seven hundred and twenty, he was Informed, That the said *Fleetwood Dormer* had withdrawn himself to *Holland*, where he then was, and thereupon the said Earl used all the properest Methods he could for Securing his Effects, and particularly directed Mr. *Hiccocks* and Mr. *Rogers*, the then two Senior Masters of the Court, to make an Enquiry into his Affairs and Accounts, and to consider what would be most proper to be done; And the said Earl believes, that the said two Masters, in Pursuance of the Directions from the said Earl, did search the Chambers of the said *Fleetwood Dormer*, in *Lincolns-Inn*, to see what Books, Accounts, or Effects could there be met with, but found no Account whatsoever, nor any Effects of Value, and did put a Stop to the transferring of the Stock, then in the Name of the said *Fleetwood Dormer*, in any of the Publick Companies; And the said *Fleetwood Dormer's* Person being thus out of Reach, and his Accounts and Effects wholly unknown, except the Stock, which could not be disposed of without his Concurrence, a Proposal was some time after made to the said Earl, That the said *Fleetwood Dormer* might have a Promise of his Liberty from the said Earl, and upon that Condition he would come over, and assign all his Effects, and assist in getting them in, and settling and adjusting his Accounts; And the said Earl, seeing no other way open to get any thing for the Suitors, and being made to believe, that if any Deficiency should happen, the same would be made up by the other Masters, did agree, That in case the said *Fleetwood Dormer* would come over, and make a full Discovery of all his Effects, and assign the same for the Benefit of the Suitors, he the said Earl would allow him his Liberty on that Condition, and not otherwise; and the said Earl was soon after Informed, That the said *Fleetwood Dormer* submitted to those Terms, and would very soon come over, and discover and deliver up his Effects; And the said Earl did not doubt, but the whole Debt upon the said *Fleetwood Dormer* would be paid. And the said Earl saith, That he does not remember that any Application was ever made to him, by the said Masters of the said Court, for any Assistance of the Court, touching the Person or Effects of the said *Fleetwood Dormer*, but what he granted, so far as he thought it tended to the Benefit of the Suitors, and believes that no Application was ever made to him by the Suitors, or any of them, or any other, to secure the Person of the said *Fleetwood Dormer*, or for Compelling him to make Satisfaction to the Suitors; And the said Earl saith, That he never endeavoured to Conceal the true State and Condition of the said Office from the Suitors of the Court, nor did any of them apply, till very lately, to the said Earl to look into the same; And further saith, That he remembers nothing of his ever Using any such Expression, as is charged in the said Article, at any Time before or after he knew that the said *Fleetwood Dormer* Absconded.

XIV. To the Fourteenth Article the Earl saith, That *Henry Edwards*, Esq; in this Article mentioned, succeeded to the Office of *Mr. Dormer* about the Eighteenth Day of *May*, One thousand seven hundred and twenty one; but, by Reason of the Disorder the said Office was then under, and the great Danger of a Loss therein, the Earl had given up and quitted all the Advantage which might Accrue to him upon the Disposal thereof, and left it entirely to the other Masters to raise what Money they could thereby, which was agreed to be all applied towards making Good any Deficiency or Loss, which might happen to the Suitors of the Court Concerned in that Office; and thereupon the Sum of Five thousand Pounds was raised, by the Disposal of the said Office to *Mr. Edwards*, and was applied accordingly; And the said Earl believes the Debt from *William Wilson*, in this Article mentioned, was assigned by the said *Mr. Dormer* to the said *Mr. Edwards* in Trust, and to the Intent, that he should Pay, Apply, and Dispose of the said Debt, or such Part thereof, as should, from Time to Time, be by him got in; and received of and from the said *William Wilson*, in such manner as the Court should Order and Direct, or to that Effect; after which said Assignment so made, the Earl believes that the said *Mr. Edwards* used great Endeavours to obtain Payment and Satisfaction of the said Debt from *Mr. Wilson*; but finding all his Endeavours fruitless, and that the said *Wilson* had long before stopt Payment, and was in no Condition of Paying his Creditors the Whole of their Debts, but that he was willing, and had offered to come to a Composition, and to pay them in Proportion the Utmost he was able; The said *Mr. Edwards* thereupon, about the Thirtieth Day of *June*, in the Year of our Lord, One thousand seven hundred and twenty two, preferred his Petition to the said Earl, as Lord Chancellor, setting forth in Substance the State of the Case, as before mentioned, and Praying that it might be referred to one of the Masters of the Court, to see if such Composition, so proposed by the said *William Wilson*, were for the Benefit of the Persons Intituled to receive the same; and the same was accordingly, by Order of the said Earl, referred to *Mr. Hiccocks*, the then Senior Master of the Court, to Enquire into, and make his Report therein; And about the Six and twentieth Day of *July*, then next following, the said *Mr. Hiccocks* made his Report, that the said *William Wilson* had, under his Hand in Writing, proposed to Assign over to the said *Mr. Edwards*, as a Composition for, and in full Discharge of, the Sum of Twenty four thousand forty six Pounds and four Shillings, therein mentioned to be due and owing from him to the said *Mr. Edwards*, as Assignee of the said *Mr. Dormer*, the Sum of Ten thousand Pounds, Part of a large Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, Gentleman, in this Article mentioned, and to pay the said *Mr. Edwards* in Specie, the Sum of One thousand four hundred sixty three Pounds, two Shillings and one Penny, over and above the Sum of Five hundred and sixty Pounds, then already paid to the said *Mr. Dormer*, in Part of the said Composition; and that upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, he was of Opinion, that the accepting the said Composition would be for the Benefit of the Person or Persons Intituled to receive the same; Upon which said Report the said *Mr. Edwards*, about the Third of *August* then next, preferred another Petition to the said Earl, with the said Report annexed, and thereby expressly Prayed the said Earl to Order him, the said *Mr. Edwards*, to accept of the said Composition, whereupon the said Earl, in a proper and usual Manner, Ordered the same as Prayed; And the said Earl saith, that he was informed, and believes, that the said Composition was Made and Agreed to, upon a Consultation of all or most of the Masters of the said Court, who the said Earl did believe would Use their best Endeavours to get as much as they could; And the said Earl saith, he hath heard, and believes it to be true, that besides the One thousand four hundred sixty three Pounds, Two Shillings and One Penny, then paid down, there hath been since got in by *Mr.*

*Edwards*, on Account of the said Debt from *Edward Poulter*, the Sum of One thousand Pounds, or thereabouts; and that at the time of the said Assignment, the said Debt, claimed by *Wilson* from *Poulter*, was a just Debt, and Judgment at Law has been since obtained for Eighteen thousand Pounds, Part thereof, and the said *Poulter* was looked upon to be a Substantial Person; though, to avoid Payment of the said *Wilson's* Debt, which arose on account of their Dealings in *South Sea* Stock, and Subscriptions in the Year, One thousand seven hundred and twenty, the said *Poulter* not only brought his Bill in Chancery, but; after the same was dismissed, and that he was taken in Execution at *Wilson's* Suit at Common Law, he found Means to make his Escape out of the Custody of the Marshal of the Court of King's Bench, and to get over to *France* or *Holland*, where he still Continues, as the Earl is informed; but he is likewise Informed, that, after the said Escape, a Commission of Bankruptcy was taken out against him by the said *Wilson*, upon which some Effects were recovered, and likewise an Action at Law brought, and a Verdict and Judgment for Eighteen thousand Pounds and upwards obtained by the said *William Wilson* against the Marshal, on Account of the said Escape; and saith, he hath likewise been Informed, That the said *Edward Poulter* and the Marshal have each of them offered Considerable Sums of Money by way of Composition for the said Debt; but the said *Wilson*, from a Persuasion of the Abilities of the said *Edward Poulter* to pay the Whole, did at first refuse any Composition with the said *Poulter*, and since hath been afraid to make any Composition, either with *Poulter* or the Marshal; and what may be the Consequence thereof, with regard to the Suitors of the Court, or what further Sums of Money may be recovered upon Account of the said Debt, towards making them Satisfaction, the Earl saith, he cannot with any Certainty take upon him to Answer.

XV. To the Fifteenth Article the Earl saith, That about the Month of *February*, in the Year of our Lord, One thousand seven hundred and twenty, he gave Orders to his Secretary to write to the several Masters of the Court of Chancery, to bring in their Accounts of the Cash, Effects, and Securities in their Hands, belonging to the Suitors of the Court, and believes he did so, but denies that the same was done with any unjust Purpose, or with any Thought to terrifie the said Masters to make any Contribution, towards Satisfying the Demands upon the said Office of *Fleetwood Dormer*, but believes, what they did contribute, they paid Freely and Voluntarily, and out of their own Money, and therein, as the said Earl believes, did no more than follow a Precedent of the like Nature, on the Failure of *Dr. Edisbury*, formerly a Master of the said Court; And the said Earl saith, That his real and whole Intention in Calling for the said Accounts, was to Inform himself, in the best Manner he was able, of the State and Condition of the several Offices, and thereby to be the better able to make proper Regulations concerning the same; and therefore, though the said Article seems to Insinuate, as if the Calling for the said Accounts was dropped, as soon as the Masters were prevailed on to Contribute, the said Earl saith, That afterwards, and without any Regard thereto, he still Continued to Call for the said Masters Accounts, and not finding them brought in, as he expected, he did, about the Beginning of *November* following, cause another Letter to be sent to them, requiring them to bring in their Accounts; and, by both the Letters sent to them on that Occasion, he directed the particular Method in which he would have their Accounts made up; but the said Earl, being afterwards convinced how Difficult and Tedious a Work it would be, and what Obstruction it would give to the Business of the Court, and that at last it could not be depended upon with any Certainty, was forced to lay aside that Design, and to content himself with going on in the same Road which his Predecessors had done; and humbly begs

leave to Observe, That what has been lately done, with respect to the Accounts of the said Masters, plainly shews the Insuperable Difficulties of such an Undertaking.

XVI. To the Sixteenth Article the Earl saith, That he believes that, on or about the Seventeenth of *March*, One thousand seven hundred and twenty three, such Order was made, as in the said Article is mentioned, for *Henry Edwards*, Esq; to pay *Elizabeth Chitty* one thousand Pounds, Part of the Money brought before Mr. *Dormer*, but does not remember that the said *Henry Edwards* made any Complaint thereof to the said Earl, but believes Mr. *Edwards*, not having then sufficient Effects of Mr. *Dormer's* in his Hands, refused Payment thereof; and that in *July* following, Mr. *Lockman*, in the Articles named, applied himself to the said Earl several times, and in a very earnest Manner, to help the said Mrs. *Chitty* to the said One thousand Pounds, alledging that he the said Mr. *Lockman* was to marry her, and that he had made a Composition with his Creditors, upon which One thousand Pounds was to be paid in a very short Time, which he then mentioned; and that he the said Mr. *Lockman* was to have the said One thousand Pounds for that Purpose; and that, if he had it not by the Time, the Composition would be Void, and he should be utterly Ruin'd; And at length the said Earl, being greatly moved by the pressing Importunities of the said Mr. *Lockman*, and by Compassion for the very great Distress in which he then appeared to be, did promise to supply him with the said One thousand Pounds out of his own Pocket, and accordingly directed Mr. *Cottingham*, then his Secretary, to pay it, taking from the said Mrs. *Chitty* an Assignment of the Benefit of the said Order, and believes the same was done accordingly; and that, upon Mr. *Lockman's* Pressing for a further Sum for the said Mrs. *Chitty*, for her own Use, the said Earl might tell him, that the said One thousand Pounds was all that he must Expect from the said Earl; and the said Earl does not believe that he had any Discourse with the said Masters to persuade them to pay the said One thousand Pounds to Mr. *Lockman*.

And as to the last Branch of the said Article the said Earl saith, That the Fact was, that one *Jackman*, having, in the Cause in the Article mentioned been Confirmed the best Purchasor of part of the Estate of *T. Harper* at the Price of Two hundred and sixty Pounds, so long ago as the Nineteenth of *December*, one thousand seven hundred and seventeen, and it being at the same time Ordered, That the Writings belonging to such Estate, should be delivered to his Council, and that the Tenants should Attorn to him, on his bringing his Purchase Money before Mr. *Dormer*, then one of the Masters, and the said Money having been brought before the said Master the Twenty fourth Day of *December*, One thousand seven hundred and seventeen, and the Tenants, having Attorned to *Jackman*, but the Conveyances not being then executed, though long before approved, a Motion was made in the Court of Chancery before the said Earl on the Fifth Day of *December* last, that all Parties might Execute the Conveyances, and the Two hundred and sixty Pounds be paid to the Plaintiff, towards Satisfaction of a Demand she had out of the Estate of the said *Harper*; and those that were to have the *Residuum* of the said *T. Harper's* Estate, insisted, that they were always ready to joyn in the Conveyances, if the Purchase Money were applied to Discharge the rest of the Estate, that they were Apprehensive of a Deficiency of Mr. *Dormer's* Estate, and therefore neither they nor the Plaintiff ought to be Sufferers by such Deficiency, the Delay having been occasioned by the Purchaser, and not by the Plaintiff, and therefore scrupled Executing the Deeds, unless upon Payment of the Money to the Plaintiff, and discharging the rest of the Estate therefrom; and this being the first Time that any Question relating to Mr. *Dormer's* Deficiency had been laid before the Court, by any of the Suitors, the said Earl took Notice of its being so, and believes he might Express himself to this Effect, That he had indeed heard of the said *Dormer's* Deficiency, but that it had never yet come Judicially before him, upon Complaint of any of the Suitors of the Court; and further Declared, That if there should be any Deficiency in his Office, several Circumstances had concurred thereto, as *Wilson* the Banker's stopping Payment, greatly Indebted to him, *Poulter's* going away in *Wilson's* Debt Eighteen thousand Pounds, and upwards, after a Verdict and Judgment at Law, and *Poulter* in Actual Execution for it; and that, as he had heard, *Wilson* had then lately brought an Action of Escape

against the Marshal, and recovered a Verdict against him for the like Sum; and how all these Matters would at last come out, the said Earl said he did not know, or he expressed himself to that Effect, and no other; and thereupon Ordered, that it should be referred to Mr. *Edwards*, to examine whether the said Two hundred and sixty Pounds was Deposited with Mr. *Dormer* for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Conveyances were not Executed, and the said Two hundred and sixty Pounds, Purchase Money, paid out before the Year one thousand seven hundred and twenty; and whether there was likely to be a Loss of any Money Deposited with the said Mr. *Dormer*, and that upon the Masters Report such further Order should be made, as should be just; and the said Earl hopes the said Order was very proper and necessary, and takes the Liberty of Representing to your Lordships, That this was after the Accounts of the Masters had been laid by the said Earl before the Lords of the Council, and had been for some Time under the Consideration of the Judges and others, appointed by His Majesty to inspect the same.

XVII. To the Seventeenth Article the Earl saith, That he never Endeavour'd to conceal the Deficiency Occasioned by Mr. *Dormer's* Failure, but as the said Earl was under a full Persuasion, that the same would all in due Time be made Good, and as Mr. *Dormer's* Effects were coming in by Degrees, and no Application was made to him by any of the Persons concerned, to put a Stop to, or any Restraint upon, the Payments, he did not think it Incumbent upon him, *Ex Officio*, to make a Declaration of an Average. And the said Earl saith, That he does not know that any Order was made by him for Mr. *Edwards* to pay any Money that had been lodged with Mr. *Dormer*, except the Order aforementioned, in the Case of *Chitty*, but believes several Orders have been made by the Court for that Purpose, and that the said Mr. *Edwards*, under a firm Persuasion that the whole Deficiency would be made Good, paid out the whole Sums so Ordered, so far as the Money then in his Hands would extend.

XVIII. To the Eighteenth Article the said Earl saith, He never knew how the Masters kept or disposed of the Money and Effects belonging to the Suitors of the Court; and as he believes, that after Dr. *Edisbury's* Failure, the then Lord Chancellor, so he knows that after Mr. *Dormer's* misfortune, the Earl thought of several methods to prevent any Inconvenience upon the like Accident for the Future; but they had both the same misfortune, not to bring any of them to such Perfection, as to venture to put them in Practice.

That Several Proposals were made to him by the Persons he consulted upon that Occasion, but none that he believes, it will be held Criminal not to have then Established; some Things were proposed that he thought Impracticable, some Insufficient, some Inconsistent with that compleat Regulation he hoped to make, the Objects he proposed to himself, were to Provide for whatever Deficiency might happen in the Office late of Mr. *Dormer*, to Secure the Suitors from any future Loss, and to make several Regulations relating to the Offices of the Masters, and he thought these would be best done together, nor had he perfected the Scheme of any One of them to his own Satisfaction; he Remembers no Proposal, that he thought would take it totally out of the Power of the Masters, to dispose of the Securities or Effects, or effectually Secure the Cash. The said Earl Admits, that he did not demand any Security to be given by any of the said Masters at the time of their Admittance, because it had not been done by his Predecessors, who were much wiser Men than himself, nor was he so much as asked by any of the Parties Interested so to do; as to what the said Earl did with Relation to the Accounts of the said Masters, he hath already set forth, and saith, That he gave no Permission nor Encouragement to the Masters of the Court, to Employ or Traffick with the Suitors Money for their own Gain or Profit; he owns, that with respect to the Securities in the Hands of the Masters, he made no General Order, and thinks it the less material, because, notwithstanding what is alledged in the Close of this Article, he believes all the present Masters did, in *December* last, Produce all the Securities in their Hands, and the Court of Chancery hath since Secured the same for the Benefit of the Suitors.

XIX. To the Nineteenth Article the said Earl saith, That upon great Consideration of Mr. *Dormer's* Deficiency, and of

the Danger there might be of further Inconveniences, with Relation to the Money and Effects in the Hands of the Masters, and of several Disputes and Differences that had arisen in the Court of Chancery, and of some Applications of the said Masters, for Establishing them in their just Rights, and of some Practices of the Masters, which the said Earl thought ought to be Reformed; he was Convinced, that the same was a work of too great Consequence for him Singly to Attempt, and being highly Sensible of His most Sacred Majesty's Paternal Goodness to His People, did presume humbly to Beseech His Majesty, as the fountain of Justice, to Depute some of His most Honourable Privy Council, to take the matters aforesaid into Consideration, in Order to the Establishing such Regulations, as might tend to the Honour of that High Court, and to the Advantage of His Majesty's Subjects being Suitors there; which Request, His Majesty out of His Wonted Goodness, was pleased to receive very Graciously, and Named several Lords, and other Honourable Persons of His Privy Council, to be a Committee, to take the same into Consideration; and pursuant to His Majesty's Command, the said Committee met, and began with the Accounts of the said Masters, wherein the said Earl begs leave to Appeal to such of your Lordships, who Attended in that Committee, whether he did not Contribute to the Utmost of his Power, to have every thing done which the said Committee thought Expedient: And the said Earl saith, that he made all such Orders as were by them Judged requisite, and so pressed the Execution thereof, that not only the Accounts of all the Masters then in being were brought in, but all the Securities in all their Hands, and the Cash of most of them were Actually Lodged in the Bank of England, and therefore the said Earl is greatly Surprized, to find himself Charged with Obstructing the taking those Accounts, which he had thus desired might be taken, and contributed to the taking of them with all his Power. And the said Earl saith, That he never thought of preventing a Parliamentary Enquiry, any otherwise, than by making it unnecessary, and procuring to the Suitors a full redress of all their Grievances, and rectifying whatever he found Amis, and that he looked upon to be his Duty, and begs leave to say it here Once for all, in Answer to all the several Insinuations of that kind contained in the Articles,

And the said Earl further saith, That while the said Accounts were taking, every one of the said Masters declared over and over, that they had Effects sufficient to Answer their whole Accounts, and the said Earl Firmly believed the same to be true, and as all of them, that he saw (which he believes were all, or at least all but Mr. *Kynaston*) had told the said Earl, that they were able to Answer their Accounts; and when they brought their Accounts to the said Earl, for him to lay before the said Committee, Mr. *Holford* had wrote under his Account some Declaration to that Effect, and some others of them, as he remembers, had made use of some other Expressions, which he thought not so proper; and some, as he believes, had wrote nothing (but he cannot Distinguish the Persons) and the said Earl thinking that when the said Accounts came to be laid before the Committee of Counsel by him, it would be proper that the same thing should be Declared to the Committee, which had been said to him singly, he Advised them all to Write the same Words under their Accounts, and did tell them, in great Sincerity and Friendship, that at a Time when so many Men's Mouths were open against them as Insolvent, it would be for their Honour and Interest to make it appear, that they were Able and Sufficient, as he then believed them to be, but never thought of a Contrivance to have them Deceitfully appear or seem what they really were not; and he says they did then withdraw to make the Subscription, or at least so many of them whose Accounts were then ready, and soon after deliver'd them to the said Earl, who carried them with him to the Committee of Council, whither he was then going, without looking upon them; but upon reading them at the Council, it was observed that they had not all used the same Words, having Varied considerably, but what any of the Subscriptions were, he cannot take upon him to set forth.

And the said Earl further saith, That a subsequent Order being made by the said Earl, for the said Masters to produce their Securities, and their Cash, before the Persons appointed to Inspect their Accounts, they made great Complaint, that so many hundred thousand Pounds should be required

at so short a Warning, and some of them saying; that though they had Effects sufficient, and could raise the Whole, if they had a little Time, desired the said Earl to allow them further Time for that Purpose; but the said Earl saith, That he required them to bestir themselves, and raise it immediately, telling them, that since they had Effects to give Security, they might find Friends to furnish the Money; and believes he did say, that some of their own Brethren might perhaps be able to let them have Money till they could raise it another Way.

But if any of them did supply others with Cash or Effects to produce, only to make a false Shew and Appearance of their Ability and Readiness to Answer the Ballance of their Accounts, the said Earl knows nothing of it, and is sure they had not the least Encouragement from him so to do.

XX. To the Twentieth Article the said Earl saith, That it never entred into his Thoughts, to make use of, nor did he ever make use of any of the Money belonging to the Suitors of the Court, for his own private Advantage, but believes, that in *December*, One thousand seven hundred and twenty, having Occasion for the Sum of One thousand five hundred Pounds, and Asking his Secretary, Mr. *Cottingham*, whether he could lend him the same, he said he could not, but would procure it for him, and accordingly Borrowed the same from Mr. *Godfrey*, one of the Masters of the said Court, and the said Earl gave his own Note for Payment thereof to the said Mr. *Godfrey*, and in *February* following Repaid One thousand Pounds, Part of the said Principal Sum; but in the same month of *February*, One thousand seven hundred and twenty upon a fresh Occasion, borrowed again Part of the said One thousand Pounds so paid back, and a Note or Notes were given for the Payment thereof; and some Time after the said Earl Ordered the whole money borrowed of the said Mr. *Godfrey* to be paid, with all the Interest due for the same; and the said *Godfrey* received the Principal, but would not be prevailed upon to take the Interest, or any Part thereof: And the said Earl saith, That all the said money was repaid within the Compass of a Year, after it was borrowed; and the said Earl declares, That he never received or borrowed any Sums of Money whatsoever of any of the Masters of the said Court, except as above set forth.

XXI. To the One and twentieth Article the said Earl saith, That upon the strictest Review of his own Behaviour, during the Time he had the Honour of Serving His most Sacred Majesty in the Office of Lord Chancellor, he is not Conscious to himself that he ever did, in any Illegal or Arbitrary manner, Extend his Power, or the Power of the Court, beyond their Lawful and Just Bounds, or that he did Arbitrarily or Illegally assume to himself, as Lord Chancellor, or by Colour of his Office, any unjust and unlimited Power of Dispensing with, Suspending, or Controlling the Laws or Statutes of this Realm, or that he any ways Oppressed the Suitors of the Court, or was guilty of any Breach or Violation of the Rights or Liberties of the Subject, or of his own Oath, as Lord Chancellor: And with regard to the particular Complaint against him in this Article, the said Earl saith, That *Rachel Tyson*, in the Article named, as the Earl is informed, caused a Bill to be Exhibited in the Court of Chancery, in the Name of her Son and Daughter, in the said Article likewise mentioned, by their *Prochein Amy*, against herself, and the said *John Tyson* and others, to have the Trusts in the Will of her late Husband duly performed; and the same was brought to Hearing at the Rolls the Seventh Day of *July*, One thousand seven hundred and eighteen, and by the Decree then made, It was amongst other Things Ordered, upon the Prayer (as the said Earl hath heard and believes) of the Council employ'd by the said *Rachel Tyson*, that a Receiver should be appointed of the Rents and Profits of the Real Estate, who was to have a Salary allowed him, and Power to Let and Set the said Estate, as there should be Occasion, with the Approbation of the Master, to whom the Cause was referred: And the said Earl saith, That an Execution of that Part of the Decree, which directed a Receiver to be appointed, the Master having certified that he had appointed *John Nicholas*, Esq; to be the Receiver of the Rents and Profits of the said Estate, the said *John Tyson*, thinking himself Aggrieved thereby, did, in the usual Course of Proceedings in the said Court, cause Exceptions to be Filed against the same, and upon the Arguing thereof before the said Earl,

by Council of both Sides, Affidavits were read, to shew that the said *John Nicholas* was an Improper Person; that the said Testator had declared in his Life Time, that the said *John Nicholas* by Name should not have any thing to do with the Management of his Estate; and that a considerable Part thereof consisted in old Houses and Water-works: And the said Earl, upon a Full Hearing of both Parties, was of Opinion, that the said *John Nicholas* ought not to be appointed the Receiver; and upon the Proposal of the said *John Tyson*, then in Court, Order'd *Robert Doyley*, Esq; to be Receiver, he giving Security to be approved of by the said Master; which Order was made, as he believes, on the Fifteenth of *January*, in the Year One thousand seven hundred and eighteen; and affirmed upon the Re-arguing the said exceptions on the Sixth of *March*, in the Year One thousand seven hundred and eighteen; since which Time the Parties Interested have never thought fit to complain thereof to your Lordship's by Appeal, in order to have it Reversed, as mistaken or Unjust, though now the making thereof is complained of as a crime; and the said Earl is not Ashamed to Own, that he was very well Acquainted with the said *Robert Doyley* for some Years before the said Order, and believed him to be a Person of great Honour and Integrity, Application and Exactness, and believes there are several Persons of Distinction, to whom he had the Honour to be known, who had the same Opinion of him; but the said Earl did not appoint him Receiver because of his own Respect for him, but because he was named by the said *John Tyson*, who was Uncle of the said Infant, and Executor of his Father's Will in Trust for him, and by the same Will appointed his Guardian in case of his Mother's Death or Marriage, and to whom the said Testator had Devised the said Estate, in case of the Death of the said Infant without Issue Male, and whose Interest it therefore was to take Care of the Infant's Interest in that particular; and the said *John Tyson* and Sir *Cesar Child* (whose Daughter the said *John Tyson* had Married) had such Confidence in him the said *Robert Doyley*, that upon the Eighteenth Day of *March*, One thousand seven hundred and eighteen, they entred into a Recognizance, together with him, in the Penalty of seven thousand Pounds, for the said *Robert Doyley*'s duly accounting for and paying the Money he should receive out of the said Infant's Estate; And the said Earl saith, That no Complaint was ever made to the said Earl against the said *Robert Doyley* to the time of his Death, but he owns that he hath heard, that upon the Master's Stating the Accounts since *Christmas* last, there does

appear due from the said *Robert Doyley* about Two thousand and five hundred Pounds, or Two thousand six hundred Pounds, but believes there is not any fear or doubt but that the same is very well secured by the said Recognizance.

And the said Earl saith, That he does not remember the particular Expressions used by the Council or himself, upon Aruging or Re-arguing the said Exceptions, but he cannot believe that any Council of great Ability and Experience in the said Court, would have thought what the said Earl did Extraordinary, much less would have used such an Expression to the said Earl as in the Articles, which is an Indecent Censure of his Proceedings; and here being a Decree in this Case, approved of by all Parties, that a Receiver should be appointed to receive the Rents and Profits of the Infant's Estate, the said Earl is at a loss to understand, how the fixing on the Person to be the Receiver, upon good Security, to account for and pay the same for the Infant's Use, is Reviving the Court of Wards, whose Business it was to take the Rents and Profits of the Infant's Estate for the King's Use, without Accounting for any of them to the Infant, but barely providing a Maintenance for him, at the Discretion, perhaps, of some Grantee of the Custody.

Thus the said Earl has laid his Case before your Lordships, and doth further, for Answer to all the said Articles, say, That he is not Guilty of all or any of the Matters contained in the said Articles, or any of them, in Manner and Form as they are therein Charged against him; And the said Earl doth further Insist upon the Benefit of His Majesty's most Gracious and General Free Pardon, granted to all His Subjects (not therein Excepted) in and by an Act of Parliament for that Purpose made in the Seventh Year of His Majesty's Reign, in Bar of, and in his Defence against the said Impeachment, and the said Articles exhibited in maintenance thereof, and all and every the Proceedings thereupon, so far as the same extend to any Neglect, Offence, or Misdemeanor, or Supposed Neglect, Offence, or Misdemeanor, or any other Act, Matter, or Thing, Suffered, Done, or Committed, or Omitted, by him the said Earl, before the Four and twentieth Day of *July*, in the Year One thousand seven hundred and twenty one, and doth humbly Insist, That no Evidence ought to be given against him for or concerning any of the Matters or Things aforesaid, in and by the said Act Pardoned, or any of them; and doth Aver, That he is not within any of the Exceptions in the said Act contained.

MACCLESFIELD.

## The COMMONS REPLICATION to the Answer of Thomas, Earl of Macclesfield.

**T**HE Commons have considered the Answer of *Thomas*, Earl of *Macclesfield*, to the Articles Exhibited against him by the Knights, Citizens, and Burgeses in Parliament Assembled, and Observe, that the said Earl hath Industriously Avoided giving a direct and particular Answer to several Matters positively and certainly Alledged against him in the said Articles, which, from the Nature of the Facts themselves, must necessarily Lie in his own Knowledge, and hath Attempted to Disguise and cover the real Crimes laid to his Charge, by Immaterial and Evasive Insinuations of Facts of a different Nature; and that many Parts of

the said Answer are Contradictory to, and Inconsistent with each other, upon which they might Demand your Lordships Immediate Judgment: Yet the Commons being able to Maintain the Truth and Justice of their Accusation, are willing to Enter into the due Examination thereof: and do Aver their Charge of High Crimes and Misdemeanors against the said *Thomas*, Earl of *Macclesfield* to be true, and that the said Earl is Guilty, in such Manner as he stands Impeached; and that the Commons will be ready to prove their Charge against him, at such convenient time as shall be Appointed for that Purpose.

Lord C. J. King. Gentlemen of the House of Commons, you may proceed as you please.

Sir G. Oxenden. My Lords, the Commons of Great Britain in Parliament assembled have, out of their indispensable Duty to His Sacred Majesty, and Zeal for the Security of the Estates and Properties of their Fellow-Subjects, exhibited a Charge of High Crimes and Misdemeanors against the Earl of Macclesfield, late Lord Chancellor of Great Britain, complaining of many dangerous and corrupt Practices, many grievous and heinous Offences committed against the good and wholesome Laws and Statutes of this Realm.

The first and principal Accusation of the Commons is, That the Earl at the Bar, whilst he continued in the Office of Chancellor, did illegally and corruptly insist upon, and take of divers Persons, several great and exorbitant Sums of Money, in Order to, and before their Admission into their Offices of Masters in Chancery; and that those Offices concern the Administration of Justice in that Court.

This, my Lords, is a Charge of the deepest Dye; The Crime alledged strikes at the very Root of Government itself; it is the Essence and Stability of Society, that Justice should be administer'd with Clearness and Impartiality, that the People may sit easy under the Wings and Protection of the Laws, and their Properties be guarded from unjust Invasions. In the Progress of the Charge your Lordships will observe, That almost all the other Crimes and Misdemeanors, of which this noble Person stands accused, are subservient to this chief Design of amassing together vast and immense Sums of Money, and that they have a Tendency to advance the Price of these Offices: Whether they be acts of unjust Oppression; of wilful Neglect; or of partial and unequal Administration of Justice: Whether they be Acts of open Violation of Duty, or of secret and private Intrigue to elude the publick Justice of the Kingdom: Your Lordships will find these Arrows drawn all from the same Quiver, dipt in the same deadly Poison, and directed to the same Mark.

In order to set this in the clearest Light, I must go on and observe, That the Commons charge in the next Place, That insufficient Persons were found out and pitched upon, to be admitted Masters of the Court, Men of small Substance and Ability; no ways fit to be entrusted with the great Sums of Money and Effects lodged in their respective Hands.

My Lords, The natural Qualities and Endowments requisite to recommend Men to so great a Trust ought to have been Honesty and Probity; The acquir'd ones, those of Knowledge and Experience; without a due Mixture of these it was very hazardous to admit any into Trust: But no doubt Credit and Competency of Fortune were Ingredients perfectly necessary; because whatever Loss, or Misfortune, might attend the Management of a Master so accomplished, in the ordering the Suitors Money, here might be some Provision coming out of his Estate to make Reparation. Your Lordships will, no question, at the first View, think it carries an odd Appearance, when this unfortunate Earl had resolved within himself, at all Hazards, to raise exorbitant and immense Treasures out of the Sale and Disposal of the Masters Places, how it should answer his corrupt Designs to admit into them Persons of small Substance, and some of almost desperate Fortunes, utterly unable to lay down the vast Prices those Offices were sold for at Publick Auction: But, my Lords, the Vastness of the Price was no Objection, or Discouragement, to a Person already undone, provided he might be made easy in

the Manner of Payment, and run no Hazards. Men of Substance might very well be afraid to *Present*, as his Lordship's Phrase is, a whole Estate at once for an uncertain and precarious Prospect, either of Success in the Office, or of Life, or Health, to enjoy it; so that the fittest Engines and Instruments to effect the noble Lord's Purposes, were Men of small and shattered Circumstances. And therefore the Commons go on and charge, That there was a fraudulent and unwarrantable Method made use of in paying for the Masters Offices out of the very Money belonging to the innocent Suitors of the Court.—That this Practice was notorious and publick, and the Person at the Bar well acquainted therewith. Your Lordships now observe, That the greatest Difficulty of all to an indigent Person, *viz.* the Payment of the Money, was, by this dangerous and unjustifiable Contrivance, totally removed, and when a Man was neither to be out of Pocket himself, nor thrown into any Fears and Apprehensions of being questioned for misapplying the Suitors Money, is it at all to be wondered at, that the Price of these Offices should swell to that Bigness, as long to be the Topick of Conversation in the World about us, and at last become the Subject of a National Enquiry? This scandalous Method of Payment is of the most malignant Kind, and a Suitor is, contrary to the Law of Nature, made the Instrument of his own Destruction; his Substance which ought to be his Support and Relief, is turned to his Oppression, or if Part only be taken from him, it is in order to arm another to dispossess him of the Rest. The great Person, whose Duty it is to protect his Property, is the Promoter of his Loss, and is the more unpardonable in it, as he turns that Loss to his own Advantage. If it be a Thing universally condemn'd, for a Person in the Earl's late high Station, to borrow a Suitor's Money without his Knowledge, notwithstanding he offers a moderate Interest for it, because it is encouraging the Masters, by his own Example, to lend out Sums with as much Justice to other People, How infinitely greater is this Offence? If it be a Crime to put Mens Properties to hazard, how much blacker is it to take them to one's self, and incorporate the Widow's Mite with one's own Heap! But, My Lords, when such prodigious Sums were extorted from the Masters, could it be any Mystery how they were to re-imburse themselves? For although they paid no Money of their own, yet they made themselves accountable for what they used of the Suitors; was it not an obvious Consideration, That if they dared pay for their Employments with part of the Trust-Money they meant to traffick and game with the Remainder too? They came in Masters upon such Terms, for no other Purpose but to pillage and fleece those under their Care. What must be the natural and unavoidable Consequence of lodging in their Hands such uncontrollable and licentious Power over their Cash, but that the first ill Run would crush them at once, and pave the Way to great Deficiencies! But lest the Prospect of so calamitous a Case should deter the most greedy from contracting for a Master's Place on Terms the most inviting, you will see, in the Series of this Affair, what Shifts, what Artifices were employed, to hide such a miserable Scene from the Eyes of the World. For the Commons in the next Place charge, That *Fleetwood Dormer*, Esq; having embezzelled great Part of the Effects belonging to the Suitors of the Court, died indebted to them in divers Sums of Money, amounting in the whole to 25000*l* and upwards; that the noble Lord at the Bar has not made any proper Inquiry into *Dormer's* Deficiency, taken no Care about his Effects, but has endeavoured to hide and conceal, from the Suitors, the State and Condition of the Office, and that this Concealment was, lest a publick Discovery of the Deficiency might lessen

lessen the unjust Gains he proposed to himself from the Sale of the Masters Places. Your Lordships observe here, That one Accusation is, a great and manifest Neglect in the Execution and Discharge of his Duty; a wilful and deliberate Neglect; not arising from the Infirmary of human Nature, but growing out of the Corruption of it; mitigated by no one Shadow of Excuse, but aggravated by the Attendance of many foreseen ill Consequences. If an Office abused in the most fatal Manner, on the Brink and Precipice of utter Destruction, was not a proper Object of his immediate Inspection, no wonder the more prosperous Offices did not deserve his Care; what Master, who was an Eye-Witness of this, would be under that decent and necessary Awe of the presiding Person, and keep himself within the just Bounds and Limits of his Office? This, my Lords, is indeed a wilful Neglect: But if you look on it in another Light, in Order to conceal the Deficiency, that the Value of the Masters Places might not be run down, it will appear, in its worst Colours, an Artifice to support and carry on a Fraud, a Contempt of Duty for the sake of Corruption. The Series of the Accusation will evidently shew, that the Earl's Heart was set upon this Concealment; for we shall now find him beginning to display his utmost Ingenuity; here was an Accident, which, unless great Care were taken, would entirely frustrate and blow up his Designs; were *Dormer's* Deficiency divulged abroad, and the whole Body of the Suitors (who had sure a Right, even from Compassion, to be taken care of) made acquainted with the ruinous Condition of his Office, who would answer that the Government itself might not have been alarmed, and a publick Inspection made four Years ago into the other Masters Accounts too? The Dread of a publick Examination now overbalanced all other Considerations; and as some of the Suitors (whose Intelligence and Sagacity were better than the rest) were daily pressing and soliciting for their Due, the Office-Money embezzell'd, no care taken to secure *Dormer's* Effects, all Supplies and Demands on *Wilson* cut off by the wretched and unwarrantable Composition made for the Suitors without their Consent or Knowledge: These Distresses and Difficulties pressing and surrounding this unfortunate Earl, it was necessary some Measures should be immediately concerted to prop and support this tottering Office; and therefore, my Lords, you will now find him arming himself with the Weapons of Authority and uncontrollable Power, and playing the Tyrant under the specious Pretence and Colour of Duty. For the Commons go on and charge, That the Person at the Bar, during the Time he was Lord Chancellor, made an Order for the Masters to bring in their respective Accounts of the Cash and Securities in their Hands; (a very proper Inspection, no doubt, had it been well-designed) but your Lordships will observe the Charge is, That this was done to terrify and induce the Masters to contribute Money towards *Dormer's* Deficiency; to conceal the true State of the Deficiency from the Knowledge of the World: and they further alledge, That in pursuance of this intimidating Order, Money was contributed for that Purpose, Part of which we shall prove to be paid since the Act of Grace, on the 11th of *August*, 1721. and that those Accounts were not insisted upon after that. My Lords, This Proposal met with its deserved Opposition from the Masters; however, the Apprehension of losing the Cash and Effects prevailed at last, the Point was carried, and a Sum accordingly contributed. When your Lordships have but just now seen that there was a very visible, and designed Neglect in forbearing to inquire into *Dormer's* Effects, and to go to the Bottom of his Deficiency; is it to be imagined, that this calling for the State of their Accounts cou'd be done out of Vigilance and Duty? No Man can think so; were

they ever insisted upon after the Contribution? His Lordship knows they never were; if the real Design was to search and examine them, it was as proper a Time to do it after the 11th of *August* as before, no body believes they were in a better Condition, the Masters had the same free Power of their Cash, and the Person at the Bar had as deep a Sense of his Duty after that Day sure, as before. If the Misbehaviour of *Dormer* gave occasion to this designed Inspection into the general Condition of the other Offices, how came it about the Design was never carried into Practice, till His Majesty, out of Compassion and Paternal Goodness to his oppressed People gave Directions for that End? The Deficiency of *Dormer* continues still, and yet the Earl impeached has made no Regulations in the Offices, examined no Accounts during the Time he remained in that high Post; nor set up any Lights, or Land-Marks, whereby the present deficient Masters might have cleared the Rocks on which they have split. No, my Lords, this was on'y a Pretence of Regulating; a Dissimulation of Duty, for the better Concealment of *Dormer's* Frauds. Besides, the Proposal that the Masters should contribute to the patching up a Deficiency in another's Office, is unjust in itself, and fatal in its Consequence. Can any thing be more repugnant to Justice than to oblige one Person to repair the Losses of another, incurred without his Knowledge or Fault? Or where is the Advantage to the Offices in general, allowing it to be just? if *Dormer's* Deficiency be supplied out of other Offices, will not those Offices miss those Supplies? and be as much impoverished in the general, as *Dormer's* is mended in particular? Surely, my Lords, there needs no Reasoning about this, the Thing speaks itself. The Commons take notice of an Alternative in this Article offered to the Masters, either to consent to a Contribution, or to be immediately stripp'd of the Cash and Effects; so that upon paying down the Sum demanded, a Master was confirmed afresh in the ill Conduct of his Affairs, he pays his Fine, and renews his Lease of Knavery and Impunity; his Books may be kept as close from Inspection as the Books of the Sybils, they contain alike the Destiny of Mankind, and he may go on with Authority to prey upon the Properties of the Fatherless and Widow; and no doubt the Master argues upon as good Grounds as the noble Earl; and concludes, that if for the Advantage of his unjust Schemes, the impeached Lord thinks it highly reasonable to extort Money from him belonging to the Suitors, which is never to be restored, it may, with Parity of Justice, be as decent for him to take the same Liberty with their Cash too, for the Service of his own. But the Commons detest the corrupt Practices of both, and expect exemplary Justice on the Great Offender at the Bar.

Thus far I have touched in a general Manner on the Management and Artifices used in the Concealment of *Dormer's* Deficiency, and, no doubt, it must create an universal Astonishment in your Lordships, how it could ever enter into the inmost Recesses of his Thoughts, that so great a Calamity as this could possibly be for ever hid in Darkness; that so torn and ghastly a Wound could ever heal of itself; or rather, that it should not by long Neglect become quite incurable.

Your Lordships will observe in the ensuing Charge, That Mrs. *Elizabeth Chitty*, an unfortunate Widow, having obtain'd an Order from the Earl at the Bar, by Virtue of which Mr. *Edwards*, *Dormer's* Successor, was to pay her 1000 *l.* part of a much larger Sum deposited in the Hands of Mr. *Dormer*, and *Edwards* refusing to pay the same, not having sufficient in his Hands, out of *Dormer's* Effects, to answer the said Demand. The impeach'd Lord did again make use of the same Artifices



fices and Stratagems to compel the several Masters to contribute this further Sum of 1000*l.* to stop the Complaints, and stifle the Murmurings of Mrs. *Chitty*; and did also intimidate them, by representing, That if the Deficiency were known, a Parliamentary Enquiry would probably ensue, and the Masters be deprived of their Offices, having bought them contrary to Law: This not taking Effect, the Commons Charge, That in order to accomplish his wicked and corrupt Purposes, he did himself pay the 1000*l.* into *Lochman's* Hands, for the Use of Mrs. *Chitty*, saying, this was the last Money she was ever likely to receive, by reason of a Deficiency in *Dormer's* Office. My Lords, You see here is a second Attempt, a fresh Endeavour to conceal the Deficiency by the Aid and Assistance of the same Measures made use of before, but backed by the Terrors of a National Inspection. The Continuation of these Arts is no small Presumption, that the End designed was unjust in the Earl's own Judgment. His Condemnation, in this Instance, arises and springs out of his own Arguments and Conduct. If a publick Discovery of this Deficiency would lay the Foundation of a publick and national Examination; What safer, what more expedient Measures could be concerted and taken, than immediately to satisfy Mrs. *Chitty's* Demands; by the Refusal of which, this publick Discovery, so much, and so justly apprehended, might come out? And what stronger Inducement could he lay before the Masters, why the Burden of this Payment should fall upon them, than by shewing in how fatal a Manner that national Examination would affect themselves? He represents to them their having purchased their Offices (and many of them of himself too) in direct defiance of the Law, and that it was their near Concern to avoid the Pit, in which they were likely to be swallowed up. My Lords, I take this to be a plain Confession of his Crime: Our Accusation is, That the Sale of these Offices is repugnant to Law and Justice; Here is his own manifest Acknowledgment that it is so, but aggravated and heightened by this flagitious Circumstance, That whilst he is reminding the Masters of that Guilt which he himself shared, he draws an Argument from that very Guilt, why they should assist him in a fresh Offence; and since they had already offended against the Laws of the Land, if they would avoid Punishment, the best way of doing it, was by a new Transgression. You have his own Word for it, that he knowingly exceeded the statutable Limits prescribed by the Wisdom of our Ancestors, for the Safeguard and Protection of the Rights and Properties of the *British* Nation. If the Buyer is Criminal, how can the Seller be Innocent? And yet his Lordship, it seems, knows of no Statute now in being, on which Judgment can be prayed in this Prosecution. 'Tis this wilful and deliberate Transgression of the Laws that has opened that Fountain of Iniquity which has drowned and laid waste the Fortunes of our Fellow Subjects.

In stating the Charge thus far, it is Evident, That neither a wilful Neglect of Duty has been wanting, nor a thorough Contempt of Justice; no Pains spared, no Artifices unemploy'd to plunge the Deficiency in *Dormer's* Offices in the deepest Obscurity: You have found him forcing and wresting a Contribution from the Masters; not such a one, my Lords, as would equally answer all Demands on the Office, but as a bare Sufficiency to satisfy the Importunities of Persons for the present, and thereby lull others into a destructive and fatal Security; To make a false shew and appearance of Ability in this Office, which the Masters were afterwards directed to do in theirs. Your Lordships shall soon find him acting another Part, and disheartning

*Lochman* from engaging any further in the Marriage with Mrs. *Chitty* (for the Sollicitations of a weak Woman to have her just Due might be easier dealt with) assuring him, that the Deficiency was such as must infallibly root out all future Hopes and Expectations on her Account; and yet the close of this Article sets forth, That so lately as the fifth of *December* last, this Earl sitting then in open Court, did, in a Cause depending before him, protest and affirm, That, for his Part, he knew nothing of *Dormer's* Deficiency, but as publick News. My Lords, If Truth and Sincerity are not to be found in the Seat of Judgment, where must we look for them? Where shall we place our Confidence, if there is no Dependence on the Affirmation of a Judge? Where shall we seek Examples worthy our Imitation, if the uprightest Places afford them not? But to pass over this unpleasing Scene, your Lordships will be pleased to take Notice, That the unfortunate Person at your Bar, in Hopes still to cover the Deficiency, made divers Orders on Mr. *Edwards* for the discharging and paying the intire and full Dues to some of the Suitors, whilst others were put off with an inconsiderable Share. Is there any Thing more Noble in the Mind of Man, than a Desire of distributing equal Justice? Without Equality Justice is destroy'd and sacrificed to the Passions and Infirmities of Men; and yet your Lordships will find there is no Virtue so lovely, no Principle so amiable, but must be abandoned and prostituted to the carrying on this wretched Scheme. Such is ever the miserable Fate of those who dip their Hands in Corruption; they engage originally in one Vice only, but are forced to adopt and cherish a number of others to keep that one a Secret from the World. For it becomes, at last, *necessary* to do injustice for the sake of Security; Peoples Necessities, tho' they may be alike, yet are their Passions quite different, and a necessitous and starving Suitor of a broken and worn-out Spirit might be turned away from his Lordship's Presence with a tenth Part of his Right, whilst one of a more obstinate Make, and a bolder Constitution, would insist upon, and wrangle for the whole. This Difference of Tempers might facilitate, possibly, such unjust Dealings for a Time; but could this partial Preference of one Person to another, in manifest Contempt and Violation of the Rules of Equality, be any otherwise of Service to this Noble Lord, or make any amends for diminishing Reputation, but by stopping the Mouths and Cries of the solliciting Suitors with such Proportions as would go down with them, prevent the Contagion from breaking out, and disappoint the Application of a publick Remedy? You see plainly the miserable Consequences the Sale of the Masters Places has been attended with; the fraudulent Method of Payment; the unjust and uncontrolled Abuses of the Masters; the great Neglect of *Dormer's* Deficiencies; the unjustifiable Concealment of it; the stretches of Art and Injustice in the Manner of doing it; 'tis one continued Series and Succession of Maladministration, calculated for the advancing the Profit and Gain of the Person at your Bar. Your Lordships would, no doubt, wonder else, why so great a Trust as upwards of a Million of Money, should be reposed in the Masters, without some reasonable Security on their Part, or some proper Restraint laid upon them for their due and fair Discharge of it, especially, since *Dormer* had broke, and brought upon the Sufferers so fatal a Misfortune: And this it is, my Lords, that raises the Resentment and Amazement of the Commons, who farther Charge, That, notwithstanding the Earl well knew that *Dormer's* Deficiency was chiefly occasion'd by the Liberty he assumed to himself of Trafficking and Gaming with the Suitors Effects, and that the other Masters did, or had it in their Power so to dispose of, or other-

wife misemploy the Money and Securities in their Hands; and, notwithstanding a reasonable and proper Scheme was laid before him, whereby the like Misfortune might be prevented for the future, yet the Earl never required any Security, or laid any Restraints on the Masters, but left them to the wide and boundless Liberty of abusing their Trust as Avarice and Ambition suggested Occasions. I will not enter into the Consideration how far it may have been the Practice not to require Security, I take it for granted, if none has been formerly demanded, it was because the Presiding Persons were vigilantly executing the Duty of their Offices, and by frequent Inspections into the Masters Accounts, restraining them from the Exercise of unwarrantable Power. But were that otherwise, bad Precedents, my Lords, will not justify Omissions; no, nor extenuate them, tho' I believe not any Instance can be produced, not so much as the Appearance of any, where it was so indispensibly and absolutely Necessary as in this Case; there was no need or use of any Example to remind him of it, common Prudence teaches us the Necessity of providing against Disorders or Losses for the Time to come, which our past Negligence has once brought upon ourselves or others; 'tis the only Attonement a Man can make for his former Faults; and if the Person at the Bar had had at Heart the least Intention of repairing the Breaches made in the Justice of that Court where he governed, here was the most fortunate Opportunity of doing it; for your Lordships shall find the very Masters themselves, in a manner, importuning and solliciting him to tie up their Hands by such proper and equitable Restrictions, as would put the fluctuating Fortunes of their Fellow-Subjects on the firmest Establishment. Had the Noble Lord listened to this Proposal (which will come more properly within the Province of another Gentleman to open to your Lordships) the unhappy Deficiencies in the present Masters Offices had been fortunately prevented, the Clamours of the World about us had been stopt, and the Nation easy. Did not Necessity demand it? The deplorable Havock committed since shews it did. Did not the National Voice call aloud for it? The Prosecution of this Day is sufficient Testimony. Was it not his Duty? Sure I am, it would have been his Happiness. And shall not the Ruin of Widows and Orphans plead for Punishment and Reparation? The Commons rely upon your Lordships Justice that they shall.

But, my Lords, there is a Charge behind, which contains Matter worthy your Observation; it sets forth, That his most sacred Majesty, out of his fatherly Goodness to his People, having directed an Enquiry to be made into the Accounts of the Masters in Chancery, in the Month of *November* last, the Earl impeached did, by his Advice and Authority, persuade and induce them to make false Representations of their Accounts and Circumstances to his Majesty in Council, and to assist one another with Cash and Effects to make a false Shew and Appearance of their Ability, that a Parliamentary Enquiry might be prevented; and did oblige them to declare in Writing, at the Foot of their Accounts, That they were able and willing to pay the Ballance, although the Earl well knew many of them were not. Your Lordships, sure, cannot but be astonished at the Boldness of this Attempt, to defeat and frustrate the gracious Intentions of his most sacred Majesty, to take from his unfortunate Subjects that Redress and Satisfaction, which their Duty and Loyalty, their Wrongs and Sufferings had claimed in his Royal Mind; to deceive his Majesty at the very Council-Table, where he had the Honour himself to sit; and to deprive the Commons in Parliament of that Inquisition for Justice, which the Nation ex-

pected at their Hands. The Dread and Apprehension of Parliamentary Justice is a strong Presumption of his Guilt. Why, my Lords, should publick Enquiries terrify and dismay an innocent Person? National Acquittals are eternal Monuments of Renown; they are more glorious and lasting than Pillars of Marble, or triumphal Arches; they remain upon Record to all Posterity, never to be defaced by the Malice or Teeth of Time. But, my Lords, as there are Monuments of Praise, so there are Columns of Infamy; there are National Condemnations as well as National Acquittals; and the noble Lord must now take his Fate in the Judgment of your Lordships, which he so much dreaded. It is an Evidence of a Man's Crime, if he flies for it; it betrays a Self-Conviction in the Party accused, in that he dares not abide a Legal Trial; it is another Circumstance against a Man, to be found tampering with a Witness, and carries with it some Presumption of his Guilt; because no innocent Person wants the Aid and Assistance of a false Evidence. Your Lordships have seen him as it were flying from his Tryal, and you will now find him tampering and intriguing with the Masters in the most dangerous and artful manner; and that the Masters are Evidence, and close ones too, will fully appear at your Bar. You shall find him colouring and glossing over the Masters Accounts, with Touches and Strokes of his own, hoping to shelter his own male Administration, by putting the Vizard of Integrity on theirs; *this* is the glorious Exit he makes; *thus* he finishes his *Impartial and Just Administration*.

My Lords, the Evidence to support this Charge will be opened to you, by the learned Gentlemen to whom the particular Proofs are assigned; I shall not therefore take up your Time in entering upon that which exceeds my Province; I only beg leave to hope for your further Indulgence, while I make a general Observation or two on the Nature of the Charge.

The Ground-work and Basis of this Noble Person's Crimes is Corruption, a thing in private Life the most detested, and in publick Persons of the most malignant Influence to the State. It deprives the Crown of that solid Strength and Grandeur, that shining Lustre and Beauty, which a just Execution of the Laws reflect upon it; it disarms the People of that Security and Safety which naturally flows upon them from an impartial and uninterrupted Administration of Justice. The Consequence of which will ever be, the Crown will lose that proper Reverence and Veneration from the People which are its Due; and the Subjects restless, and uneasy for want of Justice, will lay hold on the first Opportunity of throwing off Allegiance itself. It brings a National Reproach upon us; and, by sowing the Seeds of Discontent at Home, exposes us to the Incurfions and Depredations of our Enemies: But, my Lords, when it protects itself under the Shadow of Justice, and puts on the Smiles of Innocence, 'tis high time to rise up in Defence of our violated Laws, and set a publick Mark of Infamy upon it. To what purpose are Judges and Ministers restrained, by the Provision of Acts of Parliament, from selling Offices under their Protection and Care, if Men shall hide themselves under Example in bar of the Laws! Will Example plead for him? Surely, my Lords, there are none such: Or, if there were, what would that be but to defend Crimes by their own Blackness and Malignity? As if a Distemper were not to admit of any Remedy because it is general and contagious. But supposing, for Argument's sake, there have been Great Persons, his Predecessors, who have ventured upon small Presents and Gifts on such Occasions, does it follow, with any colour or pretence of Reasoning, because those have been confined within the Bounds of Moderation, there-

therefore the Extortion of exorbitant Sums, to connive at outrageous Measures and Oppressions, exceeding almost the Fears of the Oppressed themselves, should take shelter under the poor Pretence of Precedent and Example? Alas! my Lords, I am afraid Example only operates according to Mens Appetites and Passions; else whence comes it about, that Example should have all the Beauty of an Angel in this Instance, and all the Deformity and Horror of a Fiend, in another? His great \* Predecessor made no Attempts to conceal a deficient Office in his Time. No, my Lords, he had no corrupt Purposes to feed. The same Noble Person never ordered some Suitors their entire Demands, and left others groaning and starving under the Pressure of an unequal Distribution; he did the direct contrary. Happy had it been for this unfortunate Person, happy for the Widows and Fatherless, had he copied after the Example of his renowned Predecessors, in their wise and upright Distribution of Justice, as well as shewn to their eminent Names for Protection, in the illegal Practices wherewith he is charged! To what a low Ebb is the Virtue and Reputation of this Nation reduced, if Impunity shall justify Offences, if Bribery shall receive a Patronage from great Examples, and the basest Actions be adorned with the same Lustre and Honour, that are only due to the most virtuous. But, my Lords, the Commons have found him bargaining and bartering an † Office, in the Gift of the Crown, for the poor and sordid Advantage of an hundred Guineas. This is an Instance wherein the very Person of the King is insulted in the most flagrant manner; 'tis a Prostitution of the Regal Honour and Dignity, by one who had the Trust reposed in him, as one of the joint Guardians of the Realm during his Master's Absence: As if too there was no Access to the Throne for Grace and Favour, no tasting the refreshing Streams of that Fountain of Goodness, which rises in his Majesty's Breast, for the universal Comfort of a dutiful and happy People, but by the Assistance of the most abandoned Measures. Can your Lordships any longer wonder the People's Properties were employed to ill Purposes, when his Majesty's Prerogative is traffick'd with and sold? Could it be expected a poor Suitor's Rights should remain secure under his Protection, as Chancellor, when the King's were precarious in the Hands of his own Trustee? And yet, my Lords, how often and how gloriously has this Nation vindicated and asserted its own Honour, in the Ruin it has poured on the Heads of corrupt Judges and Ministers! It was the Loss and Forfeiture of all the Lands and Estate of Sir *William Thorpe*, Justice of the King's Bench, who was sentenced for Bribery in the Reign of *Edw. III.* Nay, the Sentence extended even to Loss of Life itself, though that part has been thought not sufficiently warranted, and should have ended in Imprisonment only. Every one knows the Vengeance hurled on the Earl of *Middlesex*, which is to be found in the Rolls of Parliament. This unfortunate Earl, having delayed Justice to the Farmers of the Customs, in a Matter referred to him by King *James I.* and having polluted his Hands with exorbitant Bribes, was sentenced in Parliament to lose all his Offices, which he held in the Kingdom; to be for ever incapable of any Office, Place, or Employment in the State; to be imprisoned in the Tower of *London* during the King's pleasure; to be fined 50,000 *l.* never to sit in Parliament any more, nor to come within the Verge of the King's Court. The Case of my Lord *Bacon* is another Instance of the Virtue and Integrity of your Ancestors, in the Abhorrence they shewed, and the Punishment they inflicted on that Great Man's Crimes.

My Lords, if the Offences committed by the Earl, and those of the Great Persons just mentioned were compared, and the Consequences naturally flowing from them, it would be found how much greater Guilt is comprehended in the Charge of this Day. I will not spend your Lordship's Time, in enlarging on a Distinction between Bribery *In* an Office, and Bribery *by Colour* of an Office; between Bribery in a Judicial Way, on account of Judgment in Causes, and Bribery in the Disposal of Offices, that concern the Administration of Justice; but only observe, that the Sale of the Masters Places, accompanied with the Circumstances I have already explained, is attended with more mischievous and oppressive Consequences to the Subject, than a Judge's accepting a Bribe in Causes depending before him. By means of the latter a Person is put to an extraordinary Expence indeed to come at his Right; or, if he is deprived of it by a corrupt Determination, yet still there is another Resource; and his Happiness is, that he may appeal to Parliament for Redress. But the Consequence of the other Case is, he can come at no Right at all; his Money is embezzled and lost, the Master runs away, the Chancellor is in the Secret, and there is no Remedy left. Is it any Excuse to say, That the Master is liable to answer for his own Frauds, and not the impeached Lord? I beg only to put the following Case. If a Keeper, who has undertaken the Care and Management of a Madman, wilfully neglects his Duty, sees the disordered Person going to do Mischief, and does not interpose, is not the Keeper responsible? Surely, my Lords, by the Law of Reason he ought. But what if the Noble Lord did not foresee the Mischief, and yet be the Occasion of it, from the Exercise of an unlawful Act, there is no question but he would be answerable. A Person intends to rob the King's Forrest, and shooting at a Deer, kills the Keeper, is not he guilty of Murder? No doubt he is: Because though he did not intend Murder, yet the Act he was about, was an unlawful Act. But, my Lords, the Person at your Bar has not this Excuse; he foresaw the Consequence, and his Intention was bad.

When the Commons consider the high Station in which this noble Lord was placed, the many signal Marks of his Majesty's Favour and Munificence bestowed upon him; the notorious Breach and Violation of his Oath, and of the several great Trusts reposed in him; when they have found him prostituting and abusing the Authority and Dignity of the Crown, trampling upon the Laws and Statutes of the Realm, destroying and confounding the Properties and Rights of divers of his Majesty's Subjects; the Commons could not sit still, and see this great Offender triumph in the Luxury of unpunished Crimes, without using their best and most effectual Endeavours to bring him to Punishment, and to make him an Example of the Justice of the present Age, a Warning and a Terror to Times to come.

Sir *Clement Wearg*, Solicitor General. My Lords, I have likewise received the Commands of the Commons, to lay before your Lordships the Evidence, in maintenance of the Charge of High Crimes and Misdemeanors, against *Thomas*, Earl of *Macclesfield*.

The Nature of the Charge consists;

In illegally and corruptly Selling and Disposing of Offices, which concern the Administration of Justice; in using and practising many indirect and unjustifiable Methods, for the keeping up the Price of such Offices, in order to advance his own unjust Gain,

\* Lord Cowper.

† Clerk of the Custodies.

My Lords, The Honour of every Government, and the Happiness of every Nation, depend upon nothing more than a strict impartial Administration of Justice; and the Justice of every Court depends not only upon the Uprightness of the Judge that pronounces the Decree, but likewise upon the Honesty and Unconcernedness of the lesser Officers, who are Assistants to him, and upon whose Reports and Representations his Decrees are founded.

It was doubtless from a just Sense of this, that the Legislature, in the fifth Year of *Edward VI.* in order to prevent such a corrupt Bartering for Offices, which was before that Statute, against Law, wisely provided, that where any Office, which concerned the Administration of Justice, not excepted in that Statute, was procured for Money, the Office should become void, and the Parties concerned in the corrupt Bargain disabled from holding it.

The Court of Chancery, in which the Earl presided, must be allowed, with regard to the Number and great Value of Suits instituted there, to be by far the most considerable Court of Justice within this Kingdom.

The Masters of Chancery are next to the Person that has the Custody of the Great Seal, and the Master of the Rolls, the great Officers of that Court.

They are, by Commission under the Great Seal, associated with the Judges in hearing Causes, and claim a Right to interpose their Opinions in the making of Orders and Decrees under that Commission.

They are intrusted by the Court to state and report Matters of Fact, upon the Truth and Fairness of which Reports the Justice of the Decree of the Court must depend. They are sworn to advise the Chancellor himself.

And of late Years they have been intrusted with the Effects and Estates of the Suitors of the Court, to an immense and incredible Sum.

My Lords, great part of the Charge against the Earl consists in setting up those Places to Sale, in using unwarrantable Methods to encourage Purchasers, and increase the Price.

It is Matter of great Surprise, to find in his Lordship's Answer an Insinuation, That it is not illegal, or against any Statute, to sell those Offices.

Surely, my Lords, there are no Places, that concern the Administration of Justice, more improper to be sold from the Nature of them, or the Selling of which is more evidently against the Statute of *Edward VI.* than the Masters in Chancery, unless it be Judges themselves.

But it must be owned, the Expressions made use of by his Lordship are conceived in such doubtful Terms, that it is difficult to know whether he intends to represent the Lawfulness of selling those Places for a Price, or only of taking a Present which the Party gives freely, voluntarily, and of his own accord, and which his Lordship says his Predecessors used to take.

There possibly may be a Difference between a Present and a Price; if there is, it is the latter his Lordship is charged with taking; a Price fixed by his Lordship, insisted upon, haggled for, and with Unwillingness paid by the Purchaser.

But, my Lords, even this may be said to be nothing more than an Offence against the Statute of *Edward VI.*

which as it creates the Offence, so it prescribes the Punishment,

Where the Person admitted to the Office is in all Respects equal to the great Trust reposed in him;

Where the Price given bears a Proportion to the lawful Gain arising from such Office, there may be some pretence to say, It is only an Offence against that Statute.

But if Persons are admitted to an Office, by which they are intrusted with near 100,000 *l.* and give as much, or more, for that Office, than their whole Substance amounts to;

If the Price they give is greater than can possibly be given, by one who would be contented with the honest Profits of the Office; if that Price is paid for out of the Money of the Suitors of the Court; if, to make the Officers amends for giving such extravagant Prices, they are connived at, indulged, encouraged to traffick with the Money and Effects of the Suitors of the Court, lodged with them for safe Custody only;

This is something more than barely an Offence against the Statute of *Edward VI.*

'Tis selling a Licence to abuse and defraud the Suitors of the Court, and making the Suitors themselves pay the Price of that Licence.

It is this the Commons have charged the Earl of *Macclesfield* withal. And this surely is Illegal, and against some Law or Statute in being.

My Lords, the ill Consequences of this Practice are very obvious; the least of them is a Delay of Justice, from the Masters using Shifts and Excuses to continue that Money in their Hands, which they are allowed to make a Gain by, and which probably, when called for, may be locked up by some hazardous Contract.

But the most fatal Consequence is, what cannot be mentioned or thought of, without feeling the greatest Compassion for the unhappy People concerned in it, the Loss which the Suitors of the Court are likely to sustain by it. The Hazard was all theirs, but the Gain belonged to others.

My Lords, whatever Excuses might be made for his Lordship, from the great Variety of Business his High Office engaged him in, which might prevent his Attending to those Things, an Accident happened in his Lordship's Time, sufficient to awaken the most engaged Attention.

When *Dormer* withdrew from his Office, the Masters themselves were alarmed at it.

When it appeared his Misfortunes were brought upon him by trafficking with the Money of the Court, and lending it to Goldsmiths at 10 *l. per Cent.* they expressed a Concern for the Suitors of the Court.

And, to prevent the like Mischief for the future, a Proposal was made to his Lordship by one of them, That the Masters might give some Security for the Money in their Hands; that the Effects might be put in the Name of more than one Master, to prevent their being trafficked with.

This might have prevented the Mischief for the future, at least in some Degree.

But who then would have given 6000*l.* for the Purchase of a vacant Place? Who would have given 1500 *Guineas* to procure an Admission?

For these Reasons the Commons charge the Proposal was not listned to, was not put in Execution.

My Lords, another Accusation against the Earl consists in his amusing the Suitors of the Court, with a false Representation of the Masters Substance, by declaring from the Bench, That they were Men of as good Fortunes as ever filled those Places.

Such an Encomium from a Chancellor would have been a great Honour, had all the Persons really deserved it.

But it surely reflects Dishonour, if spoke at a Time when scarce any one Person, who heard it, could give credit to it.

When it was the Subject of common Conversation, that one third of the Masters had given as much, some of them more, for the Purchase of their Places, and to procure their Admission, than they were worth in the World at the Time of their Purchase. And the Person, for whose sake the Compliment was made, least deserved it of any; having but lately been a Receiver of a County, nominally discharged by substituting his Brother into his Place, and having paid off a large Arrear, soon after he got the Money of the Suitors into his Hands, out of that Money.

But there was then a Master's Place vacant.

His Lordship is further charged with endeavouring to conceal the Deficiency in *Dormer's* Office;

With making a trifling, precarious Composition, for a large Debt assigned for the Benefit of the Sutor, in a very unwarrantable manner;

With making Orders for the Payment of Money out of that deficient Office, without regard to the other Suitors, who were entituled to a Proportion of what was left.

His Lordship seems to intimate, That he never thought there would be any Deficiency in that Office, but is under a full Persuasion that all would be made good.

How that is consistent with his quitting 1500 *Guineas* from the Danger of a great Loss in that Office, I shall submit to your Lordships; but surely the Manner in which *Dormer* withdrew was a strong Symptom of a Deficiency, when the Masters intrusted to secure his Effects found little more than the Debt from *Wilson* to answer a Ballance of near 40000 *l.*

When that Fund was reduced to nothing by a Composition made for half that Sum upon a Beggar, who has since escaped out of Goal and absconds for Debt.

From whence those full Assurances could arise, we must wait to hear from his Lordship.

That his Lordship did endeavour to conceal this Deficiency, needs no other Proof than his not doing any one Act in publick relating to it.

Had Mr. *Dormer's* Person been rendered sacred, by that extraordinary Promise of Security, mentioned in his Lordship's Answer, yet he might have been examined upon Interrogatories to disclose his Effects.

The Suitors might have had some Warning to have

used their Diligence in discovering his Estate, and preventing any Concealment of it.

Nothing of this done, but on the contrary; upon an Application by one of the Suitors to have his Money transferred to another Master, from an Apprehension of Loss, after *Dormer* had absented himself from the Office; he was informed from the Bench, that his Fears were rash, the Master only gone to take the Air, and that all would be well.

From this Time every thing was carried on with the greatest Privacy between his Lordship and the Masters.

Orders were made for the Payment of Money out of that Office, as if it had been clear from all Suspensions of Loss, contrary to that Rule of Equality, which is a fundamental Principle of a Court of Equity, That where several Persons have Demands out of a Fund like to prove deficient, they must bate in Proportion.

And altho' where that Fund is in the Hands of private Persons to be paid by them, it may be intelligible to talk of judicial Knowledge, and an *ex Officio* Declaration of an Average,

Yet where the Fund is in the Hands of the Court, the Payment to be made by the Court, and the Loss sustained while the Court was possessed of that Fund.

Every Knowledge of such Loss is judicial, and the Court ought in Justice, by what means soever the Knowledge of that Loss comes before the Court, to direct the Payment in Proportion only.

There is but one Article more that I shall take particular Notice of, whereby his Lordship is charged with endeavouring to disappoint His Majesty's gracious Intent of having the Accounts of the Masters, and the State of their Office enquired into.

His Lordship, to put a Stop to such Enquiry, persuaded several of the Masters to make a false Appearance of Substance, and a Shew of Readiness to pay over the Money and Effects of the Suitors of the Court in their Hands.

This was not only a Breach of his Duty as Chancellor, but a great Violation of that high Trust reposed in him as he was a Privy-Counsellor; And if his Lordship did at the same time in Council seem to promote every Step taken there, that is a very great Aggravation of his Crime.

Such, my Lords, is the Nature of the Charge, which the Commons have exhibited against the Earl of *Macclesfield*; which they are able to make good by plain and clear Proof.

Sir *William Strickland*. My Lords, The Gentlemen who have spoke before me, having fully opened to your Lordships the general Charge against the Earl of *Macclesfield*, it is my Province, and that of the Gentleman who is to speak after me, to open the Evidence we shall produce to make good the several Facts contained in the 5th, 6th, 7th, 8th, and 9th Articles; but as the ninth differs very much in its Circumstances from the other four, I shall say nothing to that Article, but leave that to the Gentleman to whom the opening of these Articles is likewise allotted.

My Lords, We shall shew you, that notwithstanding the many great and beneficial Favours bestowed upon this Earl by the bountiful Hand of his Majesty; that all those Honours conferr'd upon Himself and his Family;

Family; the *Dignity* of his high Office, and the great *Trust* reposed in him, have been *prostituted*, in order to satiate a *boundless Appetite* for *unlawful Gain*.

This I shall now particularly proceed to shew, by mentioning to your Lordships, in the first Place, the several *Grants* which the *Earl*, in his Answer, has *own'd* to have *receiv'd*; and, afterwards, by opening the Evidence, the Commons will produce, to make good their Charge contain'd in the *5th, 6th, 7th, and 8th* Articles above-mentioned, which relate to the *illegal and corrupt* Admission of four Masters in Chancery.

The first beneficial Grant the *Earl*, in his Answer *owns* to have receiv'd from his Majesty, before the Honour of Peerage was conferr'd upon him, was 1200 *l.* a Year granted to him and his Assigns, during the Life of his Majesty, in, or about *June 1716*; in the next Place, that in the Year 1718 he was created *Lord High Chancellor of Great Britain*; and, that at the same Time, his Majesty, out of his Royal Bounty, did bestow upon him 14000 *l.* and likewise granted to his eldest Son, now *Lord Parker*, an annual Pension of 1200 *l.* payable during the joint Lives of his Majesty and the said *Lord Parker*, but determinable whenever he should be put into Possession of one of the Offices of a *Teller* in the *Exchequer for Life*, and which Office he has since obtained; and over and above all these *great and beneficial Grants*, the usual Salary of 1500 *l.* a Year out of the *Hamper Office*; the other great *Profits and legal Perquisites* of his high Office, the *Earl* owns to have had an Allowance of 4000 *l.* a Year. As these were all Marks of the greatest *Honour, Esteem and Confidence* from his Great and Munificent Benefactor, so surely they ought to have produced in him all suitable Returns of *Gratitude*, by a *just and impartial* Execution of the *Trust* reposed in him, to the Honour of his Majesty, and the Good and Welfare of his Subjects.

But my Lords, The Thirst of Gain was predominant; and in pursuance of that, he did, in a Manner highly *derogatory* to the *Dignity* of the Office he then bore, *illegally, corruptly and extorsively*, by *Himself* and *Servants*, treat and barter for the Sale of Offices of Masters in Chancery, which Offices concern the Administration of Justice; and, in the same Manner, did take very great Sums of Money for their *Admissions* into the said Offices.

I must take Notice that his Lordship, in his Answer, does not *deny* to have taken all the several Sums laid to his Charge by the Commons, on the Admission of the Masters, mentioned in the Articles of Impeachment, to their respective Offices; but alleges that he took them as *Presents* only, *freely and voluntarily* given, and such as had been *usual* on such Occasions. But, my Lords, we shall shew you that the Sums of Money taken by him were taken in the Manner alleged in the Articles; and by the Evidence I shall now open, your Lordships will see how very *different* this Matter will appear from that which the *Earl* would insinuate in his Answer; I shall begin by opening the Evidence to the *5th* Article, which relates to the *illegal and corrupt* Admission of *Mr. William Kynaston* to the Office of a Master in Chancery, in *August 1721*. We will shew you that before *Mr. Kynaston* was admitted to be a Master, he was advised by *Mr. Rogers* (with whom he had then contracted for the Sale of his Office for 6000 *l.*) that the *Lord Chancellor* would expect 6 or 700 for his Admission; upon this he applied to my Lord's Secretary, *Mr. Cottingham*, (who appears to have been the *Broker* on all these Occasions) and desired to be recommended to the *Chancellor* for that Office, and told *Mr. Cottingham*, that if it was

necessary he could obtain my Lord *Bradford's* Recommendation; the Secretary only answer'd, that another Master had given 1500 *Guineas* on the same Occasion; *Mr. Kynaston* then offered 1000 *l.*; *Cottingham* reply'd, he could mention nothing *less* to the *Lord Chancellor* than 1500 *l.*; but being afterwards asked by the Person who was to pay the *Money*, what Sum would be *insisted on*? Answered, It must be 1500 *Guineas*, nothing it seems was to be abated, for this (*Mr. Cottingham* told *Mr. Kynaston*) was one of the *best* Offices, being the fullest of *Money and Securities*. *Money and Securities*, my Lords, the Property of the Suitors of the Court; and how *fatal* the Masters making Use of such *Money* for their *own Profits* has been, in order to *reimburse* themselves for the very great *Sums* paid for their Offices, is now too severely felt by Numbers of helpless *Orphans and injured Suitors*. *Mr. Kynaston*, however, seeing no Possibility of Admission without paying the whole Sum of 1500 *Guineas*, comply'd at last, sent the *Guineas* to *Mr. Cottingham*, who afterwards paid it to the *Chancellor*; and the next Day *Mr. Kynaston* was admitted and sworn a Master.

I come now to open to your Lordships, the Evidence which we shall produce to make good the *6th* Article, which relates to the *illegal and corrupt* Admission of *Mr. Thomas Bennet* to the Office of a Master in Chancery.

*Mr. Thomas Bennet*, about *May, 1723*, bargain'd with *Mr. Hiccocks*, then a Master in Chancery, for the Sale of his Office, at the Price of 7500 *l.* The next Thing to be done, was to apply to *Mr. Cottingham*, which he did, desiring to be recommended to my *Lord Chancellor* for that Office. *Mr. Cottingham* did recommend him, and told him, that the *Lord Chancellor* had no Objection to him, that he knew his Father, and should be glad to *oblige* him; the Compliment, however, ended with a Proposition of a Present, as he *call'd* it, and said, he indeed would name no Sum, but that his Brother, then a Master in Chancery, and *Mr. Godfrey*, would easily Chalk out a *Method* for him. *Mr. Bennet*, my Lords, after consulting these Gentlemen, offer'd 1000 *Guineas*; *Mr. Cottingham* shook his Head, and said, he did not care to go to the *Chancellor* with an offer of that Sum, that more had been given, and he hoped *Mr. Bennet* would not lower the *Price*. *Mr. Bennet* gave some Reasons why he hoped *Lord Macclesfield* would accept the 1000 *Guineas*, and said he did not care to give more; *Mr. Cottingham* again told him, he did not care to go with that Message; upon which *Mr. Bennet* asked him what had been given by other Masters; *Cottingham* told him 1500 *Guineas*.

However, *Mr. Bennet* again desired he would go to the *Chancellor*, and said that if the Sum he had offered would not do, he would give 1500 *l.*; *Cottingham* desired to be excused from going on that Message, and said my Lord did not love Haggling; and that if *Mr. Bennet* would give no more, he might lose the Office, for that if the *Chancellor* should refuse that Sum, he would not go with any other offer; upon this, my Lords, *Mr. Bennet*, at last, consented to give the 1500 *Guineas*; and this will appear to have been what the *Lord Macclesfield* calls *Mr. Thomas Bennet's free Gift*. The *Guineas* were paid to *Mr. Cottingham*, who paid them to the *Chancellor*, for which *Mr. Bennet* was admitted into his Office, which appears to have cost him 9075 *l.* and that very Sum, upon the making up of his Accounts, appeared to have been wanting in his Office, for the making up of his *Ballance* due to the Suitors of the Court.

I must take Notice to your Lordships, that the Lord Macclesfield, in his Answer, alledges, that the said Kynaston and Bennet pretending they were disabled from answering to the Suitors of the Court, so much Money as he had taken from them at their respective Admissions, the said Earl did, before the Impeachment, pay into the Court of Chancery, for the Use of the Suitors to that Court, the two several Sums received by him from Mr. Kynaston and Mr. Bennet; but, my Lords, that we shall shew to be a gross Mistake in the Answer, for we shall prove the said Sums were not repaid by him till after the Impeachment, and after they had by Affidavit charged the Payment of these Sums as one Cause of the Deficiency in their Offices:

I come next to shew the Manner in which Mr. Francis Elde was admitted to his Office of a Master in Chancery, which happened in February, 1723. upon the Death of Mr. Fellows; we shall shew your Lordships, that Mr. Elde applied personally to the Chancellor, who told him he would treat with him in a different manner from any Man living; in two or three Days after this he applied again to the Earl for the Office, and then did mention a Sum of 4 or 5000 l. my Lord told him, Mr. Elde and I must not make Bargains. So, my Lords, Mr. Elde after this went to Mr. Cottingham, and told him of his Intention to give the Chancellor 5000 l. Mr. Cottingham advised him to make it Guineas. And, in pursuance of this Advice, Mr. Elde did, on or about the 1st of Febr. 1723. carry to the said Lord Macclesfield's House 3000 Guineas, and 2100 l. in Bank-Notes, muffled up in a Dutch-Basket, which he sent up to my Lord by Mr. Cottingham, who left it with his Lordship, brought down word all was well, and within a Day or two after Mr. Elde was sworn into his Office.

I would observe upon this, That a Present, which might have been innocently made, and as innocently received, had needed no such secret Conveyance. But, my Lords, the Suitors of the Court now began to be awakened by the Apprehensions of their Losses, and the Voice of the People to exclaim against that infamous manner of admitting Masters in Chancery; and therefore I presume, my Lords, Privacy was now come to be thought so necessary, that the Secretary himself, tho' concerned in the Transaction, was kept ignorant of the Contents in the Basket.

I come next to open the Evidence we will produce, to prove the illegal and corrupt Admission of Mr. Mark Thurston to be a Master in Chancery, as it is laid in the VIIIth Article. He succeeded Mr. Borrett about the 5th of August last past: And, my Lords, notwithstanding what the Earl of Macclesfield alledges in his Answer, That he was informed by Mr. Godfrey and Mr. John Bennet, that there was like to be no Deficiency in that Office. We will shew your Lordships, That before Mr. Thurston's Admission there was a great Confusion in it; and that his Lordship must have forgot himself, when he says he ever was acquainted by those two Masters, that there was like to be no Deficiency in that Office.

This, my Lords, the Commons will produce to shew, That, notwithstanding the very great Losses already sustained by the Suitors of the Court of Chancery, from the great Prices given by the Masters for their Offices, the great Confusion then in that Office, and in which there is a Deficiency of more than 10,000 l. yet, in the same unlawful Pursuit of Gain, he did admit Mr. Mark Thurston to the Office of a Master in Chancery, for the Sum of 5000 Guineas. The manner of it was thus, my Lords.

Mr. Thurston, upon Mr. Borrett's Death, applied to Mr. Cottingham about that Office, and the Price agreed upon betwixt them was 5000 Guineas; with this Agreement Lord Macclesfield was acquainted, and seemed to agree to it: But afterwards, upon a Report's being spread, that Lord Macclesfield designed to give the Office to Dr. Sayer, Mr. Thurston (well advised no doubt) applied to Lady Macclesfield; and, after many Arguments used to persuade her to write to my Lord in his Favour, produced at last, 5000 Guineas in Bank-Notes, which had their desired Effect; my Lady wrote, and Mr. Thurston in two or three Days was admitted to his Office.

My Lords, I will make this Remark upon this Transaction; That the taking such an extravagant Sum of Money for an Office, in which there was like to prove a great Deficiency, was so far from being thought blameless even by the Earl himself, that it looks as if this Way was necessary to be found out, to hide this Transaction too from the Secretary, who had had the first hand in it: And, to take all cause of Suspicion away from him, he was ordered to be sure to take no Money from Mr. Thurston, on account of his Admission; which he observed so religiously, that I think he scrupled even his own Fees.

Before I conclude, my Lords, I must take notice of an Expression in the Earl's Answer to the two last Articles I have mentioned.

That, of the Money he received from Mr. Elde, he retained no more than 1850 l. and, of that received from Mr. Thurston, no more than 2000 l. By this, I presume, the World is to believe, the Earl made an immediate Restitution of the Remainder of the Money: But, my Lords, we will shew you, that no Money was returned to Mr. Elde till November last, a Time that he stood in need of it to shew and produce his Balance; nor to Mr. Thurston till October last, at which Time it was evident an absolute Stop must be put to the infamous Practice of Stock-Jobbing with the Suitors Money; and which of consequence would put those two Masters out of a Possibility of reimbursing themselves the great Sums so lately paid for their Offices.

My Lords, the next thing we shall prove will be, That in all these Transactions Mr. Cottingham has acted by my Lord Macclesfield's immediate Directions; and when we have proved that, and the several Facts I have now opened to your Lordships, I doubt not but you will be of opinion, That we have fully made out the Allegations in the Vth, VIth, VIIth and VIIIth Articles, in their utmost Extent; and that the said Earl has taken the several Sums, laid to his Charge, illegally, corruptly and extorsively, in Breach and Violation of his Oath as Lord Chancellor, and of the great Trust in him reposed, contrary to the Duty of his Office, and against the good and wholesome Statutes of this Realm.

Mr. Doddington. My Lords, I am commanded by the Commons to assist the Gentleman who spoke before me, in making good the Vth, VIth, VIIth, VIIIth and IXth Articles against the Earl of Macclesfield, which relate to his taking Money for Offices.

The Commons look upon this part of their Charge as a necessary Foundation of the whole, because from this insatiate Desire of Gain has sprung all the Evils and Mismanagement, charged upon the Earl in the rest of the Articles.

The Charge against the Earl in four of these Articles is, in short this, That he took several great Sums for the Admission of several Persons into the Office of Master in Chancery; and that he took them illegally, extorsively, corruptly, in Breach and Violation of his Oath as Lord Chancellor, and of the Trust in him reposed.

My Lords, these Facts have been so clearly stated to your Lordships, and the extorsive and corrupt manner in which they were committed, in Breach of his Oath as Lord Chancellor, so strongly enforced by the Gentleman who spoke before me, that I shall not trouble your Lordships upon those Heads.

As to the Illegality of such Practices, that have been laid before your Lordships by the learned Gentleman who opened the general Charge; and, I do not doubt, will be further explained by other Gentlemen, to your Lordships Satisfaction: But when the Earl is pleased to say, in his general Answer to all these Articles, "That he hopes receiving Presents on such Occasions is not criminal in itself, or by the Common Law of this Realm, and that there is not any Act of Parliament by which the same is made criminal" Though I have not had the Happiness to have been bred to the Profession, I must beg leave to remind him of the Statutes of *Richard II.* and *Edward VI.* as to the Statute Law: And by all that I have ever heard, or can learn, the whole Tenor and Meaning of the Common Law does disapprove and condemn such Practices, (though possibly it has not been an adjudged Case) And the Statutes I have mentioned are one Proof of such Meaning of the Law, to me, at least, who have always looked upon them to be Comments and Declarations, made from time to time to explain and enforce such Construction.

Putting up Offices of Justice to Auction, my Lords, is repugnant to the Dictates of plain Reason, and consequently to the whole Sense and Spirit of the Common Law of this Realm, which is founded upon Reason; and in this Repugnance to the Intent and Meaning of the Law of the Land, lies this Offence, (in my poor Judgment) as to the Illegality of it.

We hope therefore, my Lords, (when we have given our Evidence) that it will fully appear to your Lordships, from what we have opened, That the Earl of *Macclesfield* has taken the Sums charged upon him; and that he has taken them, as they are charged in the Articles, extorsively, corruptly, illegally, in Breach and Violation of his Oath as Lord Chancellor, and of the Trust in him reposed.

I am now come to the IXth Article, which I am commanded to open to your Lordships; and, indeed, it is a most extraordinary Instance of human Frailty: The Earl of *Macclesfield* here is not charged with taking Money of a Person who received an Office from him, but of one who quitted an Office; not for an Admission, but for a Resignation.

I believe this is the first Instance, my Lords, where any Person, on the other Side of this Bar, was ever accused of forgetting his own Dignity, the Dignity of the August Body he belonged to, and the Honour of his Sovereign, whose Counsellor he was, and whose Royal Authority was, at that time, lodged in his Hands, for an hundred and five Pounds. This is so amazing, that did I not know there was full Evidence, to the most minute Parts of this Charge, I myself should not believe it; and I am sure your Lordships Hereditary Greatness of Mind must make it so inconceivable to you,

that I shall need all your Patience and Indulgence in what it is my Duty to state to your Lordships, till you hear the Evidence we shall produce.

The Case, my Lords, is this: Mr. *Thomas Bennet*, one of the Masters mentioned in the VIth Article, soon after his Admission, was desirous to part with his Office of Clerk of the Custodies, (which is in the Gift of the Crown) to Mr. *Hammersley*; but being unwilling to do any thing, without my Lord *Macclesfield's* Approbation, he applied to Mr. *Cottingham*, his Secretary, to obtain it upon this Occasion. Mr. *Cottingham* promised to acquaint his Lordship with this Request. In a few Days Mr. *Cottingham* told Mr. *Bennet*, that he had acquainted my Lord with his Design, but said, a Present was expected of him; and asked him, what he would give? (Your Lordships will observe, that this was their constant Method, in driving all these Bargains; for they were conscious that they were doing what was illegal) Mr. *Bennet* replied, That he did not apprehend that any thing was due to my Lord on this account; for that he succeeded his Brother, Mr. *John Bennet*, and neither himself, nor his Brother, made Lord *Cowper* any Present: And further added, That he hoped my Lord would not insist upon any thing, on so trifling an Occasion, since he had so lately paid him so considerable a Sum. But still *Cottingham* insisted that a Present was required. Upon which Mr. *Bennet* seeing himself so hard driven, said he would give my Lord 105 *l.* In a few Days *Cottingham* told him, That my Lord accepted the 105 *l.* but that he was to look upon it as a particular Favour, that he accepted so small a Sum; and that if he would bring the Money to him, *Cottingham*, he need take no farther Trouble, for my Lord would apply to the King, for Leave to resign. Accordingly on the 28th of *July*, 1723. Mr. *Bennet* carried a *Bank-Note* of 105 *l.* to *Cottingham*; and, in about three Weeks time, (your Lordships will be pleased to remember, that his Majesty was then abroad) *Cottingham* told him, that the Sign Manual was come over, and chid him for not taking out the Patent; The Consequence of which was, Mr. *Bennet* did take it out, and when it came to the Great Seal, no Consideration was had of what he had given before, but it cost him about 64 *l.* for the Seal.

We shall call Mr. *John Bennet* to inform your Lordships, that when he resigned to his Brother, he asked the Lord *Cowper* if any thing was due to his Lordship, who told him nothing was due.

This, my Lords, is the naked State of the Case, and I shall make no Remarks upon it; I think nothing can be added to illustrate it, because I am confident there never was any thing like it.

But I think, out of Duty to the Commons, and Justice to the Earl of *Macclesfield*, I am obliged to take Notice of what he alledges in his own Defence against this Charge.

His Lordship is pleased to say, "That tho' this Office of Clerk of the Custodies has been usually granted by the Crown; yet it has been always look'd upon as the Right of the Lords Chancellors, or the Lords Keepers, to recommend to that, and other Offices under the Great Seal, and approve of the Deputy to execute the same; and upon such Recommendations, and approving of Deputies, have accepted Presents, and look'd upon the same as their Right."

I should not have taken Notice of his putting this Part of his Defence in the plural Number, and endeavouring



vouring to shelter himself under the pretended Practices of his Predecessors, if he had confined it to this Article; but in his general Answer to all the Articles we have opened to your Lordships, he says, "That he has done no more than his Predecessors, Great and Able Men have done before him, and therefore hopes that it shall not be imputed as a Fault to him." And indeed this Reasoning runs through almost his whole Defence.

My Lords, we could shew, That he has done more than any of his Predecessors; but your Lordships very well know, that is not now in question. I am sure, how Great or able soever a Man may be, that commits a Fault, your Lordships will always be Great enough, and Able enough to punish him for it, when he comes before you. And I am surprized the Earl should suppose, that you will connive at a corrupt Practice in him, (if this be one) because you have not condemned it in others, who were never called to answer it before you, if any have been guilty of it. I hope your Lordships will look on it as a new Way of Reasoning, first made use of by the Earl of *Macclesfield*, to justify his own Faults by the Faults of another, and extenuate the Danger and Malignity of a Distemper, by the Extent and Inveteracy of it.

By the rest of this Argument of his, your Lordships plainly see, that he himself thinks that the Acceptance of any Gratuity for advising the King, as a Counsellor, to grant this Office, had been highly Criminal, for he was, at that Time, one of the Lords Justices, and during this whole Charge a Minister of State; but he does not say that he obtain'd leave for Mr. *Bennet* to resign, and a new Grant of the Office as a Favour from the Crown; no, that he seems to admit would have been highly blameable; but he says, that as Lord Chancellor, he had a Right of Recommending to this Office; and his whole Conduct unhappily explains, that he looked upon a Right of Bestowing or Recommending to be a Right of Selling; so that by his own Argument, he thinks himself justifiable in doing that as the chief Officer and Distributor of Justice, which he seems to own would be highly unjustifiable in a Minister or Servant of the Crown.

I shall take Notice of but one Part more of his general Answer to the Articles, which we have opened to your Lordships, and that is where he says, "That during his Continuance in the said Office of Lord Chancellor, or at any other Time, he never once had a Design, or View, or Wish to raise to himself any exorbitant Gain or Profit, and appeals to the whole Tenor of his Life and Actions for the Truth of his Assertion."

This, my Lords, is an Instance how little the greatest Men are acquainted with themselves, and how much they are liable to mistake, when they talk of their own Actions; many of his Transactions in Money Matters, have been opened to your Lordships, more will be opened; and surely, my Lords, you must be of Opinion, that this inordinate Longing after Gain, this Impotence of Mind where Money was concerned, is a constitutional Weakness in the Earl of *Macclesfield*, which has given a Tincture to every Thing that passed thro' his Hands: Your Lordships have seen him taking great Sums, accepting small ones, taking 5000 *l.* accepting 105 *l.* taking for Offices in his

own Gift, for Offices in the Gift of the Crown; taking for Admissions, taking for Resignations; in this, indeed, he has shewn an Impartiality that, on every other Account, were highly to be wished in a Judge.

My Lords, I would not trouble your Lordships again after our Evidence is examined, and therefore beg leave to say, that the Commons look upon these Practices so nearly to concern the Welfare of the People, they represent, that, notwithstanding the great Part they bear in the Constitution of this Realm, they have thought it indispensibly necessary to appear themselves, and demand Justice of your Lordships, and we do it with the more Pleasure, because we are assured, That when the Commons are Prosecutors, and your Lordships Judges, the meanest Subject will have Justice, and the greatest will not find Favour.

And, my Lords, considering that the Earl of *Macclesfield* is to be judged by the most august Assembly in the World, of which he is himself a Member; it is but a suspicious Symptom of his Confidence in his own Integrity, when he lays hold of any Subterfuge to avoid your Judgment, or endeavours to secure himself against any Part of it by any Plea but that of his Innocence, and the Justice of his Cause.

Sir *Thomas Pengelly*, his Majesty's Serjeant. My Lords, Before the Managers lay before your Lordships any Evidence upon the particular Articles, there are some Things, we apprehend, necessary to be taken Notice of in the Introduction to the Articles, which are not sufficiently admitted by the Lord *Macclesfield*, in his Answer, and wherein we apprehend it will be necessary to give your Lordships some Satisfaction; and that is relating to his immediate Duty as Lord Chancellor, and the Obligation he is under of an Oath, which is administered to his Lordship, and is established by Act of Parliament. My Lords, We think it proper to lay this before your Lordships, because the noble Lord has forgot it, not only in his Answer, but in his Conduct. The Oath is establish'd by the Statute of the 12th of *Rich. 2.* which enacts, *That the Chancellor, &c. shall not name or make any Officer, or Minister, of the King, for any Gift, or Brocage, but make all such Officers and Ministers of the best and most lawful Men.*

My Lords, I beg leave to shew, that this Oath is establish'd by Act of Parliament, and afterwards shew your Lordships, that it has been administered to, and taken by the noble Lord within the Bar. It is the Statute of the 12th of *Rich. 2. Chap. 2.* which enjoyns this Oath to be taken by his Lordship.

Mr. *Lutwyche*. My Lords, We are not willing to trouble your Lordships with more than is necessary, or to go about to prove those Things that are admitted by the Earl's Answer, but where they are not fully admitted in such a Manner as they are charged, and with all that Advantage that we think we can make of them, we must beg leave to trouble your Lordships with the Proof of them. My Lords, It is admitted by the Answer, that there was an Oath of Office taken; and it is likewise set forth in the Answer, what that Oath was, but the Answer goes no farther, and

doth not admit any Thing as to another Oath founded on the Statute of the 12th Rich. 2. which hath frequently been taken by the Noble Lord; we think it therefore necessary to have the Statute of Rich. 2. first read, and the Oath that is there prescribed, and to shew you that the Noble Lord within the Bar, did take that Oath several Times.

Then the Clerk read the Statute of 12 Rich. 2. Cap. 2. viz.

“ Item, It is accorded that the Chancellor, Treasurer, Keeper of the Privy-Seal, Steward of the King’s House, the King’s Chamberlain, Clerk of the Rolls, the Justices of the one Bench and of the other, Barons of the Exchequer, and all other that shall be called to ordain, name, or make Justices of Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King, shall be firmly sworn, that they shall not ordain, name, or make Justices of Peace, Sheriff, Escheator, Customer, Comptroller, nor other Officer, nor Minister of the King, for any Gift or Brocage, Favour or Affection; nor that none which pursueth by him, or by other, privily or openly to be in any manner of Office, shall be put in the same Office, or in any other, but that they make all such Officers and Ministers of the best and most lawful Men, and sufficient to their Estimation and Knowledge.”

Mr. Serjeant Pengelly. We beg leave that Mr. Eyre may be produced and sworn, in order to prove the Administration of this Oath, and to prove the Noble Lord’s taking it several Times.

Mr. Thomas Eyre Sworn.

Mr. Serjeant Pengelly. My Lords, We desire that Mr. Eyre may be asked, Whether he is an Officer of the Exchequer, and what that Book in his Hand is?

Mr. Eyre. My Lords, This Book I have had in my Custody ever since I have been in the Office. I have been there forty Years. This is the Book in which the Statute of 12 Rich. 2. is enter’d; and, before the Privy Council name the Sheriffs, this Statute is read over to them, and then the Privy Counsellors are all Sworn.

Mr. Lutwyche. My Lords, We desire the Oath may be read.

Mr. Eyre. There is no Oath in the Book, ’tis only the Statute.

Earl of Macclesfield. Will your Lordships be pleased that he may speak aloud. He says there is no Oath in the Book.

Mr. Eyre. The Statute is read, and as soon as it is read the Book is presented to the Privy Counsellors, and they are Sworn.

Mr. Serjeant Pengelly. My Lords, We desire he may be asked, Whether he was present at any Time when the Earl of Macclesfield has taken the Oath to perform this Statute in the Court of Exchequer?

Mr. Eyre. Yes, several Times.

Earl of Macclesfield. I beg leave to ask this Question in the first Place, Is there any Oath there in that Book?

Mr. Eyre. No, nothing but the Statute of Rich. 2.

Earl of Macclesfield. Nothing but the Statute of Rich. 2. What is it you read, or do at that Time when you say the Privy Counsellors are sworn.

Mr. Eyre. As soon as this Statute is read, the Bible is presented to the Privy Counsellors, and they kiss the Book.

Earl of Macclesfield. Is there any one Word said to them, or by them?

Mr. Eyre. No, the Statute is read over, and the Privy Counsellors kiss the Book.

Mr. Serjeant Pengelly. My Lords, We desire he may read it.

Earl of Macclesfield. My Lords, I desire that he may read the very Words in the Book, as he reads them in the Exchequer.

[Mr. Eyre reads the Statute.]

Anno xii Richardi Secundi.

ITEM, Accorde est & assentuz’ que le Chancellor & Treasurer Gardein du Privy Seal Senescall’ de Hosteil le Roy, Chamberleyn du Roy, Clerke du Rolls, Justices de lune Bank & de Lautre, Barons de le Exchequer & toutz autres, que Serrount Appelles Dordaigner nomer ou fair Justices de la Peace, Viscount’s Escheators, Customers Comptrollers, ou Ascun autre Officer du Roy, ou Ministre, seroit fermement Jurez, & Serementez, quilz ne Ordeigne noient ne facent Justices de la Peas, Viscount’s Escheators, Customers Comptrollers, ne null autre Officer ne Ministre du Roy, par null’ manner Don’ ne Brocage favor n’affection, nique null que parsui par luy ou par autr’ en priv’ ou en Apert Destre en Ascun manner Office, soit mijs en mesme l’Office, ou en Ascune autr’, unque que ils facient toutz tielz Officers & Ministers de le plus Bon & Loyalz & les plus sufficientz a lour essient & lour Conscience.

Earl of Macclesfield. Those you say are the very Words you read at that Time when the Sheriffs are nominated in the Court of Exchequer?

Mr. Eyre. Yes.

Earl of Macclesfield. I suppose you read in that very Manner.

Mr. Eyre. Yes.

Earl of Macclesfield. Do’ you say any one Syllable more?

Mr. Eyre. No.

E. of *Macclesfield*. In the next place, I desire he may tell your Lordships what it is that the Officer does at this time?

Mr. *Eyre*. He carries the Book to all the Privy Counsellors, and they kiss it.

E. of *Macclesfield*. Does he not carry it to the Judges too?

Mr. *Eyre*. Yes, every one present kisses the Book.

E. of *Macclesfield*. Does he say any thing to them?

Mr. *Eyre*. No.

E. of *Macclesfield*. You say he doth not say any thing to them?

Mr. *Eyre*. No, nothing at all.

Mr. Serj. *Pengelly*. My Lords, we desire that Mr. *Eyre* may be asked, whether, during his time, this hath not been the usual Method of Swearing the Lords of the Privy Council?

Mr. *Eyre*. Yes, my Lords, it has.

Mr. *Lutwyche*. My Lords, it seems to be a Question whether this is Swearing at all. Therefore the Question I desire may be ask'd this Witness, is, what Book it is they kiss?

Mr. *Eyre*. My Lords, it is the Bible.

Mr. *Lutwyche*. I desire he may be asked, whether this hath not been taken to be Swearing them to do what is commanded by this Statute?

Mr. Serj. *Probyn*. My Lords, we beg Leave to object to that Question. We apprehend the Witness is only called to give Evidence as to the Fact, and not to state his Reasons and Constructions of Fact.

Mr. *Lutwyche*. My Lords, I beg Leave then to ask a Question that I hope they won't object to: Whether or no this is not the Manner of Swearing the Lords, upon the Nomination of Sheriffs in the Court of Exchequer?

Mr. Serj. *Probyn*. My Lords, we humbly beg Leave to object to that Question: We apprehend That Centers in the same thing with the former. The Witness has already given your Lordships an Account of all that is said and all that is done when this Act of Parliament is produced. He tells your Lordships the Act of Parliament is read; they kiss the Book; nothing is asked of them, nor is any thing answered: And yet the Gentleman is pleased to ask, whether this is called a Swearing? The Witness has given his Evidence, your Lordships will determine whether it be a Swearing or no.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether this Kissing the Bible upon the reading this Act, is not usually done at the time of appointing the Sheriffs?

Mr. *Eyre*. As soon as ever the Act is read over, the Privy-Counsellors kiss the Bible.

Mr. Serj. *Pengelly*. My Lords, I desire it may be asked, whether they proceed to name or appoint any Sheriffs before they kiss the Book in this manner?

Mr. *Eyre*. No, they do not.

Mr. Serj. *Pengelly*. My Lords, we shall rest this matter here.

Lord *Lechmere*. My Lords, I would be glad if this Question might be asked the Witness; Whether there is any Entry or Memorandum made upon Record in the Court of Exchequer, of any Oath taken by the Privy-Counsellors on this Occasion?

Mr. *Eyre*. No, there is not.

Mr. *West*. We submit this Matter to your Lordships: This Statute prescribes, that an Oath shall be particularly taken; the Fact has been

stated by the Witnesses: And whether it does not amount to the Proof of an Oath, that they will comply with that Act of Parliament, we leave to your Lordships Judgment.

Mr. Serj. *Pengelly*. We shall leave this Evidence to your Lordships, and submit it to your Determination, whether this noble Earl can excuse himself from his Obligation to this Act of Parliament, as an Oath? It is very probable, by his future Conduct, he might be of Opinion, that there was no Obligation of any Act or Oath upon him: But upon the Evidence given, we shall submit this Fact: And shall next proceed to call some Witnesses to give an Account of the Nature of the Offices of the Masters in Chancery, who are admitted, by the noble Lord, within the Bar. We shall first produce the Oath which is administered to every Master in Chancery upon his Admission: Then we shall shew the Commissions from *Edw.* the VIth's time, and so from time to time, to this Day; wherein the Masters in Chancery are joined with my Lords the Judges, to hear and determine Causes in the Absence of my Lord Chancellor; to punish Contempts, to execute and administer a Jurisdiction in that Court. The particular Oath very little varies from the Oath administered to the Lord Chancellor, which, in his Lordship's Answer, is set out at large. However we shall now beg Leave to produce the Oath; and to that Purpose, we desire Mr. *Pynsent*, the Deputy-Clerk of the Crown in Chancery, may be examined, and he will produce the Oath before your Lordships.

Mr. *Pynsent* sworn.

Mr. Serj. *Pengelly*. Sir, will you produce, before the Lords, the Oath administered to the Masters in Chancery, upon their Admission to their Offices?

Mr. *Common Serjeant*. My Lords, we hope he shall give an Account, whether he hath seen the Oath taken, and hath administered it?

Mr. *Pynsent*. Yes, my Lords, I have seen the Oath taken, and have administered it myself.

Reads the Oath.

Sacrm  
Magistrorum  
Cancellarie } YE shall swear that well and  
trulie Ye shall serve the Kinge  
Our Sovereigne Lord, and his People,  
in the Office of one of the Maisters of his Chauncerye,  
to the whiche Ye be called: Ye shall not assent, ne  
Procure the Disherytaunce, ne perpetual Damage of  
the Kinge, to Your Power, ne fraude; Ye shall doe or  
cause to be made wrongefullye to anye of his People, ne  
in anye thinge that touchethe the Seale: And lawfullye  
Ye shall Counsail the thinges that touchethe the Kinge,  
when ye shall be thereunto required. And the Coun-  
sayll that Ye shall geve touching him, Ye shall not dis-  
close. And yf Ye know anye thinge of the Dishere-  
taunce or Damage of the King, or fraude to be made  
upon anye thinge that touchethe the keeping of the  
Seale: Ye shall put Your lawfull Power it to re-  
dresse and amende; And yf that Ye cannot do, Ye  
shall advyse the Chauncellor, or Lorde Keper of the Seale,  
or other whiche may that amende, to Your Power: As  
God you helpe, Und by the Content of this Boke.

Mr. Serj. *Pengelly*. My Lords, there will be Directions given to lay a Copy of this Oath, as well as Copies of other Records, upon your Lordships Table.

The next Evidence we shall produce, are Commissions beginning in the Time of *Edw.* 6. to this time, granted to Masters, appointing them to hear Causes, &c. The first Commission we shall produce,

produce, is dated the 9th of October, the 4th of Edw. 6. My Lords, we desire that Mr. Paxton may be sworn, who has Copies of these Commissions, and has examined them with the Records.

Mr. Ralph Paxton sworn.

Mr. Serj. Pengelly. My Lords, we desire that he may be asked, whether the Copies in his hand are true Copies, and where they were examined?

Ld. Ch. Just. King. Are they true Copies, and where did you examine them?

Mr. R. Paxton. My Lords, they are true Copies. I examined them in several Places. I must look upon each of them, and then I shall tell your Lordships where I examined them. I examined some at the Rolls, some at the Petty-Bag Office, and some at the Report-Office.

Ld. Ch. Just. King. Did you examine them all there?

Mr. R. Paxton. I did.

Mr. Serj. Pengelly. Are they true Copies?

Mr. R. Paxton. I believe they are, I took a great deal of Care and Pains in examining of them.

Mr. Serj. Pengelly. My Lords, we desire that these Copies may be read.

Mr. Strange. Are they upon Stamps?

Mr. R. Paxton. Yes, Sir, with a double Sixpenny Stamp.

Mr. Serj. Pengelly. My Lords, it seems they are Stamp'd; since they make an Objection of that Nature, we desire they may be read.

Clerk reads.

Sexta pars Pat' de Anno Regni Regis Edri  
Sexti quarto.

Rex &c. Dilcis & fidelibus Consiliarijs Suis Rbto Southwell Militi Custodi ac Magro Rotulorum Cancellar' nre Willo Portman Militi uni Justic' nrorum ad Plita coram Nob' tenend' assign' Jacobo Hales Militi uni Justic' nrorum de Banco Rico Reade Militi et Johi Tregonwell Aro Magris Cancellar' nre predce Ac Dilcis Sibi Johi Olyver Clico Willo Cooke Aro Johi Croke Aro et Antonio Bellassis Clico Magris ejusdem Cancellar' nre Saltm. Quia Predilcus et fidelis Consiliarius n'r Ricus Riche Miles Dus Riche Cancellar' n'r Angl' adeo Corporis invalitudine ad presens laborat qd ad ea que in Cur' Cancellar' nre in causis et materijs int' diversos ligeos & Subditos nros ibidem pendent' tractend' audiend' discuciend' et terminand' Sint & fieri debeant ad presens pro tempore non Sufficiat Considerantes igitur ipm ad Saltm cicius posse restitui Si ab arduis negocijs nris et determinacoe causarum in Cur' Cancellar' nre penden' ad tempus abstineat Et Volentes nichilominus interim in ejusdem Cancellarij nri absentia omnibus & Singulis ligeis & Subditis nris quibuscumq; matias suas in Cur' Cancellar' nre predce prosequentibus plenam & celerem Justiciam exhiberi Ac de fidelitatibus & providis circumspiccoibus nris plenius Confidentes Assignavimus Vos octo Septem Sex quinq; quatuor & tres vrm quorum Vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus Ac tenore presenciu' Damus Vob' octo Septem sex quinq; quatuor & tribus vrm quorum aliquem vrm Vos prefat' Robte Wille Porteman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus plenam potestatem & auctoritatem audiend' et examinand' quascumq; materias causas & peticoes coram Nob' in Cancellar' nra int' quoscumq; ligeos et Subditos nros tunc pendent' et imposterum ibidem exhibend' & pendent' & easdem matias causas & peticoes juxta Sanas discrecoes vras finalit'

terminand' & debit' execucoi demandand' partesq; in matijs Sive causis vel peticoibus illis noiatas & Specificatas ac testes & alios quoscumq; quos Vob' fore videbitur evocand' quociens expedire videritis coram Vob' octo Septem Sex quinq; quatuor vel tribus vrm quorum aliquem vrm vos prefate Robte Wille Portman Jacobe Hales Johes Olyver & Johes Croke unu' esse Volumus evocand' ac ipos & eorum quemlt debite examinari compellend' diesq; productorios imponend' & assignand' processusq; quoscumq; in ea parte necessarios concedend' et fieri faciend' contemptus etiam quoscumq; ibidem comiss' Sive perpetratos debite castigand' & puniend' cetaq; omnia & Singula faciend' et exequend' que circa premissa necessaria fuerint Seu quomodolit oportuna Et ideo Vob' Mandamus qd circa premissa diligent' intendatis ac ea fac' & exequamini cum effcu Mandamus etiam tenore presenciu' omnibus & Singulis Officiarijs & Ministris nris Cur' nre predce qd Vob' octo Septem Sex quinq; quatuor et tribus vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Croke Semper unu' esse Volumus in execucoe premissorum diligent' intendant prout decet Volumus etiam & per presentes Concedimus qd omnia & Singula judicia Sive finalia decreta per Vos octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver et Johes Croke unu' esse Volumus virtute presenciu' reddend' Sive fiend' manibus vris octo Septem Sex quinq; quatuor vel tres vrm quorum aliquem vrm Vos prefate Robte Wille Porteman Jacobe Johes Olyver & Johes Croke unu' esse Volumus Subscribantur & consignentur & Superinde eadem judicia Sive decreta prefat' Cancellar' nro presententur & libentur ut idem Cancellar' n'r antequam irrotulentur eadem Similit' manu sua consignet In cujus rei testimoniu' has Lras nras fieri fecimus Patentes usq; ultim' diem Novembr' proper' futur' duratur' Si non intrim per alias Lras nras Patentes huic Comissioni Superfederi decreverimus T. R. apud Westm' nono die Octobr'

per ipm' Regem  
Concordat' cum Recordo et  
Examinat' per me

WM. ROOKE.

Mr. Serj. Pengelly. We have several others of the same Nature, which we have proved, and shall not trouble your Lordships to read them. We shall beg Leave to lay them on your Lordships Table. We shall now desire to read some later Commissions; some granted when the noble Lord within the Bar had the Custody of the Seals himself.

E. of Macclesfield. If your Lordships please, the Date of that may be read.

Clerk reads.

GEORGIUS Dei Gra' Magnæ Britanniaë Franciæ & Hiberniæ Rex fidei defensor &c. Prædilecto & fideli Consiliario nro Josepho Jekyll Mil' Magro Rotlorum Cur' Canc' nre ac Dilcis' & fidelibus nris Littleton Powys Mil' un' Justiciar' nrorum ad plita coram nobis tenend' assign' Johi Blencow Mil' un' Justiciar' nrorum de Banco Robto Tracy Ar' al' Justiciar' nrorum de Banco Robto Price Ar' un' Ba-  
ron

ron' Scij nri Johi Smith Ar' al' Baron' Scij nri  
 Robto Dormer Ar' un' Justiciar' nrorum de  
 Banco Robto Eyre Mil' un' Justiciar' nrorum  
 ad plita coram nobis tenend' assign' Johi  
 Pratt Mil' al' Justiciar' nrorum ad plita coram  
 nobis tenend' assign' Jacobo Mountagu Mil'  
 un' Baron' Scij nri Johi Fortescue Aland Mil'  
 un' Baron' Scij nri Thome Gery Mil' Willo  
 Rogers Johi Hiccocks Willo Fellows Jacobo  
 Meller Johi Orlebar Fleetwood Dormer Samu-  
 eli Browning Robto Holford Henrico Lovi-  
 bond & Johi Bennett Aris. salm Quia predilect'  
 & fidei' Consiliar' nostr' Thomas Doms Parker  
 Cancellar' nostr' magne Britannie nris arduis  
 negotijs ex Mandato nro continue attendens in  
 eisdem adeo versatur quod continue attendere  
 non potest ea que in Causis & materijs in-  
 ter diversos ligeos & subditos nros ac alios in  
 Cur' nra Cancellar' penden' agen' tractand'  
 audiend' expediend' discutiend' & terminand'  
 sint & fieri debent Nos premissa Considerantes  
 volentesq; eibus & singulis ligeis nris ac alijs  
 quascunq; materias suas in eadem Cur' Cancellar'  
 prosequen' sive prosecutur' plenam & celerem  
 Justiciam exhiberi tam in absentia quam in pre-  
 sentia predict' Cancellar' nostr' Magn' Britann'  
 ac de fidelitate & providis circumspiciobus  
 vris in hac parte plumu' confidente assigna-  
 vimus vos ac tenore prentium Damus vob' &  
 aliquibus tribus vel plur' vrum Quorum prefat'  
 Josephum Jekyll Littleton Powys Johem Blencowe  
 Robtum Tracy Robtum Price Johem  
 Smith Robtum Dormer Robtum Eyre Johem  
 Prat Jacobum Mountagu & Johem Fortescue  
 Aland unum esse volumus in absentia dict' Cancellar'  
 nostr' Magnæ Britannæ plen' prefat'  
 & auctat' audiend' & examinand' quascunq;  
 materias Causas & petitiones coram nobis in  
 dca Cancellar' nra inter quoscunq; ligeos &  
 subditos aut alios quoscunq; nunc penden'  
 aut Imposter' ibm exhibend' & penden' mate-  
 rias Causas & peticones juxta sanas discreti-  
 ones vras vel trium vrm Quorum prefat' Jose-  
 phum Jekyll Littleton Powys Johem Blencowe  
 Robtum Tracy Robtum Price Johem Smith  
 Robtum Dormer Robtum Eyre Johem Pratt  
 Jacobum Mountagu & Johem Fortescue Aland  
 unum esse volumus finaliter terminand' & debet'  
 execution' demandand' Partesq; in materijs cau-  
 sis seu petitionibus illis nominat' & significat' ac  
 Testes & alios quoscunq; quos vobis vel tribus  
 vrm (ut pred' est) fore videbitur evocand'  
 quoties expedire videritis coram vobis vel tribus  
 vrm (ut pred' est) evocand' Ac ipsos & eorum  
 quemlibet debite examinari diesq; productiores  
 imponend' & assignand' processusq; quoscunq;  
 in ea parte necessar' concedend' ac fieri faciend'  
 Contemptus etiam quoscunq; comis' sive per-  
 petrat' debite castigand' & puniend' ceteraq;  
 oia & singla faciend' & exequend' que circa  
 premissa necessar' fuerint seu quomodolibet op-  
 portuna Et ideo vobis mandamus qd circa pre-  
 missa diligent' intendatis & ea fat' exequamini  
 cum effectu Mandamus etiam tenore prentium Of-  
 ficiar' & Ministr' Cur' nre Canc' pred' qd vobis  
 vel tribus vrm (ut pred' est) in execut' premis-  
 sorum diligenter intendant prout decet Volumus  
 etiam ac per prentes concedimus qd oia & sin-  
 gula Judicia sive finalia decreta ac Ordines per  
 vos aut tres vrm ut pred' est super hum' causis  
 sive materijs ac peticioibus ut presertur reddend'  
 sive fiend' sint & esse debeant tanti & consilis  
 valor' effect' efficacie roboris & virtute Ac si per  
 pred' Cancellar' nostr' Magnæ Britannæ & Cur'

Cancellar' nre præd' reddid' sive reddend' forent  
 Proviso tamen quod oia & singula Judicia sive  
 finalia decreta per vos vel tres vrm ut præd' est  
 virtute prentium modo & forma ut prædicitur  
 reddend' sive fiend' Manibus vris vel trium vrm  
 Quorum prefat' Josephum Jekyll Littleton  
 Powys Johem Blencowe Robtum Tracy Rob-  
 tum Price Johem Smith Robtum Dormer Rob-  
 tum Eyre Johem Pratt Jacobum Mountagu &  
 Johem Fortescue Aland unum esse volumus sub-  
 scribentur & consignentur & superinde eadem  
 Judicia sive finalia decreta prefat' Cancellar'  
 nostr' Magn' Britan' presententur & libentur  
 Quodq; null' eorundem Judicior' sive final' de-  
 cretor' irrotulentur aut quovismodo execut' sint  
 antequam idem Cancellar' nostr' Magn' Britann'  
 ea manu sua propria silitur consignet Et quod he-  
 lre nre Patentes durabunt & permanebunt in  
 pleno robore & effect' donec aliter per alias Iras  
 nras Patentes huic Commissioni supersederi  
 mandat' foret aut prædict' Cancellar' nostr'  
 Magn' Britann' in plena Cur' determinari de-  
 cret' & irrotulat' erit In cujus rei Testimoniu'  
 has Iras nras fieri fecimus Patentes Teste meipso  
 apud Westm' duodecimo die Maij Anno Regni  
 nostri quarto

per ipsum Regem

WRIGHTE.

Mr. Serj. Pengelly. We desire that there may  
 be another Commission read, dated the 20th of  
 January, the 8th of the King.

Clerk reads.

GEORGIUS Dei Gratia Magnæ Bri-  
 tanniæ, Franciæ, & Hiberniæ Rex, fidei  
 Defensor, &c. Prædilecto & fidel' Consiliar'  
 nro Josepho Jekyll Mil' Magro Rotulor' Cur'  
 Cancellar' nre ac Dilcis & Fidelibus nris Little-  
 ton Powys Mil' un' Justic' nroru' ad plita co-  
 ram nobis tenend' assign' Johi Blencow Mil'  
 un' Justic' nrorum de Banco Robto Tracey Ar'  
 al' Justic' nrorum de Banco Robto Price Ar'  
 un' Baron' Scij nri Robto Dormer Ar' un'  
 Justic' nrorum de Banco Robto Eyre Mil' un'  
 Justic' nrorum ad plita coram nob' tenend'  
 assign' Jacobo Montagu Mil' un' Baron' Scij  
 nri Johi Fortescue Aland Mil' un' Justic'  
 nrorum ad plita coram nob' tenend' assign'  
 Franco Page Mil' un' Baron' Scij nri Johi  
 Hiccocks, Willo Fellowes, Robto Holford,  
 Henco Lovibond, Johi Bennett, Rico Godfrey,  
 Jacobo Lightbonn, Johi Borrett, Edro Con-  
 way, Henco Edwards, & Willo Kynaston, Ar'  
 salum. Quia Charissimus Consanguineus & Con-  
 siliar' noster Thomas Comes de Macclesfield  
 Cancellar' noster Magnæ Britannæ nostris ar-  
 duis negotiis ex Mandato nostro continue at-  
 tendens in eisdem adeo versatur quod continue  
 attendere non potest ea que in Causis & Ma-  
 teriis inter diversos ligeos & subditos nostros ac  
 alios in Cur' nostra Cancellar' penden' agen'  
 tractand' audiend' expediend' discutiend' &  
 terminand' sint & fieri debent nos premissa  
 considerantes volentesq; omnibus & singulis  
 ligeis nostris ac alijs quascunq; materias suas  
 in eadem Cur' Cancellar' prosequend' sive pro-  
 secutur' plenam & celerem Justiciam exhiberi  
 tam in absentia quam in præsentia præd' Can-  
 cellar' nostri Magnæ Britannæ ac de fidelitate  
 providis Circumspectionibus vris in hac parte  
 plurimum Confidentes Assignavimus vos ac te-  
 nore present' Damus vob' & aliquibus tribus  
 vel plur' vrm Quorum prefat' Josephum Jekyl  
 Littleton

Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus in absentia dicti Cancellar' nostri Magnæ Britannia plen' potestat' & Authoritat' audiend' & examinand' quascunq; materias causas & petitiones coram nob' in dicta Cancellar' nostra inter quoscunq; ligeos & subditos aut alios quoscunq; nunc penden' aut imposter' ibidem exhibend' & penden' & eisdem materias causas & petitiones juxta sanas discretiones vras vel triu' vrm' Quorum pefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus finalit' terminand' & debit' execution' demandand' partesq; in materiis causis seu petitionibus illis noiat' & specificat' ac testes & alios quoscunq; quos vob' vel tribus vrm' (ut præd' est) fore videbitur evocand' quoties expedire videritis coram vob' vel tribus vrm' (ut præd' est) evocand' ac ipsos & eorum quemlibet debite examinari compellend' diesq; productiores imponend' & assignand' processusq; quoscunq; in ea parte necessar' concedend' ac fieri faciend' contemptus etiam quoscunq; comis' sive perpet' debit' castigand' & puniend' ceteraq; oia & singula faciend' & exequend' que circa præmissa necessar' fuerint seu quomodo libet opportuna. Et Ideo vob' mandamus quod circa præmissa diligent' intendatis & ea fac' & exequamini cum effectu. Mandamus etiam tenore presentiu' officiar' & ministr' Cur' nostre Cancellar' præd' quod vob' vel tribus vrm' (ut præd' est) in executione præmissorum diligent' intendant prout decet Volumus etiam & per presentes concedimus quod oia & singula judicia sive final' decreta ac ordines per vos & tres vrm' (ut præd' est) super hum' causis sive materiis & petitionibus ut prefert' reddend' sive fiend' sint & esse debeant tanti & consilis valor' effectus efficacie roboris & virtutis ac si per præd' Cancellar' nostr' Magnæ Britannia & Cur' Cancellar' nostre præd' reddit' sive reddend' forent. Proviso tamen quod oia & singula judicia sive finalia decreta per vos vel tres vrm' (ut præd' est) virtute present' modo & forma ut predicatur reddend' sive fiend' manibus vris vel triu' vrm' Quorum pefat' Josephum Jekyl Littleton Powys Johem Blencowe Robtum Tracey Robtum Price Robtum Dormer Robtum Eyre Jacobum Montagu Johem Fortescue Aland & Francum Page unum esse Volumus subscribantur & consignentur & superinde eadem judicia sive final' decreta pefat' Cancellar' nostro Magnæ Britannia presententur & libentur Quodq; nulla eorundem judiciorum sive final' decretorum irrotulentur aut quovis modo execut' sint antequam idem Cancellar' noster Magnæ Britannia ea manu sua propria silit' consignet Et quod he litere nostre paten' durabunt & permanebunt in pleno robore & effectu donec alit' per al' literas nostras patentes huic Commission' supersederi mandat' foret aut per dictum Cancellar' nostrum Magnæ Britannia in plena Cur' determinari decret' & irrotular' erit. In cujus rei testimonium has literas nostras fieri fecimus patentes Teste meipso apud Westm' Vicesimo die Januarij Anno rni' nri' Octavo.

Per ipsum Regem

W R I G H T E.

Mr. Serj. *Pengelly*. My Lords, we don't apprehend it necessary to read all the others over; we shall deliver them in; unless it be desired by the noble Lord. My Lords, we now beg leave to call Mr. *Meller*, who hath executed the Office of a Master in Chancery for several Years. He will give your Lordships some Account of the Nature and of the Manner of Execution of that Office, in support of what the Commons have charged.

Mr. *John Meller* sworn.

Mr. *Lutwyche*. My Lords, We desire Mr. *Meller* may be asked whether he hath executed the Office of a Master in Chancery, and how long, and what is the Nature of that Office?

Ld. Ch. Just. *King*. Sir, you hear the Question?

Mr. *Meller*. My Lords, according to the best of my Remembrance, I was admitted a Master the latter End of the Year 1708, and continued so till July, 1720. The general Nature of the Office is, to digest and sum up those Matters which are ordered upon Hearing to be referred to us, by way of Report: That is the general Business. There is a further Business, when Bills of Costs are to be taxed, they are taxed and adjusted by us what is to be paid. I don't recollect any more particular Business.

Mr. *Lutwyche*. I desire he may be asked, for whose Service and Use those Reports are made?

Mr. *Meller*. Those Reports are made for the Use of the Suitors of the Court. 'Tis to state the Facts that the Lord Chancellor has referred to the Master that are too tedious for the Court to look into.

Mr. *Lutwyche*. To whom are they returned and directed?

Mr. *Meller*. These Reports are made to the Court, to the Lord Chancellor, or the Master of the Rolls. They have these Reports, and make a final Order upon them.

E. of *Macclesfield*. I desire he may be asked, when Reports of the several Matters referred to the Master to consider of, which would take up too much Time of the Court to settle, are made, whether those Reports of the Master are at all conclusive? Or what is the Method in case the Parties don't acquiesce?

Mr. *Meller*. My Lords, the Report is only to state the Facts to the Court; and till the Report is confirmed by the Court, what the Master hath reported has no Effect. So that I apprehend it is only to lay the State of the Matter before the Court: If what the Master reports, seems agreeable to the Court, then they confirm it; if not, they vary it, or sometimes send it back again to the Master for his further Consideration.

Mr. Com. *Serjeant*. My Lords, I desire that Mr. *Meller* may inform your Lordships, if any Person apprehends the Facts mistaken, whether they have not an Opportunity of rectifying this Report of the Master.

Mr. *Meller*. My Lords, so far as I apprehend, the Rule of the Court is this, when a Report is drawn up, the Parties on both Sides have Liberty to object to that Report before the Master; and whatever they put in by way of Objection before the Master, they may speak to those several Points when the Report comes before the Court.

Mr. Serj. *Probyn*. What are the Matters that are generally referred to the Masters by the Court?

Mr. *Meller*. The Chief Matters are the stating of Accompts.

Mr. *Strange*. My Lords, I beg leave to ask the Witness this Question. Whether any Matters of Judgment are at any time referred by the Court to the Master?

Mr. *Meller*. The Nature of Reports requires some Conclusion upon them, to be given by the Masters according to the best of their Opinion. But the Court gives a Sanction to those Reports.

Mr. *Strange*. Whether in any one Instance, the Judgment of the Master is final to the Suitor?

Mr. *Meller*. I will recollect, and give your Lordships the best Account that I can remember as to that. I think when a Master has taxed a Bill of Costs, there is a Subpœna taken out for the Costs upon the Master's Report, without going to the Court. I am not sure.

Mr. *Com. Serjeant*. When Exceptions are taken to a Master's Report, doth the Master or the Court pass a Judgment upon them?

Mr. *Meller*. The Method is this, when a Report is drawn up, a Copy is given to both Sides, and each Side puts in such Objections to it as they think proper; the Master goes through those Objections, and having gone through them, he forms an Opinion upon the whole. Then it goes to the Court, and the Parties have Liberty to go upon those Objections before the Court, who finally determine.

Mr. *Com. Serj.* I desire, my Lords, that Mr. *Meller* may acquaint your Lordships who presided in the Court when he came in?

Mr. *Meller*. My Lord *Cowper*, I take it, was then Chancellor; it was in the Year 1708, or the Beginning of 1709.

Mr. *Com. Serj.* We desire to know, whether he gave any Money when he came into the Office, and to whom?

Mr. *Plummer*. We have called this Gentleman to give an Account of the Nature of the Office of a Master in Chancery, we are not come to that Matter of giving of Money; we submit whether it is necessary to enter into that Question now?

Mr. *Serj. Probyn*. If this Gentleman is to be called again, we beg Leave to reserve that Question till they come to that Part of the Charge.

Mr. *Plummer*. My Lords, I have another Question to ask: It has been asked, whether the Determination of a Master in Chancery is final? I desire it may be asked, if the Master in Chancery makes a Report, to which there is no Exception, whether the Decree in Chancery is not according to that Report?

Mr. *Meller*. I take it, after the Master has made a Report, and there is no Exception to it, that Report is first confirmed *nisi*, and then it is confirmed absolutely upon a second Motion.

Mr. *Lutwyche*. My Lords, I desire he may be asked another Question: If there be a Reference concerning an Answer which is alledged insufficient, and the Master reports it insufficient, whether it is not final and conclusive, unless the Party takes Exception to such Report?

Mr. *Meller*. Unless the Party takes Exception, 'tis looked upon as final: For then he submits and puts in a farther Answer, and then the End of referring it to the Master is answered: But the Party may except if he pleases.

Mr. *Lutwyche*. As to the taxing of Costs, whe-

ther when the Costs are taxed to a particular Sum, that is not final and conclusive, unless the Party makes Application to the Court?

Mr. *Meller*. I apprehend I did answer that before. The Master, after he has taxed the Bill of Costs, the Clerk in Court, as I take it, makes out Subpœnas for Costs of course: But I cannot speak to that so well as the Clerks in Court; but I take that to be the Practice.

Earl of *Abingdon*. I would be glad to be informed in this Point: Supposing a Sum of Money to be laid out upon a Purchase or Mortgage, whether the Titles of those Estates are not commonly referred to a Master, and whether the Master does not judge of or determine those Titles?

Mr. *Meller*. In that Case, I can only speak to what came before myself. When there was an Order to put Money out upon a Mortgage, the first Step I took was, I sent the Title-Deeds to some able Counsel; when I had his Opinion, I used the best of my Judgment to inform myself: If I found no Objection, then I thought I was obliged to allow the Security, and accordingly made my Report of Allowance; and then as Master set my Hand to the Side of the Deed.

Mr. *Lutwyche*. Another Question I would beg Leave to ask. Tho' it is well known, yet it is fit it should appear from the Witness, and that is, Whether the Masters don't sit upon the Bench with my Lord Chancellor in open Court in *Westminster-Hall* every Term?

Mr. *Meller*. My Lords, in *Westminster-Hall* three Masters are required to attend the Chancellor; at his own House two; and the like at the *Rolls*.

Mr. *Com. Serj.* If the Gentlemen have done, we beg Leave to ask one Question: Whether even in the Case of Costs, if the Parties are dissatisfied, Application is not made to the Court (tho' not by way of Exception, yet by Motion) to refer it back again?

Mr. *Meller*. In the Case of Costs, it hath been a very rare thing to apply to the Court. Some Instances there have been, I believe, but few.

Mr. *Com. Serj.* I beg Leave the Master would inform your Lordships, whether in the Case of Titles, if there happens any Difference in the Opinion of the Parties, whether they apply to the Court, or are concluded by the Opinion of the Master?

Mr. *Meller*. I never knew, during the Time that I was in the Office, that any Title was ever contested before the Court; I mean in my own Case.

Mr. *Com. Serj.* Whether or no he knows any Case where the Parties have differ'd in Opinion about a Title, that the Master's Opinion has concluded the Parties?

Mr. *Meller*. I don't know, while I was in the Office, that there was ever any Objection before me in the Case of a Title.

Mr. *Robins*. Give me Leave to ask one Question: You say three Masters sit with my Lord Chancellor at *Westminster*, two at his own House: I desire to know what they do there, whether they sit as Assistants?

Mr. *Meller*. My Lords, I don't know that ever their Advice was asked.

Dr. Sayer. My Lords, I would ask whether they ever interposed by way of Judgment, or took upon them to act as Judges?

Mr. Meller. My Lords, I think not, I don't remember any Instance of it.

Mr. Strange. My Lords, I desire he may be asked, whether what the Master ever does is confirmed of course, or is there not a Motion for that purpose?

Mr. Meller. I thought I mentioned that before: I shall repeat it again. There is first a Motion to confirm *nisi Causa*; and upon the second Motion, unless there is Cause shewn, it is confirmed.

Mr. Strange. My Lords, I desire he may be asked, if there is not an Affidavit of Service of the first Order?

Mr. Meller. I believe there is; but that is the Business of the Solicitor.

Mr. Strange. My Lords, I beg Leave he may be asked one Question more, Whether there is not a Certificate also from the Register that no Cause is shewn?

Mr. Meller. My Lords, I can't speak particularly as to that; It is a Business that does not lie before the Master in his Office: I believe in many Cases the Register certifies.

Dr. Sayer. We will trouble your Lordships with no more Questions except this one; that is, Whether we shall see Mr. Meller again? For if we are to take our Leave of him now, we should offer some other Questions before he departs.

Mr. Serj. Pengelly. My Lords, I can't tell whether the Managers will have any Occasion to call him again; but he shall stay here to attend, in order to be called when he is wanted, either by the Noble Lord or any other Person. We don't think fit to trouble your Lordships with any other Evidence as to that Matter. Their Authority in Court appears by the Commissions that have been produced. It is not said in the Introduction to the Articles, that the Masters are to comptroll the Lord Chancellor, but to assist him in the Administration and Execution of Justice, of which we think we have produced the fullest Proof; and beg Leave to proceed to another Part of our Evidence, that which relates to the Profits of the Office of Lord Chancellor. The ordinary Profits, not to mention the extraordinary ones, which have been made by the Noble Lord within the Bar, I think may be computed to amount to 8000 *l.* a Year, or thereabouts; so that there is no Occasion to use other Means. But not to enter into them all, we shall only beg Leave to call one Witness to prove one gross annual Sum of 1500 *l.* a Year paid out of the *Hanaper-Office*. My Lords, we desire Mr. Pynsent may be asked, for what annual Sum he accounted to the late Lord Chancellor out of the *Hanaper-Office*, during his time of being in the said Office, how much he has paid him?

Mr. Com. Serj. My Lords, I beg Leave to oppose that Question. I believe there is no Payment from the Crown but what is always upon Record; and therefore that being a Matter of a higher Nature, they ought to produce those Records, and not examine Witnesses *viva voce* to it.

E. of Macclesfield. I believe this Gentleman is right in his Objection in Point of Law. But however, as this Person is the proper Officer, and I believe an honest Man, I will not insist upon the Nicety.

Mr. Serj. Pengelly. We desire to know how much a Year he has paid to the impeached Lord out of the *Hanaper-Office*?

Mr. Pynsent. I have no Voucher with me; but as far as I can charge my Memory, 'tis about 13 or 1400 *l.* a Year.

E. of Macclesfield. If he had had his Memorandum with him, I was willing he should give your Lordships an Account of that Matter; but if he speaks only by an uncertain Memory of it, I hope I shall not be bound by it, especially when he himself assigns the Want of his Vouchers as a Reason why he cannot be certain.

Mr. Serj. Pengelly. My Lords, we desire he may be asked, How much he can take upon him to say he has paid? It is not material whether by Warrant or Special Direction: It is only a Question of Fact, whether he can be certain to a Sum, either 13 or 1400 *l.* a Year, or other Sum?

Mr. Pynsent. I can say above 1000 *l.* a Year. If I had my Vouchers here, I could be more certain.

Mr. Com. Serj. The Noble Lord waved the Objection, upon a Supposition that he had a certain Account. As he has not, I must beg Leave to insist upon the Objection that I made against the Legality of the Proof.

Mr. Lutwyche. We only ask in this Case to a Fact, what he paid to him; and I will add this further, for what time?

Mr. Serj. Probyn. My Lords, we must insist upon our Objection. The Witness says he is uncertain how much he has paid: He says he has Vouchers which will shew the particular Sums he has paid; and since it is in their Power to produce those Vouchers, we must submit it that they shall produce the best Evidence they have in their Power to give, and that the Receipts and Vouchers shall be produced.

Mr. Com. Serj. The Answer of the Honourable Managers to the Objection, is no Answer. They say 'tis a Matter of Fact; but that Matter of Fact is Matter of Record: It must be proved by the Record, because the Law expects the highest Proof to be made that can be, even in trifling Cases, and much more when the Honour of so great a Lord is in question.

Mr. Serj. Probyn. I desire to know if there is not constantly a Receipt given upon every Payment?

Mr. Pynsent. Yes, and those Receipts are carried into the Auditors Office, and there they rest.

Mr. Serj. Probyn. Then they can be come at?

Mr. Pynsent. Yes, they are carried in yearly.

Mr. Sol. General. My Lords, I did not expect this Objection: But we must submit it whether there is any Foundation for it. If the Matter of Record be insisted on, only with respect to the Receipt given, there is no need of it: Better Evidence cannot be given to prove Payment, than the Man who paid it. The common Evidence to prove Payment of Money, is to produce



duce a Man to swear that he paid that Money. No better Evidence can be given; and tho' a Receipt is given, yet when a Person proves he paid the Money, he need not produce the Receipt: It is better Evidence than the Receipt: A Receipt may be given without Payment. Therefore we apprehend that the Witness's Proof of the Payment, is sufficient to prove this Matter of Fact.

Mr. Com. Serj. I apprehend there is no Money either received or issued out by the Crown, but what appears by Record. It is not only those Receipts that is the Strength of the Objection; but when there are Matters uncertain, and the Witness says he can't declare what it was, whether upon that Foundation your Lordships won't expect a certain Evidence, not only from the Nature of the Thing, but from the present Circumstances of this Case, when the Witness declares that he cannot remember it?

Mr. Strange. My Lords, I wonder to hear it said, that a Person who swears to the Payment of Money, is the most certain Evidence. He may be mistaken, the Receipt cannot. Therefore we must submit it, as they have opened it, whether this is the best Evidence?

Mr. Lutwyche. My Lords, I wonder your Lordships should be troubled with any thing of this kind, in order to prove a Salary of 1500 *l.* a Year belonging to the Noble Lord's Office, when we ask only to the Quantum of the Sum which he did receive from Mr. Pynsent: The Question is, whether we shall be admitted to ask that Question? It is admitted that the Witness paid the Salary: All the Question is, what he paid?

E. of Macclesfield. My Lords, I am sorry your Lordships Time should be taken up about a thing of this kind. When the Objection was first made by my Counsel, which I apprehend is right, I stood up to acquaint your Lordships, that I did not insist on the Nicety of it. This Gentleman used to pay me Money, and I believe he is a very honest Gentleman; but when he comes to say he is not sure how much, and they were working him up to a higher Pitch, and these Gentlemen, for ought I know, or their Solicitor, may have the Receipts in their Pockets, I thought it was then high time to stop them. This Gentleman did say it was more than 1000 *l.* My Lords, I admit it, I believe it to be 1100 *l.* a Year, or thereabouts: If I knew exactly, I would tell it, I never intended to dispute the Matter.

Mr. West. I would not have your Lordships imagine that the Commons are capable of working up a Witness. It is unworthy of the Commons of Great Britain, of the Gentlemen appointed Managers in their Behalf; it is impossible that they should have any View but the Truth of the Fact, and the Justice of the Cause. The Question asked was only what it was he paid; it was not endeavouring to work him up to any thing. If this was a Question relating to the Crimes charged upon his Lordship, I should not have been so much surprized; but this is only an Aggravation contained in the Preamble. I think the litigating the Point is as great an Aggravation, as the proving the Payment of the Money.

E. of Macclesfield. My Lords, I did not intend any Reflection upon the Commons; nor did I say any thing which amounts to it. I did say the Solicitor might have the Receipts, I don't know what they have in their Hands. The learned Gentleman that spoke last, says 'tis not a Charge, only an Aggravation: If it be an Aggravation, should it not be proved, and legally proved? But I have been ready to make this Matter easy, for I agreed it to be as much as their own Witness can with any Certainty say it was, and I don't think it to be any Aggravation; and therefore told your Lordships I believed it might be 1100 *l.* a Year, or thereabouts, not being willing to take up any more of your Lordships time about it.

Mr. Serj. Pengelly. My Lords, the Managers for the House of Commons do not think it so material whether it be 11 or 1500 *l.* a Year. We will take the Noble Lord's Admission: And we apprehend as it is 1100 *l.* a Year, it is a reasonable Addition to the Salary of his Office.

E. of Macclesfield. I only would ask this Question, Do you remember what the Chancellor's Annual Salary is?

Mr. Pynsent. No, I do not.

E. of Macclesfield. That is Part of the Particular that makes up the 1100 *l.* per Annum?

Mr. Pynsent. I think it is so.

E. of Macclesfield. Is it not 300 *l.* per Annum?

Mr. Pynsent. I think it is thereabouts.

Mr. Com. Serj. My Lords, I desire he may be asked, whether or no this 1100 *l.* a Year hath been usually allowed to the preceding Lords Chancellors?

Mr. Pynsent. I take it for granted that it was so.

Mr. Serj. Pengelly. My Lords, we shall now proceed to call our Witnesses in Support of the Ninth Article, that being a distinct Particular, relating to a Sum not at all involved in the Questions touching the Masters; and, as we apprehend, received by the Noble Earl under Circumstances of the greatest Aggravation that is possible; abusing the Royal Authority, or that Share of it which the Noble Lord enjoyed at that time when he was one of the Lords Justices. Therefore we give Preference to that Article, and desire Mr. Thomas Bennet, whom I see in your Lordships House, may be sworn and examined.

Mr. Thomas Bennet sworn.

Mr. Serj. Pengelly. My Lords, Mr. Bennet was the Person who was possessed of the Office of the Clerk of the Custodies, at the time of the Resignation of it for the Benefit of Mr. Hamersley, who has now a Patent. We have the Patent here; and if that be read, it will more fully acquaint your Lordships with the Nature of the Office, and then we shall acquaint your Lordships with the Nature of the Transaction.

The Patent begun to be read.

'Teste, &c. 5<sup>to</sup> Septemib' An. 10 Georgii Regis.

Mr. Serj. Pengelly. Tho' the Noble Lord's Name be not mentioned in the Patent, yet it is sufficiently known from the Date and Time

of it, that it was when the Noble Lord was one of the Lords Justices, and had the Custody of the Seals, and that at that time he affixed the Seals to this Patent.

Then the Patent was begun again to be read.

E. of *Macclesfield*. My Lords, I beg Pardon for interrupting, I don't know whether they think it of any particular Use to read it through; if not, for saving your Lordships time, I admit that a Grant was made of the Office to Mr. *Hamersley*, on the Surrender of Mr. *Bennet*.

Mr Serj. *Pengelly*. My Lords, as it is necessary to shew the Resignation of Mr. *Thomas Bennet*, so likewise the Nature of the Office; and therefore to the end that may be the better seen, we beg Leave the Patent may be read.

*Clerk reads.*

**G**EOGIUS Dei Gratia, Magnæ Britannia, Franciæ & Hiberniæ Rex, Fidei Defensor, &c. Omnibus ad quos presentes literæ nostræ pervenerint salutem. Cum nos per Literas nostras Patentes sub Magno Sigillo nostro Magnæ Britannia confectas geren' dat' apud Westm' vicesimo die Martij, Anno Regni nostri tertio pro nobis Heredibus & Successoribus nostris Dederimus & Concesserimus Dilecto & fideli nostro Thomæ Bennet Armigero Officiū Clerici ad scribend' & Conficiend' omnia & singula Bria de diem clausit extremum, & Mandamus & Commissiones ad inquirend' post mortem & de Ideotis & Lunaticis & ad melius inquirend' inde & superfed' eorundem ac omnia al' Bria & Process' eorund' ac omnia al' Bria de Process' cujuscunque Generis Nominis Naturæ vel Speciei essent vel forent que ante tum de vel nuper in Cur' Wardor' & Libationum aliquor' Predecessor' nostror' antetunc Regum vel Reginar' Angl' per Warrant' ibidem dum eadm' Cur' stetit & fuit in Usu & Vigore fact' & Concess' assignat' vel appunctuat' fuerant, vel fieri concedi assignari vel appunctuari consueverant vel debuerant ac de vel in Cur' nostra Cancellar' vel aliquor' Predecessor' nostror' antetunc Regum vel Reginarum Angl' sub Magno Sigillo Angl' impetrat' & persecut' fuerant vel impetrari & prosequi consueverant vel debuerant ac oies & singul' Literas Paten' de Custod' Corporum omnium Wardor' Idiotor' & Lunaticor' nostror' Hered' & Successor' nostrorum & de Maritag' eorund' Wardor' sub Magno Sigillo Magnæ Britannia impetrand' & prosequend' necnon omnia al' Bria Commissiones & process' cujuscunque Generis Nominis Naturæ vel Speciei essent vel forent de vel in Cur' nostra Cancellar' Hered' & Successor' nostrorum sub magno Sigillo nro Magnæ Britannia Heredu' vel Successorum nostrorum premissa predicta seu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' seu prosequend' HABEND' tenend' gaudend' & exercend' predictum Officiū & omnia & singula premissa predicta superius specificat' p'fat' Thomæ Bennett per seipsum vel per sufficientem Deputat' suum sive Deputatos suos sufficientes a die dat' prerecitat' Literarum nostrarum Patentium ad Termin' & pro Termino vitæ naturalis ipsius Thomæ Bennett una cum omnibus predict' profic' & advantag' ad inde spectan' prout per easdem Literas Paten' (inter al')

in eisdem content' relatione inde habita plenius liquet & apparet cumque p'fat' Thomas Bennett per quoddam Scriptum suum sub Manu & Sigillo suis sigillat' geren' Dat' nono die Augusti, Anno Regni nostri decimo, ac in Cur' Cancellar' nostra debito modo Irrotlat' Officiū & premissa predicta ac tot' statum jus Titulum & interesse sua in eisdem una cum dictis recitat' Literis nostris Patentibus Cancelland' in Manus nostras sursum reddiderit. Quam quidem sursum redditionem nos acceptavimus ac per presentes acceptamus *Sciatis modo* quod nos de Gratia nostra speciali ac ex certa Scientia & mero motu nostris *Dedimus* & concessimus ac per presentes pro nobis Heredibus & Successoribus nostris *Damus* & concedimus dilecto & fideli nostro Hugoni Hamersley de Interiori Templo Londin' Armigero dictum Officiū Clerici ad scribend' & conficiend' omnia & singula Bria de diem clausit extremum & Mandamus & Commissiones ad inquirend' post mortem & de Idiotis & Lunaticis & ad melius inquirend' inde & superfed' eorund' ac omnia al' Bria & Process' eorund' ac omnia al' Bria & Process' cujuscunque Generis Nominis Naturæ vel Speciei sint vel fuerint quæ antehac de vel nuper in Cur' Wardorum & Liberationum aliquorum Predecessorum nostrorum nuper Regum vel Reginarum Angl' per Warrant' ibidem dum eadem Cur' stetit & fuit in Usu & Vigore fact' concess' assignat' vel appunctuat' fuerunt vel fieri concedi assignari vel appunctuari consueverunt vel debuerunt ac de vel in Cur' nostra Cancellar' vel aliquorum Predecessorum nostrorum nuper Regum vel Reginarum Angl' sub Magno Sigillo Angl' impetrat' & persecut' fuerunt vel impetrari & prosequi consueverunt vel debuerunt ac omnes & singul' Literas Paten' de Custodia Corporum omnium Wardorum Idiotorum & Lunaticorum nostrorum Hered' & Successor' nostrorum & de Maritag' eorund' Wardor' sub Magno Sigillo Magnæ Britannia impetrand' & prosequend' necnon omnia al' Bria Commissiones & process' cujuscunque Generis nominis Naturæ vel Speciei sint vel fuerint de vel in Cur' nostra Cancellar' Heredum & Successorum nostrorum sub Magno Sigillo nostro Magnæ Britannia Hered' vel Successorum nostrorum premissa predicta seu eorum aliqua tangen' vel concernen' fiend' concedend' impetrand' seu prosequend' ac ipsum Hugonem Hamersley Clericum & Officiarium nostrum Hered' & Successor' nostrorum ad scribend' & conficiend' omnia & singula predicta Bria Commissiones process' superfed' Literas Paten' ac omnia & singula cætera premissa superius specificat' de vel in dict' Cur' Cancellar' nostra ac Hered' & Successor' nostror' imposterum de tempore in tempus concedend' prosequend' seu quovismodo impetrand' *Ordinamus, Constituimus, Erigimus* & Stabilimus per presentes *Habend' Tenend' Urend' Gaudend' Exercend' Fungend'* & Administrand' predict' Offic' & omnia & singula premissa predicta superius specificat' p'fat' Hugoni Hamersley per seipsum vel per sufficientem Deputatum suum sive Deputatos suos sufficientes a confectioe harum literarum nostrarum Patent' ad Terminum & pro Termino Vitæ naturalis ipsius Hugonis Hamersley una cum omnibus & singulis Feod' profic' commoditat' emolument' juribus

ribus Privileg' & al' rebus quibuscunque modo vel antehac usitat' pro premissa vel eorum aliqua recept' seu eisdem vel eorum alicui pertinen' incident' vel incumben' quovismodo adeo plene libere & integre ac in tam amplis modo & forma prout prefat' Thomas Bennett, vel aliquis alius sive alicui alii predictum Officium & cætera premissa seu eorum aliqu' antehac habentes vel exercentes habens seu exercens habuerunt exercuerunt perceperunt & gavisi fuerunt habuit exercuit percepit & gavifus fuit aut habere exercere percipere aut gaudere debuerunt aut debuit in & pro Exercitio ejusdem Officii & cæterorum premissorum. Et hoc absque computo seu aliquo alio proinde nobis Heredibus vel Successoribus nostris reddend' solvend' vel faciend' *Volumus* etiam ac per presentes pro nobis Heredibus & Successoribus nostris concedimus prefat' Hugoni Hamersley quod ipse custodiet intrabit & transcribet omnes & singulos Ordines Reportationes & comput' fact' declarat' & perfect' sive faciend' declarand' & perficiend' tangen' vel concernen' dict' Idiot' vel Lunatic' & stat' eorund' vel eorum aliquorum vel alicujus *Volumus* etiam quod nullus alius Clericus Cancellariæ nostræ Hered' vel Successor' nostror' nec aliquis alius sive alicui alii cum Scriptur' Confectione seu Compositione predicatorum Briorum Commission' process' Literarum Paten' vel cum Custodia Intracone & Transcriptione predict' Ordin' Reportation' & computorum aut al' premissorum aut alicujus eorundem ullo modo se intromittat seu intromittant sine assensu & consensu ipsius Hugonis Hamersley. Et quod idem Hugo Hamersley aut Deputat' suus sive Deputat' sui sufficien' in hac parte assignat' sive assignand' Omnia & singula predicta Bria Commissiones Literas Paten' Ordinationes Certification' Composition' & cætera premissa de vel in dict' Cur' Cancellar' nostra ac Heredum & Successorum nostrorum prosequend' conficiend' impetrand' custodiend' intrand' vel transcribend' scribere conficere custodire intrare & transcribere possint & quilibet eorum possit. *In cujus rei Testimonium* has Literas nostras fieri fecimus Patentes Testibus Willielmo Archiepiscopo Cantuar' & cæteris Custodibus & Justiciariis Regni nostri apud Westmonasterium quinto Die Septembris, Anno Regni nostri Decimo.

Per bre' de privato Sigillo,

C O C K S.

Mr. Serj. Pengelly. The Reading of these Letters Patents shews, that this Office is in the Gift of the Crown: It likewise shews, that the Resignation of Mr. Tho. Bennet was for the Benefit of Mr. Hamersley, for that is recited in the Letters Patents themselves. Now, my Lords, we shall shew your Lordships upon what Consideration or Bargain that Resignation and new Grant were made.

Mr. Com. Serj. I beg Leave to make an Objection to that: The Foundation of this Article is a corrupt Agreement for the Resignation of an Office accepted by the Lord Chancellor. Now, in the Letters Patents in general, a Resignation is taken Notice of; but they ought to make it appear, That his Lordship's Permission or Acceptance of it is necessary. The Resignation is

not made to the Lord Chancellor: Therefore we hope it shall not, by way of Conclusion and Implication, be an Evidence to prove this Resignation to be accepted or procured by him. The Resignation was in fact made without his Privy; and the Resignation itself is of Record, and must be proved by Record.

Mr. Sol. Gen. My Lords, I can hardly think myself at your Lordships Bar, by the Objections which are made by the Counsel for the noble Lord. They object before they hear us: They object we cannot prove the Resignation to the Earl: When we have produced our Proof, then they will see whether it be sufficient: 'Tis time enough for them to make the Objection then. If we are to be objected to upon every Witness we call, before we have asked them one Question, I am afraid a great deal more Trouble will be given your Lordships than we are willing to give. We are first to ask our Questions; if we ask an improper Question, they may object to the Question: Or, if the Answer don't prove our Charge, they may observe on it when it is given. I little expected this Method at your Lordships Bar.

Lords. Go on, go on.

Mr Serj. Pengelly. We don't apprehend there is any Occasion to enter into this Objection. It is a Resignation to the Crown, but through the Hands of the Lord Chancellor: He is the Lord that puts the Seal to the Instrument: But if further Evidence be necessary, they must object to that when we have gone through the Proof. Therefore we beg Leave to ask Mr. Tho. Bennet.

Mr. Lutwyche. I thought they would have objected to our asking Mr. Bennet any Questions at all.

Mr. Onslow. It is rather an Observation upon our Evidence, which will be more proper for them when they come to make the noble Lord's Defence.

Mr. Serj. Pengelly. We beg Leave to ask Mr. Bennet; what Application he made for Liberty to resign this Office, and for Mr. Hamersley to be admitted?

Mr. Tho. Bennet. My Lords, as soon as I was admitted a Master of the Court of Chancery, which was the 3d of June, 1723, I thought it inconsistent to hold this Office of the Clerk of the Custodies, which I had before; and therefore I intended to surrender it to some Person that was proper: And after I had found Mr. Hamersley, and made an Agreement with him, I applied to Mr. Cottingham, then Secretary to my Lord Chancellor. I told him I was possessed of an Office in the Gift of the Crown, and was willing to surrender, and was going to apply to a Secretary of State to get the King's Leave to surrender for the Benefit of Mr. Hamersley. I told him that the Office being in the Court of Chancery, the Secretary of State would naturally ask my Lord Chancellor, whether the Person I proposed was well-affected to the Government, and qualified for the Place: And therefore, for that Reason, I thought it my Duty to acquaint my Lord Chancellor with my Intention, and who the Person was I intended to succeed me. I desired Mr. Cottingham to acquaint my Lord Chancellor that Mr. Hamersley was the Person. Mr. Cottingham replied, he would acquaint my Lord Chancellor, and I should have an Answer as soon as possible. He appointed me to meet him the next Day, when he told me he had acquainted my Lord Chancellor

who the Person was, and that my Lord Chancellor said he had not any Knowledge of him. I told Mr. *Cottingham* he might have acquainted his Lordship that he knew him, for he lived the next Door to him: He is a Gentleman at the Bar well known; and I do assure you he is in the Interest of the Government. Says Mr. *Cottingham*, my Lord Chancellor don't know him, nor do I. I was surprized at that. But however, said he, Mr. *Bennet*, there is a Present expected by my Lord Chancellor, and if I made that Present, the thing might be made easy, and my Lord Chancellor would do what I desired; that is, to acquaint the Secretary of State, that Mr. *Hamersley* was a Person well affected to the Government; and that I desired he might succeed me in my Place. Mr. *Cottingham* said, there must be a Present. On this, I told Mr. *Cottingham*, that it was not usual to give any Present upon this Occasion; that, in my own Case, when I came in, I gave none to my Lord *Cowper*, and my Brother told me that he gave none; and that at his Coming in, he asked Lord *Cowper* if any thing was due to him, and my Lord *Cowper* denied that any thing was due, and absolutely refused any thing: Besides, said I, it is very hard for my Lord Chancellor to ask or accept any thing from me, because I so lately paid him so great a Sum as Fifteen hundred Guineas for my Master's Place; but if he will have it, I will give him One hundred Guineas. He said he would acquaint my Lord Chancellor with it; and the next day, or the day after, he told me that my Lord Chancellor would accept of that; but it was a very small Present, and it was a Favour my Lord accepted it; and my Lord would send over to *Hanover* for the King's Warrant, and I need have no further Trouble besides passing the Patent.

Mr. Serj. *Pengelly*. My Lords, I desire he may be asked, whether he paid the One hundred Guineas to Mr. *Cottingham*, and in what manner?

Mr. *Tho. Bennet*. I did pay it, I think it was in a Bank Bill of 105 *l*.

Mr. Serj. *Pengelly*. Do you remember at what time?

Mr. *Tho. Bennet*. It was long before the Resignation: For some considerable time after, Mr. *Cottingham* asked me what I meant that I did not pass the Patent, for the Warrant was come over. I said I had employ'd Mr. *Tench* to do it; but however I would speak to him again; which accordingly I did, and Mr. *Tench* passed the Patent, and I paid him 64 *l*. 17 *s*. 0 *d*. the Fees for passing the Patent.

Mr. Serj. *Pengelly*. Was that over and above the One hundred Guineas?

Mr. *Tho. Bennet*. Yes, my Lords.

Mr. Serj. *Pengelly*. Was there any Deduction upon the Payment of the One hundred Guineas?

Mr. *Tho. Bennet*. None at all.

Mr. *Lutwyche*. My Lords, I desire he may be asked, how long this was after he was admitted a Master in Chancery?

Mr. *Tho. Bennet*. I believe it was about six Weeks. I was admitted a Master in Chancery the Beginning of *June*, and the latter End of *July* following, I surrender'd my Office of Clerk of the Custodies.

Mr. Serj. *Pengelly*. We have done with Mr. *Bennet*.

Mr. Serj. *Probyn*. If the Gentlemen have done

with him, we beg that he may be asked a few Questions on behalf of my Lord *Macclesfield*. What was it you desired Mr. *Cottingham* to say in your Favour to my Lord *Macclesfield*?

Mr. *Tho. Bennet*. I desired Mr. *Cottingham* to acquaint my Lord Chancellor, that I intended to apply myself to the Secretary of State for Leave to surrender the Place of Clerk of the Custodies, and to beg the Favour, that if the Secretary of State should enquire of him after the Abilities and Circumstances of Mr. *Hamersley*, he might assure the Secretary of State, that he was a Man qualified for the Place, and well affected to the Government.

Mr. Serj. *Probyn*. Was that all?

Mr. *Tho. Bennet*. I think that was all.

Mr. Serj. *Probyn*. Was that all that Mr. *Cottingham* told you he had asked?

Mr. *Tho. Bennet*. I don't remember any thing more, but only Mr. *Cottingham* returned for Answer, my Lord did not know Mr. *Hamersley*, and I must make a Present, and then what I desired would be complied with.

Mr. Serj. *Probyn*. I think you say you had some Treaty with Mr. *Hamersley* about the Surrender of your Office?

Mr. *Tho. Bennet*. Yes.

Mr. Serj. *Probyn*. Had you come to any Agreement with him for the Office, if you could procure a Surrender and Admittance?

Mr. *Tho. Bennet*. Yes.

Mr. Serj. *Probyn*. Then I desire to know what Sum of Money he was to pay you for that Office, if you could procure him to be recommended?

Mr. Serj. *Pengelly*. We hope the Counsel will not ask such a Question.

Mr. *Sol. Gen*. It is not so proper for us to object: The Objection is to come from him: We may tell him that he is not bound to answer such a Question, unless he pleases.

Mr. *Tho. Bennet*. I desire to be excused answering a Question that is not material on one Side or the other.

Mr. Serj. *Probyn*. I hope it will be thought reasonable, that he should inform your Lordships, what was the Consideration that induced him to surrender his Office, or what Money he was to have?

Mr. *Tho. Bennet*. I might have surrendered that Office without receiving any Money for it; whether I gave it, or whether I sold it away, is not material.

Mr. *Strange*. I desire to know whether he gave it away.

Mr. *West*. The Question is only to induce him to accuse himself of a Fact which may be prejudicial to him, and it hath no Influence on the Question before your Lordships; which is not, whether this Gentleman had a Right to give away or sell his Office, but whether the Earl of *Macclesfield* corruptly took Money.

Mr. *Sol. Gen*. It is our Duty that he should not be surprized into a Question that may subject him to Punishment: It is not properly an Objection from us; but we ought to let him know, that an Answer to the Question may subject him to a Prosecution. If he thinks fit to answer, we have nothing to say to it.

Mr. *Plummer*. I have another Objection to the putting of this Question. I perceive the Counsel intend to draw out this Tryal to an excessive Length; I hope your Lordships, for your own Sakes,

Sakes, will not permit this Question to be answered?

Earl of *Abingdon*. If this Point be insisted on on both Sides, it cannot be avoided but they must withdraw: But I hope the Counsel for the noble Lord will consider very well of it, before they give your Lordships or the Managers that Trouble: For if your Lordships should judge the Question unreasonable, it would throw a Disgrace upon themselves, and be at least of no Service to the noble Lord that is impeached.

E. of *Macclesfield*. I humbly apprehend this Question to be extremely material, as that Circumstance of his having made this Present of One hundred Guineas out of Two thousand, perhaps, which he received for surrendring the Place, must set this matter in a different Light than it would appear in, if nothing else had been done but the bare paying of the One hundred Guineas; but since I perceive it to be your Lordships Sense that he should not be asked the Question, I therefore decline insisting on it.

Dr. *Sayer*. My Lords, I beg Leave to ask Mr. *Bennet* this Question: He was pleased to say that he gave a Hundred Guineas. Now I desire it may be asked of him, Whether he gave it to permit him to resign, or to give a Recommendation of Mr. *Hammersley*, or what else. That he would please to explain it; what it was given for.

Mr. *Tho. Bennet*. I have said it twice; but I will repeat it again. I said that it was that my Lord Chancellor might recommend the Person to the Secretary of State; for I apprehended it was not in my Lord's Power or Gift: He might have done it without taking any Money.

Dr. *Sayer*. With regard to this 64 l. odd Money, what was that paid for? Whether to the Great Seal only, or for the whole Fees in passing the Patent through all the Offices?

Mr. *Tho. Bennet*. It was paid to Mr. *Tench* the Clerk of the Patents, who passed this Patent through all the Offices; and the Great Seal was included in it as I apprehend.

Dr. *Sayer*. I ask who this Mr. *Tench* is, whether he is an Officer belonging to the Great Seal, under the Lord Chancellor?

Mr. *Tho. Bennet*. He is Clerk of the Patents; I do not know who he belongs to.

Mr. *Robins*. My Lords, I desire he may be asked, Whether Mr. *Cottingham* told him, that the Lord *Macclesfield* insisted upon any particular Sum?

Mr. *Tho. Bennet*. Mr. *Cottingham* told me, that my Lord insisted upon One hundred Guineas; and I argued the Unreasonableness and Hardship of it.

Mr. *Com. Serj.* My Lords, I desire Mr. *Bennet* may acquaint your Lordships, whether ever he made any Application to the noble Lord for Permission to resign?

Mr. *Tho. Bennet*. I never spoke to my Lord myself.

Mr. *Serj. Pengelly*. If the Gentlemen have done with him, we beg Leave to explain this Matter, and to ask him upon what Account it was that Mr. *Cottingham* from my Lord *Macclesfield* said a Present was expected?

Mr. *Tho. Bennet*. I can't say what was Mr. *Cottingham's* Reason; but he said my Lord Chancellor did not know Mr. *Hammersley*; and then he went on, and said, a Present was expected.

I apprehended, Mr. *Cottingham* took it, that I could not do it without my Lord Chancellor's Consent.

Mr. *Serj. Pengelly*. I desire he may be asked, Whether the Hundred Guineas was paid for a Recommendation of Mr. *Hammersley*, or that the Whole of procuring the Warrant for the Patent was to be done for it?

Mr. *Tho. Bennet*. Mr. *Cottingham* assured me, I need have no farther Trouble about it, if I would pay the Hundred Guineas: He would get the King's Warrant; and I should have no farther Trouble, but passing the Patent.

Mr. *Serj. Pengelly*. My Lords, I desire he may be asked, whether he depended upon these Assurances, or whether he made Application to any body else?

Mr. *Tho. Bennet*. I never made any other Application; and I told Mr. *Cottingham*, if any Accident happen'd of Death, &c. before the Warrant came over, I hoped my Lord Chancellor would return the Hundred Guineas; and he said, Surely so.

Mr. *Serj. Pengelly*. I beg Leave to observe, that the Patent proves that this corrupt Bargain was executed.

Mr. *Lutwyche*. I desire he may be asked, whether Mr. *Cottingham* delivered to him the Sign-Manual, or whether Mr. *Cottingham* got the Patent passed?

Mr. *Tho. Bennet*. I never saw the Sign-Manual. He delivered it, as I believe, to Mr. *Tench*.

Mr. *Lutwyche*. Did Mr. *Cottingham* give you Notice when the Sign-Manual came over?

Mr. *Tho. Bennet*. Yes, he did give me Notice it was come over, and was very angry I did not go about it.

Mr. *Com. Serj.* I desire Mr. *Bennet* may give your Lordships an Account what Time it was?

Mr. *Tho. Bennet*. About the latter End of July.

Mr. *Com. Serj.* I desire he may be asked, whether he had not made Application to the Secretary's-Office?

Mr. *Tho. Bennet*. No, I had not made any Application at all.

Mr. *Serj. Probyn*. Did you never make any Application to any other Person, either before or after?

Mr. *Tho. Bennet*. I am positive I did not.

Mr. *Serj. Probyn*. Did you ever say about that time, that you had made Application to any other Person?

Mr. *Tho. Bennet*. No, I don't remember that I did.

Mr. *Serj. Probyn*. No; did you never make Application to any body else?

Mr. *Tho. Bennet*. I never told any body, to the best of my Knowledge and Belief. I am very confident I never did.

Mr. *Serj. Pengelly*. My Lords, if they have done with this Witness, we beg Leave to call Mr. *Cottingham*, who was an Agent, and paid over this Money to my Lord *Macclesfield*.

Mr. *Peter Cottingham* sworn.

Mr. *Serj. Pengelly*. My Lords, we only call Mr. *Cottingham* to acquaint your Lordships when he paid over these Hundred Guineas to my Lord *Macclesfield*.

Mr. *Cottingham*. In July I think it was.

Mr. *Serj. Pengelly*. How long after you received it from Mr. *Tho. Bennet*?

Mr. Cottingham. I believe I paid it over that Day, or the Day after.

Mr. Serj. Pengelly. I desire he may be asked, how long before the Patent was passed?

Mr. Cottingham. I can't tell, because I can't certainly say when the Patent passed.

Mr. Lutwyche. We desire to ask him, whether it was that Year when the King was beyond Sea?

Mr. Cottingham. I think, my Lords, it was; it was in July 1723.

Mr. Com. Serj. If the Gentlemen of the House of Commons have done with him, I beg that he would give your Lordships an Account what Discourse he had with Mr. Bennet?

Ld. Ch. Just. King. You hear the Question?

Mr. Cottingham. Mr. Tho. Bennet told me he had agreed with Mr. Hamersley for the Place of the Clerk of the Custodies; and that he did not think it convenient to keep two such considerable Places which depended upon his own Life only; that is, the Master's Place, which he had before purchased, and this. He told me he had disposed of this Place to Mr. Hamersley, in order to reimburse himself Part of the Money he had paid to Mr. Hiccocks for his Master's Place that he had purchased of him, and for that Reason he did not care to keep both.

Mr. Com. Serj. Did he tell you how much he had disposed of it for?

Mr. Cottingham. No, he did not.

Mr. Com. Serj. My Lords, I desire Mr. Cottingham may be asked what it was Mr. Bennet desired him to request of my Lord Macclesfield?

Mr. Cottingham. To the best of my Remembrance, he said, he hoped that his Lordship would accept of a Hundred Guineas, because he had received from him so lately a Present for his Master's Place; and he desired his Lordship to forward his Petition to his Majesty.

Dr. Sayer. Was this on the first Application?

Mr. Cottingham. Yes; he never made but one Application to me.

Dr. Sayer. It is of Consequence; and therefore I desire it may be asked, whether at the first time he apply'd, he made this Offer of One Hundred Guineas?

Mr. Cottingham. He did, and I paid it over to my Lord Macclesfield.

Dr. Sayer. I desire Mr. Cottingham may be asked, whether he knew Mr. Hamersley before this time?

Mr. Cottingham. I knew him very well, he was my next Door Neighbour both in Town and Country.

Dr. Sayer. Did you tell Mr. Bennet you did not know him?

Mr. Cottingham. No, I never told him so, it was impossible I should; he was my next Door Neighbour both in Bell-yard, and at Hampstead.

Dr. Sayer. What Character had Mr. Hamersley?

Mr. Cottingham. A very good one.

E. of Macclesfield. When you first spoke to me of this matter, what did you tell me?

Mr. Cottingham. I told your Lordship Mr. Hamersley was my next Door Neighbour both in Town and Country; and that he was a Gentleman of as unquestionable a Character as any at the Bar; and your Lordship was pleased to depend upon me for his Character.

Mr. Strange. He is pleased to say Mr. Bennet did not inform him what Agreement was made be-

tween him and Mr. Hamersley. But did not he say on what Account he resign'd?

Mr. Cottingham. He told me he surrendered the Office, to reimburse himself the Money he had paid to Mr. Hiccocks for his Office.

Mr. Strange. What Office was that?

Mr. Cottingham. The Master's Office.

Mr. Strange. Did he mention that?

Mr. Cottingham. Yes, he did mention it.

Mr. Serj. Pengelly. If they have done, we beg leave to ask Mr. Cottingham, since he informed my Lord of the Circumstances of Mr. Hamersley, whether he acquainted my Lord of Mr. Hamersley before or after the time he paid the 100 Guineas?

Mr. Cottingham. I acquainted his Lordship before.

Mr. Serj. Pengelly. I beg leave to ask another Question. If this Gentleman can inform your Lordships upon what Account it was, he received the 100 Guineas from Mr. Bennet?

Mr. Cottingham. I received the 100 Guineas upon Account of his Surrender of his Office.

Mr. Serj. Pengelly. We beg leave to ask another Question. Whether before he agreed with Mr. Bennet, he had informed my Lord Macclesfield of any Proposal, or what was to be expected?

Mr. Cottingham. No, I don't remember I did. All that passed on that Occasion was, Mr. Bennet said he was willing to give 100 Guineas, and he hoped his Lordship would not insist upon more.

Mr. Serj. Pengelly. I beg he may be asked another Question. Whether when he came back from my Lord Macclesfield to Mr. Bennet, with the Account of the Acceptance of the 100 Guineas, whether he did not tell Mr. Bennet he ought to take it as a favour that his Lordship accepted so little?

Mr. Cottingham. I can't remember, but I think I did not.

Mr. Serj. Pengelly. Can you say you did, or you did not?

Mr. Cottingham. To the best of my Remembrance I did not.

Mr. Serj. Pengelly. We desire he may inform your Lordships what Answer he brought to Mr. Bennet from my Lord Macclesfield?

Mr. Cottingham. The Answer my Lord Macclesfield ordered me to give to Mr. Bennet, was, that he agreed to accept of the 100 Guineas according to his Proposal.

Mr. Serj. Pengelly. Whether was this Offer of the 100 Guineas the first time, or after Mr. Cottingham had spoken to my Lord Macclesfield about it?

Mr. Cottingham. Mr. Bennet proposed to me to give the 100 Guineas before I spoke to my Lord about it.

Mr. Serj. Pengelly. Whether it was the first Time he offered the 100 Guineas, or some time after.

Mr. Cottingham. He offered the 100 Guineas the first time.

Mr. Serj. Pengelly. Whether Mr. Cottingham did not say the first time, that something was expected?

Mr. Cottingham. I believe I did say the Great Seal would expect something.

Mr. Lutwyche. Mr. Cottingham says he believes he did say something was expected. Then I desire to refresh his Memory, and that he would acquaint your Lordships whether that was mentioned before the 100 Guineas were offered?

Mr. Cottingham. No, not as I remember.

Mr. Lutwyche. What did you say on that Occasion?

Mr. Cottingham. I said on that Occasion, as he offered 100 Guineas, I told him my Lord was willing to accept of it.

Mr. Lutwyche. I am speaking of the first Discourse he had with him, I think he does recollect that he said my Lord expected something on the Account of this Office?

Mr. Cottingham. The first Discourse when that was mentioned, I told him my Lord expected something to be paid by way of Compliment.

Mr. Lutwyche. Was that the first Discourse?

Mr. Cottingham. The first that I remember.

Mr. Lutwyche. I beg another Question. If Mr. Cottingham told Mr. Bennet that my Lord expected something by way of Compliment, how came Mr. Cottingham to know that?

Mr. Cottingham. Mr. Bennet asked me if I believed his Lordship would not expect a Compliment? I told him I believed his Lordship would, and then he said he would give 100 Guineas.

Mr. Lutwyche. Had you any Discourse with my Lord Macclesfield before?

Mr. Cottingham. No, none at all. I told him it was usual to make a Present; and then he told me he was willing to give 100 Guineas.

Mr. Plummer. I know Mr. Cottingham is a very honest Gentleman. I desire to ask him, if Mr. Bennet did not then tell him, that when his Brother was admitted, my Lord Cowper would take nothing?

Mr. Cottingham. He did not upon the Oath I have taken, this is the first Word I heard of it: I did not know whether his Brother paid any thing or nothing.

Mr. Serj. Pengelly. There is some little Variation, tho' not material, between Mr. Bennet and Mr. Cottingham; we beg that Mr. Bennet may come to the Bar again.

E. of Macclesfield. My Lords, I don't oppose Mr. Bennet's coming to the Bar again; but I think it is very extraordinary for Persons to produce Witnesses to confront their own Witnesses.

Mr. Lutwyche. We do it, to confirm the Testimony of our Witness.

Mr. Serj. Pengelly. In an Affair of this Nature it is impossible to produce direct Evidence, without producing the Agent employed. Mr. Cottingham was the Agent made use of by the Chancellor, and we beg leave to ask of Mr. Bennet what Answer Mr. Cottingham brought or said he brought from my Lord Chancellor relating to this Affair.

Mr. Tho. Bennet. When Mr. Cottingham went from me to my Lord Chancellor, there was not a Word of Money mentioned the first time. I would not so much as put it into his Head; and he returned to me the next Day, and told me my Lord Chancellor insisted upon a Present. Then I said it was very hard, and I would give my Lord 100 Guineas if it must be so.

Mr. Serj. Pengelly. Was it not at the second Meeting that he insisted on a Present to my Lord?

Mr. Tho. Bennet. At the second Meeting. At the first time he did not, because there was no mention made of Money.

Mr. Cottingham. All that Mr. Bennet said to me on that Occasion was, that in regard a Compliment of 1500 Guineas had been so lately given to his Lordship, he hoped his Lordship would take no more of him than 100 Guineas.

E. of Macclesfield. These Gentlemen are pleased to differ in their Evidence. I would ask

Mr. Bennet a second time, whether Mr. Cottingham told him that he did not know Mr. Hamersley.

Mr. Tho. Bennet. I am sure Mr. Cottingham told me that my Lord Chancellor did not know him, and I think he told me that he did not know him. That made me say, why, Sir, that is strange you should not know him, when he lives the next Door to you!

E. of Macclesfield. Before, he said Mr. Cottingham said he did not know Mr. Hamersley. I think he told your Lordships so, that he did not know him.

Mr. Tho. Bennet. It is impossible to swear to a Conversation at so great Distance.

E. of Macclesfield. You are not positive?

Mr. Tho. Bennet. I am not positive.

E. of Macclesfield. Then, if he is not positive whether Mr. Cottingham told him so, I desire he may be asked whether he is positive that he answered Mr. Cottingham, why Sir that is very strange that you should not know him, when he lives the next Door to you?

Mr. Tho. Bennet. I am as positive of the one as of the other. This Conversation passed between us, as near as I can remember.

Mr. Cottingham. It is very strange I should say so of my very next Door Neighbour, and a Gentleman at the Bar.

Mr. Thomas Bennet. Therefore I wondered at it.

Mr. Lutwyche. There is but one thing more relating to this Article. It is very well known that his Lordship was one of the Lords Justices.

Mr. Cottingham. It is very strange sure, Mr. Bennet, that I should not know him. He is a Gentleman at the Bar, I see him every Day at Westminster-Hall.

Mr. Tho. Bennet. That was the Wonder I made of it. I might mistake you; I am sure you said my Lord did not know him, and I believe you said you did not know him. Mr. Cottingham is very deaf, and he might mistake me.

Mr. Serj. Pengelly. My Lords, We apprehend, the noble Lord does not put us on the Proof of his Acting as one of the Lords Justices.

E. of Macclesfield. If Mr. Delafaye is there, I desire he may be called to give an Account of my Acting.

Mr. Serj. Pengelly. What I call Mr. Delafaye for, is to give an Account of my Lords Acting as one of the Lords Justices. If they don't admit it; we must call him.

Dr. Sayer. My Lords, we desire he may be called.

Mr. Delafaye called.

Mr. Serj. Pengelly. We desire Mr. Delafaye may be sworn.

Mr. Delafaye sworn.

Mr. Serj. Pengelly. Since that is insisted upon for Form-sake, which is notorious to the whole Kingdom, we only beg leave to ask Mr. Delafaye, whether my Lord Chancellor acted as one of the Lords Justices at the Time of this Patent. [shewing him Mr. Hamersley's Patent.] Look upon the Date of that Patent.

Mr. Delafaye. Yes, my Lords.

Mr. Serj. Pengelly. My Lords, we only ask this Witness whether my Lord Chancellor, who had then the Custody of the Great Seal, acted as one of the Lords Justices?

Mr. Delafaye. Yes, my Lords, he did.

Mr. Serj. Probyn. I beg leave to ask him, whether he knew any thing of Mr. Bennet's Petition

being transmitted to his Majesty abroad, and by whose Direction?

Mr. *Delafaye*. Mr. *Bennet's* Petition was transmitted to his Majesty abroad, by the Direction of the Lords Justices.

Mr. Serj. *Probyn*. I desire this Witness would inform your Lordships, whether in Mr. *Bennet's* Petition it was desired that a Grant of his Office should be made to any, and what particular Person.

Mr. *Lutwyche*. I think we may reasonably object to that Question. We are not for troubling your Lordships with unreasonable Objections; but when a Gentleman experienced in the Law shall ask Questions, concerning written Evidence, we must oppose that, and submit it to your Lordships.

Then the Managers for the Commons acquainting the House, that they had gone through with their Evidence to the Ninth Article, did intend next to proceed to the Fifth, Sixth, Seventh, and Eighth Articles; and alledging it was requisite their Evidence should be given entire, submitted it to their Lordships whether they should now proceed; whereupon, they and all Parties were directed to withdraw, and the Lords Resolved to proceed further in the Tryal tomorrow at Ten of the Clock in the Forenoon, and adjourned to Nine a Clock tomorrow Morning.

Friday May 7. The second Day.

The Lords being seated in their House, and the Managers being come, and the said Earl sitting on a Stool as before, and his Council at the Bar, Proclamation was made by the Sergeant at Arms as follows.

Our Sovereign Lord the King strictly charges and commands all manner of Persons to keep Silence, upon Pain of Imprisonment.

Then another Proclamation was made as on the first Day, That all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stands upon his Tryal, and they may come forth in order to make good the Charge.

Ld. Ch. Just. *King*. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr. Serj. *Pengelly*. The Managers will now proceed to the Fifth, Sixth, Seventh, and Eighth Articles, being all of the same Nature and Kind, relating to the Corrupt taking of Money on the Disposal of the Offices of the Masters in Chancery. The Question between the Commons and the Lord impeached upon these several Articles, is, the Manner of taking this Money. The Commons Charge the taking of the Money to be by Extortion, and Corruption, and to be drawn out of the Masters against their Consent; the Lord in his Answer insists, that it was freely and voluntarily given, as Presents, upon their respective Admittances. The Managers apprehend that they shall give your Lordships full Satisfaction, that the Charge of the Commons is true, and that the Manner of taking these Sums charged on the Lord, will be supported by the Evidence that will be produced. The first Witness that we shall call is Mr. *William Kynaston* to the Fifth Article.

Mr. *William Kynaston* sworn.

Mr. Serj. *Pengelly*. We desire that Mr. *Kynaston* may be asked, when he was admitted to be one of the Masters of the Court of Chancery?

Mr. *Kynaston*. On the 9th of August, 1721.

Mr. Serj. *Pengelly*. We desire that he may be asked, concerning the manner of his Admittance,

what Transactions there were before-hand about it, with whom, and what he gave the Lord Chancellor for his Admission?

Mr. *Kynaston*. After I had agreed with Mr. *Rogers* for the Purchase of his Office, I desired one Mr. *Baily* to go to Mr. *Cottingham*, my Lord's Secretary, to know what my Lord Chancellor would expect for my Admission into the Office, and treat with him about it. Mr. *Baily* told me it was best for me to talk with Mr. *Cottingham* myself. So I went to him, and told him my Case. He mentioned to me that other Masters, particularly Mr. *Conway* and Mr. *Borret*, had given Fifteen Hundred Guineas apiece. I proposed to him One Thousand Pounds, or One Thousand Guineas; He said he could not mention it to my Lord Chancellor under Fifteen Hundred. I agreed to give it, but I thought he meant Pounds, and made Preparations for it accordingly; but Mr. *Baily* afterwards telling me that he had seen Mr. *Cottingham*, and that he insisted upon Guineas, I sent them to him on the 8th by Mr. *Baily*, and the 9th I was admitted and sworn.

Mr. Serj. *Pengelly*. What Arguments were made Use of by Mr. *Cottingham*, to raise the Price from One Thousand to Fifteen hundred Guineas?

Mr. *Kynaston*. I don't particularly remember; but either Mr. *Rogers* or Mr. *Cottingham* said it was the oldest and the best Office.

Mr. Serj. *Pengelly*. Whether any thing was said that the Office was full of Cash?

Mr. Serj. *Probyn*. We apprehend that a Leading Question.

Mr. *Lutwyche*. It is a proper Question. But however; if they do not like it in those Words, we will put it into another Form. Whether there was any Discourse about the Profits of the Office?

Mr. *Kynaston*. I don't remember it.

Mr. *Lutwyche*. Was there any Discourse about your being recommended by any one?

Mr. *Kynaston*. I told him I had the Honour to be known to the late Lord *Bradford*, and desired to know whether his Recommendation might be necessary.

Mr. *West*. What Reason did they give you why it was the best Office?

Mr. *Kynaston*. Because it was the Senior Office, and had most Causes in it.

Sir *Wm. Strickland*. I desire to know what Answer Mr. *Cottingham* gave him, when he said he believed he might obtain that noble Lord's Recommendation?

Mr. *Kynaston*. I don't remember any he made.

Mr. *Plummer*. Whether any Objection was made by him to the Price upon his coming into the Office, by reason of any Deficiency in *Dormer's* Office?

Mr. Serj. *Probyn*. That Question is liable to the same Objection that was made to the former; it is too leading.

Mr. *Sol. Gen.* It is a fair Question, whether any Objection was made by him, on Account of the Deficiency of *Dormer's* Office?

Mr. *Kynaston*. I mentioned this to Mr. *Rogers*, he made little of it; I mentioned it afterwards to Mr. *Cottingham*, he too seemed to make light of it, and said it would be made up. So that I apprehended it would be of no great Consequence.

Mr. Serj. *Pengelly*. What Reason did he give, why he thought his Admission to the Office was not worth Fifteen Hundred Pounds?

Mr. *Kynaston*. I don't know that I mentioned any thing.



Mr. *Lutwyche*. In what manner was the Money paid?

Mr. *Kynaston*. I did not count it, but the Sum of Fifteen Hundred Guineas was carried in a Bag by Mr. *Baily* to Mr. *Cottingham*.

Mr. Serj. *Probyn*. I desire he may be asked, whether he had any Discourse with Mr. *Rogers* the former Master, about the Value of this Office, before he spoke with Mr. *Cottingham*?

Mr. *Kynaston*. Yes.

Mr. Serj. *Probyn*. How much did he say it was worth?

Mr. *Kynaston*. He said, he usually made 1700 *l.* a Year of the Office, and sometimes 2000 *l.* a Year.

Mr. Serj. *Probyn*. I desire he may be asked, what Sum of Money he gave Mr. *Rogers* for his Place?

Mr. *Kynaston*. 6000 *l.*

Dr. *Sayer*. I desire this Gentleman may be asked, at what time he paid Mr. *Cottingham* this Fifteen hundred Guineas; whether it was before or after his Admission?

Mr. *Kynaston*. Before; I believe it was the 8th or 9th of August in the Morning.

Mr. Serj. *Probyn*. I desire this further Question, whether he paid it out of the Suitors Money, or out of Effects of his own?

Mr. *Kynaston*. It could not be paid out of the Suitors Money, for I was not then admitted.

Mr. Com. Serj. Whether Mr. *Baily*, or any body else, concerned in negotiating this Affair, gave any Account of your Substance and Ability?

Mr. *Kynaston*. No, I believe not.

Mr. *Lutwyche*. If the Gentlemen have done, I beg Leave to ask him one Question, and it is in relation to what he was examined to first: He said there was a Discourse, that the Office was worth 1700 or 2000 *l.* a Year. Now, my Lords, I would ask him, how it was Mr. *Kynaston* apprehended these great annual Profits did arise? whether by the ordinary Profits of the Office, or the making Use of the Suitors Money?

Mr. *Kynaston*. I understood it of both together.

Mr. *Lutwyche*. There hath been one Question asked, as if there was no Colour to say this Money was paid out of the Suitors Money: But I would beg Leave to ask another Question to explain that: I think Mr. *Kynaston* says, that the Money paid for him by Mr. *Baily*, was not out of the Suitors Money, because he was not then admitted; but I would ask, how it was repaid or replaced?

Mr. *Kynaston*. I did not imagine, when I came to Town, that the Place would have come to so much: There was 1100 *l.* and 400 *l.* I borrow'd of a Gentleman, one Mr. *Rogers* at *Temple-Bar*; and I afterwards accompted with him for that Money, for I kept an Account of the Money of the Court with him.

Mr. Serj. *Pengelly*. What Sum of Money was reported to be in your Office, and to go along with the Office as Cash?

Mr. *Kynaston*. I was told there was about 20,000 *l.*

Mr. Com. Serj. I desire to know who told him so?

Mr. *Kynaston*. Mr. *Rogers*.

Lord *Lechmere*. When the 1100 *l.* and the 400 *l.* was accompted for to the Person that first lent it, if I did understand him right, he says he accompted for it, and it was allow'd out of the Suitors Money.

Mr. *Kynaston*. Yes, my Lords, the Money lent me to pay Mr. *Cottingham*, I did accompt for that Money out of the Money belonging to the Suitors

of the Court: I understood it was usual to do so, and that others had done it.

Lord *Lechmere*. My Lords, I would ask him another Question; I think Mr. *Kynaston* talks of 6000 *l.* being paid by him to his Predecessor; I would be glad to know in what manner that was paid, and out of what Money or Effects?

Mr. *Kynaston*. My Lords, when I treated with Mr. *Rogers*, he mention'd to me what Money he had in his Hands belonging to the Office; and we entred into Articles in relation to my paying him 6000 *l.* for his Place: And when I came up to Town, in order to take the Office, before I went to my Lord Chancellor's, I gave him a Bond for 6000 *l.* This was the 9th, and on the 12th he deliver'd me up the Bond, and paid me 9 *l.* in Money; and I gave him a Receipt for Six thousand and nine Pounds.

E. of *Strafford*. I desire he would explain himself on that Part; where he says, he gave him up his Bond; whether he reckoned the 6000 *l.* so much short of the Suitors Money?

Mr. *Kynaston*. Yes, my Lords, I did.

E. of *Macclesfield*. My Lords, I desire he may be asked this Question. He speaks of a Gentleman that paid him 1100 *l.* Part of the 1500 Guineas; I desire he may be asked, whether that Gentleman had any, and what Money of his in his Hands?

Mr. *Kynaston*. My Lords, I had Money in that Gentleman's Hands: When I lived in the Country, he used to receive Money for me in Town, on Government Securities, and other Occasions; and pay as I directed: There was an Accompt Current between us, and I did not then precisely know what Balance was then in his Hands; but I have cast it up since, and find that there was about 300 or 400 *l.* due to me at that time.

E. of *Macclesfield*. If I apprehend him right, he says he had an Accompt current with that Gentleman at that time, and kept Cash with him.

Mr. *Kynaston*. He used to receive and pay Money for me when I was in the Country.

E. of *Macclesfield*. I beg Leave to ask one Question more, if Mr. *Kynaston* did not afterwards keep, with that Gentleman, the Cash of the Suitors, as well as his own Cash, promiscuously?

Mr. *Kynaston*. Yes.

Sir *Wm. Strickland*. When was the Fifteen hundred Guineas paid?

Mr. *Kynaston*. On the 8th the Fifteen hundred Guineas was paid, and the 9th I was admitted.

Mr. Serj. *Pengelly*. We don't now proceed to examine relating to the manner of Payment for the Offices out of the Suitors Money, because there will be a distinct Examination as to that, upon another Article; the present Question being only about the Sum paid for the Admission, and not out of what Money, which we don't enter into at present.

Mr. *Lutwyche*. My Lords, we think it necessary to mention this, because otherwise it will take up a great deal of your Lordships time unnecessarily, and it will be proper to keep the Evidence entire; and therefore we hope the Counsel on the other Side shall be confined to ask such Questions only, as are proper to the Article they are upon. My Lords, we desire Mr. *Charles Baily* may be called.

Mr. *Charles Baily* sworn.

Mr. Serj. *Pengelly*. My Lords, I desire he may be asked, whether he paid any Money, and what Sum to Mr. *Cottingham*, and when?

Mr. *Baily*. My Lords, a day or two before Mr. *Kynaston* was admitted, I paid Fifteen hundred Guineas,

Guineas, which was given for his Admission. I delivered it in a Bag to Mr *Cottingham*.

Mr Serj. *Pengelly*. For what Use was it paid?

Mr *Baily*. I apprehend it was for the Use of my Lord Chancellor.

Mr *Lutwyche*. Upon what Account?

Mr *Baily*. For his Admission to the Office, on Mr *Rogers's* Surrender.

Mr Serj. *Pengelly*. I think he says it was paid a day or two before he was admitted.

Sir *Wm. Strickland*. Before the Payment of this Money, what Discourse was there between you and Mr *Cottingham*?

Mr *Baily*. I was requested, by Mr *Kynaston*, to attend Mr *Cottingham*, to know what was expected; and Mr *Cottingham* told me Fifteen hundred Guineas was expected to be paid, as a Sum for Mr *Kynaston's* Admission.

Mr Serj. *Pengelly*. If the Counsel for the noble Lord don't ask this Witness any thing, we beg Leave to call another Witness.

Mr *Com. Serj.* There are several matters we apprehend proper to be asked now, and yet may fall under the other Article. Whether it is your Lordships Pleasure that we shall now ask Mr *Baily* as to the Circumstances and Character of Mr *Kynaston*?

Mr *Lutwyche*. My Lords, there is an express Article to that Point; wherefore when we come to that, then is the time.

Mr Serj. *Probyn*. One Question may be proper to be asked before this Gentleman goes, and that is, whether when Mr *Cottingham* told him what was expected on his Admission, he told Mr *Kynaston* of it?

Mr *Baily*. Yes, Sir, I told Mr *Kynaston* that Fifteen hundred Guineas was expected.

Mr Serj. *Probyn*. Then I desire he may be asked, whether Mr *Kynaston* did not immediately consent to give it, or what did Mr *Kynaston* say?

Mr *Baily*. Mr *Kynaston* said he must submit to it, and do as Mr *Cottingham* had mention'd, or to that purpose.

Mr Serj. *Pengelly*. Whether Mr *Kynaston* informed him of offering him any less Sum, and what?

Mr *Baily*. Mr *Kynaston* mention'd to me that he thought it had been but 1500 *l.*

E. of *Macclesfield*. How came Mr *Baily* to know it was Guineas?

Mr *Baily*. Because Mr *Cottingham* told me so.

Mr *Cottingham* called, but did not immediately appear.

Mr Serj. *Pengelly*. My Lords, we are unwilling to give your Lordships Trouble, only beg Leave to take Notice, that Mr *Cottingham* was Secretary to the Lord impeach'd, during the whole Course of his Administration; he is not immediately under the Power of the Managers, but he is under the Obligation of a Summons, and had Notice to attend.

Mr *Cottingham* appears.

Mr Serj. *Pengelly*. My Lords, we desire he may be sworn.

Mr *Cottingham* sworn.

Mr Serj. *Pengelly*. My Lords, we beg Leave to ask Mr *Cottingham* this Question; the Money that he received from Mr *Charles Baily*, whether he paid it over to my late Lord Chancellor, and when?

Mr *Cottingham*. The Money which I received from Mr *Charles Baily*, the Fifteen hundred Guineas, I paid it to my Lord in a day or two I believe, I believe the next day; it was very soon after I received it from Mr *Baily*.

Mr Serj. *Pengelly*. Whether he acquainted the Earl of *Macclesfield* that he had received it upon Mr *Kynaston's* Admission?

Mr *Cottingham*. Yes, my Lords, I told the Earl of *Macclesfield* that Mr *Baily* had paid me the Money, by the Direction of Mr *Kynaston*.

Mr Serj. *Pengelly*. How long was that before Mr *Kynaston* was admitted?

Mr *Cottingham*. I can't say justly the time, it might be two or three days. There was a day appointed for the Admission of Mr *Kynaston*, but something happened that he could not be admitted that day.

Sir *Wm. Strickland*. My Lords, I desire to ask this Witness one Question: At that time, whether Mr *Cottingham* can recollect himself, if Mr *Kynaston* did not make an Objection of the great Deficiency that had happened in *Dormer's* Office?

Mr *Cottingham*. Upon the Oath that I have taken, he did not.

Sir *Wm. Strickland*. I desire another Question, whether he did not tell Mr *Kynaston* that this was one of the best Offices?

Dr *Sayer*. My Lords, I ask your Pardons; I hope they shall be confined to the general Question what was said, and not to Particulars.

Sir *Wm. Strickland*. What was said in relation to the Goodness of the Office?

Mr *Cottingham*. I did say before the Honourable Committee, that when he agreed to give the Fifteen hundred Guineas, I told him that he had purchased a very good Office; and I did say, that there was a great deal of Business in it; but I never knew what Money was in the Office, nor do I know it to this day. I own I did say before the Honourable Committee, that I told him he had purchased a good Office.

Mr Serj. *Pengelly*. Whether was this before or after the Agreement made with Mr *Kynaston*?

Mr *Cottingham*. I think at the same time, just after we had settled the Compliment to be paid to my Lord *Macclesfield*, I told him he had purchased an Office with very good Business in it.

Mr Serj. *Probyn*. I desire one Question more, whether he remembers that there was any Mention made of 1000 *l.* or One thousand Guineas by Mr. *Kynaston*?

Mr *Cottingham*. No, I remember nothing of it. He asked me what my Lord expected; I told him what my Lord had from the preceding Masters, he expected the same from him: I never heard a Word of 1000 *l.* or One thousand Guineas, nor knew nothing at all of it. I have given you the best Account I can as to the Fact that happened relating to the Agreement: Mr *Baily* may remember more of it; the Fact is above four Years ago.

Mr Serj. *Pengelly*. My Lords, we now beg Leave to proceed to the 6th Article, relating to Mr *Thomas Bennet*, who was admitted the 1st of June, 1723.

Mr *Thomas Bennet* (sworn before.)

Mr Serj. *Pengelly*. My Lords, we desire that Mr *Bennet* may give an Account to your Lordships when he was admitted, and upon what Bargain? Give an Account of the whole Treaty.

Mr *Tho. Bennet*. I was admitted the 1st of June, 1723. and before my Admission, and as soon as I had agreed with Mr *Hiccocks* my Predecessor, I applied to Mr *Cottingham*, and desired him that he would acquaint my Lord Chancellor I had agreed with Mr *Hiccocks* for to succeed him in his Office, and desired him to let me know

know my Lord Chancellor's Thoughts, whether he approved of me to succeed Mr. *Hiccocks*; soon after that, I believe the next Day, or a Day after, he met me, and told me, he had acquainted my Lord with the Message I sent; he said my Lord expressed himself with a great deal of Respect for my Father Mr. Serjeant *Bennet*, and that he was glad of this Opportunity to do me a Favour and Kindness, and he had no Objection in the World to me: That was the Answer Mr. *Cottingham* returned; he then mentioned there was a Present expected, and he did not doubt but I knew that; I answered, I had heard there was, and I was willing to do what was usual; I desired to know what it was that was expected, and what would be expected; he said he would name no Sum, and he had the less Reason to name a Sum to me, because I had a Brother a Master, and I was well acquainted with Mr. *Godfrey* who had recommended me, and I might apply to them, and they would tell me what was proper for me to offer. I told him upon that Occasion I would consult my Brother and Mr. *Godfrey*; accordingly I did, and I returned to Mr. *Cottingham*, and told him, I had talked with them about it; and their Opinion was a thousand Pounds (but I believe, I said, I would not stand for Guineas) was sufficient for me to offer. Upon this Mr. *Cottingham* shook his Head, and said, that won't do Mr. *Bennet*, you must be better advised: Why, said I, won't that do, I think it is a noble Present: Says he, a great deal more has been given: Says I, I am sure my Brother did not give so much, nor Mr. *Godfrey*, and those Persons, you advised me to consult with, told me it was sufficient, and I desire you to acquaint my Lord with the Proposal: Says he, I don't care to go with that Proposal, you may find some-body else to go: Says I, I don't know whom to apply to: Says he further, sure Mr. *Bennet*, you won't go to lower the Price, (these were his very Words, at least; I am sure that was the Meaning of them) I can assure you Mr. *Kinaston* gave 1500 Guineas. I said that was above 3 or 4 Years ago, and since that Time there have been several Occasions of lowering the Prices; the fall of Stock hath lowered the Value of Money; and I think I mentioned *Dormer's* Deficiency, and I did not know what the Consequence of that might be; and therefore, I thought at this time of Day, when Stock and every Thing was fallen, a thousand Guineas was more now, than 1500 when Mr. *Kinaston* gave it. He still insisted he did not care to go with that Message: Says I, only acquaint my Lord with it; and if my Lord insists upon more, I will consider of it: Says he, there is no haggling with my Lord, if you refuse it, I don't know the Consequence, he may resent it so far, as not to admit you at all, and you may lose the Office. Then I began to consider, and was loth to lose the Office, and told him I won't give 1500 *l*, he said Mr. *Kinaston* had given Guineas. Then I asked whether it must be in Gold. He said, in what you will, so it be Guineas. In a Day or two after he came and told me, that my Lord was pleased to accept of me, and he should admit me as soon as Opportunity

served, and he would give me Notice. He accordingly gives me Notice about the latter end of *May*; he told me my Lord had fixed a Day for my Admission, and my Father and I went to my Brother *Bennet's*, and took him up by the Way, in order to pay our Respects to my Lord on that Occasion. We had not been there long, but there was a Message brought to my House, to let me know that my Lord was very ill, and I could not be admitted; but I should know in a little Time when I should: Upon that, I saw Mr. *Cottingham* afterwards, and I asked him how my Lord did, and when I should be admitted: Says he, I can't fix the Day; but be in a Readiness, and I shall send for you. Accordingly on the 1st of *June*, 1723. he sent, and desired me to come immediately, and to come alone, and bring no Body with me, for my Lord wou'd swear me in that Morning. Accordingly I went; and the first Question Mr. *Cottingham* ask'd me was, if I had brought the Money? I told him, to be sure I should not come without it. He asked what it was in? I told him in Bank Bills, two Bank Bills, one of 1000 *l*. and the other 575 *l*. He took them up, and carried them to my Lord: He returned back, and told me my Lord was ready to admit me. I was carried up Stairs, and then sworn in his Bed-Chamber.

Mr. Serj. *Pengelly*. My Lords, I desire, if he can remember, he may be asked in what Name those Notes were made payable, or in what manner they were made?

Mr. *Tho. Bennet*. I can't remember the Names the Notes were made payable to, they were sent for from the Bank for this Purpose; but I believe they were feigned Names.

Mr. Serj. *Pengelly*. I desire he may be asked, why he thinks they were feigned Names, and for what Reason the Notes were taken in feigned Names?

Mr. *Tho. Bennet*. The Reason was, because I did not think it proper to take them out in the noble Lord's Name, nor in my own Name:

Mr. Serj. *Pengelly*. My Lords, I desire he may be asked, of whom he received those Bank Notes, whether they were his own, or whether he borrowed them.

Mr. *Tho. Bennet*. I borrowed a Draft upon the Bank of my Brother, he kept his Cash at the Bank, and he gave me a Draft upon the Bank, and I sent to the Bank, and ordered the Notes to be made out in feigned Names.

Mr. Serj. *Pengelly*. I desire he may be asked, whether by his Brother, he means his Brother the Master?

Mr. *Tho. Bennet*. Yes, my Brother the Master?

Mr. Serj. *Pengelly*. And where did he keep his Cash?

Mr. *Tho. Bennet*. He kept his Cash at the Bank.

Mr. Serj. *Pengelly*. I desire Mr. *Bennet* may inform your Lordships what Conversation he had with my Lord *Macclesfield* when he was admitted?

Mr. *Tho. Bennet*. I had no Conversation with him before I was sworn. At that Time my Lord was in his Bed, and as soon as I was sworn in, my Lord called me to him, shook me by the

Hand and wish'd me Joy, and said he had a Respect for my Father Serjeant *Bennet*, his old Friend and Acquaintance, and the Family; and said he, you are sworn in by a dying Chancellor. I told him, I hoped his Lordship would live a great many Years.

Mr. Serj. *Pengelly*. I desire Mr. *Cottingham* may be called.

Mr. *Cottingham* called, and appeared.

Mr. Serj. *Pengelly*. My Lords, I desire Mr. *Cottingham* may be asked, to whom he paid the 1500 Guineas which he received from Mr. *Tho. Bennet*?

Mr. *Cottingham*. I paid it to the Earl of *Macclesfield*.

Mr. Serj. *Pengelly*. Whether he carried it immediately or not, or at what Time?

Mr. *Cottingham*. Mr. *Bennet* brought it to me, as I remember, in a Bank Note of 1500 Guineas, and I gave it to my Lord.

Mr. Serj. *Pengelly*. Whether this was done immediately after you received it?

Mr. *Cottingham*. Yes, my Lords, immediately.

Mr. Serj. *Pengelly*. That is all we ask, my Lords, we only beg leave to observe one thing that arises from the Answer of the Lord impeached to these two Articles, which is, that afterwards, and before the Impeachment, he did deliver the Present so sent to him by the said *William Kinaston*, being 1575 *l.* and also the Present so sent to him by the said *Tho. Bennet*, being the like Sum of 1575 *l.* into the Court of Chancery, in open Court, &c.

Mr. Serj. *Probyn*. My Lords, we desire that Mr. *Cottingham* may be asked one Question, what Conversation there was between him and Mr. *Bennet*, concerning the Payment of this 1500 Guineas?

Mr. *Cottingham*. Mr. *Bennet* told me, that he had agreed with Mr. *Hiccocks* for the surrender of his Office. He told me he was a Person known to the Earl; but if he wanted a further Character, his Father, Sir *John Bennet*, and his Brother, would give him a further Character. I acquainted the Earl, his Lordship told me that he knew Mr. *Bennet*, that he had a good Character, and had married a good Fortune, and the Family were a wealthy Family, so that the Earl would oblige him, and admit him. A Day was appointed to admit Mr. *Bennet*; but the Earl falling Sick before the Time came that he was to be admitted, which was, I think, the last Day of *Easter Term*, 1723, it was then delayed; Mr. *Bennet* was prodigious pressing to have it done, and said that Mr. *Hiccocks* refused to go on with any Business in the Office; and he had been complimented upon it, the Family knew it, and he was loth to be disappointed, and he teized me almost out of my Life; upon that, I promised to speak to the Earl, and as soon as the Earl was able to do Business, it was done.

Mr. Serj. *Probyn*. If you please to recollect your self, what was the particular Sum Mr. *Bennet* offered?

Mr. *Cottingham*. 1500 Guineas.

Mr. Serj. *Probyn*. Did he talk of any less Sum?

Mr. *Cottingham*. Not a Farthing less; he asked me what was expected, I told him the Sum

Mr. *Kinaston* had paid, which was 1500 Guineas; and he never offered a farthing less.

Mr. Serj. *Probyn*. We desire Mr. *Cottingham*, that you would recollect your self, and tell us whether he offered 1000, or 1500 Guineas?

Mr. *Cottingham*. I have recollected, and what he offered to me was 1500 Guineas, and I never heard of a Farthing less; I never heard a Word of 1000 Guineas.

E. of *Macclesfield*. If your Lordships please, I desire Mr. *Cottingham* may be asked, what Condition I was in, in respect to my Health at that Time?

Mr. *Cottingham*. The Earl at that Time was very ill, Mr. *Bennet* having pressed to be admitted the first Opportunity; I think your Lordship fell ill the last Day of *Easter Term*, 1723. and I meeting with Doctor *Mead*, the Doctor told me, the Earl was in so dangerous a Condition, that if his Distemper had not a Turn, he thought he could not live 24 Hours. The Doctor and I went and supped together; he bid me to be at the Earl's the next Morning; I met him there, and he told me the Earl's Distemper had a Turn, and he might get over it: I asked the Doctor, telling him there was a Business that Mr. *Bennet* pressed me to do, if it would be safe for the Earl to do it. He told me if it did not admit much Thought and much Company, it might be done. I told him it would not admit much Thought or Company, and he said it might be done.

E. of *Macclesfield*. What was the Occasion that Mr. *Bennet* was desired to come alone?

Mr. *Cottingham*. The Reason was upon the Account of your Lordship's Indisposition; and for that Reason, I sent to Mr. *Hiccocks* for his Surrender, because my Lord could not see much Company.

Mr. *Strange*. I desire to ask you, upon whose Importunity it was you asked Dr. *Mead* this?

Mr. *Cottingham*. I asked it my self, but it was, because Mr. *Bennet* importuned me so: And I remember this Circumstance, when I went to his House, he had something of the Jaundice, and looked ill. I asked him if he was fit to be admitted: I thought Mr. *Bennet* would not have been so eager, if he did not think the Earl had been dying, and that then he would have waited longer.

Mr. *Plummer*. My Lords, if the Gentlemen have done, I desire to ask one Question; Whether on Occasion of these Masters Places being vacant, he took Directions from my Lord Chancellor to set a Price, or did it of his own Head?

Mr. *Cottingham*. I had no Directions in this matter; but when any Vacancy or Alienation, happened, and they asked me what Compliment I thought would be acceptable, I told them the Compliment that had been before made. I spoke it as my own Opinion, and without any Directions from the Earl.

Mr. Serj. *Pengelly*. I desire he may be asked, whether ever he concluded any Bargain with any of these Masters without his Lord's Approbation?

Mr. *Cottingham*. No, I did not.

Mr. *Onslow*. I would ask Mr. *Cottingham* one Question, which, I think, he hath not answered; I ask whether he had not in general Direc-

ons from the Lord Chancellor, to insist upon, or ask any particular Prices for these Places?

E. of *Macclesfield*. My Lords, I am sorry the learned Gentlemen do not observe their own Rule, in confining their Examinations to such Articles as they go upon, those they have a Right to ask to, and those only; therefore with humble Submission, it is more proper on each Article where they charge me to have insisted upon a Price, to ask to that Price, than to ask these general Questions, whether I did ever direct him to insist upon any Price? It is not that I am afraid of the Question that is put, but I am afraid of its being made a Pretext for giving your Lordships a great deal of unnecessary Trouble.

Mr. *Onslow*. This is proper to this Article, because it charges the Earl with insisting upon Prices. Therefore I desire to know, whether the Earl did ever give any Order to him to insist upon any of these Prices? I hope the Gentleman shall answer the Question.

Mr. *Lutwyche*. We apprehend we are upon a proper Question, on the one Side we say these Sums were insisted upon, and that there was an Agreement made for them; on the other Side the noble Lord in his Answer says, they were Presents; without any Regard to any Agreement, and voluntary, as if there had been no Bargain at all.

Mr. Serj. *Pengelly*. My Lords, we only propose a general Question, which, we apprehend, arises from Mr. *Cottingham's* Examination. When Money is expected; we apprehend it is the same as insisting upon it: Therefore we desire Mr. *Cottingham* may inform your Lordships, whether he insisted upon any of these Prices without Direction from my Lord *Macclesfield*?

Mr. *Cottingham*. The Masters proposed those Sums to me, to make such a Compliment to my Lord, and I acquainted the Earl with it: I did nothing without the Earl's Approbation.

Mr. Serj. *Pengelly*. I desire he may be asked if he did not insist on those Prices?

Mr. Serj. *Probyn*. My Lords, I beg the Question may be confined to some particular Article they are now upon; for as they are now upon two particular Articles, they cannot, according to the Rules they were pleased themselves to lay down, ask any Question, but what relates to them: We therefore desire they may confine themselves to these two Articles. As to any Question they propose to any of the Articles they have opened, let them be as general as they will; but we desire they may confine themselves to those Articles: Otherwise one Question may involve all the Articles together.

Mr. Serj. *Pengelly*. Whether we should now ask to *Bennet* or *Kinaston*, or to those who came after, we are under your Lordship's Direction: But we desire he may be asked, whether from the Direction he received from the Earl of *Macclesfield*, he did not insist on those Sums from *Kinaston* and *Bennet*?

Mr. *Cottingham*. I have told you that they had both voluntarily agreed of their own Accord to give 1500 Guineas, and I told my Lord *Macclesfield* of it.

Mr. Serj. *Pengelly*. I desire he may be asked, whether he did not by Direction of my Lord

Chancellor insist upon those Sums, and he would not receive under?

Mr. *Cottingham*. I did not. They asked me what I thought the Earl expected, I told them 1500 Guineas, as I mentioned before; they agreed to give it, and my Lord said he would take it.

Mr. Serj. *Pengelly*. At the Time when the Lord *Macclesfield* agreed to take those Sums, whether he did not insist upon the full of those Sums to be paid?

Mr. *Cottingham*. Yes, he said he would take them.

Mr. *Plummer*. My Lord *Macclesfield* does not disown in his Answer the accepting of a Present in general; but avoids saying what Sum in particular he accepted. Therefore I am apt to think the Instructions, the Secretary had, might be like the Answer: So that it is very proper to ask whether he had not general Instructions, that when any Master's Place was vacant, or like to be vacant, he should insist upon such a Price.

Mr. *Cottingham*. I had not such Instructions. The Gentlemen came and talked to me, and proposed to me the Sum they were willing to give, and I laid it before the Earl: I had no particular Instructions.

Mr. *Plummer*. With Submission, Mr. *Cottingham* has not answered the Question, therefore I beg Leave to ask him further, whether he hath not said elsewhere, that he received particular Directions from my Lord *Macclesfield* to insist upon such a Sum?

Mr. *Cottingham*. I cannot say but I have, and if you name the Masters, I can answer more particularly.

Sir *Wm. Strickland*. I would ask him this Question, whether he has not directly said, that he transacted none of these Affairs without my Lord's Direction?

Mr. *Cottingham*. I own it, I have said so; I own it before your Lordships, that I said that what I did he approved of.

E. of *Macclesfield*. I desire he may be asked this Question, to each distinctly, Whether I so much as knew any thing of the Matter as to any Sum offered by Mr. *Kinaston* or Mr. *Bennet*, till he told me the whole Sum?

Mr. *Cottingham*. No, never.

E. of *Macclesfield*. Whether I had any Discourse about Mr. *Kinaston* or *Bennet*, being admitted, or the Money they should give, till he told me they would give me 1500 Guineas?

Mr. *Cottingham*. No, not any Discourse. I told the Earl what they offered, and he was pleased to accept it.

E. of *Macclesfield*. I beg Leave he may be asked this other Question, since these Gentlemen have gone now into that Matter, whether he did not tell me at the same Time that Mr. *Kinaston* said he would give me 1500 Guineas, that he likewise said, if that was not sufficient I might please myself?

Mr. Serj. *Pengelly*. I hope the Question may be asked general, when they have taken Liberty to interrupt the Managers for asking leading Questions; and hope his Lordship will ask nothing that is leading.

E. of *Macclesfield*. Then I desire he may be asked when Mr. *Kinaston* offered 1500 Guineas, whether he said any Thing concerning any further Sum?

Mr. *Cottingham*. To the best of my Remembrance, I speak it doubtfully, I am not certain, Mr. *Kinaston* told me if the 1500 Guineas would not satisfy the Earl, he should satisfy himself.

E. of *Macclesfield*. I desire to know certainly whether he told me so?

Mr. *Cottingham*. I am sure I did.

E. of *Macclesfield*. What did I say thereon?

Mr. *Cottingham*. Your Lordship said you would take 1500 Guineas, and you would take no more.

Mr. *Plummer*. I desire to ask this Question, How Mr. *Kinaston* came to offer more, or to think the Earl so insatiable that the Earl expected more: I ask Mr. *Cottingham* how he came to offer from Mr. *Kinaston* more than was asked?

Mr. *Cottingham*. I told you what my Lord *Macclesfield* put to me. I certainly told him so. But as to what Mr. *Kinaston* told me, that I speak doubtfully; it is a considerable Time ago; I cannot speak it positively, I speak it doubtfully, to the best of my Remembrance it was so: I told your Lordships before.

Mr. Serj. *Pengelly*. My Lords, We shall not trouble your Lordships with calling any more Witnesses on this Article, when it appears plainly, that he was intrusted to adjust the Prices, and whether they were given to him or my Lord is not material. As to this Article and the Article relating to Mr. *Kinaston*, we shall leave it with this Observation, He is pleased to say in his Answer, as to the few Presents received from Mr. *Kinaston* and Mr. *Bennet*, that he the said Earl did afterwards and before the Impeachment deliver the same into the Court of Chancery, in open Court. All that we beg Leave to put your Lordships in Mind of, is, that from your own Journals it will appear, the Impeachment was brought up here the 13th of February 1724. when my Lord comes to shew at what Time he paid the Money, we apprehend it will be ten Days after. The next Article relates to Mr. *Francis Elde*.

Mr. *Elde* called.

Mr. *Lutwyche*. My Lords, we desire that Mr. *Elde* my be sworn.

(Sworn accordingly.)

Mr. *Lutwyche*. My Lords, we desire Mr. *Elde* may be asked when it was he was admitted a Master in Chancery?

Mr. *Elde*. My Lords, I was admitted the first Day of February last was twelve Month.

Mr. *Lutwyche*. We desire he may be asked, whether he applied in Person to my Lord *Macclesfield* to be admitted into this Office, and whether it was upon Death or Resignation?

Mr. *Elde*. Upon the Death of Mr. *William Fellowes* some of my Friends came to me, and put it into my Head that this Office might be a proper Office for me, and I took some Time to consider of it. I had some Encouragement at the Bar, and was very unwilling to quit it, but after two Days Consideration I went to my Lord himself; I told his Lordship an Office was fallen by the Death of Mr. *Fellowes*; if his Lordship thought me a proper Person. And I should be glad to have it. I was come to wait upon him about it. His Lordship said, he had no manner of Objection to

me, he had known me a considerable Time, and he believed I should make a good Officer.

Mr. *Lutwyche*. What further Discourse was there?

Mr. *Elde*. My Lord at that Time desired me further to consider of it, and come to him again: And so I did. I went back from his Lordship, and I came again in a Day or two, I believe it was the second after I came back from his Lordship, and told him I had considered of it, and desired to know if his Lordship thought fit to admit me; and I would make him a Present of 4 or 5000 *l*. I cannot say which of the two I said, but I believe it was 5000 *l*.

Mr. *Lutwyche*. What Answer did my Lord return, when you made him that Proposal?

Mr. *Elde*. My Lord said, Thee and I, or You and I, my Lord was pleased to treat me as a Friend, must not make Bargains.

Mr. *Lutwyche*. My Lords, we desire he may be asked, whether my Lord *Macclesfield* said in what Manner he would treat with him, whether in a more beneficial manner than any Body else?

Mr. *Elde*. My Lord *Macclesfield* did say, that if I was desirous of having the Office, he would treat with me in a different Manner than he would with any Man living; those were the Words my Lord used, to the best of my Remembrance.

Mr. Serj. *Pengelly*. After this Answer of my Lord *Macclesfield*, that they must not make Bargains, what further Application did he make?

Mr. *Elde*. I made no further Application at all, but spoke to Mr. *Cottingham*, meeting him in *Westminster-hall*, and told him I had been at my Lord's, and my Lord was pleased to speak very kindly to me, and I had proposed to give him 5000 *l*. Mr. *Cottingham* answered, Guineas are handsomer.

Mr. *Lutwyche*. We desire to know what he paid, and in what Manner, and in what Specie?

Mr. *Elde*. My Lords, I paid my Lord, — I cannot say I paid it him, but I paid 5000 Guineas.

Mr. *Lutwyche*. In what Manner? Who did you pay it to?

Mr. Serj. *Pengelly*. After this Agreement with Mr. *Cottingham* to make it Guineas, as being handsomer; we desire he may inform your Lordships what he did pursuant to this, and what he carried with him?

Mr. *Elde*. Upon this I immediately went to my Lord's: I was willing to get into the Office as soon as I could. I did carry with me 5000 Guineas in Gold and Bank Notes: I am not certain whether there was 3000 Guineas in Gold or two, but I think there was three, and the Residue of the Money was in Bank Notes. This I brought to my Lord's House.

Mr. Serj. *Pengelly*. My Lords, we desire he may be asked what they were put into, or in what they were carried?

Mr. *Elde*. I had the Money in my Chambers. I could not tell how to convey it; it was a great Burthen and Weight, but recollecting I had a Basket in my Chamber, I put the Guineas into the Basket, and the Notes with them; I went in a Chair and took with me the Basket in my Chair. When I came to my Lord's House I saw Mr. *Cottingham* there, and I gave him the Basket, and desired him to carry it up to my Lord.

Mr.

Mr. Serj. Pengelly. What Answer did he return?

Mr. Elde. I saw him go up Stairs with the Basket, and when he came down he intimated to me that he had delivered it.

Mr. Lutwyche. My Lords, we desire he may be asked whether he acquainted Mr. Cottingham with what was in the Basket?

Mr. Elde. I did not.

Mr. Serj. Pengelly. After Mr. Cottingham came and acquainted you he had delivered the Basket, how long after that was it before you saw my Lord?

Mr. Elde. I did not see my Lord after that, till I was sworn in.

Mr. Serj. Pengelly. How long was that after?

Mr. Elde. I cannot be positive, but it was within a Day, either the same Day, or if not, it was the next Day after.

Mr. Serj. Pengelly. I desire he may be asked, when Mr. Cottingham returned down Stairs after the Delivery of the Basket, what he said to him about the Time of his being admitted?

Mr. Elde. I do not remember he said any Thing to me about my being admitted. I took that for granted.

Mr. Serj. Pengelly. And when he was admitted, whether he was admitted in the Closet or in what Room?

Mr. Elde. When I was to be admitted, my Lord invited me to Dinner, and some of my Friends with me; and he was please to treat me and some Members of the House of Commons in a very handsome Manner: I was after Dinner sworn in before them.

Mr. Serj. Pengelly. I desire to ask whether he had the Basket again?

Mr. Elde. Some Months after I spoke to my Lord's Gentleman, and desired him if he saw such a Basket, that he would give it me back; and sometime after he did so.

Mr. Serj. Pengelly. Was any Money returned in it?

Mr. Elde. No, my Lords, there was not.

Mr. Lutwyche. There is one Thing in the Earl's Answer, that he retained only Part of the Present so made him by Mr. Elde. I perceive the Gentlemen of the other Side do not ask any Questions about it; if they do not we shall go on.

Sir Wm. Strickland. I desire to know what Mr. Cottingham did say, after he had carried up the Basket and came down again?

Mr. Elde. To the best of my Remembrance, he said nothing to me, but as I repeated it before, he intimated to me that he had delivered it to my Lord Macclesfield. I cannot say as to any particular Discourse; but I understood that he had delivered it.

Mr. Serj. Probyn. My Lords, if they have done with Mr. Elde, I would beg Leave to ask him one Question, and that is in Relation to what the impeached Earl said in his Answer, that he retained of the Present sent him by the said Mr. Elde no more than the Sum of 1850*l.* We desire therefore that he may be asked, how much was returned to him of the 5000 Guineas which he at first paid?

Mr. Elde. 3400.

Mr. West. When was that returned again to him?

Mr. Elde. In November last, to the best of my Remembrance.

Mr. Onslow. In what Manner was that Money returned to him?

Mr. Serj. Probyn. We have not yet done with him. I desire to know when you went out of Town; and when you returned, and how long after your Return was it repaid?

Mr. Elde. It was repaid to me, to the best of my Knowledge, within three, four, or five Days after my Return. As soon as I came from the Country the Earl took Notice of it, and said that he would repay me: For some Time in May before, or thereabouts, the noble Lord had taken Notice that he had received this Present from me, and he would make me exceedingly easy.

Mr. Serj. Probyn. This was before you went out of Town?

Mr. Elde. Before I went out of Town.

Mr. Serj. Probyn. When did you return to Town?

Mr. Elde. I returned the 19th, 20th, or 21st of November.

Mr. Serj. Probyn. How soon after you came to Town did you see my Lord?

Mr. Elde. Very soon after I came to Town?

Mr. Serj. Probyn. What Discourse had you with him about it?

Mr. Elde. My Lord told me he would return me my Money again, he did not say all; but he would return me my Money; and that he had done it before, had it been convenient.

Mr. Serj. Probyn. How soon after this Discourse was it, that the Money was returned?

Mr. Elde. I believe two or three Days.

Mr. Onslow. If the Gentlemen have done, I desire he may be asked in what Manner this Money was returned, and by whom?

Mr. Elde. After this Discourse my Lord Parker sent for me, my Lord Chancellor was then at Westminster-hall, and told me my Lord Chancellor had desired him to pay to me 3400*l.* and he did pay it.

Mr. Lutwyche. My Lords, if I understand Mr. Elde right, he said there was some Thing mentioned by my Lord of this Kindness before he went into the Country. I desire he may be asked upon what Occasion he was going into the Country at that Time?

Mr. Onslow. I desire that he may first answer in what Manner, by whom, and where, this Money was repaid to him, whether in Money, or Notes, or how?

Mr. Elde. To the best of my Remembrance it was paid in this Manner, there was 1400*l.* in Bank Notes, and 2000*l.* in India Bonds.

Mr. Onslow. Who was this paid by?

Mr. Elde. By my Lord Parker.

Mr. Onslow. Whether he gave any Receipt for the Money, or any Part of it, and to what Effect?

Mr. Elde. When my Lord paid me the Money, he said my Lord Macclesfield had ordered me to be paid the Money; but his Lordship not having so much by him; therefore he had ordered him to make it up, and to pay me two thousand Pounds out of his own Money; and that as 2000*l.* of it was his own Money, he desired me to give a Note of the Receipt of it.

Mr. Serj. Pengelly. Whether was that Note, a Note for Repayment of the Money, or a Receipt?

Mr. Elde. It was not for Repayment, that I remember, but it was an Acknowledgment

of the Receipt of the Money, that I had received so much.

Mr. Serj. *Pengelly*. Whether it did not contain a further Acknowledgment, for Repayment?

Mr. *Elde*. Not that I know of.

Mr. Serj. *Pengelly*. Was it said upon whose Account the Money was paid?

Mr. *Elde*. Yes.

Mr. Serj. *Pengelly*. We desire he may be asked, how many Days before he was to produce the Ballance of his Cash before the Commissioners, that he received this Money?

Mr. *Elde*. I cannot say how long before, it might be a fortnight or three Weeks; I cannot say it was not long before.

Mr. Serj. *Pengelly*. Whether it was not necessary for him to make Use of this Money, in Order to make up this Ballance?

Mr. *Elde*. I will answer that Question as well as I can: I did make Use of it to that Purpose as having it by me, but I was not so poor as to be put to a Necessity of so doing; I could have had the Money any where of any Body that knew me.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he can remember the particular Time to a Day, when it was repaid him?

Mr. *Elde*. Upon my Oath, I cannot tell the particular Time.

Mr. *Onslow*. Was it after the Inquiry was directed to be made by the Lords of the Council?

Mr. *Elde*. Yes, my Lords, I was in the Country when the Inquiry was directed to be made, and a Month after.

Mr. *Lutwyche*. I mentioned a Question before; Mr. *Elde* was mentioning that my Lord *Macclesfield* had said to him before he went out of Town, that he would make him exceeding easy: I desire he may be asked where he was then going, and upon what Occasion?

Mr. *Elde*. My Lords, I was going into *Staffordshire*, where the little Effects I have in the World lie.

Mr. *Lutwyche*. I would know upon what Occasion?

Mr. *Elde*. I never missed going into the Country the Beginning of *August*, for these ten Years past.

Mr. *Lutwyche*. Whether there was any particular Occasion for his going down into the Country at that Time?

Mr. *Elde*. If your Lordships are of Opinion that this is a fair Question, I will as fairly answer it. I went down to my House, to look into what little Affairs I had there. I called at *Stafford* first, and there declared myself a Candidate for the Election that was to ensue.

Mr. *Lutwyche*. We desire he may be asked when he returned?

Mr. *Elde*. I returned about the 19th or 20th of *November*.

Mr. *Plummer*. Mr. *Elde* says, when my Lord *Parker* paid him he had a Note from him, acknowledging the Receipt of the Money: I desire to know whether that Note was taken up again and when?

Mr. *Elde*. The Note I gave my Lord *Parker*?

Mr. *Plummer*. Yes.

Mr. *Elde*. My Lord *Parker* sent for me and gave me the Note again. I do not know that I saw my Lord *Macclesfield* till after I had seen Lord *Parker*, and he had given me up the Note again.

Mr. *Plummer*. I desire he may be asked, when the Note was delivered up to him?

Mr. *Elde*. That was asked before; I cannot tell the Day.

Mr. *Plummer*. It was never asked here before: The Question I ask is, when the Note was delivered up?

Mr. *Elde*. I do not remember the Day.

Mr. *Plummer*. As near as you can?

Mr. *Elde*. In the Beginning of *December*.

Mr. *Sandys*. I beg leave to ask one Question, he says that he applied this Money, which he received of my Lord *Parker*, towards making good the Ballance of his Accompt; whether or no, he did not first refuse to swear to the Ballance of that Accompt; and what was the Occasion of it?

Mr. *Elde*. When I had delivered in my Accompt, the Question I was asked the first Time, was proposed to me, not by any of the Judges who were appointed to inspect our Accompts, but by Sir *Nathaniel Gould*, who proposed it in such a Manner, that I could not by any Means take it. He asked me, whether I owed any Thing, and I was to swear I owed nothing: I told him I could not swear any such thing. I had some Arguments with him about the Absurdity of such an Oath, and said, if I owe a Million of Money, that is nothing to the Purpose: There is the Money due on the Ballance of my Accompt, I deliver it to you, I laid the Money upon the Table, and insisted upon leaving it with them.

Mr. *Sandys*. Whether that Note was delivered to him after he refused to take the Oath?

Mr. *Elde*. It was.

Mr. *Sandys*. Whether that Note was not the Occasion of his refusing to take the Oath?

Mr. *Elde*. I cannot say but it was an Ingredient in it.

Sir *George Oxenden*. I would be glad to know where this Note is?

Mr. *Elde*. When my Lord *Parker* delivered it to me I lapt it up, and put it in my Pocket: My Lord asked me why I did so? I answered I would keep it as a Memorandum of my Lord Chancellor's Favour to me; but when I came home considering that it would be of no Service, and that it might be hazardous to keep it by me, I tore it.

Dr. *Sayer*. I desire he may be asked whether he did not look upon himself intirely discharged from any Demand on Account of that Money, or did think himself bound to answer it?

Mr. *Elde*. I do not think myself bound to answer it.

Dr. *Sayer*. Whether he apprehends it to be a free and perfect Gift?

Mr. *Elde*. I do, my Lords.

Mr. *Cottingham* called again.

Mr. Serj. *Pengelly*. My Lords, we left the Basket in the Hands of Mr. *Cottingham*, therefore it is necessary that Mr. *Cottingham* inform your Lordships what became of it afterwards; what he did with the Basket, after he had it from Mr. *Elde*?

Mr. *Cottingham*. My Lords, I carried it up to my Lord, and set it down in his Study.

Mr. Serj. *Pengelly*. What did you say to my Lord?

Mr. *Cottingham*. Nothing. Mr. *Elde* ordered me to carry up the Basket, I carried it up, and there I set it down, I never saw it afterwards.

Mr.



Mr. Serj. *Pengelly*. Whether do you remember what Answer my Lord *Macclesfield* made at that Time?

Mr. *Cottingham*. None that I remember.

Mr. Serj. *Pengelly*. Whether did he open the Basket?

Mr. *Cottingham*. No. The Basket was covered up, and I set it down in my Lord's Closet.

Mr. Serj. *Pengelly*. Whether after that Time he appointed any Time for Mr. *Elde* to be admitted?

Mr. *Cottingham*. I think he was admitted that very same Day.

Mr. Serj. *Pengelly*. I desire this Witness may be asked, whether he received any Thing from Mr. *Elde*, besides what was in the Basket?

Mr. *Cottingham*. Not a Farthing, except my Fees: Nor no more of any of the Masters than my usual Fees.

Mr. Serj. *Probyn*. We desire Mr. *Cottingham* may be asked, whether at this Time, when Mr. *Elde* desired to be admitted into this Office, there was any other Person who desired it, or made any Offer for it?

Mr. *Cottingham*. Mr. *Lucas*, a Gentleman of the *Temple*, was recommended to the Earl by Mr. *Bulstrode*, who is since dead. He had been formerly a Commissioner of the Excise; his Name was *Whitlock Bulstrode*. Mr. *Lucas* did tell me upon that Occasion, if the Earl would admit him, he would give him 6000*l*. for the Office. I took a Memorandum of it at that Time, and I had it in my Hands four or five Days ago.

Mr. Serj. *Probyn*. When Mr. *Lucas* told you this; whether did you inform the then Lord Chancellor of it?

Mr. *Cottingham*. Yes, I am sure I did; and the Answer he made me was, that Mr. *Elde* was of a Family which were his particular Friends and Acquaintance, for whom he had a great Friendship and Value, and that he should have it 1000*l*. cheaper, or lesser than any Body else.

Mr. *Strange*. I desire he may be asked, whether before Mr. *Elde* was admitted, he did not acquaint the noble Lord, that this Mr. *Lucas* would give 6000*l*?

Mr. *Cottingham*. Yes, I did.

Mr. Serj. *Pengelly*. I desire to know whether I understand Mr. *Cottingham* right? He says, that my Lord would let Mr. *Elde* have it cheaper than any Body else: Whether he understood by that, that my Lord expected some Body else would give him more?

Mr. *Cottingham*. My Lord said he would let Mr. *Elde* have it upon the Score of particular Friendship and Acquaintance.

Mr. Serj. *Pengelly*. If I heard him right, I submit it to your Lordships, whether he did not say that Mr. *Elde* should have it 1000*l*. cheaper than any other Person. I ask whether he did not understand my Lord *Macclesfield* would have 1000*l*. more from any other Person?

E. of *Macclesfield*. My Lords, I hope I am not to be charged with the Imaginations of this Gentleman; he is asked about his Apprehension of my Intention in a Case that did not happen. I desire he may be asked, if he knew what Character Mr. *Elde* had?

Mr. *Cottingham*. A very good one.

E. of *Macclesfield*. I desire it may be asked, whether he did not know that I had a great Opinion of Mr. *Elde*'s Ability and Integrity?

Mr. *Cottingham*. He was one your Lordship had a great Opinion of, and that he was very deserving. I never heard your Lordship express a better Opinion of any Man than of Mr. *Elde*.

Mr. Serj. *Pengelly*. We have done with this Article: The next Article is the 8th. We desire Mr. *Thurston* may be sworn.

Mr. *Mark Thurston* sworn.

Mr. Serj. *Pengelly*. My Lords, we desire that Mr. *Thurston* may give your Lordships an Account when he was admitted into one of the Offices of the Masters in *Chancery*, and upon whose Death?

Mr. *Thurston*. My Lords, I was admitted into this Office upon the Death of Mr. *Borret*, and the Day of my Admission was the 5th of *August* last.

Mr. Serj. *Pengelly*. I desire he may be asked, whether before his Admission he had made any Application either to my Lord *Macclesfield* or his Secretary, or any Person concerned for him?

Mr. *Thurston*. My Lords, before my Admission, I did make some Application to my Lord Chancellor's Secretary Mr. *Cottingham*; and at that Time I made a Proposal of making a Present of 5000 Guineas, to be admitted into the Office. Mr. *Cottingham* asked me several Questions about my Circumstances, and what Persons I could name that would recommend me to his Lordship: To which I gave the proper Answers, and mentioned several Gentlemen he knew. After that, I having the honour of being acquainted with my Lord Commissioner *Gilbert*, before I took any other Steps, I waited on his Lordship, and acquainted him with my Resolution, and begged the favour of him, that he would take the Trouble to recommend me to my Lord Chancellor, as his Friend, and a fit Person for the Office. His Lordship did take that Trouble, and waited upon my Lord at *Westminster*, who was then sitting upon the Bench; and after Notice was sent him of that Gentleman's being in the little Room behind, his Lordship came off the Bench; and some Time being spent in Conversation between them, I was called in, and kindly recommended by that honourable Person; and my Lord *Macclesfield* seemed to approve of me upon his Recommendation. But I should acquaint your Lordships, that as to that Part of the Transaction with Mr. *Cottingham*, he said that he would report those Things to my Lord *Macclesfield*, of my Character and Person, though he never reported any Thing back to me again upon it: But I took the next ensuing Steps, by the Intervention of the honourable Gentleman my Lord Commissioner *Gilbert*.

Sir *Will. Strickland*. Whether he did not understand, that my Lord *Macclesfield* agreed to his Proposals?

Mr. *Thurston*. Yes.

Sir *Will. Strickland*. After this Transaction with Mr. *Cottingham*, what further Application was made? And why he was not immediately admitted at that Time?

Mr. *Thurston*. It was not expected by me to be immediately admitted at that Time: Because my Lord Chancellor did not absolutely determine me to be the Person; but said he had so good a Character of me, that he believed I should be the Man.

Sir *Will. Strickland*. Whether Mr. *Thurston*, being uneasy about the delaying of admitting him, did apply to any other Person afterwards?

Mr. *Thur-*

Mr. *Thurston*. After my being introduced to my Lord Chancellor, there was some Time for my Lord's Consideration. Near a Week after, a Message was sent me by Mr. *Cottingham*, that my Lord would be ready to admit me such a Day. Before the Day came, I had a Message contradicting it, upon my Lord Chancellor's being engaged to attend the Council on that Day. After that, I expected the Appointment of another Day for that purpose; and in the mean Time this Affair had got into the publick News-Papers, as every Thing does, and I was named by every Body to be the Person fixed upon; and People resorted to me to transact the Business of the Office, which I could not do without being duly admitted. And shortly after that Time, there was a Report spread, that my Lord Chancellor had designed to make a Present of the Place to some Gentleman in the Country, which gave me an Uneasiness, and put me upon an Expedient, that since I could not have ready Access to so great a Person as his Lordship, I went to *Kensington* one Morning to wait upon the Countess of *Macclesfield*; and upon sending up my Name, and that I desired to speak with her, in a short Time I had the honour of seeing her, and acquainted her that I was the Person that my Lord had promised the Office to, and that I could not proceed therein without being sworn; therefore I desired her Ladyship to interceed with my Lord, that I might be speedily sworn in. Her Ladyship said, she never did meddle in any Affairs of a publick Nature. I used several Arguments with her, as that the Thing was now publick and in Print, that it might be a great Disappointment to me, and might affect my Character, if my Lord did not think fit to admit me. I laid a good deal of Strefs upon these Arguments, and I acquainted her Ladyship that I did not expect or desire to come in without the due Present that is always esteemed the Perquisite of the great Seal. Then I repeated those other Arguments again, that my Character might be affected by these Disappointments; whereby her Ladyship was prevailed upon to promise she would write a Letter, and acquaint my Lord Chancellor with it. Before I went away from the Room where I had the honour to be with the Lady, I did leave upon the Table Bank Notes to the Value of 5250 Pounds.

Mr. Serj. *Pengelly*. How were they directed?

Mr. *Thurston*. I directed them to the Countess of *Macclesfield*.

Mr. Serj. *Pengelly*. I desire he may be asked, how soon after this he was admitted?

Mr. *Thurston*. I believe it was within 2 or 3 Days after at farthest, that I was admitted and sworn into this Office.

Mr. Serj. *Pengelly*. We desire he may give your Lordships an Account who was his Predecessor?

Mr. *Thurston*. Mr. *Borret*, as I acquainted your Lordships before.

Mr. Serj. *Pengelly*. We desire he may acquaint your Lordships of the State of the Office as it came into his Hands. What was the Deficiency of the Office, due to the Suitors of the Court, not answered by the Effects of Mr. *Borret*, when it came into your Hands?

Mr. *Thurston*. That is a Question I can't possibly answer, because I never had those Accompts

under my Inspection. And I don't find the Gentlemen that have, can give an Accompt of it.

Mr. Serj. *Pengelly*. I do not ask to a particular Sum; but whether there was a Deficiency, any Deficiency, and about what Sum?

Mr. *Thurston*. I do not know any Thing at all about the Matter: I might as well guess what a Gentleman is worth that I know nothing of.

Mr. Serj. *Pengelly*. Whether there were Effects sufficient to answer all the Suitors Demands?

Mr. *Thurston*. I cannot tell; because there was not any particular or exact Accompt taken of it, that is come to my Knowledge.

Mr. Serj. *Pengelly*. Whether the Suitors have been paid the Money left, or deposited by them in the Hands of Mr. *Borret*?

E. of *Macclesfield*. My Lords, if there be any Order of the Court for their being paid, it will appear, and they may produce those Orders to your Lordships: How can they pay without any Order?

Mr. Serj. *Pengelly*. I do not speak of Orders, I only ask whether he knows that the Suitors have been paid?

Mr. *Thurston*. It is impossible for me to have any Knowledge of it, for the Reasons I gave you before; having had no Inspection of those Accompts.

Mr. *Lutwyche*. I desire he may be asked, whether any Effects, or Money, or Cash, and to what Value, have been transferred to him, as the Effects of Mr. *Borret*?

Mr. *Thurston*. About 4200 l.

Mr. *Lutwyche*. Whether he knows what the Cash was, that was in Mr. *Borret's* Hands?

Mr. *Thurston*. No, my Lords, I do not know.

Mr. Serj. *Pengelly*. I desire he may be asked, whether he has been applied to by any of the Suitors of the Court, upon the Account of Money deposited in Mr. *Borret's* Hands?

Mr. *Thurston*. I cannot say no Body has applied to me for Money due in Mr. *Borret's* Office, several Suitors or their Representatives have been inquiring after such Things, who have been satisfied with having such an Answer as the present Circumstances would furnish. There were some Sums of Money before this broke out paid to Suitors, that was Interest Money, and who were represented to me as People in Necessity, to the amount of 3 or 400 l. When this broke out, I then desisted Payment, upon the Advice of a great Friend.

Mr. *Lutwyche*. I desire he would explain himself, what he means by saying before this broke out?

Mr. *Thurston*. What I mean was, the Inquiry made into the Masters Accompts, by his Majesty's Direction in Council.

Mr. *Lutwyche*. The Sum of Money he paid, I desire he may be asked who he received that Sum from?

Mr. *Thurston*. I received it from Mr. *Godfrey*, the Master in *Chancery*.

Mr. *Lutwyche*. I desire he may be asked, whether he knew of any Administration taken out to Mr. *Borret*, and at what Time?

Mr. *Thurston*. I believe Mr. *Godfrey* and Mr. *Bennet* were desired to take that Trouble upon them, to look into Mr. *Borret's* Affairs, by the Lord Chancellor; which they proceeded and took some Steps in,

till

till they were discouraged from it by the Enquiry that was set on foot. They tell me now, that Administration is granted to Mr. Paxton.

Mr. Serj. Pengelly. I desire he may inform your Lordships, since he paid the Interest, why he did not pay the Principal?

E. of Maccles. I believe it would save your Lordships time, if Mr. Serjeant would ask his Questions in such a manner, as not to imply something which was not admitted, or said by the Witnesses. The Question supposes a principal Sum demanded; the proper Question is, first to ask if any principal Sum was demanded, and whether it was, or was not paid.

Mr. Serj. Pengelly. I apprehend that Mr. Thurston says, That Creditors came to him, Suitors of the Court, and he could not pay any more than the Interest; therefore I apprehend they came to him for the Money lodged in the Hands of Mr. Borret. Therefore I desire he may be asked, whether any of those Persons that demanded their Money were paid?

E. of Maccles. I desire he may be asked, whether any demanded the principal Sum? and by what Order?

Mr. Serj. Pengelly. I desire to ask my own Questions; I apprehend I am not to be directed in the asking my Questions by the Lord impeached. I desire to ask what Suitors applied, and what Sums they demanded?

Mr. Thurston. The Names of the Suitors I can't recollect, I believe it is not necessary to trouble your Lordships with them. The Sums demanded were only Interest Money. The principal Sum, for which I paid the Interest, to the best of my remembrance, was 700*l*. There was no Demand made of principal Money to be paid. But there might be Enquiries made, I believe, by a noble Peer of this House, which I was so very unfortunate, that I could not inform his Lordship of the State of what he enquired after.

Mr. Plummer. Mr. Thurston says, he desisted from paying any further Sums, upon very good Advice; I desire to know why, or by whose Advice, he desisted paying?

Mr. Thurston. It was upon a prudential Reason I did desist; because when a publick Inquiry was set on foot, I did not know how far I might be affected, in being made answerable my self for it.

Mr. Plummer. Whether he had any Suspicion that there was a Deficiency in Mr. Borret's Office?

Mr. Thurston. There was a Suspicion that there was not competent Money to satisfy all the Suitors Demands.

Mr. Lutwyche. I desire he may be asked, whether there was not an Order for transferring the Effects in Mr. Borret's Hands to him?

Mr. Thurston. Upon the Admission of Mevery after, there is an Order of Course signed by the Lord Chancellor, to transfer the Effects to the Successor.

Mr. Lutwyche. I ask if any such Order came to him?

Mr. Thurston. There did, my Lords.

Mr. Lutwyche. Was there any Transfer of the Effects according to that Order?

Mr. Thurston. No, there was not a compleat Transfer.

Mr. Lutwyche. Why was it not, as usual in the Case of other Masters, that either are removed,

and are able to transfer; or in case, upon Death; where their Representatives are able to do it?

Mr. Thurston. The Reason it was not done, I conceive, was because it was impracticable, there being no Representative of my Predecessor; no Administration being taken out.

Mr. Serj. Pengelly. I desire he may inform your Lordships, whether he was not applied to by a noble Peer of this House concerning some Effects deposited in the Hands of Mr. Borret; and what account he then gave him of the State and Situation of the Office?

E. of Maccles. I am really very sorry to trouble your Lordships so often: What is it to me what this Gentleman said? He is now upon his Oath, and to give to your Lordships an Account what he knows; but to ask him what he said at such a time, to affect me, I hope they will not insist upon it.

Mr. Serj. Pengelly. When he has declared what he said, then there will be another Question, Whether that was true in Fact? And that Question will then affect the impeached Lord.

E. of Maccles. If Mr. Serjeant will ask a proper Question first, he may; but he should not ask an improper Thing, because he will ask a proper Question afterwards.

Mr. Serj. Pengelly. We apprehend it is proper Evidence to be given, that he gave such an Account of the Office in answer to the noble Lord; Therefore I desire to know what Account he gave to that noble Lord?

E. of Maccles. My Lords, I humbly oppose that Question, and desire your Lordships Judgment, whether he is to ask what this Person said?

Mr. Lutwyche. I believe the same End may be obtained by asking a Question without Dispute; and to which there can be no Objection; that is, Whether or no he had any Reasons to think that there was a Deficiency in the Office, and what those Reasons were?

Mr. Strange. My Lords, we beg leave to oppose that Question: What his private Opinion may be, is no Evidence; he and another may think variously of the same Matter: They are to ask him as to Fact, and not to his Opinion.

Mr. Plummer. I have not had the Happiness to be bred a Lawyer, and therefore may be mistaken as to legal Evidence: But surely when your Lordships are examining a Person to the Deficiency of his own Office, none can give a better Account than himself. I desire he would answer what he knows, whether he had the compleat Money of Mr. Borret's transferred to him?

Mr. Thurston. The compleat Money of the Office hath not been transferred to me, and for the Reasons I have mentioned to your Lordships; for want of an Administration.

Sir W. Strickland. I would beg leave to ask Mr. Thurston one Question, and I hope a material one; Whether, on his Admission into that Office, he did not find a great Confusion in it?

Mr. Thurston. I can't say that upon my Admission into that Office I found great Confusion in it, because all Papers that came within my View were very regular, and well adjusted to dispatch Business upon.

Sir W. Strickland. I desire he may be asked, whether, if he had known the State of this Office, he would have given five thousand Guineas for it?

Mr. Thurston. If I had known the State of the Office, and the Consequences of it, as appear at

this time before your Lordships, rather than have given 5000*l.* for it, I would have given 5000*l.* to have been without it.

Mr. Serj. Probyn. Of the Money he paid or left at the time he mentions, on my Lady Macclesfield's Table, I desire to know if he received any of it back again?

Mr. Thurston. I received back again from the Lady Macclesfield the Sum of 3250*l.* in Bank-Notes, the same as I enclosed, when I first left it.

Dr. Sayer. Do you know the particular Circumstances of that Transaction, and upon what Occasion the Money came to be return'd? Give a full Account of that whole Transaction.

Mr. Thurston. Soon after my Admission, and as soon as I could adjust the Affairs of my Office, it being the latter End of Summer, and little Business stirring, I went into the Country for my Health. The Servant I left in Town, sent me word, that there were several Messages from my Lord Chancellor, that he supposed might be of Importance. As soon as I could conveniently, I returned to London, and in a Day or two went my self to my Lord Chancellor's House, and I sent to know what the Occasion of those Messages was. They said, it was not from my Lord Chancellor, but it was a Message from my Lady Macclesfield. Upon that I immediately after waited upon her Ladyship. She informed me then, that she did not know that I had left so large a Present with her, as she found it was: And declaring I should be used with Honour, she returned to me 3250*l.* and the other part she said she would appropriate to her own use.

Mr. Serj. Probyn. We desire Mr. Thurston may be asked, if there was any notice taken of any Order or Directions from my Lord Chancellor about re-payment of the Money? or whether it was only a Transaction between him and my Lady Macclesfield?

Mr. Thurston. There was no notice taken of any Orders from my Lord Chancellor; rather an express Desire that my Lord Chancellor should never be acquainted with it.

Mr. Strange. I would ask when this Money was restored?

Mr. Thurston. The time when the Money was restored, was about the Middle of October.

Mr. Com. Serj. I desire he may be asked, whether at the time he first applied to Lady Macclesfield, he laid down the Paper those Bank Bills were in on the Table, before he received any Answer from my Lady, or afterwards?

Mr. Thurston. I laid down the Bank Bills on the Table, to the best of my Remembrance, at the time of my coming away, and taking leave.

Mr. Com. Serj. Whether they were inclosed in a Paper?

Mr. Thurston. They were inclosed in a Paper, and also sealed up.

Mr. Com. Serj. Whether they were opened during the time he was there?

Mr. Thurston. No, they were not.

Mr. Com. Serj. Or taken up by my Lady during that time?

Mr. Thurston. No, my Lords, I don't remember they were.

Mr. Com. Serj. Whether he named the particular Sum to her Ladyship?

Mr. Thurston. No, my Lords, not in the least. I did not give any Intimation what Sum was inclosed.

Mr. Strange. I desire he may be asked, whether he can remember that my Lady did or did not open it, before he went away?

Mr. Thurston. To the best of my Remembrance it was not opened, before I went out of the Room.

Mr. Strange. I desire he may be asked this further Question, whether he apprehended that my Lady Macclesfield was acquainted with the Contents, till after he was gone?

Mr. Thurston. I did not apprehend that my Lady Macclesfield was acquainted with the Contents of it, till afterwards.

Mr. West. Since that Gentleman hath asked concerning his Apprehension, I desire he may be asked another Question of the same kind, which is, Whether he apprehended he should have been admitted, if he had not left the Money?

Mr. Serj. Probyn. We submit it to your Lordships, whether that be a fair Question.

Mr. West. Really I think it is a proper Question, upon the Foundation of the Question asked before. The former Question was, whether he apprehended my Lady knew what he had left? I ask, whether he apprehended he should have been admitted, if he had not left that Sum?

Mr. Thurston. I do not apprehend, that if I had come without the Money, I should have been admitted. But if the Notes had been return'd to me without any other Answer, then I should fully have apprehended that I should not have been admitted.

Sir John Rushout. I desire he may be ask'd, whether he had any particular Acquaintance with the Lady Macclesfield before?

Mr. Thurston. I had not that Honour.

Sir John Rushout. Whether he had ever seen her, or been in her Company before?

Mr. Thurston. My Lords, I believe I never was.

Sir John Rushout. My Lords, we desire he may be ask'd what he apprehends was the Reason of 3250*l.* being return'd to him?

Mr. Thurston. I know not whether I should trouble your Lordships with my Apprehensions, they may not be just; but so far as I could collect from the Lady's Discourse, the Reason was, she thought it too large a Present.

Mr. Serj. Pengelly. I desire he may be ask'd, when the 3250*l.* was return'd, in what Month it was?

Mr. Thurston. It was in October.

Mr. Serj. Pengelly. Whether he can recollect in what time of the Month?

Mr. Thurston. I believe it was about the middle of October, to the best of my Remembrance.

Dr. Sayer. My Lords, we desire he may be ask'd, whether the return of this Money was before or after the then first Seal before Michaelmas Term?

Mr. Thurston. To the best of my Remembrance, the first Seal was about the middle of October, and it was return'd before the first Seal.

Mr. Serj. Probyn. My Lords, I desire he may be ask'd, whether there was any Message sent about the returning of the Money, before the Return was made?

Mr. Thurston. I have acquainted your Lordships that several Messages pass, while I was in the Country.

Mr. Robins. When he waited upon my Lady Macclesfield, after his Return out of the Country, I desire he may be ask'd, whether she mentioned any Thing to him of the Reason of those Messages?

Mr. Thurston.

Mr. *Thurston*. She mention'd the Reason, and said that it was to return the Money, which she said was too large a Present; and that she was afraid my Lord Chancellor should come to the knowledge of it.

Mr. Ser. *Probyn*. I desire he would inform your Lordships, when he went to *Kensington* to my Lady *Macclesfield*, where my Lord *Macclesfield* was?

Mr. *Thurston*. When I went to *Kensington* to my Lady *Macclesfield*, my Lord *Macclesfield* was then engag'd in the Business of the Court of Chancery, at the latter end of the Sittings, or first Seal after *Michaelmas* Term.

Mr. Ser. *Probyn*. In what state of Health was my Lord Chancellor at that time? Had he not continued some time before at *London*, and not at *Kensington*?

Mr. *Thurston*. My Lord Chancellor, by the Enquiry I made, was at that time in *London*.

Mr. Ser. *Probyn*. How soon after your Admission did the Lord Chancellor go into *Oxfordshire*?

Mr. *Thurston*. The very Day after my Admission, my Lord Chancellor went into *Oxfordshire*, as I was informed by one of my Lord's Officers, who came to me that Day upon some Business.

Mr. *Cottingham* again call'd.

Mr. Serj. *Pengelly*. My Lords, I desire Mr. *Cottingham* may be ask'd, whether upon the Proposal of 5000 Guineas made to him by Mr. *Thurston*, he acquainted my Lord *Macclesfield* with it?

Mr. *Cottingham*. I acquainted my Lord Chancellor with the Proposal made by Mr. *Thurston* of 5000 Guineas.

Mr. Serj. *Pengelly*. Whether did he approve of it, or reject it?

Mr. *Cottingham*. I am not very certain, whether the Earl did not say he would take time to consider of it. But in the main, according to my Apprehension, the Earl seem'd to approve of it.

Mr. Serj. *Pengelly*. I desire he may be ask'd, whether he receiv'd any thing for my Lord *Macclesfield*'s Use upon Mr. *Thurston*'s Admission?

Mr. *Cottingham*. No my Lords, I receiv'd nothing but my own Fees.

Mr. Serj. *Pengelly*. If he received nothing, whether he received any Directions from my Lord Chancellor, relating to his receiving, or not receiving any thing from him?

Mr. *Cottingham*. The Earl was pleas'd to tell me, he had a Design to have given that Place to Dr. *Sayer*; but he was at that time in the Country, out of Town, at *Durham*: He proceeded so far as to order me to take no Money of Mr. *Thurston*.

Mr. Serj. *Pengelly*. When was that?

Mr. *Cottingham*. Very soon before he was admitted.

Mr. Serj. *Pengelly*. My Lords, we submit this as Evidence of the Lord's knowing of the Receipt of this Present of 5000 Guineas.

Mr. *Lutwyche*. My Lords, I desire to know of Mr. *Cottingham*, whether my Lord *Macclesfield* had any acquaintance with Mr. *Thurston* before this Proposal?

Mr. *Cottingham*. I can't say as to that, whether he had or had not; I believe he had not, as I apprehend.

Mr. *Plummer*. I desire he may be ask'd one Question, whether he made any difficulty of accepting his Fees on Mr. *Thurston*'s Admission?

Mr. *Cottingham*. Yes I did.

Mr. *Plummer*. And why?

Mr. *Cottingham*. The Earl ordered me to take no Money of him. Upon that general Order I made a little difficulty, and told him of it; the answer he made me was, why should I make any difficulty when he had been thus generously dealt with by my Lord Chancellor?

Sir *W. Strickland*. Whether at that time, when he first mention'd the 5000 Guineas, it was not a Day or two before his Admission?

Mr. *Cottingham*. I believe it was a Day or two before his Admission.

Mr. Serj. *Pengelly*. My Lords, we have done with Mr. *Cottingham*; since the name of Dr. *Sayer* is mentioned on this Occasion, whom the noble Earl declared he would compliment with the Place that fell vacant, I desire this Witness may be asked, whether that was a real Compliment to Dr. *Sayer*, or whether Dr. *Sayer* made any Application, or was to give any Thing for it?

Mr. *Cottingham*. I believe, if Dr. *Sayer* had been then in Town, my Lord would really have made him a Compliment of it without any Present. My Lord told me Dr. *Sayer* was his particular Friend, and he had a great Value and Respect for him.

Mr. *Plummer*. My Lords, I beg leave to ask a Question upon that Question. He says he thought my Lord *Macclesfield* would have given it him for nothing; I ask him if he then thought he gave it Mr. *Thurston* for nothing?

Mr. *Cottingham*. The Answer I can make to that Question is, that I did not apprehend my Lord was so well acquainted with Mr. *Thurston*, as to give it him for nothing.

Dr. *Sayer*. I desire he may be ask'd, whether he did not represent to the Earl of *Macclesfield*, that there was a necessity for the immediate putting a Master into that Office, for the dispatch of Business?

Mr. *Cottingham*. I did represent it to the Earl, that it was necessary to put somebody into the Office, for several Practicers had been with me about their Affairs in that Office, and otherwise the Business might be transferred to another Office, which would have been a great Prejudice. Upon that the Earl said Mr. *Thurston* should be admitted.

Mr. Serj. *Probyn*. Whether you had not Application from the Suitors themselves, and whether there was not a Clamour from them on account of the stop it put to Business?

Mr. *Cottingham*. Yes there was; it happened to be in the long Vacation, and something I told the Earl must be done, there was an absolute Necessity to come to some Resolution or other in the Matter.

Mr. Serj. *Pengelly*. In this Article, as an Aggravation, it is alledg'd, that Mr. *Borret* died insolvent: We beg leave to call some Witnesses to give an Account of the State of the Office at his Admission, and afterwards at the time of his Death.

Mr. *Meller* called.

Mr. Serj. *Pengelly*. My Lords, we desire Mr. *Meller* may be ask'd, what Sums in Cash and Effects he delivered over to Mr. *Borret*, at the time of his coming into the Office?

Mr. *Meller*. My Lords, I take it to be about 12000*l*. I refer myself to the Account given in

to the Judges, and Directors of the Bank, and signed by my Hand.

Mr. Serj. *Probyn*. My Lords, we submit it, whether this is regular, to examine to an Accompt *Viva Voce*, which Accompt hath been reduc'd into writing?

Mr. Serj. *Pengelly*. Surely the Witness may make use of his own Paper to refresh his Memory.

E. of *Macclesf.* I don't know what these Gentlemen intend. They are reading a Charge against Mr. *Borret*, to shew what was delivered over to him, at the time he came into the Office. Is it expected I should be able to give an Account what was paid to him, or by him, while he was Master? that I should give an account of his Estate, and Effects, what it is, and if there was sufficient to pay in his Hands, or not? If these Gentlemen had any Order of the Court, in which this had been fixed and settled, that might have been something. It is impossible for me to enter into it. ----- It appears he died intestate, Administration was not granted till a great while after his Death; not till very lately: What account hath been taken of his Effects I don't know, nor can any way shew. They are beginning with an Account which I apprehend is not a proper Evidence to be given as against me, to prove that this Gentleman had not Effects sufficient to answer the Demands upon his Office.

Mr. Serj. *Pengelly*. My Lords, This Evidence relates to an Accompt delivered in by the Approbation of the Lord impeached, on the Enquiry made before the Lords of the Council. As this Accompt was delivered in before them, we apprehend so far it is a proper Evidence, and a Foundation for a farther Enquiry, how much of it remains in the Office: We shall ask other Persons afterwards as to the Deficiency. All the use we now make of it, is, to shew the gross Sum that was at first transferred over to him.

E. of *Macclesf.* My Lords; If they mean only to satisfy your Lordships Curiosity, by shewing how great a Sum there was in that Office, I think it is of no great Importance.

Mr. *Lutwyche*. All that we endeavour to prove now, is, what was very notorious at the time of Mr. *Borret's* Death; that there was a great Deficiency, and that he died insolvent, and the Earl goes a great way in this matter in his own Answer. He says in his Answer, That on the Death of Mr. *Borret*, he desired Mr. *Godfrey* and Mr. *Bennet* to enquire into his Effects, and to enter a proper Caveat in the Prerogative Court, to prevent Administration being granted to any Person who might embezzle the said *Borret's* Estate, and to obtain Administration to be granted to them for the benefit of the Suitors of the Court. This goes a good way, I apprehend, to incline your Lordships to believe, that there were those Steps used, which are unusual in the case of a Man's Solvency. Therefore what we would ask to, is, that the Witness would give an account of what he knows concerning the Deficiency in this Office, or give an account of such Circumstances, as may induce your Lordships to believe there was such a Deficiency.

Mr. *Com. Serj.* If the Gentlemen who appear on the behalf of the House of Commons think fit to rely upon our Answer, they may do it.

Mr. *Sol. Gen.* I think Mr. *Meller* hath proved that he transferred 120,000 *l.* to Mr. *Borret*; we will now go on and prove the Deficiency.

Mr. *Com. Serj.* Mr. *Meller* hath spoke *Viva Voce*, in a matter which we apprehend is capable of much

better Proof; therefore we hope what he has said shall not go for Evidence. There must have been a Schedule, and he has the counterpart of that Schedule, by which the Effects were deliver'd over.

Lord *Trevor*. Mr. *Meller* hath a Paper in his Hand, I desire to know what that Paper is?

Mr. *Meller*. The Paper I have before me is the very Account of the Money delivered to Mr. *Borret*, and the several Times when; it is made by way of Schedule. There is another Paper by way of Abstract. I drew them together at the time I delivered it to the Judges: I had not time to draw out the full Account, and therefore I made an Abstract, both which are signed.

E. of *Macclesf.* The noble Lord asked the Question exceeding proper. The Question asked is, What this Paper was? Perhaps it is the very Accompt Mr. *Borret* and he made up between them, and signed. I ask therefore, Whether it is the Accompt between them, or whether it is an Accompt of his own drawing up since?

Mr. *Meller*. This is the Accompt I drew up from my Books, of which Mr. *Borret* had a Duplicate. I verified all these *Items*, and likewise proved the Payment of the Money by Goldsmiths and Bank Notes.

Mr. *Sol. Gen.* We apprehend that this is as full Evidence as can be laid before your Lordships.

Mr. *Serj. Probyn*. We submit it, whether your Lordships are of Opinion that this is proper Evidence. Mr. *Meller* hath been proposing a Paper, which is not the original Accompt delivered; it is not the Book, but a Copy of the Book taken out, and given in Evidence in another Place: Now he would by this Evidence, signed by himself, charge Mr. *Borret* with Money deliver'd over to him; but as it is an Accompt only signed by Mr. *Meller*, we submit it, whether it can be a Charge upon the Representative of *Borret*, and consequently if it can be any Evidence at all?

Mr. *Serj. Pengelly*. We beg leave to insist upon it as proper Evidence. When a Person makes up an Accompt of his own Hand Writing, and draws it up, and swears that to be a true Accompt upon his own Knowledge, whether this is not proper Evidence?

E. of *Macclesf.* This Gentleman has really given his Evidence, though it was objected to: It will be a proper Enquiry hereafter, when we come to consider the Evidence that hath been given, whether it be good Proof of what it is brought for?

Dr. *Sayer*. We shall reserve our Objection to the last.

Mr. *Sol. Gen.* They may reserve what Observations they please; it is an Objection to be made now, or not at all.

Lord *Lechmere*. It would be of some Service to prevent mispending your Lordships Time, if the noble Lord would distinguish between Objections and Observations; for a great deal of Time has been taken up in Observations on Evidence, which are proper afterwards on the Defence.

Mr. *William Thompson* called.

Mr. *Serj. Pengelly*. Mr. *Thompson* is one of the Gentlemen, who by the consent of the Lord within the Bar, as well as of the rest of that Committee, did examine into the Accompts of the Masters in Chancery; and we beg leave to ask him, In the Accompt delivered in before the noble Lord himself

self, what appeared to be the Deficiency upon Mr. *Borret's* Account?

*E. of Maccles.* If it does appear by those Accounts, those Accounts may be produced before your Lordships, and your Lordships may be Judges; but I beg they may not insist upon this Gentleman giving his Opinion, in order to affect me with his Collections or Inferences upon them.

*Mr. Sol. Gen.* The Original Accompts are here. They are on your Lordships Table. It will be proper to examine this Gentleman as to that.

*Mr. Plummer.* I beg leave to make one Observation, and I believe it may prevent my spending your Lordships time. They make an Objection to this Evidence, as if your Lordships were going to try how the Deficiency was made up; whereas your Lordships are only trying whether there was or was not a Deficiency.

*E. of Maccles.* If the Accompts are before your Lordships, and lye upon your Lordships Table, and he only declares to your Lordships his Observations on those Accompts, for your Lordships Ease, and to save you some Trouble, I have no Objection to it.

*Mr. Serj. Pengelly.* Upon the stating the Accompt, which we apprehend is a matter of Evidence, when a Gentleman computes the Sum on one Side, and the Sum on the other Side, we desire to know what appears to Mr. *Thompson* to be the Deficiency?

*Mr. Thompson.* I can't rely upon my Memory for the Sum, but I have in my Hand a Report made to the Committee of Council, that I signed with my Name; by which it appears, that Mr. *Meller* at several times, paid to Mr. *Borret* 120000 *l.* That Mr. *Borret* paid out to the several Suitors 77485 *l.* and I find the Charge remaining on Mr. *Borret's* Office unpaid to the Suitors, is 42515 *l.* These are the Sums that upon Examination of the Accompts we find to be right.

*Dr. Sayer.* If the Gentlemen that are Managers for the House of Commons have done, we beg leave to ask Mr. *Thompson* this Question, whether on the making up of these Accounts any Executor or Administrator of Mr. *Borret* was present?

*Mr. Thompson.* When we examined the Accounts, we understood there was no Representative of Mr. *Borret*; and I think it is put in the Report, that we could get no Account but from his Clerk, Mr. *Godfrey* and Mr. *Bennet*, two Masters in Chancery.

*Mr. Com. Serj.* What Books was it he formed those Accounts from?

*Mr. Thompson.* The first Charge, or the Charge from Mr. *Meller* on Mr. *Borret*, was taken from Mr. *Meller's* Account. The 77485 *l.* paid out, was an Account from Mr. *Borret's* Books, made up by his Clerk, under the Inspection of Mr. *Godfrey* and Mr. *Bennet*.

*Mr. Com. Serj.* I desire he may be asked, whether he himself knew those to be Mr. *Borret's* Books, or only by Relation from other Persons?

*Mr. Thompson.* Only by Relation from his Clerk.

*Mr. Com. Serj.* Then, with Submission, they must go further before the Ballance can be taken notice of. They must establish that these Books are Mr. *Borret's* Books.

*Mr. Sol. Gen.* We have done with Mr. *Thompson*.

*Mr. Serj. Pengelly.* We hope the Council for the Earl impeached, will be pleased to read his own Answer, wherein he owns that Mr. *Godfrey* and Mr.

*Bennet*, were employ'd by himself to take the Effects of Mr. *Borret* into their Custody.

*E. of Maccles.* If I apprehend Mr. *Thompson*, he says, the Charge is taken from the Account given by Mr. *Meller* himself. I desire to know, whether Mr. *Meller* was not called upon to discharge himself of the Money he had in his Hands, before he surrender'd to Mr. *Borret*, and whether that was not the Occasion of his being there?

*Mr. Thompson.* I apprehend Mr. *Meller* was sent for, in order to know the State of the Office at the time he left it.

*E. of Maccles.* So he gave an Account how it stood at the time of quitting the Office, and what he paid over to Mr. *Borret*?

*Mr. Thompson.* I apprehend he did so.

*Mr. Serj. Probyn.* I desire Mr. *Thompson* may be ask'd, whether the 77485 *l.* Discharge, was taken from the Relation of Mr. *Godfrey* and Mr. *Bennet*, or from the Books themselves; or whether he did examine the Books himself?

*Mr. Thompson.* I went through every Particular of Mr. *Meller's* Accompt; as to the other, my Memory does not serve me to answer particularly.

*E. of Maccles.* Whether they did not report at that time, they could not take the Accompts perfectly for want of an Administrator?

*Mr. Thompson.* I believe, my Lords, we might do so, and I believe if the Report is turn'd to, it will appear so. I don't mention these Sums as an exact Accompt, they were the best Accompts we could get?

*Dr. Sayer.* The Question I would trouble your Lordships with, because it is of great Consequence, is, whether the Accompt of 120,000 *l.* which lies as a Charge upon Mr. *Borret's* Office, is not the Accompt which Mr. *Meller* is to discharge himself by, and of those Effects for which he otherwise remains responsible?

*Mr. Thompson.* How far Mr. *Meller* is to discharge himself, I am no competent Judge. This is the Accompt that the Office, as I apprehend, stood charg'd with.

*Dr. Sayer.* To put the Question shorter. Whether it is the Accompt of Mr. *Meller*, as Predecessor in the Office to Mr. *Borret*?

*Mr. Thompson.* I apprehend it so.

*Mr. Plummer.* Whether Mr. *Meller* did not produce Receipts for Mr. *Borret*, for this whole Accompt?

*Mr. Thompson.* To the best of my Remembrance, Mr. *Meller* did produce Vouchers for every Article set down in his Accompt.

*Mr. Serj. Probyn.* I desire he may be ask'd, whether there were any Proofs made of these Vouchers?

*Mr. Thompson.* What the Gentleman means by Proofs, I don't know. They were Receipts under Mr. *Borret's* own Hand for the whole Sum.

*Mr. Com. Serj.* I desire he may be ask'd, whether he is acquainted with Mr. *Borret's* Hand-Writing, or whether there was any Proof made of it?

*Mr. Thompson.* Mr. *Borret's* Clerk was there, and affirm'd every Receipt to be Mr. *Borret's* Hand-Writing.

*Mr. Com. Serj.* I would ask, if there was any Oath made, or if it was only upon his Word?

*Mr. Thompson.* If your Lordships will give me leave to have recourse to the Report, I will recollect myself. I can't say whether Mr. *Borret's* Clerk was sworn or no, I think he was; I don't find it set down in the Report.

*Mr. Lutwyche.* I would beg leave to ask this Question.

Question. This Report, that is sign'd by him as one of the Committee, whether it was laid before the Council, and to whom delivered in, in order to be laid before the Council?

Mr. *Thompson*. This very Report was delivered by Mr. *Baron Gilbert*, to the Committee of Council.

E. of *Maccles*. I hope it is the same that is before your Lordships, if it is not, I can't tell what to say to it.

Mr. *Serj. Pengelly*. This is the Original Report, of which your Lordships have a Copy on your Lordships Table.

E. of *Maccles*. I desire it may be delivered in and lye upon the Table.

*Mr. Godfrey called.*

Mr. *Sol. Gen.* We desire Mr. *Godfrey* may be ask'd, whether upon the Death of Mr. *Borret*, he was directed to take an Account of the State of his Office?

Mr. *Godfrey*. Upon the Death of Mr. *Borret*, my Brother *Bennet* and I, were desired by my Lord *Macclesfield*, to look into the Affairs of Mr. *Borret's* Office, and see how the Accompt stood; and likewise to see what Securities were in the Bank, in the Exchequer, and East-India Company, and other Funds. Accordingly, I went to the Bank, and to the East-India House, and took an Account of what I found stood in his Name there. I believe Mr. *Bennet* will satisfy your Lordships, he went to the Exchequer and other Places. I applied first to the Bank, to Mr. *Hanger*, who was then Deputy Governour, and he was so kind to send an Officer to search the several Books, and I had this Accompt: There was in Mr. *Borret's* Name 1000 *l.* in 5 *l. per Cent* Annuities, 1000 *l.* Bank Stock. And then I went to the East-India House, and there was 240 *l.* East-India Stock in his Name. This was all the Account I took.

Mr. *Sol. Gen.* In what State was the Office in General?

Mr. *Godfrey*. I did not look over the Office Books. I believe Mr. *Bennet* who was with me took that Charge upon him: I believe he is capable of giving you an Account. I did not see the Office-Books at all. But upon my talking with Mr. *Bennet* about it, he found there was more Stock and Security in Mr. *Borret's* Name in the several Funds, than he could find him charg'd with in the Books of the Office.

Mr. *Serj. Pengelly*. When Mr. *Thompson* and the other Gentlemen enquired into the particular Effects, whether, when he appear'd there, the Accompt he gave in was a true Accompt?

Mr. *Godfrey*. To the best of my knowledge, in relation to Mr. *Borret's*, it was.

Mr. *Sol. Gen.* I desire one Question more, whether it is usual to enquire into the Effects of a Predecessor, unless there is reason to suspect a Deficiency?

Mr. *Godfrey*. I don't know whether it is usual, but it is extremely necessary. When this Gentleman was expiring in such an Office, having no Friends in Town, nor any intimate acquaintance besides myself to take care of his Effects; I thought I ought to take some care, that his Office should not be plundered; and that was the only Reason that induced me to take care of his Effects, that they might not be embezzled.

Mr. *Serj. Pengelly*. Whether they did not find the Office in great Confusion?

Mr. *Godfrey*. In that part of his Office which was at his Chambers in the Temple, we found his Papers in great Confusion, lying without any Method or Order. We collected them as well as we could, and what Things we found of Value or belonging to the Suitors, as Goldsmith's Notes, Notes under Hand for Money, we put them upon a File; and that File, together with other little Moveables we found belonging to him, as Rings and a Watch, were all put in a Bag, and sealed up by Mr. *Bennet* and myself, Mr. *Grant*, who was Mr. *Borret's* Lady's Father, and Mr. *Grant* the Clergyman, who was his Lady's Uncle, and put them into a Trunk and lock'd them up; and they are now at my House.

Sir *W. Strickland*. I would ask him whether the next of Kin did not refuse to take out Administration, because of the Deficiency?

Mr. *Com. Serj.* Here can be no Answer, but yes or no, I hope Gentlemen will not ask such Questions.

E. of *Maccles*. I desire he may be ask'd, whether any Advice was given concerning taking out, or not taking out Administration?

Mr. *Godfrey*. Mr. *Grant* the Uncle, said, that he was a Creditor of Mr. *Borret's*, by Bond (which indeed I was surpriz'd to hear, I did not think he owed any Man a Shilling;) between 6 and 700 *l.* and being so great a Creditor, he thought if he took out Administration he should be paid first. I told him, as Mr. *Borret* had been in an Office of great Weight, and there was a great Trust, I could not tell how Matters stood in the Office; and if there should prove a Deficiency, I believed he would involve himself in taking out Administration, in much more trouble than he was aware of.

Sir *W. Strickland*. I desire he may be ask'd, if he did not apprehend there would be such Deficiency?

Mr. *Godfrey*. I did not apprehend at that time there would be any Deficiency. He had been in the Office about four Years, he had had Opportunities of re-imbursing himself: He had a handsome Fortune of his own when he came in, and had with his Lady 3000 *l.* Therefore I was under no apprehension that there would be a Deficiency.

E. of *Maccles*. I beg leave I may ask Mr. *Godfrey*, whether he was acquainted very well with the Affairs of Mr. *Borret*, and knew his Circumstances?

Mr. *Godfrey*. I have had some Years acquaintance with Mr. *Borret*. As to his real Estate, I was not perfectly acquainted with it, I had it only by common Relation, that he had an Estate of about 400 *l.* a Year, or rather better; but I don't know it of my own Knowledge.

E. of *Maccles*. As to his real Estate, you say you don't know it of your own Knowledge; whether are you particularly acquainted with his personal Estate?

Mr. *Godfrey*. No my Lords.

E. of *Maccles*. I desire Mr. *Godfrey* to inform your Lordships, what he said to me after Mr. *Borret's* Death, whether there would be a Loss or not a Loss in Mr. *Borret's* Office?

Mr. *Godfrey*. I can't at present remember what Discourse passed between the noble Earl and myself upon the death of Mr. *Borret*. I believe I might say, and it was my Opinion, that there would be no Deficiency. I have heard his Estate was such, and I knew very well that his Lady's Fortune was



so much, and that he disposed of a Place, which was the Filazer of *Yorkshire*; for which he had, as I have been inform'd, 4200 *l.* And these were the Reasons that induced me to believe there wou'd be no Deficiency; and I knew very well that I cou'd say of my own Knowledge, Mr. *Borret* lived at no extravagant rate; for I am sure all the Time he was a Master, and in Town, he never spent 200 *l.* a Year.

Sir *W. Strickland*. He says, he has heard he had 400 *l.* a Year in Land: Does he not as well know that that Estate was settled upon his Family and Children?

Mr. *Godfrey*. I have heard, that upon his Marriage, some part of it was settled, but whether all be settled, or not, I can't tell.

E. of *Maccles*. It seems this Gentleman says, he did not spend 200 *l.* a Year. How came you to imagine that he should spend no more than 200 *l.* a Year?

Mr. *Godfrey*. He told me so.

E. of *Maccles*. Where was his Family?

Mr. *Godfrey*. In the Country.

E. of *Maccles*. With whom?

Mr. *Godfrey*. With his Lady's Father; and when he was in Town, he had private Chambers in the *Temple*, and only kept one Servant; and one Horse.

E. of *Maccles*. I desire he may be asked, whether he did not once intend and propose himself to take out Administration to Mr. *Borret*, and if he did not take some steps towards it?

Mr. *Godfrey*. I had so great a concern for the Office, and the Securities not being transferred to a proper Hand, that I was willing to take out Administration, rather than there should be any clamours on account of the neglect of Business in the Office. But, my Lords, upon considering the Matter, I did not apprehend that I was so fit a Person for that purpose. I was not very young my self, I had two Children, and those young: I apprehended that if I should drop off before things were settled, the Case might be still the same as I found them: Therefore, I desired I might have somebody joyned with me in this troublesome Affair, for I did foresee a good deal of trouble in it. However, I said I was willing to engage in it, if my Brother *John Bennet* were joyned with me, rather than there should be any clamour upon the Office; and I persuaded him to do the same; and accordingly, I went down to the Commons, to see if Administration could be granted to us two. The Relations in the Country, and those People concerned for them, were very willing that Administration should be granted to Mr. *Bennet* and my self; and accordingly Process was sent to cite the Children; and that done, as I am inform'd, Sentence was given, that I and my Brother *Bennet* should have the Administration. But then this unhappy enquiry coming out, we did not know what Situation we might be in, and for that Reason I declined it.

E. of *Maccles*. Has Mr. *Borret* a Wife living, or is she dead?

Mr. *Godfrey*. His Lady died a Month before him.

E. of *Maccles*. What age are his Children?

Mr. *Godfrey*. The eldest is about three Years old, and the youngest about two, as I am informed; I never saw them.

*Mr. John Bennet was called and sworn.*

Sir *W. Strickland*. The Question I desire he may be asked is, whether he did not, upon the enquiry

into the Affairs of Mr. *Borret*'s Office, apprehend that there was a Deficiency.

Mr. *J. Bennet*. I did hear it reported that there would be a great Deficiency in that Office, at the Time I was desired by my Lord *Macclesfield* to look into it; and I was likewise informed soon after, that there was like to be no Deficiency.

Sir *W. Strickland*. I desire he may be asked, how he found it?

Mr. *J. Bennet*. I found his Papers and Accompts in the utmost Confusion. His Accompts were mostly in loose Papers: There was one Book indeed, but that extended no farther than to the *Christmas* before his death, which was near three quarters of a Year before he died. Mr. *Godfrey* desired I would join with him in taking out Administration; after a good deal of importunity I did consent.

Sir *W. Strickland*. I desire one Question more. He says he was informed soon after, there was like to be no Deficiency in the Office. I desire to know, whether he did inform the Earl of *Macclesfield* there was like to be no Deficiency?

Mr. *J. Bennet*. No, I did not, but I did inform him, that there was not so great a Deficiency as was reported, which was 25 or 30000 *l.* I cou'd make no regular Computation, every thing was in the utmost Confusion, as I acquainted my Lord.

E. of *Maccles*. I desire he may be asked, whether he did not inform me, that he found more Stock in *Borret*'s Name, in the Books of the several Companies, than he could find charged upon him in the Office?

Mr. *J. Bennet*. Not to my Remembrance; for I did not look into the Stocks of the Companies, that was Mr. *Godfrey*'s Business.

E. of *Maccles*. You, then look'd into his Books?

Mr. *J. Bennet*. I did so.

E. of *Maccles*. Then upon your looking into his Books, and Mr. *Godfrey*'s looking into the Companies Books, and comparing them together, I desire you would inform my Lords, whether you did not take more to be in his Name, than he was charged with in the Books of the Office?

Mr. *J. Bennet*. Upon Mr. *Godfrey*'s Accompt there appeared, upon casting it up, to be more Stock in his Name than the Securities he was answerable for to the Court.

E. of *Maccles*. He has said, he could not tell what the Deficiency would be, because he could not make up a regular Accompt; I desire he may be asked, whether he did not tell me that he believed there would be no Deficiency?

Mr. *J. Bennet*. No, I did not.

E. of *Maccles*. Did you not upon your Oath?

Mr. *J. Bennet*. After Mr. *Borret*'s death, I did say to several People, when they were clamorous (but whether I said so to my Lord *Macclesfield*, I can't tell) that upon the best Accompt I could make of his confus'd Affairs, there would be a Deficiency of 4 or 5000 *l.* and I believed not more.

Mr. *Com. Serj.* Tho' Mr. *Bennet* did not look into the Books of the publick Companies; yet whether he did not examine at the Exchequer upon that Occasion?

Mr. *J. Bennet*. Yes.

Mr. *Com. Serj.* I desire he may be asked, whether he did not tell Mr. *Godfrey*, afterwards, that upon what appear'd, there would be no Deficiency?

Mr. *J. Bennet*. No.

Mr. *Plummer*. Mr. *Bennet* has said, upon comparing the Books, he found more Stock in Mr. *Borret*'s

*Borret's* Name, than he was charged with to the Court. I desire he may be asked, if he found more Stock than the Money and the Effects he was charged with to the Court?

Mr. *J. Bennet*. No my Lords, the best Calculation I could make, was, that there was near 4 or 5000*l.* Deficient.

Mr. *Serj. Pengelly*. We shall leave this Article, with this Observation, that Mr. *Borret* died insolvent, and a debtor to the Suitors of the Court, of which we have given full Evidence; and that Mr. *Thurston* was admitted into that Office by the Earl Impeach'd, without procuring satisfaction to the Suitors of the Court, or Security for their Debts: If that was done, it lies upon the noble Lord to prove it.

Mr. *Onslow*. My Lords, The Commons having made good that part of their *Impeachment*, by which the *Earl of Macclesfield* stands charged with extorting many great, and extravagant Sums of Money, for the admission of several of the Masters of the Court of Chancery into their respective Offices: We shall now proceed, my Lords, to support the *Eleventh* and *Twelfth* Articles, which contain many corrupt Practices, used by the said Earl, to advance and encrease the illegal Gain, arising to himself from the Sale and Disposal of those Employments.

The *Eleventh* Article charges him, my Lords, with admitting several Persons to those Offices, who at the Time of their Admission, were of *small Substance and Ability*, and highly unfit for so great a Trust, as by the nature of their Employments at that Time, was to be placed in 'em.

The Masters in Chancery, my Lords, have of late Years, been the *Treasurers* of that Court. The *Repository* of the Money and the Effects brought into the Court, brought there my Lords, not by the choice and consent of the Parties concerned, but by the compulsion of the Court, under the Faith of a better Security: But so, my Lords, has it fallen out, that this pretended Security, has served only to delude the Suitors of the Court, into a false Quiet, whilst their Estates have been made a Prey to infamous *Stock-jobbers*, and wantonly wasted, by some of 'em, to support the extravagancy of their Living.

The Fortunes, my Lords, of *Orphans* and *Lunaticks*, are from the Compassion of our Government, a part of the Care of the Court of Chancery; and have been lodged in the Hands of the Masters, as a Place of *Sanctuary*, till the Owners should become capable of managing their Estates themselves: When They come, my Lords, to require their Fortunes, He, who was the *Supreme Judge* in a Court established for their Relief: He, who was the *Great Guardian* of Infants and Lunaticks, will be found to have suffer'd an advantage to be taken of the weakness of the *One*, and the misery of the *Other*, to render their helpless condition a means of their Ruin, instead of their *Protection*.

This, my Lords, is the nature of the Trust reposed in the Masters of the Court of Chancery, and This the Use they have been permitted to make of it. The *Greatness* of the Trust, will shew your Lordships, what Precautions a Lord Chancellor ought to have taken, as to the Officers admitted into these Employments; and the Abuse of this Trust, will demonstrate how little His care has been, whose Duty it was to provide Persons of Integrity, and responsible Men for the execution of these Offices; but who, my Lords, unfortunately for the Suitors, and to the

dishonour of the publick Justice of the Kingdom, presided seven Years in the Court of Chancery; in which Time, a deficiency of above *four score thousand Pounds*, has happened upon the Masters He admitted; and what perhaps may be worthy of your Lordship's particular Notice, of the *six* Masters on whom there appears to be a Deficiency, *Four* of them were admitted by Him. If our Evidence, my Lords, as to this Article, rested only on the Proof of these Deficiencies, it would, we apprehend, be sufficient to evince what the Commons have here alledged, That Persons of small Substance and Ability, have, by the Earl at the Bar, been preferred to be Masters of the Court of Chancery. But, my Lords, to bring this Charge still nearer to the Earl, We have it in Proof, and strongly so, That little or no inquiry was ever made by Him, into the Characters and Circumstances of Those He admitted into these Offices. That in fact, my Lords, they were Men of very mean Fortunes. No Security ever required of Them; which still made it the more necessary, that their own Ability should be thoroughly looked into and well approved. We shall show your Lordships, That they were entrusted, some of 'em, with *forty, sixty*, one of 'em, I think, to the amount of a *hundred thousand Pounds* in Cash and Securities; and yet, my Lords, no other Use was made of This, but to enhance the Price of the Office, when it was to be Sold and Barter'd for the benefit of the Earl. The Argument used, to bring up any Person to the Rate the Earl insisted on, was the largeness of the Sum to be transferr'd to the Purchaser. The Temptation generally succeeded. The Reason your Lordships will easily imagine; and when the Price was thus agreed upon, no other Qualification was required; the Person stood right in the Earl's Opinion, and was thought proper to be Associated to him. — Were it only that, my Lords, the Commons would not have troubled your Lordships with this Article, — but to be Associated to him in the Administration and Execution of Justice, and to be entrusted with the Fortunes of whole Families, whose only support, perhaps, depended on the Ability and Integrity of these Men: How well, my Lords, the Earl consulted in the appointment of these Officers, the Honour of that publick Justice They were to assist him in: What Regard He has had for the Interest of Those, whose Estates He thus flung into their Hands, The Evidence we shall produce to your Lordships, and your own Observations upon it, will abundantly show, notwithstanding his flat denial of this part of the Charge.

I will trouble your Lordships but with one particular more in this Article, and it is what the Article concludes with. A remarkable Declaration by the Earl, of the Ability, and other Qualifications of the Masters, particularly those promoted by him; and this happened, my Lords, upon as remarkable an Occasion. A very honourable Person, then a Judge also in that Court, and now justly at the Head of it, having seen with Indignation, the *Harvock* that was making of the Effects of the Suitors; out of compassion to them, and from a Zeal for Justice, endeavour'd to put some stop to it, in an instance that came within his Cognizance. An Order was made by him, my Lords, on one of the Masters, to allow some Profit to a Suitor arising from her own Money, which the Master designed as it was thought, to have sunk to his own Use. The Master thought himself aggrieved, and fled for Redress to his Pa-

iron, the then *Lord Chancellor*, the *Earl* now under your Lordships Consideration; and he was secure in so doing, for the Order was immediately discharged; and then it was, my Lords, to obviate the Clamours that were breaking out from all sorts of People against the Masters, that the *Earl* did in open Court, then sitting as *Lord Chancellor*, in his *judicial Capacity*, declare, that the present Masters were Men of as great Probity, Fortunes, and Abilities, as any set of Masters that ever were in that Court; and that he had had the Satisfaction of putting in most of them himself. As this, my Lords, was spoken in general of them all, but with a peculiar Regard to those he had admitted; the Commons have laid it to be to the manifest *Deceit* and *Injury* of the Suitors of the Court, which they are justified in doing, by the Thing it self being *false*, by the Proof we have, my Lords, that the *Earl* must know it to be *false*, and by the Resemblance it bears to that Series of other mean *Artifices* he had long been practising to give a *counterfeit* Credit to these *corrupt* Officers. A Credit, my Lords, he was soon to receive some *Benefit* from; for the Witness will inform your Lordships, that a Vacancy of a Master in Chancery happened the Day before this significant and memorable Declaration was made.

My Lords, The Commons have made this Article a part of their *Charge* against the *Earl of Macclesfield*, as being the great Source of the *Evil* that is likely to befall the unhappy *Sufferers* in the Court of Chancery; and as it was the *Means* he made use of to draw to himself those extravagant Sums of Money we have proved him to have received: For Men of small Fortunes, my Lords, as they have more Temptations, so they run less hazard than others in preying upon Money that is entrusted with them; and it is this, my Lords, that encourages such Men to give exorbitant Rates for Employments which afford them those Opportunities.

Thus, my Lords, I have opened to your Lordships the Substance of the *Eleventh* Article, and the nature of our Proof upon it. The *Twelfth* Article will be opened and enforced to your Lordships by the Gentleman who is to come after me. I shall therefore detain your Lordships no longer than to make this one Observation, That as the Office of a Master in Chancery is of great *Trust* and *Importance*, that as these Officers are appointed to this Trust by the *sole Discretion* of the Lord Chancellor; and that the Effects of the Suitors of the Court are deposited in their Custody, by his *immediate* Orders, which he might have plac'd in *safer* Hands if he had thought fit; he becomes by all this in the nature of a *superior Trustee* for, and is therefore justly *answerable* to the Suitors for the Behaviour of these Men. So, my Lords, in some Degree may the Publick be thought *answerable* for him; which makes his Guilt without Measure, who has thus brought a Disgrace upon his Country, by prostituting one of its highest Courts of Justice to his own *Avarice* and *Corruption*, to the *Rapine* and *Corruption* of his inferior Officers, and to the *Undoing* of those, who, by the Constitution of the Kingdom, have been forced into his Power.

Mr. Palmer. My Lords, The Gentleman that spoke last has fully opened the Evidence of the *Eleventh* Article, and has shewn to your Lordships, that for his own private and illegal Gain, the impeached Lord did commit the Money and Effects of the Suitors, to Men no way of Substance sufficient

for so great a Trust. The *Twelfth* Article will lay before you a most corrupt Practice, used without Controul; while the *Earl* was Chancellor, by which this illegal Gain was immensely increased; and whereby those Masters of whom the Commons complain in the preceding Article, were tempted and enabled to buy their Offices at extravagant Prices.

Your Lordships will see what Methods were used on the Admission of Masters in Chancery: Great Sums were paid for the Surrenders and Admissions, and those Sums were taken from the Money of the Suitors; sometimes the Purchase-Money was borrowed; but after Admission, repaid from the Cash of the Office; sometimes the Value of the Purchase was left in the surrendring Master's Hands: Whatever different ways were taken at the beginning, they all tended to this; the Suitors were to make the Purchaser easy, and People were persuaded to bid high, by being told how easily the largest Sums could be raised.

It was a common Recommendation to a Purchaser, to tell him how much Cash was in the Office; and that he need not be afraid to make any Contract good, Money would be ready as soon as he was admitted: Your Lordships will see the Consequences of such Recommendations. Masters did offer, and give more than they could be presumed they were worth, the Suitors Money was at Hand to make good the Bargain; and these are the Masters in whose Offices appear the greatest Deficiencies.

It will appear to your Lordships, that Mr. *Kinaston*, and Mr. *Thomas Bennet*, procured their Places in this manner. Mr. *Kinaston* discharged a Bond of Six Thousand Pounds to his Predecessor, by giving a Receipt of the same Value. Mr. *Bennet* gave a Receipt to his Predecessor for Ten Thousand Pounds; both acknowledged a Transfer of so much of the Suitors Money, the one received but Nine Pounds, and the other Fifteen Hundred, the rest was kept back as part of the Price of their Office, and is now a part of their Deficiencies. How great their Deficiencies are, may be observed to your Lordships; Mr. *Bennet's* is near Ten Thousand Pounds, and Mr. *Kinaston's* above Twenty Thousand.

This is the Practice, the impeached Lord, in his Answer, declares himself totally ignorant of; and is what the Commons declare he knew, connived at, and encouraged; and as they have been always careful to aver nothing but what they are satisfied will be fully maintained, this Article will be supported by Proofs, that the impeached Lord was well informed of what he now denies the Knowledge of; that it was the Subject of his Discourse, and that he feared, and endeavoured to prevent a Discovery.

And your Lordships will find him observing on the Accounts of some of the Masters, as they were given in on the late Enquiry, *That they were given in in the worst Manner; That they should convince the World that they paid for their Places out of the Suitors Money; and, That they would at last discover what he had always, when asked, taken care to deny.*

The impeached Lord admits, in his Answer, that he never caused any Schedules to be made of the Suitors Effects, to be transferred over to succeeding Masters: That it was what his Predecessors ne-

ver did before him, and that if the Consequences alledged by the Commons, have arisen from this Practice, or the not ordering such Schedules, he thinks he is not Criminal.

My Lords, the Charge of the Commons is general, that he knew the Abuse, and took no Care to reform it; if he had taken Care that the Effects of the Suitors should have been transferred by Schedule; if he had appointed any one to overlook the Transfer; if he had taken any Method at all to be assured that the Effects of the Suitors were duly made over according to this Order of Transfer, the Commons would not have charged as they have done, and perhaps he had not at this Time appeared so nigh your Lordships Bar.

But if the impeached Lord thinks he is justified by saying, it was not his Duty, and therefore the Omission no Offence: The Commons aver in their Article, that it is the Duty of the Chancellor of *Great Britain*, to superintend the Masters and their Accounts; and it is submitted to your Lordships, whether he is not Criminal, if he suffers Money deposited by the Orders of his Court in the Hands of the Masters, to be without Order, conveyed or left in private Hands.

I shall say no more to your Lordships on this Article, but leave the Proof of it to the Evidence.

Mr. Serj. *Pengelly*. My Lords, the Proof in support of these Articles, will go to them both promiscuously. In the first Place we beg leave to shew to your Lordships, the several Orders of Court, which state the deficiencies of several Masters.

Mr. *Ralph Paxton* Sworn.

Mr. Serj. *Pengelly*. We desire he may be asked, whether the Papers he produces, are true Copies of the Orders Examined by the Books in the Office.

Mr. *R. Paxton*. My Lords, they are true Copies, I Examined them.

## Lords Com. Ordo Curiae.

Veneris 29. Die Januarii, 1724.

WHEREAS, by an Order made by the Rt. Hon. the late Lord High Chancellor of *Great Britain*, the Seventeenth Day of *December* last, it was (*inter al'*) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, Sir *Nath. Gould*, Mr. *Thomson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy-Governour of the Bank of *England*, by the several Masters of this Court, upon the Examination of their Accompts, for or towards answering the Ballance of Cash admitted by their said Accompts, to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up and left in the Custody of the Bank of *England*, in such manner as by the said Order is provided: And whereas, the Masters had in their several Accompts, given in Particulars of Stock and of Annuities, transferrable in the Books of the several Companies, standing in their Names, which belonged to the several Suitors of this Court,

or as their own proper Stock and Annuities, by which part of the Ballance of Cash in their Hands might be made good, or secured. It was further ordered, That they should each of them forthwith, deliver into the respective Companies, a Declaration in writing, wherein such Stock in each respective Company, or the Annuities there transferrable, as by their respective Accompts appeared to belong to the Suitors of the Court, and likewise the Stock and Annuities by them respectively proposed towards making good or securing their Ballance of Cash, or so much thereof as should equal the Ballance of their said Accompts; in Case they had in their Names, more than sufficient for that purpose should be declar'd to be upon Trust to attend the Orders of this Court: And it was further ordered; That the said several Masters, should forthwith give to the said Mr. Baron *Gilbert*, their Post Accompts of their Receipts and Payments since the former Accompts; and by a subsequent Order of the 21st Day of the said *December*, It was ordered, That the several and respective Masters, whose Effects so ordered to be secured, did not amount to the whole Ballance of Cash admitted by their Accompts to be in their Hands, should forthwith secure the rest of the Ballance of the Cash appearing to be due on their respective Accounts, by depositing in like manner Bank Notes, or other Effects to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties to be approved of by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them, for duly answering from Time to Time as this Court should direct, such Sum and Sums as the remaining Deficiencies of their said respective Ballances amount unto. And whereas, Mr. *Edward Conway*, one of the Masters of this Court, did, on the Nineteenth Instant, attend the Right Hon. the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, and acknowledge that he was Debtor to the Suitors of the Court on the Ballance of his Cash Accompt, the Sum of 13039 *l.* 4 *s.* 4 *d.*  $\frac{1}{2}$ . and that he had brought into the Chest the Sum of 3000 *l.* only, so that he remains Debtor on the said Cash Ballance, the Sum of 10039 *l.* 4 *s.* 4 *d.*  $\frac{1}{2}$ . and that since making the said former Orders, he had sold 3500 *l.* South Sea Stock, in the Cause between the Lord and Lady *Faulconberg*, which was intended a Security for the Sum of 3425 *l.* and that he had since paid off only the sum of 2593 *l.* 9 *s.* 3 *d.* pursuant to the Orders of this Court in that Cause, so that there remained the Sum of 831 *l.* 10 *s.* 9 *d.* in his Hands, to be applied to the Parties concerned in that Cause; and that he had since sold 2000 *l.* South Sea Annuities Stock, part of the Sum of 17950 *l.* South Sea Annuities Stock, belonging to the Suitors of the Court in several Causes, which he ought to re-place. Their Lordships did thereupon order, That the said Mr. *Conway*, should in a Week, deposite the Sum of 10039 *l.* 4 *s.* 4 *d.*  $\frac{1}{2}$ . and also the said Sum of 831 *l.* 10 *s.* 9 *d.* belonging to the said Cause of *Faulconberg* and *Faulconberg* in Bank Notes, or Money in his Chest at the Bank of *England*, and also should replace the said Sum of 2000 *l.* South Sea Annuity Stock, or that he should enter into a Recognizance of 26000 *l.* with two sufficient Sureties to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, for answering the said Sums, and replacing the said 2000 *l.* South Sea Annuity Stock, in such

such Manner as this Court should direct: And this Court being Yesterday inform'd by Mr. *Attorney General*, on behalf of the Suitors of this Court, that the said Mr. *Conway* had not deposited either of the Sums aforesaid, or entered into a Recognizance with two Sureties, as by the said Order he was directed: It was thereupon order'd that he should on this Day attend the Court, to shew Cause why he did not yield Obedience to the said Order. And he now attending accordingly, and admitting that he had not deposited either of the Sums aforesaid, nor replaced the said 2000 *l.* South-Sea Annuity Stock, or given Security with two Sureties, as by the said Order is required: And whereas he did formerly upon Examination of his Accompts, produce to the Persons who inspected the same, Bank Bills and Notes, sufficient to make good the said Sum of 13039 *l.* 4 *s.* and 4 *d.*  $\frac{1}{2}$ : Being the whole Ballance of his Cash Accompts, but had only deposited 3000 *l.* part thereof in pursuance of the said Order: And it being several times demanded by the Court, whether he did know or remember the Names of the Person or Persons from whom he had the said Bank Notes, or any of them, or did know or remember the Names of the Person or Persons to whom he had since paid or delivered them, or any of them, he declined giving any direct Answer to the said Question relating to his own proper Knowledge and Remembrance, but upon Oath said, it was impossible for him to answer the same; whereupon, and upon hearing of Mr. *Attorney General* and Mr. *Sol. Gen.* on Behalf of the Suitors; and what was farther insisted on, this Court doth declare, that the said Mr. *Conway* is guilty of very high Contempts, and doth therefore do for his said Contempts, stand committed to the Prison of the *Fleet*; and that for making Provision for the Execution of his Office, and that no Prejudice may happen to the Suitors of the Court by reason of the said Commitment, he do in the Custody of the Warden this Afternoon, deliver all his Books and Papers belonging to his Office, unto Mr. *Holford* one other of the Masters of this Court, who is to act therein as he the said Mr. *Conway* ought to have done during his Commitment; and the Clerk of Mr. *Conway* is to be at Liberty, if he thinks fit, to attend Mr. *Holford* therein, and Mr. *Conway* is at Liberty from time to time to make such Proposals to the Court for making good his Deficiency as he shall think proper.

R. P. Examined 6th of May, 1720. by Book of Entries, Cur' Canc' Letter B.

## Lords Com. Ordo Curiae.

*Mercur. tertio Die Febr. Ann. Regni Georgii Regis undecimo.*

WHEREAS, by an Order of the 29th of *Jan.* last, for the Reasons therein contain'd, it was ordered that Mr. *Thomas Bennet*, one of the Masters of this Court, should then sitting, the Court give his own Recognizance to be taken by

Mr. *Holford*, one other of the Masters of this Court in the Penalty of 18150 *l.* conditioned to answer and pay the Sum of 9075 *l.* therein mention'd, in such Manner as this Court should direct; and that upon his so doing, the time for his performing of an Order of the 12th of *Jan.* last; for depositing the said 9075 *l.* or procuring two or more Sureties, to enter into a Recognizance of the Penalty aforesaid, as in the said Order is mentioned, should be enlarg'd till this Day: And if he should procure such Sureties to enter into such Recognizance, he was first to give the Names of the intended Sureties to Mr. *Paxton* (Soll. on behalf of the Suitors of this Court) to the end he might enquire after their Abilities; and the said Mr. *Thomas Bennet*, was this Day to attend the Right Honourable the Lords Commissioners, for the Custody of the Great Seal of *Great Britain*, when such farther Order should be made as should be just. And the said Mr. *Thomas Bennet* this Day attending their Lordships, in the Presence of Mr. *Attorney General*, and Mr. *Solicitor General*, on behalf of the Suitors of the Court; and the said Mr. *Thomas Bennet*, now delivering into Court a Particular of several Estates which he proposed to assign and convey as the Court shall direct, in trust for the Suitors of the Court, and submitting to be examined upon Interrogatories, for Discovery of all other Estate he has both Real and Personal, and that the same shall be also assigned and conveyed to the same Trust: Their Lordships do therefore Order, that the time for the said Mr. *Thomas Bennet's* giving his Recognizance with two or more Sureties in the Penalty aforesaid, be enlarged until *Wednesday* next, at which time the said Mr. *Thomas Bennet* is to attend in Court, when such farther Order shall be made as shall be just. But in the mean time, he is to assign and convey the several Estates by him now proposed, unto the said Mr. *Holford*, as he, the said Mr. *Holford* shall approve and direct, and is also within that time to produce and leave with the said Mr. *Holford*, all Deeds and Writings in his own Hands relating thereto; and so far as he is able to procure the Mortgages and Annuitant, to produce and leave with the said Mr. *Holford*, the several Deeds and Writings in their respective Hands relating to the said Persons. And the said Mr. *Thomas Bennet* is also within the same time to be examined upon Interrogatories, before the said Mr. *Holford*, for discovery of all other, his real and personal Estates, and is also to assign and convey the same to the said Mr. *Holford*, as he shall approve and direct. And what Estates shall be by him, the said Mr. *Thomas Bennet* so assigned and conveyed to the said Mr. *Holford*, as aforesaid, the same are to be upon Trust for the Suitors of the Court, as the Court shall direct; and the said Mr. *Paxton* is forthwith to prepare and lay Interrogatories before the said Mr. *Holford* for the Purpose aforesaid.

R. P. Examined 6th of May, 1725. by Book of Entry, Cur' Canc' Letter B.

Ordo

## Ordo Curie

*Martis Decimo Nono Die Januarii, 1724.*

WHEREAS, by an Order made by the Right Honourable the Lord High Chancellor of Great Britain, the seventeenth Day of December last, it was (amongst other Things) ordered, that the Bank Notes and other Effects therein specified, produced before Mr. Baron Gilbert, Mr. Justice Denton, and Mr. Justice Raymond, Sir Nathaniel Gould, Mr. Thompson, and Mr. Hanger, three of the Directors, and one of them Deputy Governour of the Bank of England, by the several Masters of this Court, upon the Examination of their Accompts, for, or towards answering the Ballance of Cash admitted by their said Accompts to remain in their respective Hands belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be lock'd up, and left in the Custody of the Bank of England, in such manner as by the said Order is provided. And it was further ordered, that the said several Masters should forthwith give to the said Mr. Baron Gilbert, Post Accompts of their Receipts and Payments since their former Accompts. And by a subsequent Order of the one and twentieth Day of the said December, it was ordered, that the several and respective Masters of this Court, whose Effects so ordered to be secured, did not amount to the whole Ballance of the Cash admitted by their Accompts to be in their Hands, should forthwith secure the rest of the Ballance of the Cash appearing to be due on their respective Accompts, by depositing in like Manner, Bank Notes, or other Effects, to the Amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties, to be approved by Mr. Baron Gilbert, Mr. Justice Denton, and Mr. Justice Raymond, or any two of them, for duly answering from time to time, as this Court should direct, such Sum and Sums, as the remaining Deficiencies of their said respective Ballances amount unto. And Mr. Edward Conway, one of the Masters of this Court, this Day attending the Lords Commissioners for the Custody of the Great Seal of Great Britain, and acknowledging that he was Debtor to the Suitors of the Court on the Ballance of his Cash Account, in the Sum of thirteen Thousand and thirty nine Pounds four Shillings and four Pence half Penny; and that he had brought into the Chest the Sum of three thousand Pounds only, so that he remains Debtor on the said Cash Ballance, the Sum of ten Thousand and thirty nine Pounds four Shillings and four Pence Half Penny; and that since the making the said former Orders, he has sold three Thousand five Hundred Pounds South-Sea Stock, in the Cause between the Lord and Lady Faulconberg, which was intended a Security for the Sum of three Thousand four Hundred and twenty five Pounds; and that he hath since paid off only the Sum of two Thousand five Hundred and ninety three Pounds nine Shillings and three Pence, pursuant to the Orders of this Court in that Cause; so that there remains the

Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, in his Hands, to be apply'd to the Parties concern'd in that Cause; and that he has since sold two Thousand Pounds South Sea Annuity Stock, part of the Sum of seventeen Thousand nine Hundred and fifty Pounds South Sea Annuity Stock, belonging to the Suitors of the Court in several Causes, which he ought to replace: Their Lordships do thereupon Order, that the said Master Conway, do in a Week, deposite the said Sum of ten Thousand and thirty nine Pounds four Shillings and four Pence Half Penny, and also the said Sum of eight Hundred and thirty one Pounds ten Shillings and nine Pence, belonging to the said Cause of Faulconberg and Faulconberg, in Bank Notes or Money in his Chest at the Bank of England; and also do replace the said Sum of two Thousand Pounds South Sea Annuity Stock; or that he do enter into a Recognizance of twenty six Thousand Pounds, with two sufficient Sureties, to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of Great Britain, for answering the said Sums, and replacing the said two Thousand Pounds South Sea Annuity Stock, in such Manner as this Court shall direct.

*Tho. Parnell, Dep. Reg.*

R. P. Examined 6th of May, 1725. with Book of Entries, Court. Canc' Letter B.

## Ordo Curie

*Mercurii Viceffimo Die, Januarii. 1724.*

WHEREAS by an Order made by the Right Honourable the late Lord Chancellor of Great Britain, the seventeenth day of December last, it was (among other Things) ordered, That the Bank Notes, and other Effects therein specified, produced before Mr. Baron Gilbert, Mr. Justice Denton, and Mr. Justice Raymond; and Sir Nathaniel Gould, Mr. Thompson, and Mr. Hanger, three of the Directors, and one of them Deputy Governor of the Bank of England, by the several Masters of this Court, upon the Examination of their Accounts, for or towards answering the Ballance of Cash admitted by their said Accounts to remain in their respective Hands, belonging to the Suitors of this Court, should be deposited in several Chests, and that then the said Chests should be locked up and left in the Custody of the Bank of England, in such manner, as by the said Order is provided. And it was further ordered, That the said several Masters should forthwith give to the said Mr. Baron Gilbert Post Accounts of their Receipts and Payments since their former Accounts. And by a subsequent Order of the one and twentieth day of the said December, It was ordered, That the several and respective Masters of this Court, whose Effects so Ordered to be secured, did not amount to the whole Ballance of the Cash admitted in their Accounts to be in their Hands, should forthwith secure the rest of the Ballance of Cash appearing to be due on their respective Accounts, by depositing, in like manner, Bank Notes, or other Effects, to the amount thereof, or enter into a Recognizance in a competent Sum of Money, with two or more Sureties,

ties, to be approved by Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, or any two of them; for duely Answering from Time to Time, as this Court should direct; such Sum and Sums as the remaining Deficiencies of their said respective Ballances amounted unto; And Mr. *Kinaston*, one of the Masters of this Court, being this day present before the Right Honourable Sir *Jeffery Gilbert*, Knight, one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, and being examined touching the Money and Effects for which he was answerable to the Suitors of the Court, did admit, that the Sum of thirty one thousand nine hundred and fifty four Pounds, fifteen Shillings and a Farthing, was the Cash Ballance in his Hands, due to the Suitors; and that he had deposited in his Chest at the Bank, the Sum of four thousand six hundred and eighty six Pounds, one Shilling and nine Pence, in pursuance of the Order of the seventeenth of *December* aforesaid; and that he had declared a Trust of three hundred Pounds South-Sea Stock for the Suitors, which at the present valuation is three hundred and sixty Pounds; so that there remains the Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, deficient and unsecured to the Suitors of the Court; and proposed towards Satisfaction thereof, to Assign over a Debt of twenty thousand eight hundred and fifty Pounds, owing to him from Mr. *Delahaye*, in such manner as should be thought proper for the Benefit of the Suitors: But alledged that he was not to be charged with the Sum of seven thousand five hundred and seventy five Pounds, mentioned in his Accounts to be part of the aforesaid twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing. Whereupon their Lordships considering what was alledged by him, were of Opinion, That he was answerable to the Suitors of the Court for the said Sum of seven thousand five hundred and seventy five Pounds; and do therefore Order, That the said Mr. *Kinaston* do, in a Week, deposit the said Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in Money or Bank Notes, in his Chest at the Bank of *England*, or enter into a Recognizance in the penalty of fifty three thousand eight hundred and seventeen Pounds, with two or more Sureties, to be approved of by one of the Lords Commissioners for the Custody of the Great Seal of *Great Britain*, to Answer and Pay the said Sum of twenty six thousand nine hundred and eight Pounds, eleven Shillings and three Pence Farthing, in such manner as this Court shall direct.

*Tho. Parnell,*  
Dep. Reg.

R. P. Examined the 6th of May, 1725. by the Book of Entries. Cur' Cance' Letter B.

Mr. *Sol. Gen.* The Managers for the House of Commons lay before your Lordships these Orders, to shew, that the several Masters therein mentioned, were deficient. It will be incumbent on the noble Lord to shew; that when they were admitted, they were of Ability proper for such a Trust. We now proceed upon the Declaration that was made on the 21st of *January* last was twelve-Month, and desire that Mr. *Waller* may be called.

Mr. *Waller* Sworn.

Mr. *Sol. Gen.* My Lords; we desire he may be ask'd, whether he applied to my Lord Chancellor upon an Order made by his Honour the Master of the Rolls, relating to Mr. *Conway*; and what it was my Lord Chancellor said on that Occasion?

Mr. *Waller.* In *July* 1723. I had Directions from my Client, to apply to Mr. *Conway*, to lay out upon *South-Sea* Annuities the Sum of 4000 *l.* that had been brought before him in a Cause between Mr. *Davenant* and my Lord *Cardigan*. The Master told me at first, he would take Care of it. Upon further Application, he said the Order had directed another Sum of Money should be brought before him in the same Cause, and that he could not put out the one without the other. Upon this, I applied, by Petition, to the Master of the Rolls, praying, that Mr. *Conway* might be oblig'd to put out the Money, and that he might answer Interest for it after he had had it a reasonable Time in his Hands. Upon that, the Master of the Rolls directed he should lay out the Money immediately.

Mr. *Serj. Probyn.* I beg your Lordships Pardon for interrupting this Witness. In the manner he is going on, your Lordships observe, he is taking Notice of Orders, Petitions, Acts of the Court, and this he gives upon his Memory. We think these ought to be produced.

Mr. *Sol. Gen.* If they are desirous to entertain your Lordships with them, we have them all here. We only make use of them to let in the Declaration of the noble Lord.

E. of *Maccles.* If that be all the Use, there is no need to produce these Orders: But if they are to introduce Evidence with relation to the Merits of the Case, it is proper to have them produced.

Mr. *Sol. Gen.* We don't dispute the Justice of the Order then made, but ask the Occasion of it; and all we desire is what was declared, and what was the Occasion of the Declaration.

Mr. *Serj. Pengelly.* The Managers don't enter into the Consideration whether the Order is just, or no. All they represent to your Lordships, is the Occasion of this Declaration. Whether a Man acts justly, that detains Money, and does not pay it out when he ought to do it, that we leave to another Determination. But what we ask now, is the Declaration of the Earl of *Macclesfield*, and the Occasion of it.

Mr. *Waller.* Upon the Petition to the Master of the Rolls, he made an Order to put the Money out, and that the Master should pay some Interest. On this, he applied to my Lord Chancellor, to discharge this Order. My Lord, upon that Occasion; said, the Master was not to blame, and that the then Masters were a Set of Masters of as great Probity, Ability, and Fortune, as ever had been before; and that his Lordship had had the Satisfaction of having put in most of them himself. I can't say that these were the very Words, but it was, to this Effect.

Mr. *Sol. Gen.* When, at what Time was this?

Mr. *Waller.* This Declaration was made the 21st of *January*, 1723.

Mr. *Sol. Gen.* Where was it?

Mr. Waller. In Court, at my Lord's House in *Lincoln's-Inn-Fields*, where he usually sat.

Mr. Sol. Gen. Was there at that time any Vacancy of any Master's Office; and how long did that Vacancy happen before?

Mr. Waller. Mr. *Fellowes* died either the Day before, or the Day but one before.

Mr. Sol. Gen. Was there any Observations made at that Time of any Person in Court that took notice of what was said?

Mr. Waller. One of the Counsel took Notice of somebody taking Notes, and said he believed it would be in the *Amsterdam Gazette* in a short Time; or to that Purpose. My Lord Chancellor asked who he was?

E. of *Maccles*. I desire he may tell your Lordships, when Application was made to me by way of Complaint of it, what it was I said at that Time?

Mr. Waller. I don't remember.

E. of *Maccles*. Pray recollect your self, if I did not say it was right, and they had a Right to take Notes there.

Mr. Waller. I don't remember that you did.

E. of *Maccles*. Did I make no Answer?

Mr. Waller. Not as I remember.

Mr. Serj. *Probyn*. I desire he may be ask'd, whether he kept any Notes or Memorandum of the Words that were then said?

Mr. Waller. No, my Lords.

Mr. Serj. *Probyn*. How does he then come to remember the very Words?

Mr. Waller. Since my Lord *Macclesfield's* Counsel will have it, I must acquaint your Lordships, that it struck me with so much Astonishment to hear such a Declaration made on the Masters, which most People thought they did not deserve, that indeed I could not but remember it, and have remembred it ever since.

Mr. Serj. *Pengelly*. We have several other Persons who were present at this Time, when this Declaration was made; but we apprehend it was so publick, so notorious, and has been so distinctly proved by a Person present, that it will be unnecessary to call further Evidence to it.

Mr. Sol. Gen. We beg leave to trouble your Lordships as to one Circumstance, to ascertain the Death of Mr. *Fellowes*: We have one of Mr. *Fellowes's* Servants here.

*Edward Ange* sworn.

Mr. Sol. Gen. We desire he may be ask'd, whether he was a Servant to Mr. *Fellowes*?

Mr. Ange. I was a Clerk in Mr. *Fellowes's* Office, at the Time of his Death, and many Years before.

Mr. Sol. Gen. When did he die, what Day?

Mr. Ange. Upon the 19th of *January*, 1723.

Mr. Sol. Gen. It was the 21st that the Declaration was made, so that it seems that it was necessary; and such a Declaration was wanting at that Time to keep up the Price of the Office.

Mr. *Lightboun* called.

Mr. Sol. Gen. We desire Mr. *Lightboun* may be ask'd, whether he gave any Intimation to the Earl of *Macclesfield*, that the Circumstances of some of the Masters were suspicious, before the 21st of *January* was twelve-month?

Mr. *Lutwyche*. I desire Mr. *Lightboun* would give your Lordships an Account what Discourse he had concerning the Masters with the Earl of *Macclesfield*.

Mr. *Lightboun*. I can't say I acquainted him with my suspecting any of the Masters by Name, being deficient, but I told him in Conversation, that as a Deficiency had happened in Mr. *Dormer's* Office, the like Accident might happen in others; and that it might be proper for his Lordship to take some measures to prevent the like for the future, if possible.

Mr. *Lutwyche*. In the Year 1723. Whether had you any Discourse with my Lord Chancellor relating to the Circumstances of any of the Masters, or about any Proposals of Security to be given by them?

Mr. *Lightboun*. In the Year 1723. I had some Conversation with my Lord upon that Subject, and it was upon the Occasion of my Lord's sending for me to know why I had not complied with a Proposal of the Masters, to pay 500 *l.* towards making good Mr. *Dormer's* Deficiency. I ask'd, whether it was his Lordship's Proposal, or whether it was a Proposal from some of the Masters. My Lord said, it was mention'd by the Masters, and he approv'd of it; and as the rest had complied, he hoped I would.

Mr. Sol. Gen. You need not now give a particular Account of this; this will be proper on another Occasion; that I desire to ask you now, is only in general, whether before the 21st of *January* 1723. you had any Conversation with my Lord about the Deficiency of the Masters, and that there was Reason to suspect a Deficiency in some of the Masters?

Mr. *Lightboun*. I did not mention any particular Person, but only that an Accident had lately happen'd, and as it had happen'd, it might happen again; but I was far from mentioning any Master by Name, for I might thereby have made my self liable to an Action.

Mr. Sol. Gen. We don't desire to ask him whether he mention'd any particular Master, but only in general, whether he did not say he had Grounds to suspect some of them? The Question is in general.

Mr. Com. Serj. The Question was first ask'd in general, but the Answer not coming out to their Satisfaction, they now apply it to a particular Fact, to which the Answer required is only Yea and No. This we apprehend not to be altogether so regular, we therefore desire the Question may be asked in other Terms.

Mr. Sol. Gen. My Lords, I will ask the Question in general, whether he gave any Intimation in general, that there might be a Suspicion of the Masters?

Mr. *Lightboun*. I did in general acquaint my Lord, as this Accident had happen'd, I did not know how soon it might happen again. The Year 1720. had made great Havock, and I did not know what Effect it might have had amongst us.

Mr. Serj. *Pengelly*. I desire Mr. *Lightboun* may be ask'd, whether he can recollect that he had any Discourse with my Lord *Macclesfield* to that Effect at any other Time before *January* 1723.

Mr. *Lightboun*. My Lords, I can't confine my self to a particular Time. I have had the Honour of many Conversations with my Lord *Macclesfield* on this Subject, and what passed at one particular Time



Time more than another, I can't remember. I have often had the Honour to hear his Lordship mentioning the Methods which he thought of, to prevent it, and to propose such Methods as I thought of, but I can't tell all the particular Times.

Mr. Serj. *Pengelly*. I desire he may be ask'd, whether from the Conversation which pass'd between the Earl of *Macclesfield* and himself, it appear'd to him, that the Earl had any Suspicion of a Want of Substance in the Masters?

Mr. *Lightboun*. My Lord, when I mention'd it, seem'd unwilling to think so. He said he hop'd not; he hop'd there was no manner of Danger, they were all recommended to him for Men of Fortunes, or to that Effect. Latterly, this last Year, when my Lord was talking of this Matter, he seem'd to think there was a Necessity that there should be an enquiry into this Affair: and when the Masters were ordered to bring in their own Accompts, I remember I told my Lord I question'd if they were able to do it. My Lord said he hop'd it, and wish'd it.

E. of *Abington*. If Mr. *Lightboun* be left to his own Discretion, to relate without Interruption whatever he can recollect that pass'd between him and Lord *Macclesfield* before *January* 1723. when this Declaration was made in Court, it may give your Lordships a fuller Light and Satisfaction.

Mr. *Lightboun*. I don't remember to have had any particular Conversation about the Abilities of the Masters, farther then I have mentioned to your Lordships. I have told you that I did give some Hints in a doubtful Manner, that I was dissatisfied; but it would very ill have become me to have mentioned particular People whom I was doubtful of.

Mr. Serj. *Pengelly*. My Lords, we proceed now to examine some Witnesses upon the Article relating to the Masters coming in, and in what manner the Money was paid upon their Admission, either on a Surrender, or Death of a former Master; and out of what Fund that Money was paid. We beg leave to call Mr. *Kinaston*.

Mr. *Kinaston* called.

Mr. Serj. *Pengelly*. We beg leave he may be ask'd, in relation to his Treaty with Mr. *Rogers*, when he came into his Office? and in what Manner the Money paid for the Office was rais'd?

Mr. *Kinaston*. It was in *May* 1721.

Mr. Com. Serj. Before Mr. *Kinaston* answers to this, we hope the Managers shall intimate to your Lordships, that they have Evidence to apply this to the Lord who now stands accused; otherwise a bare Discourse between Mr. *Rogers* and Mr. *Kinaston*, cannot affect the Earl of *Macclesfield*.

Mr. *Lutwyche*. I apprehend this Interruption is very unnecessary, It is the first part of the Article we are going to prove, that it was a Practice among the Masters in Chancery, to pay the Money for their Places out of the Suitors Money; and that though the Chancellor had good reason to suspect or know this, yet he applied no Remedy or Redress, but let it go on for his own Benefit: Therefore we must begin with the first part of the Article. They are not to examine and ask the Managers, whether they have any Proof of the latter part of the Article; we are beginning

with the first part of the Article, and then shall bring it home to the noble Lord.

Mr. Sol. Gen. We shall prove the whole, that there was such a Practice, and that it is reasonable to think the noble Lord knew it, or had reason to suspect it, and did not prevent it. We must first begin with the Practice.

Mr. Serj. *Pengelly*. My Lords, we desire he may give your Lordships an Account of the Methods taken at the time he came into the Office, of selling and paying for those Offices, and in what Manner the Agreement for his Office was transacted?

Mr. *Kinaston*. My Lords, I treated with Mr. *Rogers* for the Sale of his Place in *May* 1721. I did understand them, and had heard before, that the Method was, that they retained so much of the Money belonging to the Office for their Places, and that such had been the Practice. I did agree with him, and entered into Articles to pay him 6000 *l.* for his Place. I went for some time into the Country, and when I was there, he wrote to me, and told me that he designed to resign the Place on the 9th of *August*. I did come up to Town, and on the 9th of *August* I gave him a Bond for 6000 *l.* Then I went with him to my Lord *Macclesfield*, and was sworn in Master. There was a general Order for him to deliver over the Effects and Securities to me; after this, he delivered up the Bond which I had given him, and retain'd so much Money belonging to the Suitors of the Court, as amounted to 6000 *l.* He paid me nine Pounds, and delivered me up my Bond, and I gave him a Receipt for 6009 *l.*

Mr. Serj. *Pengelly*. I desire to know what was paid for his Admission?

Mr. *Kinaston*. 1500 Guineas were paid to Mr. *Cottingham* by Mr. *Baily*.

Mr. Serj. *Pengelly*. How was it repaid?

Mr. *Kinaston*. In *February* afterwards, I stated an Account with the Person that was my Cash-Keeper and kept my Money, in relation to the Money receiv'd and paid, and he charged me with the 1575 *l.* and deducted it out of the Money of the Suitors which he had received.

Mr. Serj. *Pengelly*. I desire he may be asked, how much Cash, what Sum of Money, came to his Hands from Mr. *Rogers*?

Mr. *Kinaston*. Something above 20000 *l.*

Mr. Serj. *Pengelly*. I desire he may be asked, whether when these Effects were by the Order of Transfer delivered from Mr. *Rogers* to him, there was any Person present on behalf of my Lord *Macclesfield*, to see them delivered over?

Mr. *Kinaston*. No.

Mr. Serj. *Pengelly*. Was there any Account demanded of him afterwards, either by my Lord Chancellor or his Agent, of the *Quantum* of the Effects or Cash?

Mr. *Kinaston*. I don't remember there ever was.

Mr. Serj. *Pengelly*. I beg leave to ask, whether at that Time he had Money enough of his own to pay Mr. *Rogers* 6000 *l.* for his Place, and 1500 Guineas to my Lord *Macclesfield* for his Admission?

Mr. *Kinaston*. Yes, I believe I had more Money at that time, but it was out upon Security; I was worth more.

Mr. Serj. *Pengelly*. What was his Inducement to come into this Office?

Mr.

Mr. *Sol. Gen.* Or, I would ask it in other Words, whether the easiness of his paying for his Place was not one Thing that induc'd him to Purchase?

Mr. *Kinaston.* Yes, I believe it was one Inducement to me to purchase the Place.

Sir *Wm. Strickland.* I beg leave to ask another Question. Mr. *Kinaston* says he had more Money of his own at that Time, but I desire to know, whether he could have paid 7575*l.* which he gave for his Office, unless he had paid it out of the Suitors Money?

Mr. *Kinaston.* No, I could not have paid the whole.

Mr. *Serj. Probyn.* If the Gentlemen have done, I desire he may be asked, what Money he had of his own at that Time, either in Cash, or in his Bankers Hands, or in Security?

Mr. *Kinaston.* I really cannot tell, I believe I might have between 2 and 3000*l.*

Mr. *Serj. Probyn.* How much can you take upon you to say you had?

Mr. *Kinaston.* Really I cannot tell.

Mr. *Serj. Probyn.* Speak to the nearest you can.

Mr. *Kinaston.* I believe I had about 2000*l.* very near three in Money and Effects.

Mr. *Serj. Probyn.* What other Estate had you? Had you any real Estate?

Mr. *Kinaston.* I had an Estate settled upon me at my Marriage, no other Estate.

Mr. *Serj. Probyn.* I desire you to give an Account, whether you had any other personal Estate?

Mr. *Kinaston.* No, I do not remember I had, except you reckon Timber such.

Mr. *Com. Serj.* I desire, my Lords, he may be asked, what the annual value of his real Estate was?

Mr. *Serj. Pengelly.* I submit, whether he be obliged to tell his whole Circumstances?

Mr. *Kinaston.* I am very willing to tell, it was about 400*l.* a Year.

Mr. *Com. Serj.* Whether he had not his Estate without Impeachment of Wast?

Mr. *Kinaston.* Yes.

Mr. *Serj. Probyn.* Of what Value might the Timber be?

Mr. *Kinaston.* I was once bid 2500*l.* for it, but now they know I have an occasion to sell, they will not give me so much.

Mr. *Serj. Pengelly.* I beg leave he may be asked, whether at that Time his Father was living?

Mr. *Kinaston.* Yes, he was at the Time of my purchasing the Place.

Mr. *Serj. Pengelly.* As the Cash was above 20000*l.* of what Value were the Securities?

Mr. *Kinaston.* Really I cannot tell, I have given in an Account of the Effects.

Mr. *Serj. Pengelly.* About what Sum?

Mr. *Kinaston.* I have given it in in my Accounts what it was.

Mr. *Serj. Pengelly.* To what Sum doth the whole both in Cash and Securities amount?

Mr. *Kinaston.* I believe under 50,000*l.* about 46000*l.*

Mr. *Serj. Pengelly.* The Securities as well as the Cash?

Mr. *Kinaston.* I mean the Securites and the Cash together.

Mr. *Serj. Pengelly.* Upon this Evidence, we submit it to your Lordships, whether the Timber upon his Estate was a proper Security for 50,000*l.* to be put into his Hands.

E. of *Macclesf.* He now represents his Estate to be 400*l.* a Year. How was it reputed?

Mr. *Kinaston.* I believe about 500*l.* per Annum.

Mr. *Plummer.* I desire to ask him, whether if he had felled every stick of Timber on his Estate, that and his personal Estate would have paid what he was to give for his Master's Place?

Mr. *Kinaston.* No, it would not.

Mr. *Serj. Pengelly.* My Lords, We make Use of this as a Proof of the former Article.

Mr. *Thomas Bennet* called.

Mr. *Serj. Pengelly.* My Lords, We desire he may be asked in what manner the Transfer of his Office was transacted, and how the Money was paid for his Masters Place?

Mr. *Tho. Bennet.* My Lords, When I treated with Mr. *Hiccocks* about the Surrender of his Office, one of the first Things he told me was, that I need raise no Money to come into this Office, for whatever Money we agreed for, should be deducted out of the Money to be paid over to me, which I understood to be the Money belonging to the Suitors of the Court.

Mr. *Serj. Pengelly.* What was done in pursuance of this?

Mr. *Tho. Bennet.* This encouraged me to go on and proceed, in order to come into this Office, I supposed this to be the Practice, else I had not gone in.

Mr. *Serj. Pengelly.* Whether that was generally reputed to be the Practice?

Mr. *Tho. Bennet.* I own I thought so. I was a younger Brother, and had not Money enough of my own to come into that Office.

Mr. *Serj. Pengelly.* We beg leave, that he may inform your Lordships how much he was to pay, and how it was raised and paid?

Mr. *Tho. Bennet.* The Sum I agreed to pay Mr. *Hiccocks* was 7500*l.* and the Sum to my Lord Chancellor was 1500 Guineas, which is 9075*l.*

Mr. *Serj. Pengelly.* We hope that he shall inform your Lordships how it was raised and paid.

Mr. *Tho. Bennet.* As to the 1500 Guineas, I acquainted your Lordships I borrowed it of my Brother, and the next Day returned it him again out of the Money I received of Mr. *Hiccocks.* As soon as I was admitted, I went to Mr. *Hiccocks,* and demanded of him the Suitors Effects. He paid me 2500*l.* and told me I must give a Receipt for 9000*l.* I told him, it was hard to have no more Money paid me, when he told me there was much more Cash in the Office, and that I had given my Lord *Macclesfield* more than he had offered to pay me: He said, he should pay me more afterwards, but he insisted on my taking of this now, so I took the 1500*l.* and gave him a Receipt for 9000*l.*

Mr. *Serj. Pengelly.* I desire he may be asked, whether upon any Occasion he had any Discourse with the Earl of *Macclesfield* relating to the method of his coming in, or about the re-payment of the 1500 Guineas he paid him.

Mr. *Tho. Bennet.* In order to give an account of this, I must acquaint your Lordships of the occasion of my waiting on his Lordship. Mr. *Holford* told me, that my Lord Chancellor had sent to him, and desired that he or my Brother *John Bennet* would endeavour to accommodate matters between Mr. *Hiccocks* and my self, on occasion of the Deficiency of my Accounts. Mr. *Holford* said he did not care to go, but my Brother did go to Mr. *Hiccocks.* He would do nothing, no Accommodation could be made; but my Brother told me that my Lord Chancellor would pay back to me the 1500 Guineas which he had received, so the matter with Mr. *Hiccocks* might be accommodated.

Mr. *Serj.*

Mr. Serj. Pengelly. When was this?

Mr. Tho. Bennet. It was about the time of our giving in our Accompts.

Mr. Serj. Pengelly. Was it before Christmas, or after?

Mr. Tho. Bennet. It was before Christmas last, in December, I think about the 7th of December. Upon that I asked my Brother, whether I might depend upon it, that my Lord Chancellor would pay back the 1500 Guineas? And he said, Yes, he had it from his Lordship; and he did assure me I might depend upon it; but he said nothing could be done with Mr. Hiccocks. Then I desired them to acquaint my Lord with it; they both declined it; and desired I would go my self upon this Occasion. I went, and I told my Lord, I was come to wait upon his Lordship to thank him for the kind Offer he had made to my Brother of returning the 1500 Guineas, and I wished the same could be said of Mr. Hiccocks, and I could prevail with him; but nothing could be done: I came to return his Lordship thanks; and I thought I should have received the Money then. My Lord asked me to sit down, and then told me if he had known I had been to give so great a Sum of Money for the Office, he would not have admitted me. I told him I did give so great a Sum, but immediately as soon as I was admitted, I ensured my Life to the Value of 8000*l.* which cost me 400*l.* so that if I had died, no harm would have come to the Suitors. My Lord said, it was very honourably done. Soon after that, he said, he was very sorry to see the Items that were put into my Accompt and Mr. Kinaston's in-Relation to Sums in the Hands of an honourable Person; for, says he, that hath discovered the Method of purchasing these Offices, that the Money is deducted out of the Suitors Money, which, said he, I have always taken pains to deny, when ever I have been asked the Question.

Mr. Serj. Pengelly. We beg Leave now to ask him, how much the whole of the Cash; and Securities transferred from Mr. Hiccocks to him, amounted to?

Mr. Tho. Bennet. I believe near 100,000*l.*

Mr. Serj. Pengelly. I apprehend he said before, he was a younger Brother, and had but little Fortune of his own; I desire he may be asked whether any Care was taken by my Lord Macclesfield as to the transferring the Effects of the Suitors in Mr. Hiccocks Hands over to him? and whether any Person was employed by my Lord to see the Effects transferred over?

Mr. Tho. Bennet. No.

Mr. Serj. Pengelly. Whether there was any other Security for this great Sum of Money deposited in his Hands, besides what was made by this Insurance on his Life?

Mr. Tho. Bennet. No, my Lords, I know of no other Security. That was a voluntary Act of my own, and I paid for it.

Mr. Lutwyche. My Lords, Mr. Bennet says, he had some reason to hope that the 1500 Guineas would be given him back again; I desire he may be asked whether there was any subsequent Overture about paying the 1500 Guineas back again?

Mr. Tho. Bennet. My Lord Chancellor dismissed me at that time, and told me, I should not know by what means, or by what methods I should receive the Money, or by whose Hands; but his Lordship would take Care that one way or other I

should receive it: He would not say how, because I might be called upon to answer what Discourse passed between his Lordship and me in another place.

Mr. Lutwyche. Was there any thing done upon that?

Mr. Tho. Bennet. Hearing nothing from my Lord Chancellor for a Fortnight after, I went to his Secretary, Mr. Dixon, and told him that I had used such Expressions in my Accompt, that if the Money was not produced, it would oblige me to name my Lord Chancellor; and I desired him to acquaint my Lord that I could not pay this Money, and that I must discover it in a Day or two. This was Sunday Night: The same Night Mr. Dixon returned from my Lord, and told me, that if Mr. Holford would be present the next morning at the payment of the Money at Mr. Kinaston's Chambers, that Mr. Kinaston and my self should receive it. We were there the next day. Mr. Dixon came, but brought no Money; said my Lord expected some Indemnification. We said, as to an Indemnification we could give none. He said he would go to my Lord. I was in hopes he would have brought the Money; but when he came back, he said it was an Holyday, and no Money could be had, and desired we would go to the Judges, and desire two or three days time to produce this Money. I told him we could not do it, for that very Night the Report was to be laid before the King and Council. He then returned again to my Lord Chancellor, as he told us, and when he came back, he said my Lord Chancellor was gone out. Upon that we gave in my Lord Chancellor's Name to the Judges, and the Gentlemen of the Bank, and they gave it in to the Council, as I am informed.

Mr. Lutwyche. My Lords, We desire he may answer this Question, Whether it was explained what that Indemnification was, which was expected, and in what manner it was to be?

Mr. Tho. Bennet. My Lords, Mr. Dixon explained it thus,——

E. of Macclesfield. I hope whatever Mr. Dixon said, shall not affect me; but that they will produce him: He is able to speak for himself.

Mr. Lutwyche. Then I only desire he may be asked, what Officer Mr. Dixon was under my Lord Chancellor?

Mr. Tho. Bennet. Mr. Dixon was my Lord's Secretary.

Mr. Lutwyche. Whether at that time that you had the Discourse with my Lord Macclesfield, you mentioned or said any thing of Mr. Dixon's having come to you, in my Lord Macclesfield name?

Mr. Tho. Bennet. No, My Lords, that was before Mr. Dixon's coming to me.

Mr. Lutwyche. Did you take Notice at any time to my Lord Macclesfield of Mr. Dixon's coming to you?

Mr. Tho. Bennet. No, I never spoke to my Lord Chancellor afterwards. This was the 27th of December, and it was the 7th of December that I waited upon my Lord.

Mr. Serj. Pengelly. We think it appears that Mr. Dixon was an Agent of my Lord Macclesfield's: I desire to know what the Nature of the Proposal of Indemnification was, that he made?

E. of Macclesfield. I can't think Mr. Serjeant is in earnest. Have they proved that he was employed

ployed by me? I have heard no proof of it, only Mr. Serjeant hath said it. Mr. Dixon himself is the proper Person to give an Account of what he told them from me. If they do insist upon it, I must beg your Lordships Judgment.

Mr. Serj. Pengelly. If it is insisted upon by the Noble Lord, to disavow the Proceedings of his own Agent, we will waive it.

E. of Macclesfield. I neither avow nor disavow; but I object to the Evidence of this Gentleman about the Discourse of what Mr. Dixon said, who is living, and can speak for himself.

Mr. Serj. Pengelly. If the Noble Lord will ask him any thing, he may, we have done.

E. of Macclesfield. I beg leave that Mr. Bennet may be asked two or three Questions: He has indeed given Evidence which greatly surprizes me. In the first place I desire he may inform your Lordships, whether, when he was with me, he did not tell me that if Mr. Hiccocks would pay 2000 l. he would make good the whole Money?

Mr. Tho. Bennet. No, I did not say so; I could not make good the whole Money, or any thing like it. I said that such a Report had been spread, that I proposed, that if Mr. Hiccocks would pay me 2000 l. I would answer the rest; but I was not able.

E. of Macclesfield. I would be glad to know how he came to tell me of a Report of his own Act: Was it a Report without any Foundation?

Mr. Tho. Bennet. I went to Mr. Hiccocks, and told him I wanted 6000 l. but he said if 2000 l. would do, he believ'd he could lend me that. Lend at me, said I; if you give me 2000 l. it is something. And this was the Foundation of this Report.

E. of Macclesfield. I cannot give Evidence myself to disprove him in this; and therefore I desire to know whether he has said to any other Persons, that if Mr. Hiccocks would pay him two thousand, or three thousand Pounds, or thereabouts, he would pay the rest?

Mr. Tho. Bennet. I might say, I would endeavour to raise the rest; but I never said I would pay the whole, for I knew I was not able.

E. of Macclesfield. Mr. Bennet understands my Question, to which he hath given no Answer. My Question is, Whether he hath not told some other People, that in Case Mr. Hiccocks would pay 2 or 3000 l. he would pay all the rest?

Mr. Tho. Bennet. No, my Lords, I never told any Body that I would pay the rest; but I believe I might say; if Mr. Hiccocks would give me 2 or 3000 l. I would stand the Hazard; for I did not expect that all the Money should be taken out of my Hand.

E. of Macclesfield. I desire he may be asked, whether at that time he was with me, I did not ask him, with what Conscience and Honesty he could buy a Place, when he had not Money to pay for it? or whether it was not in answer to that, that he told me that he had insured his Life?

Mr. Tho. Bennet. My Lord did say so to me. I answered, I had not Money; that I had not bought the Place, had it not been for the Cash of the Suitors; and that I had since secured 8000 l. on my Life, in order to secure the Suitors.

E. of Macclesfield. I desire to know what visible Estate the Gentleman then had, and of what yearly Value?

Mr. Tho. Bennet. My Lords, when I came into the Office, I believe I had about 250 l. a Year, or thereabouts.

E. of Macclesfield. I desire to know whether he was married before?

Mr. Tho. Bennet. I was.

E. of Macclesfield. What Fortune had you with your Wife?

Mr. Tho. Bennet. The Fortune I had with my Wife, was in the Whole between 2 and 3000 l. part of it was an House.

E. of Macclesfield. What was the Value of that House?

Mr. Tho. Bennet. I had not let it then, but since my coming into the Office I have let it for 90 l. a Year.

E. of Macclesfield. I desire to know if he did not keep his Coach and Equipage at that time?

Mr. Tho. Bennet. I did set up my Coach in the unfortunate Year 1720. I was once worth 20,000 Pounds, but lost it all, and became much indebted; the Estate I had of my own was mortgaged for more than it was worth.

E. of Macclesfield. Whether he was married in the Year, 1720?

Mr. Tho. Bennet. No, I was not.

E. of Macclesfield. I desire to know what Estate he hath given into the Court of Chancery?

Mr. Tho. Bennet. That Accompt lies upon the Table.

E. of Macclesfield. What yearly Value is that?

Mr. Tho. Bennet. About 900 l. per Annum; part of it is settled, the rest mortgaged, and an Annuity charged on it more than it is worth.

E. of Macclesfield. Has any Estate been purchased with your Money, or Money which came from you, since you was a Master?

Mr. Tho. Bennet. Part of that given in was so, 68 l. per Annum, and 40 l. per Annum.

E. of Macclesfield. Has any other Estate been purchased with your Money, or Money which came from you, since you was Master?

Mr. Tho. Bennet. None, but what I have given in. I have given in every Shilling.

Mr. Com. Serj. My Lords, I desire he may be asked, whether he was not at the Time of his becoming Master in Chancery, in Possession of the Office of Clerk of the Custodies?

Mr. Tho. Bennet. Yes, I was.

Mr. Com. Serj. Now, my Lords, it will be very proper to ask him what that was sold for, that the Value of his Estate may be known.

Mr. Tho. Bennet. That may affect me, and my Successor.

Mr. Lutwyche. I don't know whether we need put you in mind, that the late Act of Parliament only indemnifies the Masters, but there is none to indemnify the Clerk of the Custodies.

Mr. Com. Serj. Which way it will affect Mr. Bennet I don't know. I apprehend no Action can lye against him for the Money he received, nor any criminal Prosecution or Information. But that I may not mispend your Lordships time; I desire Mr. Bennet may inform your Lordships of the yearly Value of the Place.

Mr. Tho. Bennet. It is about 250 l. a Year.

E. of Macclesfield. A Patent for Life?

Mr. Tho. Bennet. Yes, my Lords.

Mr. Serj. Probyn. How much hath it been sold for?

Mr. Tho. Bennet. I can't tell what it hath been sold for: It may have been once sold for about 1200 l.

Mr. Serj.

Mr. *Serj. Probyn*. At that time when you surrendered, what might it have been sold for?

Mr. *Tho. Bennet*. I beg leave to submit, whether I am obliged to answer that Question.

Mr. *Serj. Pengelly*. If it was not saleable by Law, it was not worth a Farthing. I beg leave to put your Lordships in mind, that Mr. *Bennet* was excus'd Yesterday from answering a Question of the same Nature: The Council hope that this Day, being a new Day, they may have Liberty to ask the same Question over again.

Mr. *Com. Serj.* There was another Ingredient in your Lordships Resolution Yesterday. I hope it is no Injury to him to answer how much he hath known it to be sold for; without mentioning by whom.

Mr. *Serj. Probyn*. We hope Mr. *Bennet* will answer the Question, what is the most he hath known it to be sold for?

Mr. *Plummer*. My Lords, I object to his answering that Question, because if he did sell it himself, that might be the greatest Sum that he hath known to be given for it, and that will subject him to a Penalty.

Mr. *Serj. Probyn*. We don't ask who gave it, or who received it; but what is the greatest Price he hath known that Office to be sold for?

E. of *Macclesfield*. He says he hath known it to be sold for 1200 l. I desire he may be asked whether he hath not known that it hath been sold for more?

Mr. *Tho. Bennet*. I believe it hath been sold for more.

E. of *Macclesfield*. And how much more?

Mr. *West*. This Question is an indirect way to come at that Question that was denied them Yesterday.

Sir *Will. Strickland*. My Lords, with humble Submission, the Question asked by the Noble Lord, tends directly to make Mr. *Bennet* tell what he sold his own Office for; for if his own Office was sold, it is probable that he sold it for the greatest Price; and to tell that, is to make him say what he sold his own Office for.

Mr. *Lutwyche*. By this Method your Lordships Resolution of Yesterday will be evaded. We took it then, that the Witness was not obliged to discover what he sold the Office for. Now they are asking what is the greatest Price he knew the Office sold for? Then the next Question may be, to whom was the Office sold, and by whom was it sold? Therefore we must humbly submit it to your Lordships, that it is not a Question to be asked.

Mr. *Com. Serj.* To object to a Question because another may follow, is odd arguing. When such a Question is made, it will be then time enough to oppose it: Therefore I hope that we shall go on.

Mr. *Serj. Probyn*. My Lords, I apprehend this Question is proper, and the Answer to it is necessary.

Lord *Lechmere*. Your Lordships will observe some Rules in your Proceedings. An Objection hath been made: An Answer hath been given: Both Sides insist upon your Lordships Judgment: That being done, they must withdraw. Therefore I desire they may withdraw.

E. of *Macclesfield*. The Reply is not yet made; something has been said by the Gentlemen who are Managers by way of Objection to the Questi-

on that was proposed, which, if they insist upon, I desire my Council who are to reply, may be heard before they withdraw.

Mr. *Serj. Probyn*. The Managers for the House of Commons have been pleased to examine into the Circumstances of Mr. *Bennet*, at the time he was admitted Master, in order to shew that he was then not of Substance fit to be intrusted with so great a Sum of Money. We are then in Duty obliged to examine him as to that Substance, and the Value of his Effects. He hath told your Lordships what Estate he hath in Land; we are now to examine him as to his Personal Estate: He hath told us he had an Office, the Clerk of the Custodies; that he hath parted with it; the Money arising by that Office must be reckoned as part of his Personal Estate. To come at the Value of the Office, we do not ask him any Question that makes him liable to a Penalty; but such a Question, where the Answer to it may be with Safety; and that is, what is the greatest Sum he hath known to have been given for the Office of the Clerk of the Custodies? He may answer this without involving himself in any Difficulties, for it is not asked what he himself hath sold that Office for? No Answer to this general Question can affect him with any ill Consequence.

Dr. *Sayer*. I humbly apprehend this is no way irregular. We are inquiring about his Effects; it is owned he had the Clerk of the Custodies, therefore that must be a part of his Personal Estate: The Answer to our Question can't any way involve him in Danger, or subject him to any Penalty; because it doth not necessarily follow that he sold his Place at the greatest Price that he ever knew it sold for. We submit it, whether it is not a Question fair with regard to the Witness, and proper to be put to him.

Mr. *Robins*. We agree that where he may subject himself to a Loss, there is no forcing him to answer; no Person is bound to accuse himself. But this is only a Matter of Discovery what the Value of this Office is; the Answer cannot affect him; and therefore we hope we shall have an Answer.

Mr. *Strange*. My Lords, I am surprized to hear it said that this is not a Question material for the Noble Earl's Defence: Surely it is as material for us to increase his Estate, as it is for them to diminish it. They have already examined into Particulars, to shew what small Substance he was of, and what the Estate he had was mortgaged for: The proper Answer to be given to that, as far as it will go, will be to shew that he had other Estate and Effects, and we are not able to shew that without examining him. I humbly submit it therefore that we are as proper to go into that Evidence, as they were; it is equally material; and as they have examined to it on behalf of the Commons, we are intitled to examine to it likewise on behalf of the Noble Earl.

E. of *Macclesfield*. I apprehend the Objection is, That he is not to be asked a Question, which if he answers he will charge himself with a Crime or Penalty. Whatever Answer he makes to this Question cannot charge him: Let him Answer and say that he hath known this Place sold for 1000, 1500, or 2000 l. can that be given in Evidence so as to affect him? Therefore the Question to Day is not the same as was asked Yesterday: It was then asked, what he had received for his Place? and if he had

had answered and said what he had received, it would have been a Confession, which would have convicted him: But if the Answer be, That he knows it was sold for such a Price, and that is given in Evidence, by that Answer it doth not appear that he sold it: Therefore upon that I humbly submit to your Lordships, and we are ready to withdraw.

Mr. Serj. Pengelly. This is by a Side-wind to know your Lordships Opinion upon the 9th Article.

E. of Macclesfield. I beg leave to interrupt that worthy Gentleman. I agree that the Commons that bring in the Charge, have a right to Reply; but with Submission this is an Objection arising from my Council, and the Reply belongs to them.

Mr. Serj. Pengelly. My Lords, we apprehend the Objection arises from the Managers, and therefore the Reply belongs to them. The Managers made the Objection, therefore we beg Leave to observe, that this is in Consequence to desire your Lordships Judgment upon the 9th Article, Whether the Office of the Clerk of the Custodies be saleable by Law, or no? If he is obliged to answer this Question, 't is upon a supposition that the Transaction is lawful: Therefore in an Affair of this Nature, there can be no other View but to get an Opinion upon this Article. My Lords, we apprehend this Proceeding is in Consequence the same as if a Question was proposed to your Lordships, whether my Lord Macclesfield could by Law sell the Place of Clerk of the Custodies?

Mr. Lutwyche. My Lords, I must beg leave to mention this to your Lordships. When it is considered upon what Foundation this Question is asked, and what it doth mean, it can be only to elude your Lordships Resolution Yesterday, and to make that of no Effect. My Lords, there should be always the greatest Candour used before your Lordships, that no Tricks or Methods should be made use of to ask that which should not be asked. Now, my Lords, what is the Question they are examining to, and the Use to be made of it? Here is a Person that is alledged to be of mean Ability, and the Question is, What Substance and Estate he hath? and they would reckon into Part of his Estate an Office not saleable by Law, and ask him, what that Office is worth? From whence the Inference must be, that he sold it.

E. of Macclesfield. That is not the Question, what it is worth; but a particular Fact, what is the most that it hath been sold for?

Mr. Lutwyche. What doth that tend to? The Question is, What Estate this Gentleman had that could enable him to pay this Money for this Office? They have examined him about his own Estate, and his Wife's Estate, but then there is another Part of his Estate; which was this Office of Clerk of the Custodies. What is that? It is that very thing which we say it is unlawful to sell. Therefore we submit it to your Lordships as no way material to the Defence of the Lord. We hope your Lordships will not admit that to be done by an indirect Method, which would not be admitted to be done by a direct one.

Ordered to withdraw. Which was accordingly done; and all Parties concerned being after some time call'd in again, —

The Lord Chief Justice King declared to them, That it was the Order and Judgment of the Lords, that the said Question was not to be asked.

Mr. Plummer. I would ask Mr. Tho. Bennet one Question, Whether every thing he had in the World at the Time of his Purchase of the Mastership, was worth the Money he gave for it?

Mr. Tho. Bennet. All I had in the World was not worth it.

Mr. Serj. Probyn. My Lords, Mr. Bennet says he mortgaged his Estate for more than it was worth; I desire he may be asked whether he knew at that time, that it was not worth so much as it was mortgaged for?

Lords. No, No.

Mr. Plummer. My Lords, I beg leave to ask this Question, and I hope it will be very proper, that is, I desire to ask Mr. Bennet, as he hath given an account of a Conversation with my Lord Macclesfield; I desire to know if my Lord Macclesfield at the time of his Admission into his Office, did ask him what he was worth?

Mr. Tho. Bennet. My Lord Macclesfield never asked me any Questions in Relation to my Circumstances, or any thing like it.

E. of Macclesfield. My Lords, I desire he may be asked, whether I had any notice of his Losses by the South-Sea?

Mr. Tho. Bennet. Not that I know of: I don't know that my Lord Chancellor had any Notice of it.

Mr. Serj. Pengelly. My Lords, if the Council have done, we shall not give your Lordships any farther Trouble on these two Articles: Both of them are as clearly and as fully proved and substantiated as it is possible. It comes out now upon the Examination, that, tho' several Masters were intrusted with 40, 50, or 80,000 l. they were not of any competent Substance, not really worth what they paid for their particular Places. As to the manner of their paying for their Places, if we have not given a direct Evidence that his Lordship knew it, yet the Practice and Notoriety of the Fact being prov'd, and that it was thus generally understood, is a reasonable Evidence in it self, and by the Notice the Lord took of it himself by the several Questions he hath asked, we think it is yet clearer. We humbly submit whether upon this Evidence every part of these two Articles is not sufficiently proved? We depend upon the Examination already taken, and will take up your Lordships Time no farther.

Then the Managers and the Council were directed to withdraw; and the Lords adjourned to the next Morning at Ten a Clock in the Forenoon.

Saturday May 8th. *The Third Day.*

THE Lords being seated in their House, Proclamation was made by the Serjeant at Arms for Silence; and another Proclamation, That all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Tryal, and they might come forth in order to make good the Charge.

Lord Ch. Just. King. Gentlemen of the House of Commons, you may proceed in your Evidence.

Mr.

Mr. *Gibbon*. My Lords, Your Lordships having already heard what has been offered in Support of the preceding Articles, I am commanded by the Commons to assist in maintaining the 13th and 14th Articles of their Impeachment against the Earl of *Macclesfield*.

The Charge in these Articles is, That the Earl knowing Mr *Dormer* (one of the Masters in Chancery) had disposed of great part of the Suitors Money for his own private Advantage, by which there became and still continues a Deficiency of at least 25000 *l.* and that Mr. *Dormer* absconded upon that Occasion; That application was made to the Earl thereupon, who instead of taking proper Methods to compel Mr. *Dormer* to make Satisfaction to the Suitors (from an Apprehension that a publick Discovery of the said Deficiency might lessen the unjust Gain the Earl proposed to himself, by selling and disposing of the said Offices) did endeavour by many indirect Practices to conceal from the Suitors of the Court the true State and Condition of the said Office, and did falsely and deceitfully declare that Mr. *Dormer* was only gone to take the Air; that he would return in a little time, and all would be well. That Mr. *Dormer* having towards a Satisfaction to the Suitors of the Court, assigned to Mr. *Edwards* (who succeeded him in his Office of Master) a Debt of 2446 *l.* 4s. *od.* due from Mr. *Wilson* (a Banker) to Mr. *Dormer*, to the intent the Money received on that Account should be applied as the Court of Chancery should direct, the Earl of *Macclesfield*, for the unlawful Purposes aforesaid, without regard to the Interest of the said Suitors, by Colour of his said Office, did in an unwarrantable, clandestine, and unusual Manner, authorise, direct and establish a precarious and trifling Composition with the said *Wilson*, upon his paying 1463 *l.* 2s. *1d.* and assigning 10,000 *l.* part of a Debt of 22,060 *l.* 12s. 5 *d.* pretended to be due to the said *Wilson* from *Edward Poulter*, in Discharge of the said Debt; and to that End, on Mr. *Hiccocks's* Report, then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order, not made in open Court, order Mr. *Edwards* to accept the said Composition in full Discharge of the said Debt; which said *Poulter* was a Person Insolvent, and has since absconded for Debt, and none, or very small part of the said 10,000 *l.* has been, or is ever likely to be received.

Your Lordships will please to observe, that the Earl is charged with the highest Breach of Trust in relation to the Suitors of the Court of Chancery, and to have committed that Breach of Trust for the most unjustifiable End.

The Crimes, my Lords, stated in these Articles, are in themselves so heinous, they need no aggravation; and I think the noble Lord's Answer shews they are capable of no Excuse.

He is pleased to say, "That Mr. *Dormer* being out of Reach, his Effects unknown, except the Stock, which could not be transferred without his Concurrence, and the Earl seeing no other way open to get any thing for the Suitors, and being made believe, if a Deficiency

" should happen, the same should be made up by other Masters; did agree, that in Case Mr. *Dormer* would come over, and make a full Discovery of all his Effects, and assign the same for the benefit of the Suitors, the said Earl would allow him his Liberty on that Condition, and not otherwise.

The noble Lord says, No other way was open to get any thing. Sure, my Lords, the granting of a Sequestration would have been one and the speediest way to have found out and secured the Effects; but it might have been a way too open; for it must have published the Deficiency of the Office; whereas Mr. *Dormer's* coming home, and quietly resigning, hushed all Enquiry.

What the Earl means by being made to believe the Deficiency should be made up, I am at a Loss, my Lords, to know; made believe! how, or by whom! It does not appear the Masters entred into any Contract to do it; and could his Lordship think any Discourse between him and the Masters (if such there was) could be a sufficient Security for the Suitors of the Court?

But suppose the Masters had contracted to supply the Deficiency, I submit to Your Lordships how far that Contract would have been justifiable; for how should that Supply arise? If out of the Suitors Money in the Masters Hands, that was only supplying one Deficiency by making another; and if it was to be out of their own Estates, that likewise, by lessening the Substance of the Masters, would diminish the Security of their own Suitors; And what, my Lords, could induce the Masters to enter into such a Contract? I can imagine nothing, but to conceal the Deficiency, in order to raise a Value on their own Places upon their Resignations. I therefore submit to your Lordships, whether the Earl's Answer is not an implied Confession of an Endeavour to conceal this Deficiency, in order to keep up the price of the Office? Your Lordships observe on what Condition the Earl says he permitted Mr. *Dormer* to come over. But I do not find the noble Lord alledges, that in order to gain the End proposed, Mr. *Dormer* was examined on Interrogatories touching the Debts due to the Suitors of the Court, or to what Estate or Effects he had to answer the same: We can shew your Lordships there was no such Examination. We shall prove, that Mr. *Dormer* did not give a satisfactory Account of his Balance, and with great Difficulty was prevailed on to convey his Estate for the Benefit of the Suitors: But yet, my Lords, he continued to have his Liberty. How the Earl will account for those Proceedings, I leave to your Lordships Consideration; I can see no possible Account can be given but this, that an Examination on Interrogatories touching the Debts of the Suitors, and Mr. *Dormer's* Answer and Confinement, must have published the Deficiency of the Office. The Earl is pleased to say, "He did not doubt but the whole Debt upon the said *Fleetwood Dormer* would be paid.

I presume he did not doubt but it would be, because he knew in Justice it ought to be paid; and since it is before your Lordships, I likewise do not doubt but it will be paid.

The noble Lord in his Answer is pleased to quote on some Occasions the Example of his Predecessors; I wish, for the Sake of the unhappy Suitors, and for the Honour and Justice of the Court of Chancery, he had here followed the Steps of his Predecessors in the Case of Dr. *Eddisbury*.

“ The noble Lord insists, He does not remember any Application made by the Masters for any Assistance of the Court, touching the Person or Effects of Mr. *Dormer*, but what he granted, as far as he thought tended to the Benefit of the Suitors.

We shall offer Proof to the contrary: But had that been so, was that, my Lords, sufficient? Was the Earl to wait the setting of a Prosecution on Foot, till Application made by the Masters? It was not probable many of them (who had bought at high Prices, and on Resignations, were to make the most of their Places) would apply for the securing the Person or Effects of Mr. *Dormer*, they would not willingly have had a Master imprisoned; the Discovery of a Deficiency in him would have made other Suitors apprehensive that the same might have happened to them; for every one knew how freely those Gentlemen trafficked in the fatal Year of 1720. The very Notion of a Deficiency would have put the Suitors on an Inquiry, and upon calling the Money out of the Masters Hands. Could then the Earl expect they would interest themselves much in an Examination of this Kind? But was it less his Duty to enquire and give all necessary Orders, and take all proper Precautions for the Suitors Safety, because the Masters neglected it? No, certainly, unless for the Reason assigned in the Article.

The Earl says, “ He did never endeavour to conceal the true State and Condition of the Office from the Suitors, nor did any of them, until very lately, apply to him to look into the same.

He well knew, that many of them called for their Money, and were ordered their whole Demands, while Mr. *Edwards* had wherewithal to pay; but those unhappy Suitors, who did not know of the Deficiency, and from such Orders for the whole Money might well be persuaded there was no Deficiency, and consequently did not complain, have now, I fear, a melancholy Case. And with what Grace the Earl can insist, that no Suitors ever did, or at least till very lately, complain, I leave to your Lordships Consideration.

The Earl is pleased to say, “ He remembers nothing of his using the Expression charged in the Article, either before or after he knew of Mr. *Dormer*'s absconding.

I believe the noble Lord, on a little Recollection, will easier call to Mind what he said on this Occasion, than be able to give a justifiable Reason for it.

He is pleas'd to say in his Answer to the 14th Article, “ He quitted all the Advantage of the Disposal of Mr. *Dormer*'s Office.

The Gentlemen, who have spoke before me, have, I hope, sufficiently made it appear to your Lordships, that there could be no such

legal or just Advantage. Where then is the Generosity? A Sum of Money, which he ought not to have taken, is given up towards answering the Debt of the Court, for which I take it his Lordship himself is answerable.

He is pleased to say, “ That after Mr. *Dormer*'s assigning Mr. *Wilson*'s Debt to Mr. *Edwards*, the Earl believes Mr. *Edwards* used great Endeavours to obtain Payment and Satisfaction of the said Debt from Mr. *Wilson*; but finding all Endeavours fruitless, and that Mr. *Wilson* had stopped Payment, and was in no Condition of paying his Creditors the whole of their Debts, but had offered to come to a Composition, and to pay them in Proportion the utmost he was able, Mr. *Edwards* thereupon petitioned his Lordship.

What those great Endeavours were, I am, my Lords, at a loss to know; for I can't find there was any Commission of Bankruptcy taken out against *Wilson* (though that was advised and pressed as a safe and necessary Method) no Suit in the Court of Chancery, or in any other Court commenced against him, to get in this Debt, or that he was so much as served with any Process about it. How then the Earl can say, that all Endeavours were found fruitless, I leave to your Lordships Consideration.

He is pleased to say, “ Mr. *Hiccocks* reported, 'twas his Opinion the accepting the said Composition would be for the Benefit of the Persons entitled to receive the same.

My Lords, It does not appear Mr. *Hiccocks* had looked much into *Wilson*'s Circumstances, had examined the Particulars of his Books on Oath, had called the Creditors before him to enquire into the Justice of their Debts, or to know the Amount; but yet took upon him to apporportion Part of *Poulter*'s Debt, as a Composition for the Suitors of the Court, though it will appear that *Wilson* paid several of his Creditors afterwards their full Demands.

Strange Proceeding sure in an Affair of this Nature! for which I will not pretend to Account. But, my Lords, I cannot but observe that the two Masters, who were employed to take Care on this important Occasion, for the innocent unhappy Suitors, were very soon (pending the Affair) allowed to sell their Places at exorbitant Prices: Mr. *Rogers*, August 1721. for 6,000 l. and Mr. *Hiccocks*, June 1723. for 7,500 l. and which very Sums now remain a Debt to the Suitors of the respective Offices. Your Lordships have already heard what was demanded and paid on those Resignations.

The Earl is pleased to say, “ That on Mr. *Edwards*'s second Petition with Mr. *Hiccock*'s Report annexed (in which Mr. *Edwards* expressly prayed, that he might be ordered to accept the said Composition) the Earl in a proper and usual Manner ordered the same as prayed, and was informed, and believes, that the said Composition was made and agreed to on a Consultation of all or most of the Masters of the said Court.

I have heard, my Lords, the proper and usual Manner is to have Petitions of this Nature set down to be heard in Publick, and the Parties concerned



concerned to be summoned; Petitions relating to Bankrupts, to Lunatics, to Ideots, I believe are so: The Statute in the Case of Bankrupts directs publick Notice to be given in the *Gazette*, for the Creditors to meet; they have an Opportunity there to make all proper Enquiries, and see every thing done that may be most for their Advantage; the Bankrupt is not entitled to his Liberty, nor any Benefit allowed him, without a Certificate that he has made a full Discovery of his Effects, and that there appears no Reason to doubt of the Truth of such Discovery; and not then neither, unless four Parts in five in Number and Value of his Creditors sign such Certificate, and testify their Consent. How the Earl could think it just that the Suitors of the Court of Chancery (whose Money was forced from them by the Power of that Court, and put into the Hands of a Bankrupt Master) should have less Care taken of them, less Privileges allowed them for their Security, than any other Creditors in the Kingdom, I can no way comprehend, but must think, my Lords, this clandestine and unusual Proceeding a strong Proof of the Crime charged in these Articles.

“As to what the Earl says of the Composition being agreed to by most of the Masters; if that, my Lords, had been so (though we shall give Evidence to the contrary) I should not at all have wondered at it; for any Composition obstructed the Inquiry and Proceedings, which otherwise must necessarily have been publick: But, my Lords, had the Composition been agreed to on a Consultation of all or most of the Suitors concerned, that indeed would have been a good Defence of the noble Lord.

“He is pleased to say, at the Time of *Wilson's* Assignment of *Poulter's* Debt, that *Poulter* was looked on to be a substantial Person.

We shall produce to your Lordships Evidence to the contrary: And I must observe, that the Earl does not offer to shew any proper Inquiry was made touching his Solvency. Sure, my Lords, when that Debt was taken as a Payment for the Suitors of the Court, his Circumstances should have been carefully looked to, and a Recognizance with Securities taken in Court; but that could not be done without a publick Notice of the Deficiency.

When I consider, my Lords, the long Experience and great Abilities of the noble Earl, I can never think the Remissness in this Inquiry, these clandestine and unusual Proceedings, this precarious and trifling Composition, could ever have happened through Inadvertency only: I therefore, my Lords, must insist upon it as a manifest Proof of the Charge contained in these Articles.

The Gentleman, who speaks after me on this Occasion, will open the Evidence we shall offer, and I will therefore take up no more of your Lordships Time.

*Mr. Hedges.* My Lords, it falls to my Share to endeavour to be Assistant to the Gentleman who spoke last, in maintaining the 13th and 14th Articles; which I shall do, by stating the Evidence to your Lordships, as shortly as I can.

My Lords, The 13th Article sets forth, that

*Mr. Dormer* having *embezzled* great Part of the Suitors Effects, to the amount of 25,000*l.* or some other great Sum, and he thereupon *absconding*, Application was made to the Earl of *Macclesfield*, then Lord Chancellor, to *secure his Person and Effects*, which his Lordship *neglected* and *declined* to do; and *endeavour'd* to *conceal* the true State of the Office, as well with respect to *Mr. Dormer's* Effects, as to the Debt due from him to the Suitors. And upon Motion made in the Court of Chancery (after his Lordship *knew* that *Mr. Dormer* had *absconded*) that the Effects of some of the Suitors might be *transferr'd* to a more *secure* Office, his Lordship, in order to *delude* the Suitors into a Belief of the Safety of their Effects, and to prevent a publick Inquiry, then sitting in open Court, did say, That the Parties need not be in haste; *falsely and deceitfully* at the same Time declaring, that *Mr. Dormer* was only gone to *take the Air in the Country*, and that he would return in a little Time, and *all would be well*, or to that Effect. And, my Lords, notwithstanding the Earl's Endeavour in his Answer to *evade* the Charge contain'd in this Article, I am persuaded, upon hearing the Evidence, your Lordships will rest satisfy'd, that it has been *made out* in every Particular. For, my Lords, as to the first Part of the Charge, where he denies that he was ever *advis'd* to *secure Mr. Dormer's* Person, it will be made appear to your Lordships, that *Mr. John Bennet*, and *Mr. Lightboun*, went from a Meeting of several of the Masters, and in their Names *acquainted* the Lord Chancellor, that it was their Opinion, that *Mr. Dormer* had *not fairly* stated his Accounts; that there was a *Deficiency* of upwards of 20,000*l.* and that it was necessary for Example sake, he should be committed, according to the *Precedent* set him by the Lord *Comper* in *Dr. Eddisbury's* Case. But the Earl insisting on *Mr. Dormer's* Liberty, they again repeated the *necessity* of making such an Example, but at last left the Earl *fixed* in his Resolution of continuing *Mr. Dormer* at Liberty.

My Lords, this Promise of Freedom to *Mr. Dormer* was only conditional; IF he gave in a fair and just Account, and assisted in getting in the Debts. But he was so *far* from complying with these Conditions, that when he gave an Account in Writing of the Ballance of his Cash, amounting to 49,000*l.* he only inform'd them, that 24,000*l.* of it was due from one *Wilson* a Banker, *since broke*; but as to the Remainder, the Master, to whom it was given, could never obtain from him any other Notice where it lay, or what was become of it.

Immediately upon this, the Masters were *summon'd*, and *acquainted* with it; and the next morning that Account was left with *Mr. Cottingham* for the Lord Chancellor's perusal.

Your Lordships will be farther inform'd, that *Mr. Rogers* and *Mr. Hiccocks*, being directed by the Lord Chancellor to procure a Conveyance of *Mr. Dormer's* Estate to them, for the Benefit of the Suitors, it was with the *greatest Difficulty* that *Mr. Dormer* was *prevailed* upon to comply with it.

In the next place, my Lords, his Lordship, in his Answer, denies, that he endeavour'd to *conceal* the true State of the Office from the Suitors; or that he *remembers* any thing concern-

ing the *Expression* he is charg'd with: That Mr. Dormer was only gone into the Country to take the Air, and that he wou'd return in a little time, and all would be well.

My Lords, I must agree, that, since his Lordship is resolv'd to deny that he endeavour'd to conceal the State of the Office, it were to be wish'd by him that he cou'd safely deny this Expression, since if true, it proves that Endeavour directly upon him. But, my Lords, the Words were spoken by his Lordship in open Court, and can be sworn to by a Person, whose Business in Court at that time was such, as can possibly leave no room for a Doubt, or a Mistake.

For farther proof, my Lords, of his Lordship's Endeavour to conceal the State of this Office, we shall shew, that a Message was sent from the Lord Chancellor to Mr. Lightboun with a Proposal that he shou'd advance 500*l.* towards this Deficiency: Acquainting him, at the same time, that it was for the Honour of the Court; and that the Appearance of a Deficiency wou'd be attended with ill Consequences. But Mr. Lightboun refus'd to comply with that Demand, which he thought wou'd only skin over the Wound, and not effectually cure it. And yet, my Lords, this Proposal, which Mr. Lightboun had the Honesty and Courage to reject, was enforc'd by the impeach'd Earl with the Threats of a Parliamentary Enquiry; asserting, that if the Masters did not contribute towards the Concealment of this Deficiency, it wou'd occasion a publick Enquiry; wherein, if it shou'd appear, that they had bought their Places contrary to the Statute 5 and 6 of Edward 6. it might go ill with him, but that it wou'd fare much worse with them; turning even that Parliamentary Enquiry, which he ought to have dreaded as his sure Punishment, into means for extorting of Money. We have also Proofs that at another Meeting of the Masters, a farther Demand was made upon them, in order to conceal the State of that Office; but all the Masters then refusing to contribute to a Concealment so unreasonable in its own nature, the Lord Chancellor paid that Demand of 1000*l.* himself; not out of any just regard to the Suitors, but for his own Profit and Advantage, well knowing, that the Notoriety of this Insolvency, wou'd make the Masters Places less valuable; and therefore was content to part with this Sum, to insure to himself a greater prospect of Gain at his next Sale. Nor was it necessary for those, who dealt at this Auction, to bring any Money of their own to it; the mere admittance into the Office immediately giving them Possession of a Cash sufficient to answer his Lordship's Expectations. And thus Beggars were his best Purchasers; though sure to be the worst Trustees for the Publick.

How great a Hardship must it be, my Lords, to the Suitors of that High Court, to be contending many Years for their just Property, at an Expence possibly no ways proportionable to their remaining Fortunes; and to find at last, when they had obtain'd a Decree in their Favour, that their Money was lost in a Bankrupt Office, without hopes of recovery? This is a Consideration in which every Man in Great Britain is more or less concern'd. For what Estate is there, which may

not some way or other in the Course of a few years, come under the Direction of that Court? How much then does it concern every Individual, and even the Legislature itself, that all its Avenues of Justice shou'd be safe and open? But how much more does it concern the Honour and Conscience of the Person, who presides in it, if there shou'd be a dangerous Precipice in the way, to be the first in setting up a Mark for all the World to avoid it?

But, my Lords, if in this Article, which I have open'd to your Lordships, there appears a Criminal Endeavour to conceal the Deficiency of this Office, supported by a false Assertion made in open Court, in order to delude the Suitors into an Opinion that their Money was safe, and a great neglect in not securing Mr. Dormer's Person; in the 14th Article, he will appear in a yet more guilty Light, not only neglecting, as in the former, to enquire into his Effects, but on Enquiry made, and Time had for mature deliberation, confirming a precarious and trifling Composition, and tying down the Suitors of the Court by his Authority, to the certain Diminution of one half at least of their Effects, and in all probability to the irrecoverable loss of the whole.

My Lords, in the Answer which his Lordship returns to this Article, he denies none of the Matters of Fact contain'd in it, but admits them as they there stand charg'd. I shall therefore only make some Observations on the nature of this Transaction, and on the Assertions in his Lordship's Answer.

In the first place, my Lords, he insinuates that Mr. Edwards us'd great endeavours to obtain payment from Wilson, but found them fruitless; Wilson having stopp'd payment long before.

My Lords, I know not what endeavours his Lordship can prove Mr. Edwards to have us'd; but whatever they were, they were not unlikely to prove fruitless, since as his Lordship adds immediately, Wilson had long before stopp'd payment: But this we can prove, That Wilson's Books were never inspected by Mr. Edwards; that he never knew what his Debts were; nor any thing more of him, than that Wilson came voluntarily to Mr. Edwards, and propos'd of himself to pay him 1400*l.* in ready Money, and to assign over to him a Debt of 10,000*l.* due from one Poulter, whose Circumstances were still more precarious than his own.

In the next Place, his Lordship asserts, that he order'd this whole Affair of Wilson's Composition in the usual manner; and is inform'd, and believes, that this Composition was made and agreed to, upon a Consultation of all, or most of the Masters. But, my Lords, we shall make it appear, that the Delivery of the Petitions, the Orders made upon them, and the whole Transaction of this Affair, was carried on from first to last in a clandestine, private, and unusual Manner.

As to the Consent which his Lordship says he believes the other Masters gave to this Composition, we shall prove, my Lords, that Mr. Edwards was the only Person concerned on behalf of the Suitors, and so far was he or any of the rest of the Masters from taking the best Care they could, that the first Draught of a Composition, which Wilson brought, was accepted and settled between him

him, and Mr. *Hiccocks*. And that when Mr. *Edwards* did mention this Composition to some of the Masters, they were so far from approving of it, that Mr. *Edwards* acquainted the Lord Chancellor, that it was the Opinion of one of them, that a better Composition was to be had. And another of the Masters was so far from agreeing to this Method at all, that he propos'd a Commission of Bankruptcy as the only Means to bring this Matter to a proper Light.

But that Light, my Lords, was what his Lordship was most afraid of. That wou'd have discover'd the deficiency of this Office, which would have brought a disrepute upon others, and consequently have lower'd their Price. This was his Lordship's only Care; whilst for the rest he cou'd set unconcern'd, and see so great a Sum of the Suitors Money wasting away to nothing, as it pass'd thro' the Hands successively of three Bankrupts.

But, my Lords, we shall farther prove, that when his Lordship order'd a Petition to be prefer'd to himself, that he might approve of this Composition, he never order'd the Suitors to be acquainted with it, nor had they any Notice of it. Nor did his Lordship ask, if *Wilson* had compounded with any other Creditors, nor so much as enquire if he had sworn to his Circumstances.

It will be made appear, that at this very time Mr. *Edwards* was inform'd, and did believe that *Poulter's* Circumstances were very bad, and that neither he nor any one else attended the Commission of Bankruptcy against *Poulter* on Behalf of the Suitors.

And, my Lords, to judge a little farther of this Matter, by a very sure Rule of Justice; that, of doing as one wou'd be done by: Your Lordships will find that Mr. *Edwards* confesses, that if it had been his own Money, he wou'd have lookt more carefully after it.

Farther yet, my Lords, we shall prove, that notwithstanding this Debt was compounded with *Wilson*, yet he has paid the whole Amount of other Debts, with Interest, to several of his Creditors.

Lastly, my Lords, his Lordship in his Answer says, that he believes Mr. *Edwards* has since got in one thousand Pounds of *Poulter's* Debt. The Truth is, one thousand Pounds has been recover'd; but it was by an accidental Discovery of conceal'd Effects belonging to *Poulter*; one thousand Pounds of which was paid to Mr. *Edwards* by *Wilson*, as Part of *Poulter's* Debt.

But does his Lordship seriously intend this for any Vindication of himself, or any Compensation to the Suitors, that after four or five years expectation, instead of twenty four thousand Pounds due to them, he believes one thousand Pounds may have been since recover'd?

I cannot help observing here to your Lordships, how different a Care has appear'd throughout his Lordship's whole Behaviour, with Regard to his private Advantage, and the Safety and Protection of the Suitors of the Court.

In their Case, he could think it equitable to subject their Estates to the Losses of a Master in Chancery, who had squander'd and gam'd away their Substance and his own. But in his own private Affairs, how cautiously circumspect was his Lordship? The least Advantage was not neglected, and if a Master's Place was to be alienated, a difference of Guineas was meanly insisted upon, instead of

the Pounds which had before been oppressively extorted.

But, my Lords, in this Impeachment, the Commons, with Regard to the Dignity of their own Proceedings, with Regard to this august Judicature, are not desirous to enlarge upon Matters of smaller Moment: His Lordship might have enjoy'd his hundred Guineas in quiet, had not a long Series of his Conduct in so high a Station, tended to destroy the Reverence due to the Laws, by an Execution of them instrumental to the Ruin of the Subject.——Against apparent Extortioners and Robbers, we guard ourselves with a Caution proportionable to the Infamy of their Characters: But when the Sanctity of the Laws, and the Ensigns of Authority, design'd to defend and protect us, are made use of to invite us into Ruin, how sure and extensive must that Ruin be?

My Lords, The Commons have beheld with the deepest Concern such corrupt Practices in this high Court; such, as have deform'd the Beauty of Justice, and render'd the Administration of it grievous, and even fatal to the Subject. They have beheld that Minister of Justice, whom the Laws of the Land have invested with an extraordinary Power to punish Frauds and Deceits, himself carrying on a most pernicious Deceit, to the great dishonour of the Court, and the ruin of its Suitors: The Guardian of Orphans become their Oppressor, the Keeper of the King's Conscience prostituting his own, and the Dignity of his high Station, to an ignominious Traffick with the best Bidder, and employing the SCALES OF JUSTICE in the Business of an Usurer.

But, my Lords, that Parliamentary Enquiry is now come, with the Terrors of which he forc'd the Masters into Compliance with his arbitrary Demands. He then foretold it might possibly GO ILL WITH HIM, tho' it wou'd fare worse with them. So just a Decree pronounc'd by himself against himself, is, we trust, in no Danger of being revers'd; but rest assur'd, that as far as it regards him, it will be unanimously confirm'd by your Lordships.

Mr. *Lutwyche*. My Lords, we shall now proceed to our Evidence on these two Articles together: To shew to your Lordships that the Deficiency of *Dormer's* Office was endeavour'd to be conceal'd by many indirect Practices, and first of all we shall call a Witness to prove Mr. *Dormer's* Deficiency to be about twenty five thousand Pounds.

Mr. *Thompson* called, and appeared.

Mr. *Lutwyche*. My Lords, we desire that Mr. *Thompson* may refresh his Memory, as this Matter was referred to him to examine, and that he would please to give your Lordships an Account how he found the State of Mr. *Dormer's* Office, and what Deficiency there was in it?

Mr. *Thompson*. My Lords, I find in our Report the Debt due from Mr. *Dormer's* Office was stated at 49604*l.* 11*s.* 11*d.* and I find that Mr. *Edwards*, who succeeded Mr. *Dormer* in that Office, had paid to the Suitors 23725*l.* 15*s.* 9½ so that there remains due to the Suitors of the Court, such as have paid their Money into Mr. *Dormer's* Office, the Sum of 25878*l.* 16*s.* 1*d.* ½ And this I believe to be a true State of the Account, from such Evidence as was laid before us.

Mr. *Lutwyche*. If the Counsel on the other Side don't think fit to ask this Evidence any Question, we beg Leave to call Mr. *Edwards*, who succeed-

ed Mr. *Dormer*, and will give your Lordships an account of the State of that Office, and what the Deficiency was.

Mr. *Henry Edwards* sworn.

Mr. *Lutwyche*. My Lords, we desire that Mr. *Edwards* may be asked, how much the Deficiency is in Mr. *Dormer's* Office?

Mr. *Edwards*. My Lords, according to the Account given in, the Deficiency appears to be about twenty five thousand odd hundred Pounds; but since that, there is discover'd about fifteen hundred Pounds more, which was not brought into the Account. It was discover'd about three Weeks or a Month ago, and not before.

Mr. *Lutwyche*. I desire he may be ask'd whether he knows of any other Deficiency discover'd?

Mr. *Edwards*. No, my Lords, I do not.

Mr. *Serj. Probyn*. My Lords, I desire Mr. *Edwards* may be asked, that as there hath been a further Deficiency discovered, whether there hath not also been a Discovery of further Effects?

Mr. *Edwards*. Not as I know of. I am inform'd Administration hath been lately taken out to Mr. *Dormer*, that there hath been a Discovery of Effects, but to what Value I can't tell.

Mr. *Strange*. I would desire he may be ask'd, whether he hath had any Account from the Administrator?

Mr. *Edwards*. I have seen Mr. *Paxton*, who I understand administr'd. He told me he had discover'd some Effects, but he did not tell me to what Value.

Mr. *Lutwyche*. If the Counsel for the noble Earl have done, we would beg Leave to ask another Question, in Relation to this Matter. They examine what were the other Effects of Mr. *Dormer*, we desire to know, if Mr. *Edwards* can inform us, how long ago this Discovery was?

Mr. *Edwards*. I can't certainly tell. I believe it is about two Months ago that Mr. *Paxton* hath had Administration; and since that he hath made this Discovery.

Mr. *Lutwyche*. It is proper from this Question that hath been ask'd by the Counsel for the noble Lord, to call another Witness to prove that there have been Effects discovered, and that there have been Goods laid by three or four Years, and almost spoil'd, because no Care was taken of his Effects.

Mr. *Serj. Probyn*. My Lords, before this Gentleman goes, I beg Leave he may be asked one other Question, whether he had not Notice before *Christmas* last, that there were other Effects of Mr. *Dormer*, and from whom?

Mr. *Edwards*. Yes, I believe I had; and when I understood that Mr. *Paxton* was the Person who had taken out the Administration, I told him of it.

*E. of Macclesfield*. My Lords, I desire he may be asked who it was that brought him Notice of these Effects?

Mr. *Edwards*. It was a Gentleman that came out of the Country. I don't remember his Name. He was a Person that lived near the Place where Mr. *Dormer's* Country House was. I have forgot his Name.

*E. of Macclesfield*. Can you recollect if you hear his Name? Was his Name *Goodfellow*?

Mr. *Edwards*. I believe it was.

*E. of Macclesfield*. I desire, if you can recollect, who he said he came from?

Mr. *Edwards*. I think he said he came from Mr. *Cottingham*; I don't know that he mention'd your Lordship. I understood your Lordship had been acquainted with it, but not that he acquainted you of it.

Mr. *Campbel* sworn.

Mr. *Lutwyche*. My Lords, I desire that this Witness may be asked, whether he knows of any Goods or Effects of Mr. *Dormer* being discover'd, and at what Time, and how long they had lain in that Place where they were found?

Mr. *Campbel*. In the Year 1721, I did buy a Parcel of Hops, but who they belong'd to I did not then know; but since I find they were Mr. *Dormer's*. They were one hundred and forty eight Bags of Hops. I sold sixteen of them the same Year, one hundred and one since. I bought them of Countrymen; some of one Man, and some of another. I bought them by Commission, but Mr. *Dormer* was not the Man that employ'd me, neither did I receive the Money from his Hands.

Mr. *Lutwyche*. We desire to know how long the Goods did lye in that Place where they were; and whether there was any Loss by the Sale of those Goods, being left so long there.

Mr. *Campbel*. They had lain there above three Years, and I believe, modestly speaking, there was above five hundred Pounds Loss upon them.

Mr. *Plummer*. I desire Mr. *Campbel* may be asked how he came to know they were Mr. *Dormer's* Hops?

Mr. *Campbel*. I never did know they were Mr. *Dormer's* Hops, nor still do I know it, but as I am told.

Mr. *Plummer*. My Lords, I desire he may be asked who told him so?

Mr. *Campbel*. This Gentleman told me so [pointing to Mr. *Paxton*.]

Mr. *Serj. Pengelly*. My Lords, we shall now call Mr. *Paxton*, who hath taken out Administration by the Direction of the Lords Commissioners of the Great Seal; and under that Administration he hath possess'd himself of those Effects, which were scatter'd and lay waste before.

Mr. *Serj. Probyn*. My Lords, I beg Leave this Witness may be first asked one Question. I think he hath said that he bought those Hops by Commission, not by the Order of Mr. *Dormer*, nor for Mr. *Dormer*: I desire he may be asked, by whose Direction they were kept so long by him?

Mr. *Campbel*. He that gave me the Orders to buy them was not Mr. *Dormer*, neither did he pay me the Money. The Reason they lay so long was, I had no Orders to sell them.

Mr. *Serj. Prob*. Who was the Person that gave you Orders to buy them?

Mr. *Campbel*. The Person's Name is one Mr. *Longmead*.

Mr. *Serj. Prob*. Where doth this Person live?

Mr. *Campbel*. He lives at *Islington*.

Mr. *Com. Serj*. My Lords, I desire this Witness may be asked, whether or no about the Time that these Hops were bought, they were not very cheap, and at a low Price?

Mr. *Campbel*. They were at a low Price.

Mr. *Com. Serj*. Whether a great Number of People have not kept Hops upon a Supposition that they would rise?

Mr. *Campbel*. Yes they have, a great many.

Mr. *Serj. Probyn*. I desire he may be asked, whether he did not keep other Hops as well as these by him, for the Advantage of a better Market?

Mr. *Campbel*. Yes, I had several other Hops bought in that Year that I kept for a better Market, and still had a worse. I have Hops by me cost me 5*l.* a Hundred, not worth now 10*s.* a Hundred.

*E. of Macclesfield*. How much a Bag might that be?

Mr. *Campbel*. I can't tell how many hundred may be in a Bag: I can't tell, because they are not weighed

*E. of Macclesfield*. Whereabouts?

Mr. *Campbel*. Sometimes there are three hundred; sometimes 2 and a half, sometimes 2 and 3*qrs.*

Mr. *Lutwyche*. My Lords, to explain this Matter I desire he may be asked, whether this Loss he speaks of, of 4 or 500*l.* happened in the Difference of the Price, or by the Hops being spoiled?

Mr. *Campbel*. Both by the Difference of Price, Hops being cheaper, and by the Antiquity of the Hops.

Mr. *Lutwyche*. My Lords, we desire he may be asked who is this Mr. *Longmead*?

Mr. *Campbel*. He keeps a Shop in *Islington*, he keeps a Grocer's Shop.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he is not Mr. *Dormer's* Servant, or an Agent for him?

Mr. *Campbel*. For any thing I know he was an Agent for Mr. *Dormer*.

Mr. *Com. Serj.* My Lords, we desire he may be asked, whether for ought he knows he was not an Agent for Mr. *Dormer*?

Mr. *Campbel*. I believe he was an Agent for him, and I have good Reason to believe it, because he paid me all the Money, and gave me Orders to buy the Goods.

*E. of Macclesfield*. I desire to know whether the Witness infers that *Longmead* was Mr. *Dormer's* Agent because he paid him Money; might not he have paid him the Money, tho' he had not been his Agent?

*Ld. Ch. Jus. King*. Speak your own Knowledge, whether he was Agent for Mr. *Dormer* or no.

Mr. *Campbel*. I never did ask him whose they were: He employed me, and I bought the Goods, and did suppose they were for Mr. *Dormer*. I never asked him whether they were his Goods or not.

Mr. *Sol. Gen.* My Lords, we desire that Mr. *Paxton* may be called, to shew how he discovered these Effects.

Mr. *Nicholas Paxton* Sworn.

Mr. *Lutwyche*. My Lords, we desire Mr. *Paxton* may give your Lordships an Account what he knows of these Hops.

Mr. *Paxton*. After I had got Letters of Administration to Mr. *Dormer* granted me, I did make what Inquiry I could relating to the Effects of Mr. *Dormer*. This Mr. *Longmead* came and told me of some Hops; that he was Servant to Mr. *Dormer*, and had bought them by his Direction. Then we went to Mr. *Campbel's* who took out a Handful and said they were Saleable, and would bring in about 200*l.* He told me they cost 800*l.* and it would be best to dispose of them as fast as I could, that there might be no more Loss.

They are not yet sold, they may be worth about 200*l.*

Mr. *Lutwyche*. My Lords, It is admitted by the Answer, that Mr. *Dormer* absented himself and absconded. It was notorious, and talked of by every Body: It will lye upon this Noble Lord to give an Account what he did thereon. My Lords, we will now proceed to give your Lordships an Account of this Composition made with *Wilson* who was indebted to *Dormer*. This *Wilson* was a Banker, the Person that Mr. *Dormer* intrusted with Money; and upon that Occasion, there being a great Debt due to *Dormer*, as is set forth in the Articles, a Composition is made with *Wilson* on Account of that Debt. There were such Dealings and Proceedings therein, as will appear to your Lordships to have been unusual and unwarrantable. We beg Leave therefore to shew your Lordships a written Evidence, an Order under the Hand of this noble Lord himself for this Composition though never drawn up: And indeed your Lordships will observe that through the whole Course of these Proceedings, there is not any one Affidavit, or any one Order, or any Report filed in the usual Manner. From whence we may infer, that it was intended to be a clandestine thing, that nothing might appear of it upon Record, as other things do. The first thing we shall beg Leave to shew is, an Assignment from Mr. *Dormer* to one of the Masters in Chancery of this Debt. When we have shewn that Assignment, then we shall beg Leave to give your Lordships an Account of the Methods and Proceedings thereupon.

Mr. *William Green* sworn, and the Assignment produced.

Mr. *Lutwyche*. My Lords, we desire this Witness may be asked, whether he saw this Deed executed, and by whom?

Mr. *Green*. My Lords, I did see this Deed executed by the late Mr. *Dormer*: I am one of the Witnesses to it, and *John Jones* is the other Witness.

Mr. *Lutwyche*. My Lords, we desire this Deed may be read.

Clerk reads. This Indenture made the six and twentieth Day of *July*, *Ann. Dom.* 1721, and in the seventh Year of the Reign of our Sovereign Lord *George* by the Grace of God, King of *Great-Britain*, *France* and *Ireland*, Defender of the Faith, &c. Between *Fleetwood Dormer* of *Lincolns-Inn* in the County of *Middlesex*, *Esq;* late one of the Masters of the High Court of *Chancery* of the one Part, and *Hem y Edwards* of *Lincolns-Inn* aforesaid, *Esq;* one of the Masters of the said High Court of *Chancery* of the other Part. Whereas *William Wilson* Citizen and Goldsmith of *London*, is and stands justly indebted unto the said *Fleetwood Dormer* upon Account, in the full and just Sum of twenty four thousand and forty six Pounds and four Shillings of lawful Money of *Great-Britain*, or upwards, as by the Books of the said *William Wilson* may and doth appear: And whereas the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in the said High Court of *Chancery*, in several considerable Sums of Money, for and on Account of Moneys brought before and paid to him as one of the Masters of the said Court: Now therefore for the more speedy getting in and recovering of the aforesaid Debt, due and owing by  
and

and from the said *William Wilson* as aforesaid; and also for the more speedy and effectual Payment of all such Sum and Sums of Money as are owing by the said *Fleetwood Dormer* as aforesaid: This Indenture witnesseth, That for the Ends and Purposes aforesaid, and for and in Consideration of the Sum of ten Shillings of lawful Money of *Great-Britain* to the said *Fleetwood Dormer* in Hand paid by the said *Henry Edwards*, at or before the enfealing and delivery of these Presents, the Receipt whereof is hereby acknowledged: He, the said *Fleetwood Dormer*, hath granted, assigned, transferred, and set over, and by these Presents, doth grant, assign, transfer, and set over unto the said *Henry Edwards*, his Executors, Administrators, and Assigns, the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and all and every Part thereof, and all and every other Debt or Debts, Sum or Sums of Money any ways due or owing by or from the said *William Wilson* to the said *Fleetwood Dormer* and every Part thereof, and all Interest due or to grow due for the same, and all Bonds, Bills, Notes, and other Securities, for the same or any Part thereof. And all the Right, Title, Interest, Property, Benefit, Advantage, Claim, and Demand whatsoever, both in Law and Equity, of him, the said *Fleetwood Dormer*, of, in, to, or out of the same, and every or any Part thereof, to have, hold, receive, perceive, take, and enjoy the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and all such other Debts and Sums of Money as are due or owing to the said *Fleetwood Dormer* by the said *William Wilson* as aforesaid, and every Part thereof, and all the Benefit thereof, and all and singular other the Premises unto the said *Henry Edwards*, his Executors, Administrators, and Assigns upon trust. Nevertheless, and to the Intent and Purpose that he, the said *Henry Edwards*, his Executors, Administrators, or Assigns, shall and do issue, pay, apply, and dispose of the same, or such Part or Parts thereof, as shall from time to Time be by him or them got in and received in such manner as the said High Court of *Chancery* shall in that Behalf order or direct, for and towards Payment and Satisfaction of such Debts and Sums of Money as are now due and owing by the said *Fleetwood Dormer*, for or on Account of Monies brought before and paid to him, as one of the Masters of the said Court. And in the mean time, after Receipt thereof, and until the same shall be so paid, applied, and disposed of, shall and do deposit, lend, or place out the same, or any Part thereof, in such Manner as the said Court of *Chancery* shall in that Behalf order or direct. And for the better enabling the said *Henry Edwards*, his Executors, Administrators, and Assigns, to get, call in, and receive the aforesaid Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the said hereby assigned Premises upon the Trusts aforesaid: He, the said *Fleetwood Dormer*, hath made, ordained, constituted and appointed, and in his Place and Stead put and deputed, and by these Presents doth make, ordain, constitute and appoint, and in his Place and Stead, put and depute the said *Henry Edwards*, his Executors, Administrators, and Assigns, his true and lawful Attorney and Attornies irrevocable for him the said *Fleetwood Dormer*, and in his Name; but upon the Trusts aforesaid, to ask, demand, sue for, recover, and receive of and from the said *William Wilson*, his Heirs, Executors, or

Administrators, and all and every, or any other Person or Persons whom it may concern, the aforesaid Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the said hereby assigned Premises, and every or any Part thereof upon the Trusts aforesaid, and likewise to compound for the same, and every or any Part thereof, as he or they shall in their Discretions think fit, and upon non Payment of the same Debt or Sum, Debts or Sums, or any Part thereof, to bring, commence, and prosecute such Action or Actions, Suit or Suits, either at Law or in Equity, or elsewhere, for the Recovery thereof, as he or they shall be advised, and on Payment thereof, or any Part thereof, to give Receipts and Discharges for the same, and one or more Attorney or Attornies for the Purpose aforesaid, to make and constitute, and at Pleasure to revoke, and generally to do and act in the Premises for the recovering and obtaining of the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the said hereby assigned Premises, and every or any Part thereof, as fully and effectually to all Intents and Purposes as he the said *Fleetwood Dormer*, his Executors or Administrators might have done; giving and hereby granting unto the said *Henry Edwards*, his Executors, Administrators and Assigns, the full and whole Power and Authority of him the said *Fleetwood Dormer*, in and about the Premises upon the Trusts aforesaid; hereby ratifying, confirming, and allowing all, and whatever the said *Henry Edwards*, his Executors, Administrators, or Assigns, or his or their Attorney or Attornies shall lawfully do or cause to be done in or about the Premises by Vertue of these Presents. And the said *Fleetwood Dormer* doth hereby for himself, his Heirs, Executors, and Administrators, covenant, promise, and agree to and with the said *Henry Edwards*, his Executors, Administrators, and Assigns in Manner following: That is to say, that he, the said *Fleetwood Dormer*, hath not received, compounded, released or discharged, or consented to the receiving, compounding, releasing, or discharging the said Debt or Sum of twenty four thousand and forty six Pounds and four Shillings, and other the hereby assigned Premises, or any Part thereof, and that he, his Executors, or Administrators shall not, nor will at any time hereafter, receive, compound, release, or discharge the same or any Part thereof, without the Consent of the said *Henry Edwards*, his Executors, Administrators, or Assigns, first thereunto had and obtained in writing under his or their Hands. And further, That he the said *Fleetwood Dormer*, his Executors and Administrators, shall and will at the Requests, Costs and Charges of the said *Henry Edwards*, his Executors, Administrators, or Assigns, make, do, and execute, or cause and procure to be made, done, and executed, any further or other lawful and reasonable Acts, Deeds, Powers and Authorities, for the better enabling him, the said *Henry Edwards*, his Executors, Administrators, and Assigns, to sue for, recover, and obtain the said Debt and Premises hereby assigned, and every or any Part thereof upon the Trust aforesaid. And it is hereby declared and agreed that the said *Henry Edwards*, his Executors, Administrators, or Assigns shall not be charged or chargeable with, or accountable for any more Monies than he or they shall actually receive, or shall come to his or their Hands by Vertue of these Presents; and that it shall and may be

lawful to and for the said *Henry Edwards*, his Executors, Administrators and Assigns, in the first Place, by and out of the Premises, to deduct and reimburse him and themselves all such Losses, Costs, Charges and Expences as he, they, or any of them shall sustain or be put unto, by Reason of the Trust hereby in him reposed, or the Management or Execution thereof, or any other thing in any wise relating thereunto: In witness whereof, the said Parties to these Presents have hereunto interchangeably set their Hands and Seals the Day and Year first above written.

*Fleetwood Dormer.*

Mr. *Lutwyche*. The next thing we shall trouble your Lordships with in relation to this Matter of the Composition, is a Petition of Mr. *Edwards*, to which there is an Answer. The Answer is writ by Mr. *Cottingham*, and signed by the noble Lord. I mentioned to your Lordships that no Order is drawn up upon it: Nothing appears in publick: Therefore we must beg Leave to prove the Earl's Hand to this Order made upon this Petition.

*E. of Macclesfield*. After taking the Petition in his Hand and looking upon the Name subscribed to the Answer written upon it, said, My Lords, this is my Hand.

Clerk reads,

To the Right Honourable Thomas Earl of Macclesfield, Lord High Chancellor of Great-Britain.

The humble Petition and Representation of Henry Edwards, Esq; one of the Masters of the high and honourable Court of Chancery.

*Sheweth,*

THAT *William Wilson*, Citizen and Goldsmith of London, is and stands justly indebted to *Fleetwood Dormer*, Esq; late one of the Masters of this Court upon Account, in the full Sum of twenty four thousand and forty six Pounds, four Shillings, as by the Books of the said *William Wilson* doth and may appear.

That the said *Fleetwood Dormer* is and stands justly indebted to divers Persons, Suitors in this Court, in several considerable Sums of Money. And for the more speedy getting in and recovering the said Debt, and effectual Payment of all such Sum and Sums of Money as are owing by the said *Fleetwood Dormer* as aforesaid, the said *Fleetwood Dormer*, for that End and Purpose, hath by Indenture bearing Date the 26th of July 1721, granted, assigned, transferred, and set over to your Petitioner, his Executors, Administrators; and Assigns, the said Debt or Sum of twenty four thousand and forty six Pounds four Shillings in Trust, and to the Intent that your Petitioner shall pay, apply, and dispose of the same, or such Part thereof as shall from time to time be by him got in and received of and from the said *William Wilson*, in such Manner as this Court shall order and direct.

That it appears to your Petitioner, that the said

*William Wilson* is indebted to divers other Persons in great Sums of Money, and for some time hath not been able to carry on his Business, or able to make good and pay the said Debt so assigned to your Petitioner; but hath lately offered to your Petitioner and his other Creditors to come to a Composition, and to pay them in Proportion the utmost he is able. And your Petitioner doubting whether he can with Safety to himself, agree to any such Composition,

Humbly prays your Lordship would be pleased to refer it to one of the Masters of this Court, to see if such Composition so proposed by the said *Wilson* be for the Benefit of the Persons intituled to receive the same.

And your Petitioner shall ever pray, &c.

30<sup>th</sup> of June 1722.

Be it as is prayed, and to that End let it be referred to Mr. *Hiccocks* one of the Masters of this Court, and let the Master speed his Report: After which, such further Order will be made as shall be just; of which give Notice forthwith.

Macclesfield C.

Mr. *Lutwyche*. My Lords, I beg Leave to take Notice, that in this Petition it is expressly recited, that *Dormer* was indebted to the Suitors of the Court, and that being so, we apprehend the greatest Care should have been taken for their Benefit. Your Lordships shall see in the Progress of this thing, how it was transacted. I believe any Person that is concerned in the Court of Chancery, hath not known such a Proceeding in the most trifling Matter whatsoever. My Lords, the next thing is a second Petition, said to be with a Report annexed, but we can't find it filed; here is a Paper of Mr. *Hiccocks* not stamp't nor filed, which we do apprehend to be the Report meant, and therefore we desire that may be first read.

Clerk reads 26<sup>th</sup> of July 1722.

WHEREAS by an Order made by the Right Honourable the Lord High Chancellor of Great Britain, the thirtieth of June last, upon the humble Petition of *Henry Edwards*, Esq; one of the Masters of this Court, I am directed to see if the Composition in the said Order mention'd, to be offer'd or propos'd to be made by *William Wilson*, Citizen and Goldsmith of London, to the said Mr. *Edwards*, as Assignee of *Fleetwood Dormer*, Esq; late one of the Masters of this Court, who was a Creditor of the said *William Wilson*, for the Sum of 24046 l. 4s. 0d. in the said Petition mention'd: I have been attended by the said Mr. *Edwards*, and by the said *William Wilson*, and considered of the several Matters by the said Petition and Order to me referred. And the said *William Wilson* hath under

der his Hand in Writing propos'd to assign over to the said Mr. *Edwards* (as a Composition for, and in full Discharge of the said Sum of 24046 *l.* 4 *s.* 0 *d.*) the Sum of 10000 *l.* part of a larger Sum due to the said *William Wilson*, from *Edward Poulter* of *Hackney*, in the County of *Middlesex*, Gent. and to pay to the said Mr. *Edwards* in Specie the Sum of 1463 *l.* 2 *s.* 1 *d.* over and above the Sum of 560 *l.* already paid to the said Mr. *Dormer* in part of the said Composition. And upon Consideration had of the Circumstances of the said *William Wilson*, and the said several Matters, I am of Opinion that the accepting the said Composition will be for the Benefit of the Person or Persons entitled to receive the same. All which I humbly certify and submit to his Lordship.

*Hiccocks.*

Mr. *Lutwyche*. Now read the Petition of Mr. *Edwards*, and the Order thereupon.

*Clerk reads.*

To the Right Honourable Thomas Earl of Macclesfield, Lord High Chancellor of Great Britain.

The humble Petition of Henry Edwards, Esq; one of the Masters of the high and honourable Court of Chancery.

*Sheweth,*

THAT upon your Petitioner's former Petition prefer'd to your Lordship relating to *William Wilson*, Citizen and Goldsmith of London, your Lordship the 30<sup>th</sup> of June last was pleas'd to refer it to Mr. *Hiccocks*, one of the Masters of this Court, to see if the Composition mention'd in the said Petition and Order to be propos'd by the said *Wilson*, would be for the Benefit of the Persons entitled to receive the same.

That the said Mr. *Hiccocks* having been attended by your Petitioner, and the said *Wilson* both pursuant to your Lordship's said Order, made his Report dated the 26<sup>th</sup> of July last, whereby he certifies that he is of Opinion that the accepting of the Composition in his Report mention'd, will be for the Benefit of the Person or Persons entitled to receive the same, as by the Report annexed.

Wherefore your Petitioner most humbly prays your Lordship to take into your Consideration the Matter of the said Report, and to order your Petitioner to accept of the said Composition upon the Terms therein mention'd, if your Lordship shall so think fit, or to make such other and further Order in the Premises, as to your Lordship shall seem most meet.

And your Petitioner shall ever pray, &c.

3<sup>d</sup> of August, 1722.

On the Report annexed be it as is prayed. Of which give Notice forthwith,  
Macclesfield, C.

Mr. *Lutwyche*. My Lords, I must beg Leave to make one Observation upon this, that the noble Lord may explain it, for I believe there is no Precedent for it; when there is a Composition thus

to be made, and thus referred, and a Report hath been made, The Prayer of the Petition is, that Mr. *Edwards* may be order'd to accept of this Composition, or to make such other Order, as his Lordship should think fit. The Answer to it is, Be it as is prayed, of which give Notice forthwith; by which I suppose the Parties understood that it was ordering Mr. *Edwards* to accept of this Composition. Now it is wonderful to me, if he was order'd to accept of the Composition, why it is said, give Notice forthwith? What? when the thing is done? Besides, there is another thing more material, to whom should such Notice be given? surely to the Suitors of the Court. But it is well known his Lordship had not appointed any Solicitor for the Suitors of the Court, and they had no Notice, tho' here is a Semblance or Shew of what is done in other Cases. We shall beg Leave to shew next to your Lordships, that these Orders on these Petitions, this Report, and these Proceedings, were not one of them entred or filed as Orders usually are.

Mr. *Plummer*. My Lords, I beg Leave to make one Observation before this Matter goes over. The Petition is by Mr. *Edwards* only, one of the Masters, and it is that my Lord *Macclesfield* would be pleas'd to order him to accept of the Composition. None of the Suitors of the Court, who were the Persons entitled to receive the same, are Petitioners.

*Clerk* reads two Certificates from, and signed by *Edward Goldsbrough*, Deputy Register, that there were no such Orders entred, nor no such Report filed.

Mr. *Lutwyche*. My Lords, the Composition is signed by *William Wilson*. I desire Mr. *Edwards* may be asked whether he knows Mr. *Wilson*'s Hand?

Mr. *Edwards*. This is signed by Mr. *Wilson*; it is Mr. *Wilson*'s Hand.

*Clerk reads,*

WHEREAS a Suit in Chancery is now depending between Mr. *Edward Poulter* of *Hackney*, and myself, for the Sum of 22060 *l.* 12 *s.* 5 *d.* which he agreed to pay me for and upon closing all Accounts between us: And whereas *Fleetwood Dormer*, Esq; late a Master in the high Court of Chancery, being indebted to divers Persons, Suitors in the said Court, in several considerable Sums of Money, for and on Account of Money brought before and paid to him as one of the Masters of the said Court, he the said *Fleetwood Dormer*, for the better Payment thereof, did by Assignment dated the 26<sup>th</sup> of July 1721, assign over to *Henry Edwards*, Esq; one of the Masters of the said Court, a Debt or Sum of 24046 *l.* 4 *s.* which was and is due and owing from me to him the said *Fleetwood Dormer*: And whereas I being incapable of paying the said Debt of 24046 *l.* 4 *s.* did lately propose as a Composition for and in full Discharge of the same, to assign to the said *Henry Edwards* the Sum of 10000 *l.* part of the Sum of 22060 *l.* 12 *s.* 5 *d.* due to me from the said *Edward Poulter*, as aforesaid; and likewise to pay to him the said *Henry Edwards*, the Sum of 1463 *l.* 2 *s.* 1 *d.* in Specie, over and above the Sum of 560 *l.* before paid to the said Mr. *Dormer*, in part of the said



faid Composition: And whereas on a Petition prefer'd to the Right Honourable the Lord High Chancellor of *Great Britain*, by the faid *Henry Edwards*, representing the Matter of the faid Propofal; and after feveral fubfequent Proceedings had upon the faid Petition, his Lordfhip was pleas'd, by Order dated the third of *Auguft*, 1722, to order the faid *Henry Edwards* to accept of the faid Composition: And the faid *Henry Edwards* having thereupon agreed to accept of the faid Composition, accordingly I do hereby, in Consideration thereof, affign over to the faid *Henry Edwards* the Sum of ten thousand Pounds, part of the Sum of twenty two thousand and fixty Pounds, twelve Shillings and five Pence, due to me from the faid *Edward Poulter* as aforefaid, having already paid him the faid Mr. *Edwards*, the other Sum of 1463*l.* 2*s.* 1*d.* before-mention'd. And I do hereby promife to pay to the faid *Henry Edwards*, Efq; or his Order, the faid Sum of ten thousand Pounds, on my recovering the Sum of twenty two thousand and fixty Pounds, twelve Shillings and five Pence aforefaid, or otherwife to pay him a like Proportion of what I fhall recover, more or lefs, from the faid *Edward Poulter*. And I do hereby further promife, that I will not do any Act to incumber or difcharge the Demand I now have againft the faid *Edward Poulter*, without the Consent of the faid *Henry Edwards*. And whereas the faid Mr. *Edwards* does now accept of the faid Composition, I do hereby declare and agree, that if I do not on Demand pay him the before-mention'd Proportion of what I fhall recover from the faid *Edward Poulter* as aforefaid, or do any ways difcharge the Demand I now have againft him, without the Consent of the faid *Henry Edwards*, that then the faid Composition fo made by the faid *Edwards*, fhall be void, and of no effect, as if it had never been made. And I do hereby further promife, I will at my own Charge profecute the faid Suit, and alfo do and execute all further and other Acts that fhall be neceffary for the better affigning to the faid *Henry Edwards*, Efq; the before-mention'd Proportion of what I fhall or may recover as aforefaid, from him the faid *Edward Poulter*, as he the faid *Henry Edwards* fhall at any Time require. Witness my Hand this twenty eighth Day of *Auguft*, 1722.

*William Wilfon.*

31<sup>st</sup> of *October*, 1724. Paid to *Henry Edwards*, Efq; the Sum of one thousand Pounds, in part of this Note or Affignment.

*William Wilfon.*

Mr. *Lutwyche*. My Lords, this Composition which hath been read to your Lordfhips, is recited to be in full Satisfaction and Difcharge of *Wilson's* Debt. Now we beg Leave Mr. *Edwards* may be asked, whether he made any Application to the Earl of *Macclesfield*, before the firft Petition was preferr'd?

Mr. *Edwards*. My Lords, I had received Propofals from Mr. *Wilson*. He came to me and told me, he had a Sum of Money in his Hands, and was

willing to pay the Debt to Mr. *Dormer*, in Proportion with his other Creditors, and asked me whether I would accept of a Composition, and give him a Difcharge in full. I told him I had no Power to make a Composition, but however I would represent it to fome of the Mafters; and accordingly I fpoke to Mr. *Hiccocks*, who was then fenior Mafter, and told him the Propofal Mr. *Wilson* had made; and I believe I mention'd it to others, but efppecially to Mr. *Hiccocks*, he being the fenior Mafter, and more particularly concerned in Mr. *Dormer's* Affairs. Mr. *Hiccocks* was of Opinion I could not fafely make a Composition. I asked, What Method then was the moft proper to be taken? if that was really all he had to pay, I had better feure that than have nothing. He faid he did not fee why it might not be in this Cafe as in other Cafes; whether upon a Petition to my Lord Chancellor, he might not direct an Enquiry to be made by a Mafter, whether it was for the Benefit of the Parties to make fuch Composition or not. Upon that I waited on my Lord Chancellor, and acquainted him with Mr. *Wilson's* Propofal. I told his Lordfhip, I thought I had not Power to do it. He faid, I think fo too; I don't fee that you have Power to do it. Said I, I am informed that it is ufual in Cafes of this Nature, to apply to the Court by Petition, that it may be referred to a Mafter, to fee whether the accepting of this Composition be for the Benefit of the Parties concerned or not. Yes, fays my Lord, I think that is very proper, that will indemnify you, I would have you prefer a Petition; which accordingly I did.

Mr. *Lutwyche*. I would beg Leave to ask in Relation to what he mentions, that it was taken Notice of that he had no Power to make fuch Composition, whether any thing was faid whether my Lord *Macclesfield* had fuch a Power?

Mr. *Edwards*. No, there was nothing faid of that.

Mr. *Plummer*. My Lords, I defire he may be asked, whether any of the Suitors were acquainted with this intended Composition?

Mr. *Edwards*. No.

Mr. *Sol. General*. Did my Lord *Macclesfield* give any Direction to give Notice to any of the Suitors?

Mr. *Edwards*. No.

Mr. *Plummer*. My Lords, I defire he may be asked, if he himfelf attended Mr. *Hiccocks* when Mr. *Wilson* was before Mr. *Hiccocks*?

Mr. *Edwards*. I am not fure I was there at any time with Mr. *Wilson*.

Mr. *Plummer*. If he knows what Methods were taken to know what Mr. *Wilson* was worth?

Mr. *Edwards*. I underftood that Mr. *Hiccocks* and Mr. *Rogers*, the two fenior Mafters, upon Mr. *Dormer's* abfenting himfelf, had Mr. *Dormer's* Accompts laid before them, and that they were directed to infpect thofe Matters; and I was informed they did look into *Dormer's* Books, and had alfo the Perufal and Infpection of Mr. *Wilson's* Books, to fee how Mr. *Dormer's* Affairs flood in thofe Books.

Mr. *Plummer*. My Lords, I defire Mr. *Edwards* may be asked if any Body was employ'd for the Suitors on their Behalf?

Mr.

Mr. *Edwards*. I was before Mr. *Hiccocks*, but not present with Mr. *Wilson*.

Mr. *Plummer*. I ask if any Body on the Suitors Behalf was before Mr. *Hiccocks*, when Mr. *Wilson* was there, to see and cross-examine him?

Mr. *Edwards*. I don't remember there was.

Mr. *Serj. Pengelly*. My Lords, I desire Mr. *Edwards* may be asked whether this Petition is of his own Hand-writing?

Mr. *Edwards*. No, my Lords.

Mr. *Serj. Pengelly*. Do you know whose it is?

Mr. *Edwards*. It is my Clerk's Hand.

Mr. *Serj. Pengelly*. Whether the two last Lines were struck out before the Answer to the Petition, and by what Hand?

Mr. *Edwards*. I don't know when they were struck out.

Mr. *Serj. Pengelly*. My Lords, we will beg Leave to mention what it is. At the End of the first Petition, the Master desires an Indemnification by the Order of the Court: Part of the Petition is, that he may be indemnified and saved harmless in making such Composition. But that is struck out before the Answer, which shews, as I humbly apprehend, the very Notice that the Earl of *Macclesfield* himself took, how dangerous and hazardous that Transaction was.

Read the Words.

Clerk reads. And that your Petitioner may be indemnified and saved harmless in making such Composition.

Mr. *Serj. Pengelly*. Do these Words stand now in the Reading?

Clerk. No, they are razed out.

Mr. *Edwards*. I remember this was a Paper that I laid before the honourable Committee. I was a little surprized to see those Words struck out; but when they were struck out I can't say, nor by whom.

Mr. *Lutwyche*. I desire he may be asked, if they were struck out before he delivered the Petition into the Committee?

Mr. *Edwards*. Yes they were.

Mr. *Sol. Gen.* My Lords, we desire he may be asked how much he hath received of this Composition?

Lord *Lechmere*. I desire him to explain himself, whether these Words were struck out after the Petition delivered, and before the Order made by the noble Earl?

Mr. *Edwards*. My Lords, I don't remember ever to have taken Notice, that those Words were struck out, till I had Occasion to look for it to lay it before the Committee.

Lord *Lechmere*. Whether he hath any Doubt whether they were struck out before they were delivered into the Committee?

Mr. *Edwards*. They were struck out before I delivered them into the Committee.

Mr. *Sol. Gen.* In whose Custody was this Petition?

Mr. *Edwards*. I believe part of the Time in Mr. *Hiccocks's*; Mr. *Hiccocks* sent it to me, and I have had it ever since.

Mr. *Serj. Pengelly*. Whether he struck out these Words that were inserted for his own Indemnification?

Mr. *Edwards*. No, upon my Oath I did not.

Earl of *Abingdon*. As I apprehend, there was no Commission of Bankruptcy against *Wilson*, therefore I would know what Method was taken to inform the Court of the real Substance and Ability of *Wilson* before this Composition was made?

Mr. *Edwards*. I know of no other Application made to the Court by Mr. *Wilson*.

Earl of *Abingdon*. Was *Wilson* examined upon Oath?

Mr. *Edwards*. Mr. *Hiccocks* told me that Mr. *Wilson* had made an Affidavit, that this Sum of Money which he proposed as a Composition, was what he was able to pay in Proportion with the rest of his Creditors, and that he grounded his Report thereupon.

Mr. *Lutwyche*. Was this Affidavit ever filed?

Mr. *Edwards*. No, my Lords.

Mr. *Sol. Gen.* My Lords, we desire he may give an Account how much he hath received of this ten thousand Pounds.

Mr. *Edwards*. The first Sum was fourteen hundred and odd Pounds, and the Sum of one thousand Pounds since.

Mr. *Sol. Gen.* How much of this was of the ten thousand Pounds?

Mr. *Edwards*. Only the one thousand Pounds.

Mr. *Sol. Gen.* What is become of *Poulter*?

Mr. *Edwards*. *Wilson* hath told me that he is in *Holland* or *France*.

Mr. *Sol. Gen.* What was his Character, as to Substance, at the Time of his Composition?

Mr. *Edwards*. I never met any Body that could give an Account of his Character. All I heard of him was from Mr. *Wilson* himself.

Mr. *Lutwyche*. My Lords, I desire he would acquaint your Lordships when the one thousand Pounds was paid?

Mr. *Edwards*. I can't recollect exactly the Time.

Mr. *Lutwyche*. As near as you can, before or since *Christmas*?

Mr. *Edwards*. I believe it was in *September* or *October* last; I believe in *October*.

Mr. *Sol. Gen.* I desire Mr. *Edwards* may inform your Lordships what he thought of *Poulter*, at the Time of the Composition, whether he looked upon him as a Man of Substance?

Mr. *Edwards*. I could make no Judgment of the Man, I never saw him before; I know nothing of him, otherwise than as Mr. *Wilson* told me.

Mr. *Sol. Gen.* That is no Answer to my Question, which is what his Opinion was as to his Substance at the Time of the Composition, whether he would have trusted him with one hundred Pounds?

Mr. *Edwards*. I can't tell what Answer to give to it; *Wilson* represented him to me as a Man able to pay the Debt; and from his Representation I believed that *Poulter* was sufficient.

Mr. *Sol. Gen.* Whether he enquired into *Poulter's* Character?

Mr. *Edwards*. There was no Body I knew to enquire of.

Mr. *Sol. Gen.* Did he enquire, or did he not?

Mr. *Edwards*. I asked Mr. *Wilson* as many Questions as I could, and what his Opinion was about him. He told me he believed he was able to pay his Debts, and he told me one *Helbut* a *Jew*, who

was his Bail, could tell his Substance. I happen'd to meet *Helbut* at the *Rainbow Coffee-House*, and I asked him if he knew *Poulter*. He said Yes. Says I, is he a Man of any Substance, What is he? No, says he, I believe he is in very mean Circumstances. This is all I ever asked.

*Sol. Gen.* What was your Opinion of this Man's Abilities?

*Mr. Edwards.* My Lords, I told you that as to the account I had of him, *Mr. Wilson* gave me a great assurance that he was a Man of Ability.

*Mr. Plummer.* I desire he may be ask'd, whether *Mr. Wilson* hath not paid his whole Debt to several other Creditors?

*Mr. Edwards.* I am inform'd he hath paid his full Debt to some Creditors.

*Mr. Plummer.* My Lords, I desire he may be ask'd, what Directions he received from my Lord *Macclesfield* to inquire into this Man's Circumstances?

*Mr. Edwards.* I had no Directions.

*Mr. Plummer.* Whether any Inquiry was made by the Earl of *Macclesfield*?

*Mr. Edwards.* Not as I know of.

*Mr. Lutwyche.* I think he mentioned one *Helbut* as his Bail: I desire to know whether there was a Suit commenced for this Debt assigned?

*Mr. Edwards.* I understood it was for this Debt assigned, which *Wilson* recovered at Law.

*Mr. Serj. Pengelly.* My Lords, I desire he may be asked, whether *Mr. Poulter* hath appeared here and been esteemed solvent, or a Person quite gone away?

*Mr. Edwards.* I have not seen *Mr. Poulter*, nor any that have seen him, for some considerable time.

*Mr. Serj. Pengelly.* My Lords, I beg Leave to make one Observation, and it is to save your Lordships time; that is, That you would be pleas'd to observe in the Proceedings upon this Article, the several Acts and Orders made by the Earl of *Macclesfield* relating to this Deficiency of *Dormer's*, do take Notice of his Deficiency, and you'll find the Earl himself doing one Act which makes a Deficiency; that is, compounding a Debt due from *Wilson* to *Dormer*; and therefore those Orders having been read before your Lordships, you will please to retain them in your Memory, till we come to the 6th Article, wherein it is charged that there was a Deficiency in *Dormer's* Office, and there we shall shew that this noble Lord declared that he never knew of any Deficiency; and by an Order made in Court, pronounced by himself, he then did direct that a Master should inquire if there was any Deficiency in this Office; so that those publick Acts won't be necessary to be read over again upon that Article, but as now produced, will be sufficient to prove the Notice the noble Earl had of this Deficiency, and that even he made part of the Deficiency himself.

*Mr. Lutwyche.* My Lords, we have done upon these two Articles we have opened.

*Mr. Serj. Probyn.* My Lords, if the Gentlemen have done, we desire to ask some Questions,

and first we beg Leave that he may be ask'd, whether any of the Masters were acquainted with this Agreement or Composition with *Mr. Wilson*?

*Mr. Edwards.* I don't remember that any were, but *Mr. Hiccocks*.

*Mr. Serj. Probyn.* My Lords, we desire he may recollect whether there was any Consultation between him and any other Master, as to the Manner that this Composition should be made, before it was accepted, and whether it was a reasonable Composition or not?

*Mr. Edwards.* I mentioned it to two or three other Masters at the publick Office, but I can't charge my Memory particularly who they were.

*Mr. Serj. Probyn.* Was that before the time that the Composition was made?

*Mr. Edwards.* Before the time I applied to my Lord *Macclesfield*.

*Mr. Com. Serj.* My Lords, I desire that *Mr. Edwards* may inform your Lordships from whom it was that he received this Information, that several of the Creditors of *Wilson* were paid their full Debts?

*Mr. Edwards.* The first Person that informed me was *Sir Laurence Carter*; I happened to be at his Chambers, and naming to me the Affair of *Wilson*, he told me his Brother *Mr. Thomas Carter* had received 120*l.* which *Mr. Wilson* owed him, and which was his whole Sum.

*Mr. Com. Serj.* I desire to know when it was that he received that Sum?

*Mr. Edwards.* There was no time mentioned when that was paid him: As near as I can recollect the time, when *Sir Laurence Carter* told me this, it was soon after the Composition.

*Mr. Com. Serj.* My Lords, I desire he may recollect, whether this Payment was made before the Composition or after; did not he say it was before the Composition?

*Mr. Edwards.* No, I don't remember that.

*Mr. Serj. Probyn.* I desire he may be asked, whether he knows any thing of this Payment to *Mr. Carter* of his own Knowledge?

*Mr. Edwards.* No, I don't know it of my own Knowledge, but I believe it to be very true.

*Mr. Serj. Probyn.* Since he had this Information of one Debt being paid intirely, tho' he had compounded with others, I desire he may be ask'd whether he ever charg'd *Mr. Wilson* with it?

*Mr. Edwards.* Yes, my Lords, I did: A little after I went to *Mr. Wilson*, and I told him that I was informed he had paid *Mr. Thomas Carter* his full Demand, and it was rumoured about that he had paid several others their full Debts, and that it look'd unfair. Says he, this Money was lent me by my particular Friends, to pay off some little straggling Debts to keep me up in my Business, and therefore I was unwilling he should lose it.

*Mr. Serj. Probyn.* Whether did he apprehend this to be a new Debt contracted since his Failure, or an old one due before?

*Mr. Edwards.* I don't know when the Debt was contracted.

*Mr. Com. Serj.* I apprehend he says, that this Money was lent him by some Friends to set him up again?

*Mr. Lutwyche.* Really, my Lords, we would not interrupt the Gentlemen, but I take it, what they are going on with is not Evidence. We must submit it, whether what *Mr. Wilson* said is Evidence, either on the one Side or on the other?

*Mr. Com. Serj.* We must humbly be in your Lordships Judgment, whether this kind of Evidence be not as proper on our Side as on the other? most of the Evidence *Mr. Edwards* has given to affect the noble Earl, has been only Informations he has had from *Wilson* or *Sir Laurence Carter*, and yet now the learned Manager objects the same Information must not be admitted as Evidence on the other Side. I apprehend if any Favour is to be shewn on either Side, it should rather go on in the Support of Innocence.

*Lords.* Go on, go on.

*Mr. Sol. Gen.* My Lords, we don't oppose their going on, we only beg Leave to set your Lordships right. We did not give a tittle of Evidence of what *Mr. Wilson* said: We have proved the Petitions, we have proved the Orders, we have proved the Facts; we did not mention a Word of *Sir Laurence Carter*, it sprung from this Examination; but we are willing they may go on, if your Lordships think fit.

*Earl of Macclesfield.* My Lords, I apprehend there is no Occasion to give your Lordships any trouble. If what this Gentleman hath said, with relation to *Mr. Wilson's* Payment to his Creditors is no Evidence, it needs no Answer.

*Mr. Com. Serj.* My Lords, we desire that *Mr. Edwards* may inform your Lordships, whether or no there was any Consultation among the Masters relating to this matter, and what their Opinion was?

*Mr. Edwards.* I don't know of any Consultation about it.

*Mr. Com. Serj.* We desire that he may inform your Lordships, whether he made any Acknowledgment for his being admitted into his Office, and to whom this Money was paid, and to what Purpose, and how applied?

*Mr. Edwards.* My Lords, the Steps I took to be admitted into my Office, if your Lordships will give me leave to trouble your Lordships with the Narrative, were these. First, I applied to *Mr. Godfrey* one of the Masters, with whom I had most Acquaintance: I told him I heard *Mr. Dormer's* Office would be disposed of; he told me he believed it would. Says I, if I could be accepted I have some Thoughts of treating for it, what is the usual method in those Cases to be recommended to my Lord Chancellor? Says he, you must apply to my Lord's Secretary *Mr. Cottingham*; accordingly I did, and I told *Mr. Cottingham* that I had heard *Mr. Dormer's* Office was to be disposed of. *Mr. Cottingham* told me it was to be disposed of. I then talk'd to him about the Terms. *Mr. Cottingham* told me as to the Price and the Person, my Lord *Macclesfield* had left it intirely to the other Masters; for whatsoever that Place could fetch, was intended to go towards making up *Mr. Dormer's* Deficiency.

Upon that, my Lords, I went again to *Mr. Godfrey*, and after a Meeting or two, I concluded to give five thousand Pounds if I could be admitted. Whether *Mr. Godfrey*, or *Mr. Cottingham*, or who went to my Lord I can't tell. I had not the Honour to see my Lord till I was admitted: But upon these Terms I was approved. I had Direction, I can't say whether *Mr. Godfrey* or *Mr. Cottingham* gave me the Directions, that I should pay my Money into the Hands of *Mr. Rogers* the then senior Master; accordingly I did pay five thousand Pounds, and in three or four Days after I had the Honour to be admitted and sworn in.

*Mr. Strange.* My Lords, I desire he may be asked, whether at the time of his Admission any Presents was made by him to the Earl of *Macclesfield* or to his Secretary?

*Mr. Edwards.* None at all, but the Secretary's Fees as usual in those Cases.

*Mr. Strange.* Whether at the time he agreed to pay the Sum of five thousand Pounds for the Office, he knew how the Money was to be apply'd?

*Mr. Edwards.* Yes, *Mr. Godfrey* told it me when I went back to him from *Mr. Cottingham*; I remember to have asked him several Questions, and made him several Proposals relating to the Office, for we differed a great deal about its Value; I think I first proposed three thousand Pounds for it; but he disliking that and some other Offers I made him, I desired to know how much it was that my Lord *Macclesfield* insisted upon? to which he answered, that it was not my Lord's Intention to take any thing for the Admittance, but that he had left it to the Disposal of the Masters, to make the most of it for the Benefit of the Office.

*Mr. Com. Serj.* Whether he knows how this Money was disposed of, and to what Use employed?

*Mr. Edwards.* I can't remember the time, but some short time before *Mr. Rogers* surrendred his Office, he paid me back this five thousand Pounds which I in a little time paid to the Suitors of the Court.

*Mr. Strange.* Whether before he surrendred his Office, he had any Discourse with the Masters how *Mr. Dormer's* Debts were secured?

*Mr. Edwards.* No otherwise than upon this Treaty. I told *Mr. Cottingham*, I hear there is a Discourse of a Deficiency in *Mr. Dormer's* Office; says he, I believe there is, but how much I can't tell; but that can be no Objection to you, because you are to answer for no more than you receive. Matters are all settled and taken Care of, that what Deficiency soever there is shall be made good.

*Mr. Serj. Probyn.* By whom?

*Mr. Edwards.* He did not say by whom, or in what Manner.

*Mr. Serj. Probyn.* Had you any Discourse with any other Master?

*Mr. Plummer.* My Lords, I beg leave to make one Observation. The Counsel says with any other Master, and the Gentleman at the Bar says it was *Mr. Cottingham* told him so.

*Mr. Serj. Probyn.* This Gentleman I am examining

aming is one of the Masters, therefore it is not improper to ask whether he had any Discourse with any other of the Masters?

*Mr. Edwards.* I made the same Objection to *Mr. Godfrey*, and he answered me much the same. *Mr. Godfrey* said he could not tell what the Deficiency was, but whatsoever it was, that would be all settled and made good.

*Mr. Serj. Probyn.* As he had this Discourse with *Mr. Godfrey*, I desire he may be ask'd, whether he hath not likewise had some Discourse with *Mr. Rogers* how this Deficiency was to be made good?

*Mr. Edwards.* No, I don't remember I had any Discourse with *Mr. Rogers*.

*Mr. Com. Serj.* My Lords, I desire he may inform your Lordships, whether at any other time he had any Discourse with any of the Masters about this matter?

*Mr. Edwards.* My Lords, I often talk'd upon this Subject with the Masters, as a matter which very much concern'd my Office. This I mentioned at the time I came in. They were then all of Opinion that this Deficiency was to be made good. I don't remember that any Body told me in what method or particular way it was to be made good.

*Mr. Com. Serj.* I desire he would inform your Lordships, as near as he can remember, whether it was said that it would be made good, or that it was to be made good?

*Mr. Edwards.* I can't remember the distinct Words, I took it to have the same tendency and meaning.

*Mr. Serj. Probyn.* I desire he may be ask'd, whether he hath not several times and on many Occasions heard the Masters declare, that this Deficiency was to be made good, and by the Masters?

*Mr. Edwards.* I have heard them several times declare, that they did not doubt but it would be made good; but I never heard them say that it would be made good by the Masters. I have often heard the Masters say they would not make it good.

*Mr. Serj. Probyn.* I desire he may be ask'd, whether about the time that the Masters advanced the five hundred Pounds apiece, he did not hear them declare how this Deficiency of *Dormer* was to be made up?

*Mr. Edwards.* My Lords, when I came into the Office, I think the very Day that I was admitted, *Mr. Rogers* paid five hundred Pounds; eight more paid five hundred Pounds apiece, some at one time, some at another; they did not all pay at the same time. That I heard was to go towards making up this Deficiency; but how far the Masters intended to contribute further I can't say.

*Mr. Com. Serj.* I desire he may inform your Lordships, whether he did not apprehend that the making up of this Deficiency was a great Concern to him?

*Mr. Edwards.* Yes, I think it hath been of a great Concern to me.

*Mr. Com. Serj.* I desire to know then how it comes to pass that he inquired no more into it?

*Mr. Edwards.* My Lords, I remember I was

once asking some Questions relating to that Account, and it was told me, that the State of this Deficiency had been laid before my Lord Chancellor before I was admitted. Upon that I did conclude, that this Contribution of the Masters, of five hundred Pounds apiece, had been in Concert with my Lord Chancellor. I understood it to be so; I don't know whether my Lord gave Orders that it should be so.

*Mr. Com. Serj.* I desire he may be asked who it was that told him so?

*Mr. Edwards.* I think *Mr. Hiccocks* told me so.

*Mr. Serj. Probyn.* My Lords, we have done.

*Mr. Robins.* I desire to know what Answer *Mr. Hiccocks* gave to the Questions he asked?

*Mr. Edwards.* Only that my Lord was acquainted with it, and had the State of *Mr. Dormer's* Office laid before him.

*Mr. Serj. Pengelly.* My Lords, if they have done, we only beg leave to observe, that they have been establishing the Notice of this whole Deficiency on the Earl, upon the first Vacancy in the Office, even before *Mr. Edwards* came in; so that the whole Transaction afterwards proceeded upon a full Notice of the Circumstances and State of the Office. The Evidence of the Contribution of the Masters, and of the Earl of *Macclesfield*, towards making good this Deficiency, prevents, in a great measure, our bringing any Proof to the fifteenth Article, which is now going to be opened.

*Mr. Plummer.* My Lords, if they have done, I only beg leave to observe, that the very letting *Mr. Edwards* pay his five thousand Pounds to the Deficiency of the Office, and my Lord *Macclesfield's* not taking it to his own Use, is a sufficient Proof of his Knowledge of the Deficiency. And as to this Composition, I have one Question more to ask. I think he says he mention'd it to two or three Masters; I desire to know if he did so, and whether they approv'd it?

*Mr. Edwards.* I think one of the two or three Masters was *Mr. Lightboun*. He was there, and he did say, as I remember, that he thought we might as well lose the whole, as take so small a part of such a Debt.

*Mr. Plummer.* I desire another Question, and that is, if he consulted any of *Mr. Wilson's* Creditors before he made this Composition?

*Mr. Edwards.* No, my Lords, I did not know any of them.

*Mr. Serj. Pengelly.* How much did he receive in the whole from the Masters?

*Mr. Edwards.* I received five hundred Pounds from nine of them.

*Mr. Serj. Pengelly.* Did any of the Masters, and which, refuse?

*Mr. Edwards.* Yes, *Mr. Lightboun* refused.

*Mr. Serj. Pengelly.* For what Reason?

*Mr. Edwards.* That I can't tell; he did not give any particular Reason.

*Mr. Com. Serj.* My Lords, I believe it may be necessary to trouble your Lordships with asking another Question: Whether this Discourse in Relation to this Composition, was before or after the Composition made?

*Mr. Edwards.* I believe it was before.

*Mr.*

*Mr. Com. Serj.* Then I desire to know whether *Mr. Edwards*, upon that or any other Occasion, acquainted the noble Earl of it?

*Mr. Edwards*, No, I don't remember I did.

*Mr. Sol. Gen.* My Lords, I believe we have done with these two Articles.

*Sir John Rusbout.* My Lords, the Commons proceed to the fifteenth Article against *Thomas Earl of Macclesfield*, and they have entrusted me to lay open to your Lordships the Subject matter of this, and the two ensuing Articles, and the Nature of the Evidence they think proper to produce to make good the Charge in these Articles; by which it will appear to your Lordships very fully, that the Crimes charged upon the Person at your Bar, which have already been manifested in so many Instances, did not proceed from Mistake, or mere Negligence; altho' these would have been Faults not excusable in a Person placed in so high a Station, but that they were the Effects of Art and Contrivance, formed to carry on and promote a corrupt and illegal Gain and Advantage to himself.

It may seem at first sight very surprizing, and may not readily obtain Belief with your Lordships, that a Person rais'd by his Majesty's abundant Goodness, to Stations of so great Honour and Profit, who had received large Additions to a plentiful Income by successive and repeated Grants from the royal Bounty, that such a Person should condescend to receive, much more that he should use Arts and Stratagems to obtain further Supplies to his insatiable Thirst of Lucre.

But this your Lordships will plainly see to be the Case, when we have given our Proofs to the fifteenth, sixteenth, and seventeenth Articles. Your Lordships have already heard that there was a very great Deficiency and Loss of the Suitors Money in the Office of *Mr. Dormer*, a late Master in the Court of *Chancery*; that the Earl at your Bar then presiding in that Court, well knew that there was such a Deficiency; that instead of applying Remedies to redress the Evil, he made use of several Methods to cover and conceal it; it being very obvious for him to reflect, that if such a Deficiency was publickly known, and not effectually remedied, none would ever after purchase a Master in *Chancery's* Place, at least not at such exorbitant Prices to which the Purchase had lately been raised.

What then must be done? here was like to be an entire Stop put to this Branch of Revenue which had yielded so plentifully, and proved so beneficial to his Lordship.

The Contrivance therefore is to oblige the Masters, who had already paid for their Places, to pay again towards making good this Deficiency, and by an artful drawing them to a Compliance in this Point, to conceal and continue the Mischief.

This is what the Commons charge in the fifteenth Article, that the Earl of *Macclesfield*, to conceal the Deficiency in *Mr. Dormer's* Office, did order several Masters of the Court to bring in their Accounts of the Cash, Effects, and Securities belonging to the Suitors which were in their Hands, with Intent to terrify the Masters thereby, so far, as to oblige them to contribute

large Sums to answer the Demands of that Office: And further to engage them to a Compliance in that Respect, he represented to them, that unless they would do it, the Money and Effects of the Suitors would be taken out of their Hands: That by this means he did induce nine of the Masters to contribute five hundred Pounds apiece, which several of them did out of the Suitors Money in their Hands; and this being done, they were never obliged to bring in their Accounts.

What Answer is given to this Charge? The Answer hath been read, and I need not trouble your Lordships with a Recital of it. But the Earl admits that he gave such Orders that the Masters should bring in their Accounts:

That several Masters did afterwards pay and contribute as is charged:

That they were not afterwards obliged to bring in their Accounts.

But then in Excuse he alledges, That this was not done to terrify the Masters to make any Contribution to the Demands on *Dormer's* Office:

That what they did contribute, he believes they paid freely, and out of their own Money:

That he believes he follow'd therein a Precedent of the like Nature in the Failure of *Dr. Edisbury*.

That he continued to call for the Accounts, but was convinced how tedious a Work it would be, what Obstruction it would give to the Business of the Court, so he laid it aside; and observes, that what is lately done with respect to the Accounts of the Masters, shews the insuperable Difficulties of such an Undertaking.

From this Answer your Lordships may reflect, how just the Observation is, that the Commons have made in their Replication, when they say, the Earl of *Macclesfield* hath industriously avoided giving a direct and particular Answer to several matters positively and certainly alledged against him, which from the Nature of the Facts themselves must necessarily lye in his own Knowledge.

For he admits the Fact charged upon him by the Article; but to that part of it which charges that this was done to conceal the Deficiency in *Dormer's* Office, he makes no Answer at all.

And where the Article charges, that in order to obtain what is own'd to be done, he did represent to the Masters, that unless they would comply, the Money and Effects of the Suitors should be taken out of their Hands; to this likewise he makes no Answer.

My Lords, It may be difficult for me who am little conversant in Law Proceedings, to lay this matter in its strongest Light before your Lordships. But I take the Case to be this.

The Commons charge, that the Earl of *Macclesfield*, to conceal the Deficiency in *Dormer's* Office, ordered the Masters to bring before him their Accounts of the Suitors Effects, and threatened that unless they would contribute towards that Deficiency, those Effects should be taken out of their Hands: They contribute, the matter is dropt, and no Accounts are ever brought before him.

The Earl acknowledges that he order'd those Accounts to be brought before him; that upon his giving that Order several Masters contributed 500*l.* apiece, and that afterwards the bringing the Accounts was dropt; that this was done to conceal *Dormer's* Deficiency, and procured by the Menace of taking the Effects of the Suitors out of the Hands of the Masters cannot be denied: What part of the Charge then remains unadmitted? I must submit it to your Lordships, whether, upon what the Earl hath allowed in express Terms by his Answer, as well as what he hath admitted by not answering at all, the whole Charge of this Article doth not stand confessed, and the Commons might demand Judgment against the Earl, upon this Article, upon his own Confession.

But the Earl adds some things by way of Excuse, I suppose, or Extenuation of the Offence; how immaterially and how evasively your Lordships will soon observe.

He denies, that the ordering the Masters to bring in their Accounts, was done to terrify them to make any Contribution towards *Dormer's* Deficiency, and yet there is not the least Appearance of any other End, or Design, for which it could be done; nor does he mention, or so much as pretend to any other End which with the least Colour of Reason could be intended by it; he says, indeed, he had a Mind to know the State and Condition of the several Offices, that he might be able to make proper Regulations concerning them; but the thing was dropt before he had this Knowledge given him, and before he made any one Regulation in the matter; and yet he solemnly declares that this was his real and whole Intention: If it was his Intention how came he to alter it so soon? Could it not last till one Regulation was made in a Matter which wanted it so much?

Your Lordships will from hence judge, That the Crime which the Commons charge upon the Person at your Bar was not a Sin of Ignorance; he was informed of the Miscarriage of the Officers of his Court, he was conscious that it needed Regulation, he had sometime a Thought and Intention, to make such Regulation; but, alas, it soon proved abortive, and the intended Reformation, however necessary for the Honour of the Court, as well as the Safety and Advantage of the Subject, was soon laid aside: A Conduct so weak and so greatly inconsistent, as not to be accounted for in any Person, who had not been capable of pleading Innocence and Pardon to the same Fact.

However his Lordship having found it necessary to excuse this proceeding with the Masters, by pretending an Intention to make some Regulations concerning them; it became as necessary, in the next Place, to make some Apology for not proceeding to such a Regulation.

And for this he says, that it would be a difficult and tedious Work:

That it would be an Obstruction to the Business of the Court:

That what has been lately done shews the insuperable Difficulties of the Undertaking.

I may reasonably fear I should grow tedious to your Lordships if I should attempt to take notice of all the Inconsistencies, Inconsequences and Evasions in the Answer to this single Article.

Upon what Account was the Person now at your

Bar advanced to the highest Station of the Law; intrusted with the distribution of Justice and Equity in his Majesty's supreme Court in *Westminster-Hall*, if it was not to secure the Property of the Subject to those to whom it did in Conscience belong? And upon what Account were the Moneys brought into Court deposited with the Masters, but only for safe Custody, till it appeared to whom Equity wou'd determine the Right?

But when it was once manifest that those, who were employed in this Trust, had shamefully broken it, and by notorious Mismanagement were likely to bring Ruin to all the Suitors of the Court, was it fit to cherish and cover up the Evil because it was a difficult and tedious Work to redress it? Was it likely to be less difficult by the Delay, or rather did not every Day propagate and increase the Mischief, and make it less capable of Remedy? Or could any thing be more proper for the Business of the Court?

Your Lordships have too great Sagacity not to discern the Weakness of such an Excuse, nor will you easily be persuaded to believe, That the Earl of *Macclesfield* was only going on in a Path his Predecessors trod before him, or that he is to be sheltered, because what hath been since done hath met with Difficulties in the Undertaking.

It is known, how upon the first Failure, in the Time of his Predecessors, an effectual Remedy was immediately applied; and that those, who have since attempted to give an helping Hand, have prevented any new Eruption of the Evil complained of; and if the Undertaking was attended with Difficulties, their Care and commendable Zeal for the publick Service have already been able to surmount them in some Measure; altho' the gross Encouragements given by the Earl of *Macclesfield* had laid such a strong Foundation for those Difficulties, as if he had designed really to make them insuperable, that they might serve for such a Sort of Excuse as he now endeavours to draw from them.

But the Earl alledges further, that he believes the Masters, who contributed towards *Dormer's* Deficiency, did it freely and out of their own Money; and that in bringing them to contribute he followed the Precedent in *Dr. Edisbury's* Case.

I need not trouble your Lordships long upon this Branch of the Article, since no one besides his Lordship can well believe the Masters contributed freely; and the Proof we shall lay before your Lordships upon this Head will give full Satisfaction, that none of them did it freely, nor all of them out of their own Money; nor is it the Crime the Commons charge, that the Masters were prevailed on to contribute towards the Deficiency; but that the Earl, whose high Station made it his Duty, when he was inform'd of the Deficiency, to take Care to redress it, did not, as in the Case of *Dr. Edisbury*, provide that the whole Money belonging to the Suitors should be effectually answered; but instead of following that Precedent in the just and honest Use of it, he turned it to answer his own corrupt Purposes, and to conceal from public Notice, that Loss to the Suitors which it was his Duty to have wholly prevented.

The next Article we proceed to is the sixteenth, which charges, that one *Elizabeth Chitty* having obtained an Order of the 17th of *March*, in the tenth Year of his present Majesty, whereby Mr.

*Edwards*, who succeeded in *Mr. Dormer's* Office, was order'd to pay 1000 *l.* part of a very large Sum due to her, which had been paid into *Dormer's* Hands; *Mr. Edwards* complained of this as an Hardship to him, who had never received the Money; upon this the Earl would have perswaded the rest of the Masters to pay the Money to prevent a Parliamentary Enquiry, and they refusing, he paid it himself to one *Mr. Lochmann* for the Use of the said *Mrs. Chitty*; with Intimations however, that she must not expect any more of the 10000 *l.* which had been paid on her Account into *Dormer's* Hands.

Your Lordships will be surprized at the Detection here made both of the Guilt and the Boldness of the Offender; that the Person, who is so sensible of his Crime, as to tell the Masters this Matter would affect both himself and them, who discerns the monstrous Consequences of the Mischief before him, who foresees the Punishment of that Crime by a Parliamentary Enquiry; that this Person, instead of applying Remedies to the Evil, should use little Artifices only to conceal it.

What Answer gives the Earl to this Charge? He admits the Order made, and that *Mr. Edwards* refused to pay the 1000 *l.* that he himself paid the Money, and told *Lochmann* that was all they must expect from him; but he does not believe he had any Discourse with the Masters to persuade them to pay the 1000 *l.* to *Lochmann*.

Your Lordships must be convinced of the Guilt when the Offender himself hath not the Assurance to deny it; he cannot deny but that he knew and represented the Consequences that would ensue what was done; that it would produce a Parliamentary Enquiry; that it would affect himself as well as the Masters, and that it would hazard the Forfeiture of their Offices. Your Lordships have now an Opportunity to vindicate the Honour of Parliaments, and to have this Instruction to Posterity; that those who foresee their unwarrantable Actions will give Occasion for a Parliamentary Enquiry, shall not be able by any Contrivances, by any Means whatever, to evade the Justice of it.

As to the last Part of this Article, which charges, that, on a Motion in a Cause, *Harper* against *Casfe* and others, relating to 260 *l.* which having been paid into *Mr. Dormer's* Hands was in danger of being lost, the Earl falsely and deceitfully declared he had heard there was a Deficiency in *Dormer's* Office, but knew nothing of it only as public News: The Commons will give sufficient Evidence to your Lordships of the Truth of this Charge.

The Earl indeed gives a large Account of this Cause and the Orders made in it, and then concludes, he believes he expressed himself to this Effect, That he had indeed heard of *Dormer's* Deficiency, but that it had never come judicially before him upon Complaint of any of the Suitors of the Court; that several Circumstances taken Notice of at large had concurr'd thereto, and adds, that he said he did not know how all these things would come out, and expressed himself to that effect and no other; and upon all this Circumlocution in the Answer, without any denial of the Words as they stand charged, we have reason to believe your Lordships would be very well satisfied without further Proof, that the Words mentioned in the Article were undoubtedly used by the Earl of *Macclesfield*.

It is further observ'd by the Earl, that this happened after such time as the Masters Accounts had been laid before the Lords of the Council, and had been under the Examination of the Judges and others to whom they had been refer'd by his Majesty; and there may be some reason to doubt whether the Knowledge of a Deficiency had been so soon declared by his Lordship, if the Examination under which his Majesty's abundant Goodness and Care for his People had put those Accounts, had not already laid open and made a public Discovery of it.

The seventeenth Article charges, that tho' the Earl of *Macclesfield* knew of the great Deficiency in *Dormer's* Office, yet to conceal it, in order to carry on his corrupt and unjust Designs, he made Orders upon *Mr. Edwards* for the payment of several Sums, which were paid without Regard to the Proportion the rest of the Suitors were justly entitled to out of *Dormer's* Effects, and consequently to their great Loss and Prejudice: To this the Earl answers with his usual Candour, That he never endeavour'd to conceal the Deficiency, but as he was under a full Persuasion it would in due time be made good; that he did not think it incumbent on him *ex officio* to make a Declaration of an Average; that he doth not know any Order was made by him for *Mr. Edwards* to pay Money lodged with *Mr. Dormer*, but believes several Orders were made by the Court for that Purpose.

Your Lordships upon the bare reciting the Words of the Answer, will perceive the Art and Fallacy of the Answerer; he doth not know any Order was made by him, but believes several were made by the Court; as if he could hope to make your Lordships believe, he was a Stranger to, and unconcern'd in the Orders made by the Court, of which he was the only Judge.

He admits he did endeavour to conceal the Deficiency, but was persuaded it would be made good in due time, without acquainting your Lordships with any Grounds for that Persuasion, or even mentioning when he thought that due time would come.

He intimates it was incumbent to make a Declaration of an Average, but thought it not incumbent upon him to make it *ex officio*: He could not deny it to be the most equal Rule, that if a Loss was inevitable, an Average ought to be made; that the Loss might be born equally and in Proportion among all: He could not deny the making Orders to pay some was inconsistent with, and destructive to this Equality; and he could not however think it incumbent on him to do this *ex officio*, and yet it belonged to no body's Office but his own to effect it.

Thus your Lordships may observe how, to every Article, the Answer either admits the Charge or uses loose, general, or foreign Circumlocutions to evade it, when the Evidence of the Fact will not allow him to deny it; yet he would be thought to say something at least in excuse: But his Knowledge of your Lordships superiour Understanding, ought to have deterred him from all Expectations of imposing upon your Lordships by any little Shifts and Artifices of this kind; nor should he hope to pass here the Answer as sufficient, which must have been reported contrary, if I am rightly informed of the Practice, by any of the Masters of his Court.



But I shall not longer detain your Lordships with Observations in matters in themselves so evident; what is admitted to every one of these three Articles is sufficient to justify the Charge of the Commons, and whatever remains but imperfectly admitted, we doubt not, by Witnesses and other Proofs, to make out to your Lordships intire Satisfaction.

My Lords, It is a Province enjoined me likewise, to maintain the Charge exhibited by the Commons of *Great Britain*, in the fifteenth, sixteenth, and seventeenth Articles of their Impeachment against *Thomas Earl of Macclesfield*. And it is with the greater Chearfulness I undertake that Province, since I come to demand that Justice, which your Lordships are always disposed to administer, to every Subject of *Great Britain*; and therefore I cannot but be fully assured of your just Inclinations, to do equal Right where it is demanded by the House of Commons, the Representative Body of the whole united Kingdom.

It is very strange, that the Earl now under Prosecution; who hath been so many Years within the Walls of this House; who hath so long been Witness of your Lordships great Integrity and Wisdom, should not thereby be deterred from attempting what might subject him to your Censure. But it is still more unaccountable, that a Person, who hath had so long Experience of that Judgment and Sagacity, whereby you skilfully distinguish between right and wrong, should hope, by the Artifice of Words, and loose, general, evasive Expressions; that he should ever hope, I say, My Lords, by such Fig-Leaves as these, to hide himself from the Eyes of your Lordships impartial Justice.

The worthy Gentleman, who hath preceded me upon this Head, hath so fully open'd the several Articles now under Consideration, and hath so clearly detected the Sophistry, and Insufficiency of the Answers that are given to them, that I shall not need to be long upon that Head; it would indeed be difficult to add any thing new to what hath already been observed, did not the innumerable Fallacies and Inconsistencies with which his Answer abounds, continually supply fresh Materials for Observation.

But I shall content my self only to take notice upon the Answer to the fifteenth Article, that the Earl stands in a Manner convicted by his own Confession: He admits the Fact, but would avoid the Consequence by saying, that he really intended to make the Masters bring in their Accounts, altho' he did not do it: If it was intended, why was it not done? It was a difficult and a tedious Work.

I am surpris'd, my Lords, to find that any Person should expect to satisfy your Lordships, by so weak, and frivolous an Excuse.

A Person who presides in the highest Court in *Westminster-Hall*, is informed of some unwarrantable Practices of the Officers to whom the Money of the Suitors is intrusted, which for want of due Care hath already proved very pernicious, and must in time prove destructive to the Property of all the Suitors of that Court, unless some speedy Check be put to this growing Evil: is convinced the Matter needs Regulation; but he lets it go on, because it would be a difficult and tedious Work to redress it.

In moral Evil, my Lords, the Continuation of the Practice of an ill Habit, because it is difficult to break it, is so far from extenuating, that it is justly esteemed to aggravate the Fault; and I don't doubt but that your Lordships will have the same Sentiments in this Case; for since it was necessary to apply a Remedy, the sooner it was done the better, and the Difficulty of the Work should have been a Spur, rather than a Check to a vigorous Endeavour for redressing it.

In his Answer to the sixteenth Article, your Lordships will observe the same Prevarication spread through the whole: The Widow *Chitty* having a considerable sum of Money, to which she was intitled, brought into Court, and deposited in Mr. *Dormer's* Hands for the safe Custody of it only, petitions for 1000*l.* part of her own Money; such a Petition could not be denied intirely, without bringing on a speedy Inquiry of the Causes and Occasions of the Embezzlement which had happen'd in that Office; and the Discovery must have brought on a Necessity of remedying the Evil, that would thereby have been made so publick, and so notorious.

An Order therefore is granted, that the 1000*l.* should be paid; but then the Difficulty is renewed, how to make that Payment without discovering to the Publick the Mismanagement; which must have put a stop to the Sale of the Masters Places, which were disposed of at exorbitant Prices, and brought in an immense, tho' illegal Gain. Mr. *Edwards* would not pay it; he had no Money of Mr. *Dormer's* in his Hands; the next Application was made to the Masters of the Court, to see if they could be prevailed on once more to raise a Sum by Contribution amongst them; to this End they were told, that if they did not comply, *Dormer's* Deficiency would be discovered, and that might occasion a Parliamentary Inquiry, the Consequence of which might be, the Forfeiture of their Offices, bought contrary to the Statute of *Edward* the sixth: that this might affect himself a little, but them much more; all this, my Lords, is charged in this Article, and not denied by the Earl, but in such a lamentable, evasive Manner, as betrays more Guilt than an open, an ingenuous Confession.

It passes my Observation, in that little View I have been able to make of past Times, that any Judge of a Court in *Westminster-Hall*, should own the Knowledge of so great a Crime in the Officers of his Court, as that they came into their Places contrary to Law, without any Censure, or Blame for it.

But that a Person raised by the unmerited Bounty of his Majesty, to preside in the highest Court there, to conduct the Administration of Justice agreeable to the Rules of Equity and good Conscience, as his Majesty's Vicegerent in that great Station; that such a Person should not only be conscious of the Illegality of the Masters obtaining their Places, and a Party to such Illegality, but should have the Assurance to make use of that as an Argument, to extort Money from them, in order to prevent the Discovery, and the Punishment consequent thereto, will, I persuade my self, stir up in your Lordships the greatest Indignation.

It seems he apprehended the Terror of a Prosecution by Parliament might have some Effect upon them, and engage them to comply with his Demands,

mands, altho' it had not the least Effect upon himself. It was a proper Expedient to bring them in to a Contribution of a 1000*l.* but it was not sufficient to deter him from those Practices, which justly merited such a Prosecution.

Our Ancestors thought it became them to keep in Awe the greatest Subjects in the Realm, and none were too big to be called to Account for the Wrongs and Injuries they did the Publick; the Case of *Michael de la Pole* in *Richard* the Second's Time, and *Card. Woolsey* in *Henry* the Eighth's, with many others, some of which have been already mentioned to your Lordships, are flagrant Instances of it. And we have now a just Opportunity of shewing, that we have the same regard for the Honour of Parliaments, and the Good of the People; that no one ought to presume to transgress the Laws, be his Station, or his Power never so highly advanced, upon prospect of Impunity; since a *British* Parliament can reach the most lofty, and punish the most insolent, corrupt Offender: So that he, who is not restrained within the Limits and Boundaries of the Law out of Awe and Reverence to it, must expect to fall a Sacrifice to the Power of their Justice.

Your Lordships have here an Instance of one placed at the Head of the Law, who is conscious that his Actions are contrary to it; who makes no Scruple of avowing this, where it may serve his Interest, defies a Parliamentary Inquiry, and goes on in Practices which he knows, and professes to be illegal. Your Lordships will observe how he endeavours to shelter himself from Danger, and by an infamous Degree of Dissimulation; what he openly avows to raise a Contribution from the Masters of the Court, he more publickly denies, with design to carry a plausible Appearance in this Affair to the People.

The Deficiency of *Dormer* at last became a publick Clamour; it was not *Mrs. Chitty* only, but many others wanted their Money deposited and entrusted in the Hands of the Court, and by the Court entrusted to the Custody of the Master; and the Suitors then made open Complaint upon this Subject. In the Cause therefore of *Harper* and *Cafe*, a Motion being made, that 260*l.* lodged in *Dormer's* Hands might be paid before the Execution of the Conveyance, directed by the Court; he who had been so long informed of the shameful Embezzlement of the Money of the Suitors in *Dormer's* Office, who had invented so many artful Contrivances to conceal the Knowledge of it from the Publick, in order to serve his own private, unjust, corrupt Designs, the Matter being now declared in open Court, he could no longer deny the Knowledge of what he was so plainly informed of; that therefore all By-standers might imagine his Care and Concern for the publick Good was so extraordinary, that he could not have forbore to have remedied the Mischief if he had been before apprized of it; he then publickly and falsely declared that he had heard there was a Deficiency in *Dormer's* Office, but that he knew nothing of it but as publick News. In the Earl's Answer, my Lords, he explains this Expression, by saying, that it never came judicially before him upon the Complaint of any of the Suitors of the Court: This I am persuaded your Lordships will think a very poor Excuse, that he who was the Protector

of all the Fortunes of the Fatherless and Lunatics, should not upon the first Intimation, or even Suspicion that they were like to be Losers, cause a strict Examination to be made into it.

It can scarce be believed a Person who has so great a Capacity to judge in what manner he ought to act, should ever descend to so low a Degree, so unworthy the Station in which he was placed, so unworthy the Dignity and Honour to which he had been advanced, as to deny the Knowledge (otherwise than as News and accidental Discourse) of what he had been so frequently informed, and what he had taken Pains so long, and so deliberately to conceal.

I need not use any Words to represent to your Lordships the Indignity of such Prevarication, who will upon the first Intimation be sensible of every thing that may seem in the least Degree to depart from the Rules of Honour: It is indeed almost inconceivable, that a Person advanced to be a Part of your noble Body, should so far forget himself and you; it is what, if he could have expressly denied by his Answer, we must have despair'd to have gain'd Credit in, tho' we could have proved it by inferior Witnesses; but his Answer will sufficiently convince your Lordships of the Truth of the Allegation; for he who could not directly deny a Charge of so gross a Crime, must by his own Silence, in a Matter of so heavy a Nature, be concluded to be guilty of it.

I have already detained your Lordships so long upon this sixteenth Article, that I shall not take the liberty of trying your Patience by making any Observations upon the Seventeenth, but shall leave it to the Gentleman that is appointed to assist in it.

It contains only repeated Instances of a corrupt Endeavour, still to conceal the Knowledge of that Deficiency from the Publick, which it was his Duty to have prevented; or at least to have supplied, and rather to have made it good, than have conceal'd it. What Ground or Reason could there possibly be, why a Mischief of this Kind, if it did happen by Accident, should with so much Industry be covered and continued? when that Concealment could answer no good or honest Purpose, but must by the Delay increase and grow more desperate, and tend to bring Destruction and Ruin to the Suitors of the Court?

But as your Lordships, by the Proofs upon the former Articles, had an Opportunity to take notice what large Sums of Money had been paid for the Purchase or Exchange of the Places of the Masters of the Court of *Chancery*; it is natural to conclude from thence, that the Masters were necessarily to be indulged in making use of the Suitors Money in their Hands, in order to make up the vast Sums they had given for their Offices; and if there had been Miscarriages in Attempts of that kind (which in bold Adventurers for such Ends could hardly be avoided) the Discovery of such a Mischief would have made it absolutely necessary to have removed the Money from those who had proved such unfaithful Stewards, or at least to have obliged them to have given proper Securities to indemnify those, whose Fortunes were intrusted to their Care, from any Loss which might happen by their Mismanagement; the Consequence of which Caution must unavoidably have drawn on a Retrenchment

trenchment of the exorbitant Prices which of late have been given for those Places.

But I need not give your Lordships any further Trouble, by enlarging more upon this Topick, who ought rather to make Apology for having been already so long upon it; the Gentleman who went before me, and he that will follow me upon this Head, will be sufficient to give your Lordships more ample Satisfaction; and the Certainty of the Facts (which the Earl himself seldom hath the Assurance to deny, but only attempts by false Colours to avoid the Inferences from them) will, where-ever there is need or occasion, be supported, and made good, by full Evidence.

Mr. *Thompson*. My Lords, I am commanded by the Commons to assist in maintaining the fifteenth, sixteenth, and seventeenth Articles of their Impeachment. The Gentlemen who have gone before me, have acquitted me from giving your Lordships any Trouble upon two of these Articles; and I count it my good Fortune that the Third is fallen to my Lot, since the Evidence to prove the Charge contain'd in it, is so very clear and direct, that little need be said, either to shew the Necessity of the Accusation, or the Truth of the Facts alledg'd by the Commons.

My Lords, I will avoid, as much as I can, recapitulating any Evidence which has been opened before; but the Crimes of the unfortunate Earl of *Macclesfield* are so interwoven, that it may be sometimes necessary for me to look back upon Circumstances that have been spoken to upon other Articles.

The Commons in the seventeenth Article set forth, "That the Earl very well knew there was a Deficiency in Mr. *Dormer's* Office, and that Mr. *Edwards* (his Successor) had not sufficient in his Hands to pay the whole Money due to the Suitors." My Lords, as to the Earl's Knowledge of this Deficiency, he admits it in his Answer, by saying, "He never endeavour'd to conceal it:" and Mr. *Edwards* has not only declar'd upon Oath this Day at your Bar, there was a Deficiency, but also, "That it was laid before my Lord before he was admitted."

Yet "Notwithstanding he very well knew it," the Commons aver, "That he did from time to time make Orders for the Payment of several Sums out of this Office," and in support of this Charge, we shall produce divers of his Lordship's original Orders.

And, my Lords, I appeal to the Testimony of every Master in *Chancery*, who has been, or may be examined before you; I appeal to your Lordships Observations upon the Evidence you have already heard, whether or no such Proceedings were not calculated, "to carry on his unjust Designs, and to prevent a Parliamentary Enquiry."

As to the latter part of the Article, "That Sums were paid without any regard to, or consideration of the Proportion the rest of the Suitors were entitled to," we shall not only prove the Fact, but shew likewise that this Partiality was not carried on inadvertently, but deliberately; that this unequal Distribution of Right did not flow from a supine Neglect, or careless Oversight, but sprung from a deprav'd Intention, and determin'd Corruption.

Mr. *Edwards* will acquaint your Lordships, that

he forewarn'd the Earl of the Consequences that must follow from his Payments, who still bid him "continue paying," and Mr. *Lighbourn* (reasoning with him as became a Person associated to the Chancellor) urg'd, "That he did not think any Measures justifiable in a Court of Equity, where-by any undue Preference might be given, and some have their whole Money and others be left in the Lurch."

So that this Misdemeanor, this Fraud, was in manifest and wilful Violation of the Trust repos'd in him, a Trust, my Lords, (when faithfully executed) wherein consists the Glory and Happiness of this Kingdom. It is the Security of all our Properties, a Refuge for distressed Widows, and a Protection to helpless Orphans; and when the Commons saw that Oppression had possess'd the Seat of Justice, that Partiality had usurped the Throne of Equity, that the Guarantee for our Fortunes was become the Invader of them, they beheld it with Indignation and Horror, and have applied to your Lordships to demand Redress and Vengeance.

Now, my Lords, I beg your Attention, whilst I take a view of the Earl's Answer.

He says, "He never endeavour'd to conceal *Dormer's* Deficiency." You will hear that he did, and alledg'd, "It would be for the Honour of the Court to conceal it."

The accus'd Earl proceeds, "As he was under a full Persuasion the same wou'd be made good." I dare say the Earl of *Macclesfield* will at a proper time acquaint you what were the Grounds of this Persuasion." The Commons observe with the deepest Concern for the miserable Suitors, that they have met with no Foundation, no Colour of Reason to induce "Them" to entertain such Hopes. On the contrary, the Master who succeeded to Mr. *Dormer's* Office frequently represented to the Lord Chancellor, "The Hazards the Suitors were in from this Deficiency."

Yet the Earl boldly asserts, that this very Master "Mr. *Edwards* was under a firm Persuasion the whole would be made good." We shall convince your Lordships he never had the least Prospect, the least Glimpse of it; and I'm afraid the Earl and he had just the "same full and firm Persuasion of the State of this Office."

The noble Lord goes on. "And as no Application was made to him by Persons concern'd to stop Payment." I suppose he means before that remarkable Motion which produc'd his extraordinary Declaration in open Court.

Perhaps the learned Lord will here make another notable Distinction, and explain by the Words "Persons concern'd," the "Suitors only;" and have recourse to his old Subterfuge, "That it never came judicially before him." We think, and no doubt your Lordships will think so too, that "Mr. *Edwards* was a Person concern'd"; that his pressing Applications ought to have been sufficient, and that our Evidence is not to be defeated by so weak an Evasion.

But admitting, my Lords, "That the Earl had this full Persuasion, and that no Application was made to him to stop Payment:" What Justification does he draw from thence? "That he did not think it a Duty incumbent upon him, *ex officio*, to make a Declaration of an Avarage."

How contradictory, my Lords, How inconsistent is this with his Answer to the fifteenth Article! There he pleads the Case of Dr. *Edisbury*, and in that Case an Average was declar'd. The Precedent was follow'd to encourage a Contribution, but was laid aside when it directed him to secure the Suitors their Proportions. Here I can't help observing, that as the Earl has thro' the whole Series of his Actions copied Precedents from the worst Views, so he has now quoted them in the most disadvantageous Manner. When his Predecessors took small Sums, he ventur'd by their Examples to swell his Demands to exorbitant Prices; but when their Patterns shou'd have led him to a nice and scrupulous Caution in the Choice of his Officers, he disdain'd to tread in their Footsteps. And, my Lords, This Precedent was good for the corrupt Purpose of concealing a Deficiency, but ceas'd to be so, when it was to do Justice to the injur'd Suitors. He has turn'd his Weapons upon himself, and if Dr. *Edisbury* guards him in one Article, he must of necessity wound him in another.

What I shall next take notice of in his Answer is, "That he does not know any Orders were made by him except in the Case of *Chitty*." That Case is attended with such Circumstances, and may be follow'd by such Consequences, that he has not yet, nor will, I dare say, soon forget it: However, I presume he will recollect others when we produce his own original Orders for three several Payments, one of 400 *l.* another of 642 *l.* and a third of 2000 *l.*

This Evidence alone, my Lords, would support this Article, but the Earl has thoroughly confirmed the Charge in his next Sentence. "He believes Orders have been made by the Court."

Tho' his own Orders were criminal, Orders from the Court were innocent, till they received his Stamp of Guilt, who knowing the Condition of the Office, commanded "Payments to be made as Orders came in." The impeach'd Lord (and were this his only Offence, therefore justly impeach'd) commanded these Payments.

His Defence is again become his Accusation. Orders from the Court wou'd have ended, had he suffer'd the Master to stop Payment, but that would have disclos'd what he took such unwarrantable Pains to conceal; and from that Concealment arose the Injuries to the Suitors; that was the malignant Ground-work of his infamous Designs, and is now the Subject of our just Charge.

Certainly the Earl did not mean here obliquely to insinuate that he had a Sharer in his wicked Administration, or to bring another great Name in question with his. That were not for his Service. Characters, my Lords, receive their Lustre from their Foils.

My Lords, I have open'd to you, that we shall prove the Accusation contain'd in the Article, and enforce it from the Earl's Answer. If your Lordships find we have made good our Charge, I submit it to your Lordships what Judgment you will pass upon such "manifest and wilful Violations of the Rights of the Subject."

Far be it from me to add Load to the Guilty; here indeed it is impossible. Crimes committed by a Lord Chancellor are capable of no Aggravations; his Station sufficiently enhances his Guilt. Such Crimes are now become a Parliamentary Enquiry,

which the Chancellor's conscious Heart long since presag'd; and the Commons think they have shewn good Reason why your Lordships should convince the Earl of *Macclesfield* that he flatter'd himself with vain Hopes, when he menac'd the Masters, "That this Enquiry would affect him, but "them much more."

The Commons are sensible, that he who has so long been a Stranger to Justice, will at last meet with it here; and that your Lordships providential Wisdom will never suffer such Reproaches to be cast upon this, as have been thrown out upon another Nation. "That a Judge is an Evening Wolf, "that Justice standeth afar off, and Equity can not enter.

*Mr. Serjeant Pengelly.* My Lords, We beg leave to call our Witnesses in support of these Articles. We desire Mr. *Conway* may be call'd.

*Mr. Conway call'd and sworn.*

*Mr. Serj. Pengelly.* My Lords, We beg leave that Mr. *Conway* may be ask'd, whether he paid any Money in the Nature of a Contribution, and when? We have the Receipt here (shewing it to Mr. *Conway*.)

*Mr. Conway.* My Lords, This is a Receipt given me by Mr. *Edwards*, Aug. 11, 1721. for the Sum of 500 *l.* contributed by me.

*He reads the Receipt.*

Aug. 11, 1721.

Receiv'd then of Master *Edward Conway*, Esq; the Sum of 500 *l.* voluntarily contributed by him in Aid of the Deficiency of my Predecessor *Fleetwood Dormer*, Esq; in the Cash of his Office, which I promise to repay in case the same shall at any time hereafter be otherwise made good.

*H. Edwards.*

*Mr. Serj. Pengelly.* We desire he may be ask'd in what manner he paid it, whether it was out of his own Money or stopt out of any other Money paid into Court?

*Mr. Conway.* Soon after, my Lords, I was admitted a Master, Mr. *Dormer's* Deficiency broke out; and the Contribution of the Masters being then spoken of, I was among the rest applied to, to contribute: I was sworn in in *January* 1720, and this Receipt is in *August* 1721, when Mr. *Edwards* came to me to bring me some Junior Masters Money, which he was to deliver to me, out of which he stopt this 500 *l.* upon account of the Contribution which I had promis'd to come into.

*Mr. Serj. Pengelly.* We beg leave that Mr. *Conway* may be ask'd, whether the 500 *l.* was allowed or deducted at that time out of the Suitors Money?

*Mr. Conway.* Yes, my Lords, it was stopt by him at that time.

*Mr. Serj. Pengelly.* What Persuasions were made use of to induce the Masters to contribute to pay this Money?

*Mr. Conway.* When the Affair of Mr. *Dormer* came out, what I can remember is, that Letter that came from him from *Holland* was sent to Mr. *Hol-*

*ford*

ford to be read before the Masters in the publick Office, and there the Masters spoke of it what they thought proper.

*Mr. Serj. Pengelly.* What Intimation was there from him, or from any other Person, of any Direction from my Lord *Macclesfield* relating to the Payment of this 500 l. Contribution?

*Mr. Conway.* I think my Lord *Macclesfield's* Secretary was there at the time *Mr. Dormer's* Letter was read. I think he had spoken what he had principally to say before I came in, but I think he said the Consequence might be fatal to the Masters, if we did not take care of this Deficiency.

*Mr. Serj. Probyn.* We would not presume to interrupt the learned Managers; but I think the particular time when this was done, and the particular Sums that were paid by each Master should be stated. I remember *Mr. Edwards* was pleas'd to say the first 500 l. that was contributed was paid upon the Day he was sworn in, which I think was in *May 1721*. We desire therefore that he would please to express the Day when every other Sum was paid in.

*Mr. Sol. Gen.* We only desire this Gentleman to speak to his own Payment.

*Mr. Conway.* The Receipt is dated *August 11, 1721*. Then *Mr. Edwards* stopt so much Money.

*Mr. Serj. Pengelly.* We desire he may be ask'd how he paid that Money, whether voluntarily, or freely, or upon what Ground?

*Mr. Com. Serj.* I beg Pardon, but I must beg leave that the Witnesses may declare at what time this Transaction was.

*Mr. Conway.* It was the Day the Receipt bears Date, the Transaction happen'd *Aug. 11, 1721*.

*Mr. Sol. Gen.* We desire he may be ask'd what induced him to pay in this Sum?

*Mr. Conway.* It was stopt as a Contribution towards making up *Mr. Dormer's* Deficiency.

*Mr. Serj. Probyn.* My Lords, We desire that this Witnesses may be ask'd, whether there was any preceding Promise or Agreement to pay this Money?

*Mr. Conway.* My Receipt mentions a Promise.

*Mr. Serj. Probyn.* Then I desire to know how long before this Promise was made?

*Mr. Conway.* Soon after the Deficiency was spoken of in *Mr. Dormer's* Office, in *February 1720*. about three Weeks after I was admitted.

*Mr. Edwards* called.

*Mr. Serj. Pengelly.* My Lords, We only call *Mr. Edwards* to ascertain the time when he received the Money of *Mr. Conway* for his Contribution.

*Mr. Edwards.* My Lords, According as I have taken it out of my Book, it was the 11th of *August 1721*.

*Mr. Serj. Pengelly.* Now, my Lords, we shall shew the manner how this Payment was made.

Then *Mr. Lightboun* was called and appeared.

*Mr. Plummer.* I desire *Mr. Lightboun* may be ask'd if he was ever press'd to pay 500 l. by whom, and for what?

*Mr. Lightboun.* Not long after *Mr. Dormer's* Failure, *Mr. Cottingham*—

*Mr. Com. Serj.* My Lords, I hope *Mr. Lightboun* shall mention the time as he goes along.

*Mr. Lightboun.* Not long after the Failure of *Mr. Dormer*, I met *Mr. Cottingham* by accident at

my Lord Chancellor's Room at *Westminster*, and he ask'd me, whether there had been mentioned to me a Proposal of paying or advancing 500 l. a piece towards making up the Deficiency of *Mr. Dormer's* Office, for carrying on the Business there? I said I had heard it; he said it was propos'd that it should be immediately rais'd, that the Business of the Office might be carry'd on, till *Mr. Dormer's* Effects could be dispos'd of and sold; and some Intimation was given, that possibly we might have our Money again as *Dormer's* Effects came in. I have heard such a Thing talk'd of, says I, but I will never come into it; I thought it attended with dangerous Circumstances, and a dangerous Precedent, and therefore I was resolv'd I would not contribute.

*Mr. Plummer.* Can you recollect what pass'd afterwards?

*Mr. Lightboun.* He said all the rest would. I said I would not, and I continued the same Resolution when I talk'd with the Masters about it.

*Mr. Plummer.* I desire he may be ask'd if my Lord *Macclesfield* ever press'd him to pay this Money, and when?

*Mr. Lightboun.* It was often mention'd to me by the Masters, why I did not contribute as the others did, and I was made not a little uneasy for not having done it. I think in the beginning of the Summer 1722, as near as I can remember the time, my Lord Chancellor coming out of Court at his own House, (where I had the Honour to have been sitting with him) said, *Mr. Lightboun*, I would speak with you. I followed his Lordship into his House up into his Study, where my Lord was pleas'd to say, *Mr. Lightboun*, I am very sorry to hear that you have not contributed your 500 l. towards making up *Mr. Dormer's* Deficiency; for, says he, it must be consider'd, that it will be attended with ill Consequences, if that Matter is not taken care of. I asked him, was it your Lordship's Proposal? He said it came from the two senior Masters, but he approv'd of it. I answer'd, that if it had came from your Lordship, it might have had a different Consideration, but as it was theirs, and to serve their own Purposes, I hop'd his Lordship would not insist upon my coming into it. The two senior Masters had been long in their Offices, were grown in Years, and were willing to get out, and sell at high Prices; one of them had slipt out, and the other was about it; that I was but lately come into the Office, and intended to continue in it, and said, I will not concern my self in this Affair, unless the Office can be put upon such a Foot that the Suitors may be made safe and easy.

*Mr. Serj. Pengelly.* My Lords, I desire he may be ask'd, whether at this time my Lord *Macclesfield* made use of any Reasons, Arguments or Promises towards prevailing upon him to pay this Money?

*Mr. Lightboun.* I can't say my Lord press'd me; he left me to my own Inclination, but advis'd me to pay it, and not to stand out, to do as the rest did, and not to stand alone in it.

*Mr. Serj. Pengelly.* Whether did he mention of what Consequence or Advantage it would be to the Masters?

*Mr. Lightboun.* His Lordship said, if there were not some Measures taken it might be of ill Consequence, and that this was the only Expedient he thought

thought of. I told his Lordship, I thought there were many others, but this was one I would not come into; but that it was not for me to presume to dictate to his Lordship, I thought it did not become me.

*Mr. Serj. Pengelly.* My Lords, I desire he may be ask'd, if after these Discouragements my Lord *Macclesfield* did not again demand Money of him, and when?

*Mr. Lightboun.* My Lords, In the Year 1724, about the latter end of *July*, I met *Mr. Cottingham* by accident at the Tavern. He came in and desired me to go into a Room, for he had something to say to me. He told me, that my Lord *Macclesfield* had sent him to tell me, that he wonder'd that I had not paid my 500*l.*; that there was 1000*l.* to be paid to *Mrs. Chitty*, or to *Mr. Lockmann*, that must be immediately paid; that my Lord had been apply'd to, and much press'd, and it must be forthwith paid, and he expected that I would advance the 500*l.* and the rest of the Masters 50*l.* apiece, which would make up the Sum. I said to *Mr. Cottingham*, I cannot think my Lord *Macclesfield* would send you on such an Errand to me, I told my Lord formerly I would not pay it, I was with his Lordship this Morning, and he said nothing of it, and shall have the Honour of waiting upon him in a Day or two, and if he then think fit to talk to me about it, I shall give him a proper Answer; but I don't care to send my Message to him by you, because Messages are liable to be mistaken and misrepresented, and I will give my Answer my self. Upon that *Mr. Cottingham* began to be angry at my distrusting him, and thinking that he came of his own Accord, and averr'd to me that he came with my Lord Chancellor's Privy. I repeated the same Answer again to him, that I would give my own Answer to his Lordship, and would return none by him. In a Day or two after there was an Intimation given that my Lord Chancellor expected all the Masters to attend him at six a Clock in the Evening: We imagined that it was a Call upon the other Masters for more Money, and for my five hundred Pounds. They had all declared to me they would never contribute any thing more, and therefore I desired them that in case that were the Business, they would freely declare their Thoughts before my Lord himself. I believe it was the senior Master I pressed to do it, saying to him, it best becomes you to give the Answer; says he, if the Question be put, I shall propose that we may have time to consider of it. I desired he would not do that, it would encourage my Lord, and he might think that if he importuned it further we would comply, and for my part I am determin'd not to do it; so we went on to my Lord, and were carried up Stairs; when we came there, my Lord said, there hath been an Application made to me on the behalf of *Mrs. Chitty* or *Mr. Lockmann*, I think he was the Person expressly named, and that he had been much pressed by Persons of Distinction; and then he turned to me, and said, *Mr. Lightboun*, I am extremely surprized you have not paid the 500*l.* as the rest have done. After he had us'd a good many Persuasions and Arguments, I told his Lordship it was with great Concern that I refus'd to do any thing

that his Lordship could desire of me; but this was a Thing of such a dangerous Consequence, that I would not contribute one Farthing, and that I had given his Lordship my Reasons before; if he would hear them again, I would repeat them again; but this one was of most Weight with me, that it might be a Precedent, and look'd upon as an Undertaking for one another, if ever there should be a national Inquiry into these Matters; and that I would be answerable only for my own Debts: That as I had not contributed towards the Misfortunes of others, I would not contribute towards Payment of their Debts; that I did not know but the paying Contributions to make good the Demands on other Offices might make Deficiencies in our own; I had always refus'd it, and never repented it, and I had the pleasure of hearing every Master repent the doing it. I called upon the rest of the Masters to deal ingenuously with my Lord, to tell him what they had said when they had talk'd over the Matter among themselves, that they would not contribute any more; upon that *Mr. Holford* got up and said, he would never do it. Then my Lord said, he either would pay it himself, or take care it should be paid.

*Mr. Plummer.* I desire he may be ask'd if my Lord *Macclesfield* used any Insinuations with respect to the Parliament?

*Mr. Lightboun.* I forgot that my Lord *Macclesfield* was pleas'd to say, that the Consequences of not contributing to raise a Sum of Money to pay the Debt of *Mr. Dormer*, might be that the Money and Securities would be taken out of our Hands. I told him I was ready to deliver both the Money and Securities the next Day if his Lordship made the proper Orders, and I was properly indemnified. I think his Lordship said further, this may produce a Parliamentary Enquiry, and should it be resolv'd that purchasing a Master's Place is contrary to the Statute of the fifth and sixth of *Edward VI.* you might lose your Places; to that I replied, I would quit my Office rather than hold it upon those Terms of paying other Masters Debts. He went on further about a Parliamentary Inquiry; I said, let the Consequence be what it will, I would not pay it. Then I called upon the other Masters, who said they would not pay it.

*Mr. Serj. Probyn.* My Lords, As to the paying of the 1000*l.* to *Mrs. Chitty* or *Mr. Lockmann*, I desire *Mr. Lightboun* may be ask'd whether the late Lord Chancellor was pleas'd to say that he had or would take Care to pay the 1000*l.* himself, or what the particular Expression was that he then made use of, that he had taken Care or would take Care?

*Mr. Lightboun.* I can't remember at this distance of time, whether he said he had, or would take Care to pay it. There is so little Difference, that I cannot say which. I do not pretend to say those were the very Expressions my Lord used to me, or I to him. I speak as to the Tenor or Purport of our Conversation, I would neither aggravate nor soften Matters.

Mr. Serj. Pengelly. The next Witness we call is Mr. Holford, who was present at this Conversation.

Mr. Holford sworn.

Mr. Serj. Pengelly. We desire Mr. Holford may be asked, whether he was present at this Time, as is mentioned, when the Masters were required by the Earl of Macclesfield to raise this 1000*l.* for Mrs. Chitty or Mr. Lockmann.

Mr. Holford. My Lords, I was present at that Meeting. It was desir'd, as I apprehended, by my Lord Macclesfield, for us to attend him at Six o' Clock. When we came up there, I think, the first thing that my Lord Macclesfield said was, he asked Mr. Lightboun why he would not pay his 500*l.* as others had done. Mr. Lightboun did give this Answer: That he had told him several Times before, that he would not do it; he had given his Reasons, and it was in vain to repeat those Reasons again, he was of the same Mind still. My Lord then spoke of a Demand there was of 1000*l.* on Mr. Dormer's Office for one Mrs. Chitty and Mr. Lockmann, and I apprehended, my Lord mentioned it as if he intended that the Masters should contribute towards making it up; but he after said he would take Care of it. After that my Lord did not mention the 1000*l.* but, in general, spoke of the Deficiency in Mr. Dormer's Office, and it ought to be made up; and he proposed, as I did apprehend, that the Masters should make it up. Mr. Lightboun did call upon me to declare; upon that I told my Lord, it was very unadvisable to contribute towards a Deficiency which no Body knew what it was; and the doing so would only be ruining one's self, for fear of being undone; and, for my Part, I was unwilling to do it; any Body else might do as they thought fit.

Mr. Plummer. In what Manner did my Lord address himself to Mr. Lightboun, did he do it in gentle Terms, or how?

Mr. Holford. He spoke pretty sharply to him.

Mr. Serj. Pengelly. What was said by the Earl of Macclesfield, to persuade the Masters to come into this Contribution?

Mr. Holford. My Lord said it was a grievous thing, there had not been that due Care taken there ought to have been; that those who came first had all their Money, and those that came after would have none; which would make a great Clamour upon the Masters.

Mr. Serj. Pengelly. What was said upon that?

Mr. Holford. I don't remember what in particular.

Mr. Serj. Pengelly. What was said, as to a Parliamentary Enquiry?

Mr. Holford. I remember my Lord did say, it might perhaps occasion a Parliamentary Enquiry. Suppose, said he, the Parliament should resolve, that the Office of a Master in Chancery is a Place relating to the Execution of Justice, and resolve that every Body that hath purchased those Offices is within the Statute of the 5th and 6th of Edward VI. It may affect me in some Degree, in the Loss of the Disposition of the Offices; but it will affect you in the Loss of the Places themselves.

Mr. Serj. Pengelly. Whether any Person then ask'd my Lord, in what Manner it might come before the Parliament?

Mr. Holford. I ask'd my Lord myself, and said

it would be a Favour if he would give us his Opinion, in what Manner it might come before the Parliament, and in what Way. He said, it might come in by the Committee for Courts of Justice, appointed by the House of Commons at the Beginning of every Session. But when I came out of the Room, I said, it was more likely to come by Way of Complaint than that Way.

Mr. Serj. Pengelly. I desire he may be asked; whether, at this Time, the Masters agreed to come to a Contribution to pay this 1000*l.* and what was said about it.

Mr. Holford. It was disagreed to; and when it was so, my Lord did say, that he himself would pay the 1000*l.*

Mr. Serj. Pengelly. We leave that as a Circumstance of my Lord's endeavouring to prevent a Parliamentary Enquiry.

Mr. Serj. Probyn. My Lords, we desire Mr. Holford may be asked, whether he can be positive as to the Time of this Meeting?

Mr. Holford. I believe it was in July, or August, 1724.

Mr. Serj. Probyn. You can't be positive?

Mr. Holford. No, I can't be positive.

Mr. Serj. Probyn. Whether there was, at that Time, any Proposal made to raise Money, by any annual Sum or Payment out of the Offices, towards paying the Deficiencies by degrees.

Mr. Holford. I do not remember any such thing.

Mr. Serj. Probyn. Was such Proposal made at any other Time.

Mr. Holford. I don't remember that it was ever proposed by my Lord. I have heard Talk among the Masters of a great many Schemes and Proposals; but they never did agree in any one thing.

Mr. Serj. Probyn. I desire he may refresh his Memory, and that he may inform your Lordships if there was not a Proposal made, that if they might be maintain'd in their Offices, as they then were, they would not then consent that a Contribution should be rais'd among the Masters.

Mr. Holford. No, I don't remember that; I believe it was mentioned, that supposing the Masters might be continued on the Foot they were, whether they would not think it worth their while to do it. I said it was a Matter fit to be considered, and I did not know but it might; but there was no Method proposed but what seem'd difficult; and I don't remember that any thing was agreed to.

Mr. Strange. I desire he may be ask'd, whether, after they had contributed the 500*l.* a piece, their Accompts were called for by my Lord Macclesfield, in the Manner they were called for before?

Mr. Holford. I don't know but they might. The Manner of calling for those Accompts was thus: There was a Writing left in the publick Office, in which there were a great many Items in what Method those Accompts should be brought in. I had prepared mine, and waited till they should be called for; but they were not called for, nor demanded; so I laid mine by.

Mr. Com. Serj. I desire he may be ask'd, whether this Discourse, in relation to the raising of Money, was to pay off the whole Deficiency, or confin'd to pay off this Demand of 1000*l.*

Mr. Holford. I don't remember any Proposal, but only a Discourse that was started. I did not apprehend the whole Deficiency was intended to

be paid; for I never knew any Body that could tell what the whole Deficiency was, till of late.

Mr. Com. Serj. I desire to know, whether he speaks this from his Memory?

Mr. Holford. I can speak from nothing but my Memory.

Mr. Com. Serj. I desire that he will inform your Lordships, whether he doth not remember, that in *November* last there was a Signification to the Masters, and to him in particular, to bring in their Accompts?

Mr. Holford. Yes, my Lord.

Mr. Com. Serj. If there was such an Intimation in *November* last, to deliver in their Accompts, how comes it that you say you have them by you still?

Mr. Holford. This is a Mistake; you misapprehend me. The Accompt, that I mentioned before, was what was immediately called for, after the Failure of Mr. *Dormer*; but the Accompt in *November* last was what was called for by the Judges, and delivered into the Council.

E. of *Macclesfield*. My Lords, I desire to know, whether Mr. *Holford* can remember what the particular Directions, as to those Accompts, were, and whether the Accompts he prepared were drawn up according to those Directions?

Mr. Holford. Those Directions were many; in drawing up my Accompt, I did not draw it up exactly according to those Directions; but I drew them up to shew the Balance of Cash and Securities in my Hands.

E. *Macclesfield*. I would desire to know, whether they were not the like Directions as in *November* last, and whether the Masters did not think it impracticable to draw it up accordingly?

Mr. Holford. Yes, my Lords, they did; they thought it difficult, I thought it was not practicable without a great deal of Trouble.

Sir *George Oxenden*. I desire to know, whether it was required by my Lord Chancellor to look into *Dormer's* Deficiency, to see what the true State of it was at that Time?

Mr. Holford. All I heard of it was: I heard that my Lord had ordered Mr. *Edwards* to deliver in an Accompt of Mr. *Dormer's* Office to me and Mr. *Bennet*: He did deliver one; but it was an Accompt done in Haste, and did not shew what the Deficiency was. For some of the Payments said to be made, no proper Vouchers were produced; there were Mistakes, and it was not a proper Accompt; and without examining it we could not depend on it.

Mr. Serj. *Pengelly*. He mentions, that at this Meeting it was said, supposing the Masters might be continued on the same Foot they then stood, &c. I desire Mr. *Holford* may explain what he meant by the Foot they then stood on; what Liberties and Privileges were meant by that Expression?

Mr. Holford. I understood it was their continuing in the Possession of the Money.

Mr. Serj. *Pengelly*. Whether that was to lock the Money up in a Cabinet, or to have Power of the Money to make use of it?

Mr. Holford. For my own Part, I should not have lock'd it up.

Mr. *Lutwyche*. I would beg Leave to ask him, as he hath mentioned the Calling for the Accompts, whether he delivered any Accompt to the Earl of

*Macclesfield*, till the Order made by the Council?

Mr. *Holford*. My Lords, I did deliver an Accompt to my Lord *Macclesfield*, or to Mr. *Cottingham*, of my Money, but not of the Securities.

Mr. Serj. *Pengelly*. We desire Mr. *Edwards* may be called again.

[Accordingly Mr. *Edwards* was called and appeared.]

Mr. Serj. *Pengelly*. My Lords, we beg Leave that Mr. *Edwards* may give your Lordships an Account; because he was immediately concerned in a Demand made upon this Office, what Application was made to him for this Mrs. *Chitty's* Money; and what Application he made to the Earl of *Macclesfield* on that Occasion.

Mr. *Edwards*. My Lords, there was an Order brought to me, that was made by my Lord *Macclesfield*, for the Payment of 1000*l.* to Mrs. *Chitty*. I told the Party, I had not Money in my Hands of Mr. *Dormer's*, sufficient to answer the Demand upon the Office. I then went to my Lord *Macclesfield*. I told him (I had been forced to trouble him pretty often upon that Occasion) that it gave me a great deal of Uneasiness, that there was no Fund in my Hands to answer those Demands that were upon my Office. I hoped his Lordship would take Care that there should be a Supply, or that he would not be pleased to make Orders upon me for Payment of Money.

Mr. Serj. *Pengelly*. Give an Account of the Whole that passed, the whole Conversation.

Mr. *Edwards*. My Lord *Macclesfield*, in answer to that said, at least, it was what I understood by his Answer, that, if the People would but have a little Patience, he was doing every thing necessary, and making proper Regulations for that Purpose.

Mr. Serj. *Pengelly*. I desire he may be ask'd, whether my Lord *Macclesfield*, at that Time, directed him to proceed to make any further Payments, or encouraged him to go on to make Payments?

Mr. Serj. *Probyn*. My Lords, we apprehend that is too leading a Question.

Mr. Serj. *Pengelly*. What Directions he had, in general.

Mr. *Edwards*. My Lords, I had no other Directions that I remember.

Mr. Serj. *Pengelly*. I desire he may acquaint your Lordships, whether he said any thing relating to the State and Condition of the Suitors of the Court?

Mr. *Edwards*. Several Times that I had the Honour to wait on my Lord *Macclesfield*, I told him there was like to be a great Deficiency in Mr. *Dormer's* Effects: All that had been raised out of *Dormer's* Effects was exhausted and gone, and there were a great many Demands; and I hoped Provision would be made to answer them: It was for me to do it else; and I hoped it was not expected that I should.

Mr. Serj. *Pengelly*. Was any thing represented at that Time, concerning paying some of the Suitors of the Court, and not others?

Mr. *Edwards*. About that Time, or rather since, as I remember, I told my Lord *Macclesfield* that I saw the Masters were determined not to make any further Contributions; and if that were to be the Case, and there was to be no further Supply of Money, it would be very hard for some to have



all their Money, and others none at all. My Lord Chancellor said, I do not know what to say to it, I think it is very hard it should be so; I will take all the Care I can, and hope to make every Body easy.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he had not paid all the Money, or near all, when this Discourse happened?

Mr. *Edwards*. Yes, My Lords.

Mr. *Lutwyche*. I desire he may be asked, whether he was present at the Meeting of the Masters, when this 1000 *l.* was insisted upon, and on what Occasion it was?

Mr. *Edwards*. It was upon a Summons that all the Masters should attend his Lordship; I am not sure, as to the Day; I think it was the latter End of *July*: We waited upon his Lordship about six of the Clock in the Evening, and my Lord mentioned it to Mr. *Lightboun*, that he was surprized that he had not contributed his 500 *l.* he wonder'd that he should be so backward in doing what others thought right to do, and that there was Occasion at that Time for the Payment of 1000 *l.* he mentioned, either to Mrs. *Chitty* or Mr. *Lockmann*. Mr. *Lightboun* told him, that he did not expect to be asked again upon this Subject, he had so often told his Lordship he would not contribute; other People might do what they pleased, but, as for his Part, he was determined not to do it.

Mr. *Lutwyche*. We desire to know what passed, and what was said by the Earl, at that Meeting?

Mr. *Edwards*. When this was refused by Mr. *Lightboun*, there was a Discourse in the Company, that if the rest of the Masters would advance 50 *l.* a piece, and Mr. *Lightboun* his 500 *l.* it would make up the Sum. The Masters, most of them, spoke their Mind, and shewed an Unwillingness to contribute any more. My Lord *Macclesfield* was pleased to say, this is a Thing of Consequence, a Matter that ought to be considered; here is a very pressing Occasion for a Sum of Money to be immediately paid, if not paid, I don't know what the Consequence may be; Clamours begin to grow pretty strong, I don't know but it may occasion a Parliamentary Enquiry; or to that Effect.

Mr. *Lutwyche*. I desire he may be ask'd, whether there was any further Discourse what the Parliament might do?

Mr. *Edwards*. My Lord *Macclesfield* was pleased to say further, I don't know, if this Matter comes into the Consideration of Parliament, how far it may affect your Offices, the Sale of them is against an Act of Parliament: Suppose it should be resolved by the House, that these Places, being bought contrary to the Act of Parliament, are forfeited, I can't say how far it may affect me in some Measure, but it will affect you much more.

Mr. *Serj. Pengelly*. These are the very Words of the Article, and we may rely upon the Opinion of of the Earl himself, when he was in the Possession of that great Office?

E. of *Macclesfield*. My Lords, I desire Mr. *Edwards* may be asked, whether the Subject Matter of this Discourse was the Payment of this 1000 *l.* or making good the Whole of *Dormer's* Deficiency?

Mr. *Edwards*. I understood the only Subject to be this 1000 *l.*

E. of *Macclesfield*. You understood it so?

Mr. *Edwards*. And the Reason why I understood it so was, because if Mr. *Lightboun* would have been pleased to have paid his 500 *l.* and the other Masters 50 *l.* a piece, it would have made up the Sum.

E. of *Macclesfield*. Was the Proposal of paying 50 *l.* a piece, after Mr. *Lightboun* had refused the Payment of 500 *l.*?

Mr. *Edwards*. I believe it was.

E. of *Macclesfield*. What Occasion was there for the Proposal to pay 50 *l.* a piece, when the Payment of 500 *l.* was absolutely refused?

Mr. *Edwards*. I believe it was understood by several, that, if the other Masters would have contributed 50 *l.* a piece, it would have been an Inducement for Mr. *Lightboun* to have come in and paid his 500 *l.*

E. of *Macclesfield*. Some Body must propose this that had that Apprehension?

Mr. *Edwards*. I can't say who proposed it, nor whether it was proposed by my Lord *Macclesfield*, but 50 *l.* a piece was mentioned.

E. of *Macclesfield*. My Lords, I desire to know of Mr. *Edwards*, whether the Masters did not at any Time agree to make good *Dormer's* Deficiency?

Mr. *Edwards*. My Lords, I think I remember a Meeting of the Masters at your Lordship's House, not long before this, where they seemed inclinable to agree, that if they were continued in the Rights of their Office in all Respects, and on the same Foot as they had enjoyed them, that then they would have endeavoured to have made this Deficiency good.

E. of *Macclesfield*. I desire to know if he hath not said, that on his coming into the Office, the Masters told him, they would make good the Deficiency?

Mr. *Edwards*. I can't say the Masters ever told me, they would make good the Deficiency; I can't say I ever heard them say, that they would make it up.

E. of *Macclesfield*. I desire you would recollect yourself, whether, when you was with me, and I desired you to give an Account of this Matter, you did not say, that the Masters did promise to make it good, or else you would not have come into the Office?

Mr. *Edwards*. I don't remember I told your Lordship so; I believe it was designed by the Masters to have it made up, if not the Whole, the greatest Part of the Masters, were inclinable to make up the Deficiency.

E. of *Macclesfield*. I desire an Answer to the Question, whether he did not say, that the Masters did promise him to make good the Deficiency?

Mr. *Edwards*. I don't remember that I said so directly; I told your Lordship, that unless I had had Assurances, that the Deficiency of the Office would have been made up, I never would have meddled with it. These Assurances I had from Mr. *Cottingham* and Mr. *Godfrey*.

E. of *Macclesfield*. I think you say, the Masters did seem to agree, that if they were kept in Possession of the Rights of their Offices, they would contribute. Had you two Meetings with me in *July*, or *August*?

Mr. *Edwards*.

Mr. *Edwards*. I think there were two in the same Month of *July*: Within a Month the two Meetings were.

E. of *Macclesfield*. Whether the Masters have not made several Complaints to me, of the Invasion of their Right in their Offices, and desired me to make an Order to redress them?

Mr. *Edwards*. Not only Complaints of that Sort were made, but I believe those Complaints were reduced into Writing, and laid before your Lordship; there were frequent Complaints by Concurrence of all the Masters.

E. of *Macclesfield*. How long before that Time were Complaints made to me, of the Masters being injured in the Profits of their Office?

Mr. *Edwards*. I believe near a Twelvemonth.

E. of *Macclesfield*. Was it not more?

Mr. *Edwards*. It was full a Year.

[*Earl of Macclesfield shews Mr. Edwards a Paper.*

Mr. *Edwards*. This is what I mentioned, a Representation in Writing laid before your Lordship.

E. of *Macclesfield*. Pray look upon that.

[*Shews another Paper, which Mr Edwards looks upon.*

E. of *Macclesfield*. Are those two Papers signed by you, and the other Masters whose Names are at the End of them?

Mr. *Edwards*. Yes.

E. of *Macclesfield*. I desire to know in the next Place, whether I was not much pressed by the Masters to have made some Alterations in the Proceedings of the Court? And what Answer did I give?

Mr. *Edwards*. Upon this Representation there were a great many Applications made to my Lord *Macclesfield*. I went several Times myself. Sometimes two or three would make Application to him, that he would be pleas'd, if he thought the Matters represented to be Grievances, that he would redress them. My Lord did say, that he thought, that the Matter of our Complaint was just, and that those Matters were proper to be rectified, and he would take all proper Measures to do it.

E. of *Macclesfield*. And why were not all these Things set right?

Mr. *Edwards*. I remember one Circumstance that I believe will be an Answer to the Noble Lord's Question. Those Matters were not laid together all at once before my Lord Chancellor, but some at one Time, and others at another Time; and my Lord *Macclesfield* did say, I would have you draw up a State of all these Grievances you complain of, and then I shall see them better under one View, and take them together.

E. of *Macclesfield*. Was there any Order made in Favour of the Masters, and to redress these Grievances?

Mr. *Edwards*. I remember we were a little impatient that there was no Order made; we often solicited on several Accounts before they were made.

E. of *Macclesfield*. For what particular Reasons were you so impatient?

Mr. *Edwards*. It is impossible to recollect the particular Reasons; they were, in many Instances, relating to the Proceedings at the Rolls, and the Innovations there to the Prejudice of the Masters Offices.

Mr. *Plummer*. My Lord *Macclesfield* hath asked several Questions, and I would make an Observation upon this Evidence, That these Gentlemen applied to Lord *Macclesfield* to redress Grievances; but he would not promise them a Redress till they paid this Debt.

Sir *George Oxenden*. I desire to know what he means by the Profits of the Office?

Mr. *Edwards*. The principal Thing that I mean is, the keeping of the Money; but there were several other Things in which we thought our Offices lessened, by taking away the customary Fees which usually belonged to the Masters.

Sir *George Oxenden*. If the Profits of the Office was the keeping of the Money, I suppose they made use of it?

Mr. *Edwards*. Yes, my Lords, I believe it was not understood by any Body, that the Money was designed to be locked up. By the Profits of the Money is meant the putting out the Money at Interest for ourselves. But that is not all, the placing the same out at Interest for the Suitors occasions several Perquisites, as Reports and other Things, which would be lost by taking away the Money.

Mr. *John Bennet* called again.

Mr. *Sol. Gen.* My Lords, we desire Mr. *John Bennet* may be asked, whether he was present at the Meeting at the Lord Chancellor's, when Proposals were made for the raising this 1000 *l.*

Mr. *Bennet*. My Lords, I was there, and my Lord *Macclesfield* was earnest in persuading Mr. *Lighboun* to pay his 500 *l.* Mr. *Lighboun* said he had much rather bring in all the Money and Securities he had in his Hands, and deliver them up, than pay this 500 *l.* Upon which my Lord *Macclesfield* said, delivering up the Money and Securities too might be the Consequence, but that was not the worst; there might be Votes of the House of Commons, that the Office of a Master in Chancery did concern the Execution of Justice, and that the Masters in Chancery, by purchasing their Offices, had incurred the Penalty of the Statute of *Edward the VIth*, and thereby forfeited their Places, and that a new Set of Masters might be put in; it might redound to some Loss to his Lordship in disposing of those Offices, but it would redound much more to their Loss, the Loss of their Places.

Mr. *Lutwyche*. When the Masters refused to contribute to this of *Chitty*, what said my Lord?

Mr. *Bennet*. My Lord said, he would take Care of it himself, or that he would pay it himself, I can't say which.

Mr. *Lutwyche*. Whether anything was said concerning the Consequence of not paying this 1000 *l.* and whether any Mention was made of *Dormer's* Deficiency?

Mr. *Bennet*. There was Mention made of Mr. *Dormer's* Deficiency, and one Master mentioned, that it was a bottomless Pit; and as my Lord had desired me and Mr. *Holford* to take some Account of it, we both declared, we had not received such a satisfactory Account from Mr. *Edwards*, as could be depended upon, and that the Deficiency appeared to us to be very uncertain.

Mr. *Lut-*

Mr. Lutwyche. I desire he may be asked, whether any mention was made of any Fear of the Discovery of that Deficiency?

Mr. Bennet. I can't say by whom it was said, but it was said in Discourse, If this 1000 l. was not now paid, the Deficiency of Mr. Dormer's Office would be discovered.

Mr. Lutwyche. Pray recollect who was that said by?

Mr. Bennet. I can't take upon me to say whom it was said by, but it was said in the Conversation that passed at that Time.

Mr. Lutwyche. Who were then present?

Mr. Bennet. I believe, all the Masters.

Mr. Lutwyche. And who besides?

Mr. Bennet. My Lord Macclesfield.

Mr. Lutwyche. Were not all the Masters against making up the Deficiency?

Mr. Bennet. Yes, all of them.

E. of Macclesfield. Was Dormer's Deficiency then known?

Mr. Bennet. It was known abroad, but it was not known how much.

E. of Macclesfield. Were there two Meetings between me and the Masters in July, or the Beginning of August?

Mr. Bennet. I believe within a Month there were two Meetings.

E. of Macclesfield. What was the Subject Matter of the other Meeting?

Mr. Bennet. The first Meeting was to put us all in mind of our Duty, and to admonish us to avoid any Complaint?

E. of Macclesfield. That was the first Meeting. Was there any thing said about Dormer's Deficiency?

Mr. Bennet. I don't remember there was.

E. of Macclesfield. What Admonition was it that was given to the Masters, and what was said to them, if they did fail in their Duty?

Mr. Bennet. The Admonition was generally to take Care to perform our Duty, not to give any Cause of Complaint, and, in particular, not to go out of Town, till a Week after the last Seal.

E. of Macclesfield. Do you not remember, that I said in my Admonition, that, if any Master failed in his Duty, I owed it to the rest to punish him, and to make him an Example?

Mr. Bennet. I believe you did say so.

Mr. Lutwyche. At the Time when this Admonition was given, was any thing then said about your Accompts?

Mr. Bennet. No, I don't remember that any thing was then said on that Subject.

E. of Macclesfield. In Point of Regularity, when these Gentlemen speak of this 1000 l. they should produce the Order?

Mr. Serj. Pengelly. It is here, and it is admitted in the Answer.

[The Order produced, proved by Mr. Ralph Paxton, who swore it to be a true Copy of the Order taken from the Report-Office.

Mr. Paxton begins to read,

*Martis decimo septimo Die Martii Anno Regni Georgii Regis decimo, inter Prideaux Sutton Cler. & Annam Uxorem ejus, Mercy Sheldon Spinster & Egidium Laurence Executor. Winifred Sheldon Spinster Defunct. Quer. Elisam Chitty, Johannem Russel & alios Defendentes.*

Whereas the Defendant, Elizabeth Chitty —

E. of Macclesfield. It is not necessary to trouble my Lords in hearing the whole Order, only the ordering Part?

Mr. Paxton reads again,

*His Lordship doth order, that the said Master do, out of the said Money in his Hands, pay unto the Defendant Eliz. Chitty the Sum of one Thousand Pounds, and to the Plaintiffs the Sum of five Hundred Pounds, subject to the further Order of this Court.*

Mr. Lovibond sworn.

Mr. Lutwyche. My Lords, we desire that Mr. Lovibond may be asked, whether he was at the Meeting, when the Masters attended my Lord Macclesfield about July last, and what passed at that Meeting?

Mr. Lovibond. I was at that Meeting with several of the other Masters, I think most of them: As to what passed then, according to the best of my Recollection, the first Thing was, my Lord Macclesfield turned to Mr. Lightbourn and ask'd him, why he had not paid the 500 l. as well as the rest of the Masters; to which he replied, he never would, and gave my Lord some Reasons why he would not. Then my Lord Macclesfield was pleased to say, there was a Matter that required Expedition, a further Demand was made of a Sum of Money, by one Mr. Lockmann, who belonged to the Prince's Court, and it did behove us to find out some Way to make him easy. He proposed that the Masters should raise that Money among them. The Masters in general said, that they could not do it.

Mr. Lutwyche. What Arguments were made use of by my Lord Macclesfield, to persuade them to it?

Mr. Lovibond. I remember that Mr. Lightbourn said, rather than pay it, he would deliver up all the Money and Effects in his Hands, and my Lord Macclesfield did reply, Perhaps that is not the worst of the Matter, it may be worse than that; suppose there should be a Parliamentary Enquiry, and the Parliament should come to a Resolution, that you have forfeited your Offices, by having bought them against the Statute of Edward the VIth.

Mr. Lutwyche. I desire he may be asked, whether any Encouragement was given, in case they would pay this Money?

Mr. Lovibond. I don't remember there was any thing spoke by way of Encouragement to the Masters, for Payment of that Sum of Money.

Mr. Lutwyche. I desire to know what was the Result of this Matter, as to this Sum of Money being to be paid, and who it was that said it should be paid?

Mr. Lovibond. Upon the Refusal of the Masters, my Lord Macclesfield said, Well, I will take Care of that Part myself.

Mr. Lutwyche. I desire he may be asked, whether any thing was then said in relation to the Deficiency of Dormer's Office?

Mr. Lovibond. Yes, there was some Discourse about that Matter, and my Lord Macclesfield did express himself as though it would be an unlucky

Thing; and it must be made up one Way or other, and he desired the Masters to think of a Way to make it up. My Lord *Macclesfield* said, if you can have the Enjoyment of your Places, as you have had them these Forty Years, will you come into some Terms to make up that Debt? Some said they could not come into it; some said there be a might Means of paying it by Annual Installments out of their several Offices; some seemed to agree to it; others said we may as well make good the Bankers Debts, as make good this Debt.

*E. of Macclesfield.* I desire he may be asked, whether he did not agree, that this Deficiency should be made good by Annual Payments?

*Mr. Lovibond.* No, I did not.

*E. of Macclesfield.* I desire to know, whether the rest of the Masters did not?

*Mr. Lovibond.* I believe some of the Masters did.

*E. of Macclesfield.* I desire to know, whether they did all agree?

*Mr. Lovibond.* I believe the major Part did. I did not.

*E. of Macclesfield.* Do you believe any besides yourself disagreed?

*Mr. Lovibond.* Indeed I can't tell. The greatest Part did agree. I can't say I heard any Body refuse.

*E. of Macclesfield.* Some, he says, did agree to it, the major Part, and none that he heard refused. I desire to know, if it was not endeavoured to find out a Way to make up whatever Deficiency there was; and whether this was the Subject Matter; the making good the 1000 *l.* or the Whole of the Debt?

*Mr. Lovibond.* The making good the Whole of the Debt, as I understood it.

*E. of Macclesfield.* I think he said, that I said then, I would take Care of the 1000 *l.* whether was that after they had agreed that the Deficiency should be made good, or before?

*Mr. Lovibond.* No, I think it was before.

*Mr. Plummer.* I desire to know, if my Lord *Macclesfield* did say, he would take Care of it, when the Masters refused to contribute?

*Mr. Lovibond.* To the best of my Remembrance, it was upon their Refusal, that he said so.

*Mr. Thomas Bennet* called again.

*Mr. Tho. Bennet.* My Lords, before the Managers propose a Question, I beg the Favour to mention a Thing that my Memory slipp'd me in Yesterday. My Lord *Macclesfield* then asked me, what Estate I had purchased? I said 68 *l.* a Year in *Kent*, and 40 *l.* per Annum in *Suffolk*. I forgot a House I bought for 700 *l.* which is mortgaged for the same Sum. The Accompt lies upon the Table, I forgot it then, and I did then refer to my Accompt that lies upon the Table, that I might not be mistaken.

*Mr. Sol. Gen.* I desire he may be asked, whether he was present at this Meeting at my Lord *Macclesfield's*.

*Mr. Tho. Bennet.* Yes, I was summoned to attend my Lord *Macclesfield* on this Occasion. I dined that Day with my Brother and *Mr. Lovibond* and one more; and my Brother told me, that

there was a Proposal come from my Lord *Macclesfield* by *Mr. Cottingham*. He said it was, that the Masters should advance 50 *l.* a piece, towards a Demand in the Court of *Chancery*; and in case we would do it, my Lord *Macclesfield* would make *Mr. Lightboun* pay his 500 *l.* We, who were then present, seemed to agree, that if my Lord would make *Mr. Lightboun* pay his 500 *l.* we would pay our 50 *l.* a piece. In the Evening, when we attended my Lord *Macclesfield*, his first Application was to *Mr. Lightboun*, and as soon as we came, he said to him, *Mr. Lightboun*, I am surprized you have not paid your 500 *l.* as the rest have done, I wonder at it; and he used some hard Expressions, that I wonder he could stand it, I could hardly have done it; but *Mr. Lightboun* did stand it, and refused to pay it, and gave his Reasons for it, and said he had given them over and over again.

*Mr. Sol. Gen.* What Reasons were laid before you to pay it?

*Mr. Tho. Bennet.* The Reasons laid before us by my Lord *Macclesfield* were, that there was a Deficiency in *Dormer's* Office, which he was afraid would break out; for here was a Demand of a Sum of Money by one, for whom he had been spoken to, by a Person of very great Distinction. I did not know who it was then, but I afterwards understood it was *Mr. Lockmann*, that was the Person that was to have the Money; and he asked, if we did not think it for our Interest to make such a Person our Friend?

*Mr. Sol. Gen.* Was there any thing more said?

*Mr. Tho. Bennet.* My Lord *Macclesfield* said, that in case this Money was not paid, and some Method found to make up the Deficiency of *Mr. Dormer*, he believed it might occasion a Parliamentary Enquiry, which might hurt him very much, but, said he, I believe it will hurt you Gentlemen much more.

*Mr. Lutwyche.* Were there any of the Masters that asked him any Questions, how he apprehended it would come into Parliament?

*Mr. Tho. Bennet.* Yes, *Mr. Halsford* asked him the Question, Can your Lordship imagine, in what Method this may come into Parliament? My Lord answered, Upon the Meeting of every Parliament, Committees were chosen by the House of Commons, and among the rest there was a Committee of the Courts of Justice, and he thought it very likely, that That Committee might take this under Consideration.

*Mr. Sol. Gen.* What was said upon the Masters Refusal to raise the 1000 *l.*?

*Mr. Thomas Bennet.* After *Mr. Lightboun* refused to pay towards the 1000 *l.* my Lord then said he would make up that.

*Mr. Sol. Gen.* Was there any Talk of *Dormer's* Deficiency?

*Mr. Tho. Bennet.* There was some Discourse about making up *Mr. Dormer's* Deficiency. Several of the Masters were against it. No Scheme could be found that would make it up. I said upon that Occasion, that it was a bottomless Pit, and *Mr. Edwards* had not given Satisfaction to any of the Masters what the Deficiency was.

*Sir George Oxenden.* Was there any mention made at this Meeting of the Statute of *Edward VI.*

*Mr. Tho. Bennet.* My Lord Chancellor said, He did not know but our Offices might come within the Statute of *Edward VI.*: And, if that should be

so resolved by Parliament, we must forfeit our Offices; and therefore had we not better do something than forfeit our Offices?

Mr. Serj. Pengelly. My Lords, we beg Leave to call Mr. Lockmann, to whom this 1000 l. was paid, and to shew your Lordships the Declaration that was made by the Earl of Macclesfield at that Time.

Mr. Lutwyche. We beg Leave first to read the Order in the Cause of Harper and Cate.

[The Order is proved.]

Mr. Ralph Paxton reads.

*Sabbati quinto Die Decembris, Anno Regni Georgii Regis undecimo, inter Jana' Harper vidua' Quer' Thoma' Case Clericu' & Sara' Maria' uxor' ejus, Henricu' Halsey, & alios Defendentes.*

UPON opening of the Matter this present Day unto the Right Honourable the Lord High Chancellor of Great Britain, by Mr. Solicitor General and Mr. Williams, being of Council for the Plaintiff; and Mr. Benjamin Jackman, in the Presence of Mr. Talbott, of Council for the Defendants: The Cases. It was alledged, That it being, by the Order made on the hearing of this Cause (*inter alia*) ordered and decreed, that the Sum of 500 l. Pounds, Part of the Marriage Portion of the Plaintiff, receiv'd by Thomas Harper Clerk, her late Husband, should be made good to her with Interest from his Death, at the Rate of 5 l. per Cent. per Annum, together with her Costs of this Suit, to be taxed by Mr. Dormer, then one of the Masters of this Court, out of the said Thomas Harper's Estate (for which, and other Purposes, in the said Order, so much as should be necessary of the said Thomas Harper's Estate was to be sold to the best Purchaser that could be got for the same, with the Approbation of the said Master :) And the said Master having, by his Report, (made pursuant to the said Order, and) dated the 12th of December, 1716, certified the Sum of 557 l. 16 s. 05 d. to be due to the Plaintiff for Principal and Interest, besides Costs. And the said Defendants having been served with a Writ of Execution of the said Decree, the said Master, by his Report dated the 9th of November, 1717. allowed the said Jackman the Purchase of three Houses at Kensington (Part of the Premises directed to be sold) at the Sum of 260 l. And the said Master's Report being afterwards absolutely confirmed, the said Jackman obtained an Order of the 19th of December, 1717. whereby it was ordered, That the Writings belonging to the said Estate, purchased by the said Jackman, should be delivered to his Council, and that the Tenants of the said Estate should attorn to him, on bringing his Purchase Money before the said Master. And the said Jackman did accordingly, on the 24th of the same December, bring his said Purchase Money before the said Master, as by his Certifi-

cate of that Date, now read, appears; and the Tenants attorned to the said Jackman: But the Defendants have ever since, by trifling Pretences and Excuses, put off the executing proper Conveyances to the said Jackman, although the same have been long since settled and allowed by Mr. Edwards, one of the Masters of this Court, the said Mr. Dormer's Successor, as by the Affidavits of Joseph Herring and Thomas Atwood appears. It was therefore prayed, that all Parties may forthwith execute Conveyances of the said Houses to the said Mr. Jackman, or as he shall appoint: And it was on the Plaintiff's Behalf prayed, that the said Purchase Money may be paid to her, towards Satisfaction of what is due to her, by vertue of the said Decree: Whereto the Council for the Defendants had Cases alledged, that they are intitled to the Residue of the said Tho. Harper's Estate; after such Payments, as are directed by the said Decree to be made out of the same, are made; and the Defendants Case and his Wife were always ready to join in executing the said Conveyances, upon an Application being made of the said Jackman's Purchase Money towards what is due to the Plaintiff; but being apprehensive of a Deficiency of Mr. Dormer's Estate, to answer the Monies brought before him, pursuant to the Orders of this Court; and conceiving they ought not to be Sufferers, though such Deficiency might appear, and the Delay being occasioned by the Purchaser, and not by the Plaintiff, and the said Master not having settled the said Conveyances, they did therefore scruple to execute the said Conveyances, until the said Jackman's Purchase Money should be applied to the Purposes in the said Decree; but are willing, if the Court should so think proper, on Payment of the said 260 l. Purchase Money to the Plaintiff, and the said Tho. Harper's Estate being discharged of so much, to execute the said Conveyances. Whereupon, and upon hearing of the said Affidavits of the said Joseph Herring and Thomas Atwood, and an Affidavit of Notice to the Defendant Halsey read, and what was alledged on both Sides: His Lordship doth order, that it be referred to the said Mr. Edwards, to examine, whether the said 260 l. was deposited with the said Mr. Dormer, for the Benefit of any particular Person, and whom, and what was the Occasion of the Delay, that the said Conveyances were not executed, and the said 260 l. Purchase Money paid out before the Year 1720. and whether there is likely to be a Loss of any Monies deposited with the said Mr. Dormer: And, upon the said Master's Report, such further Orders shall be made, as shall be just.

Mr. Serj. Pengelly. My Lords, this Order was made in December last: It is a Direction to Mr. Edwards to see, whether there was likely to be any Loss of any Monies deposited with Mr. Dormer: We pray that Mr. Lockmann may be sworn.

Mr. Lockmann sworn.

Mr. Serj. Pengelly. We beg Leave that Mr. Lockmann may be asked, whether he attended upon the Earl of Macclesfield at any Time relating to a Sum of Money, and where.

Mr.

Mr. *Lockmann*. I received an Order from the Earl of *Macclesfield* upon Mr. *Edwards* for 1000 *l.* but not being able to receive it of Mr. *Edwards*, I went to *Kensington* to wait upon the Earl of *Macclesfield*, and told his Lordship the Necessity I had for this 1000 *l.* which belonged to Mrs. *Chitty*, but the Benefit of it was made over to me; that I had the Misfortune to be backwards in my Affairs, and had some *South-Sea* Contracts to make up, and had made a Composition of my Debts, for which I had about three Weeks to pay it in, and therefore I desired the Favour of his Lordship to order me the Payment of this 1000 *l.* His Lordship was pleased to tell me, that if I attended him in Town, and applied to him there, I should have the Money paid. Upon which I waited upon his Lordship in Town; and when I had the Honour to see his Lordship, he told me, that he had enquired into the Affair relating to that Money upon which the Order was made, that it was in Mr. *Dormer's* Office, where there was a Deficiency, that he could not yet bring all the Masters to settle that Matter; but if I would come a few Days after, he would see what he could do for me. Thereupon I attended several Days, and went to *Westminster-Hall*, and spoke to Mr. *Cottingham*, and he said great Pains had been taken by my Lord, but he had not yet been able to bring any thing to bear, but he did not doubt but in a little Time he could bring it to bear to his Satisfaction; there had been some Motions made by Serjeant *Chesbhyre*, &c. which had frightened the Masters from raising Money; but if I attended in a few Days, he would do what he could for me. I waited some Days, and at last I took the Freedom to wait upon my Lord *Macclesfield* at his own House in *Lincoln's-Inn* Fields, and I told his Lordship I had attended many Days in Town, and had neglected my Duty and Service; that the next Day was the last Day appointed to pay my Composition, and having depended upon this Money, I had made no other Provision. Whereupon his Lordship said, he had taken a great deal of Pains, and had spoken to the Masters, and that I should attend his Lordship next Day at *Westminster* at Ten, and he would see what he could do for me, but that there was none of the Estate of Mr. *Dormer* left. I waited upon his Lordship accordingly the next Day at *Westminster*. His Lordship called me into his Room, and told me that Mr. *Cottingham* should pay me the 1000 *l.* but he believed there would come no more, that this would be the last of the Money, or the last Sum that Mrs. *Chitty* would receive; and that if she had nothing else, I might, by marrying her, in Expectation of a Fortune, make myself worse than I was.

Mr. *Dodington*. I desire Mr. *Lockmann* may be asked, what the whole Sum was that was paid in?

Mr. *Lockmann*. I took it to be about 10000 *l.*

Mr. Serj. *Pengelly*. I desire he may be asked, if the Earl of *Macclesfield* gave any further Reasons, why it was like to be the last Sum?

Mr. *Lockmann*. The Earl of *Macclesfield* did not, at that Time, give me any Reason; but the Day before, when I had the Honour of seeing his Lordship, at his House in *Lincoln's-Inn-Fields*, and once before that, his Lordship told me that the Masters in Chancery were apprehensive of losing

a great deal of their Privileges and Profits of their Places; and therefore some of them were not willing to advance any Money.

Mr. *West*. My Lords, I beg Leave to ask Mr. *Lockmann*, whether he received any Direction or Intimation, as to the keeping of this private, the telling, or not telling it?

Mr. *Lockmann*. I did receive no Intimation at that Time; afterwards, when the Solicitor met me, he ask'd me, Pray, says he, Mr. *Lockmann*, have you received the 1000 *l.* you solicited for? Yes, I have received it. Pray, who then paid it you? I told him Mr. *Cottingham*; says he, Mr. *Cottingham* denied it to me. Upon that I met Mr. *Cottingham* some Time afterwards in the Court of Requests. He told me I should say nothing of it: Besides this, I received no Intimation to keep it secret.

Mr. *West*. What did he say to you then?

Mr. *Lockmann*. He said said at first meeting me, You can't fare well, but you must cry out Roast-meat. I, being not well acquainted with that Phrase, did not know what he meant. I did not know that I had ever eat Roast-meat or boil'd Meat with him either; so I told him, if that was in relation to his paying me the 1000 *l.* it was only what was due, and I hoped there would be Care taken to answer the Remainder. He answered, he could not tell what the Consequence would be, whether ever it would be made up, or not, he could not tell, he was very uncertain.

E. of *Macclesfield*. Sir, I desire to know off you, whether you did not represent yourself to me to be in the utmost Distress, if this Money was not paid to you, that in such Case you must be ruined?

Mr. *Lockmann*. I remember I told his Lordship, that this Money, I had borrowed it of Mrs. *Chitty*, that I had settled a Composition with my Creditors and wanted this Money to satisfy them; that it must be paid the next Day; and if I did not then pay it, it would be a great Damage to me; but I pressed his Lordship more, as I depended upon his Lordship's Promise, and that was the Reason I press'd it the more.

E. of *Macclesfield*. I desire he may be asked, whether I ever promised to pay him at any Time before that?

Mr. *Lockmann*. When I went to wait upon your Lordship at *Kensington*, your Lordship promised me it should be paid; that, as soon as you came to Town I should apply to your Lordship, and you would give Orders, and it should be done.

E. of *Macclesfield*. Whether he did not look upon it, that I did this out of Compassion to him?

Mr. *Lockmann*. I took it as Part of a Sum of Money due, and I did not look upon it as Charity, or out of Compassion.

E. of *Macclesfield*. I desire to know, whether he did not intreat it of me as an Act of Compassion to him?

Mr. *Lockmann*. I don't understand the *English* Terms, I did not use the Word Compassion; I begg'd that your Lordship would be so good as to order me the Money.

E. of *Macclesfield*. I desire to know, whether the first Time he applied to me I promised to pay the Money?

Mr. *Lockmann*.

Mr. Lockmann. Your Lordship promised the Order should be given to the Master, and that I should be paid.

E. of Macclesfield. When was that Promise?

Mr. Lockmann. When you promised to order the Master, and I should have the Money.

E. of Macclesfield. How long before?

Mr. Lockmann. I can't very well remember; because the Solicitor waited several Times upon the Master, and the Master told him there was nothing. I went to the Master's House, and then to the Rolls, and there I saw him; and he told me there were no Assits in his Hands of Mr. Dormer's.

E. of Macclesfield. I desire to know, whether he did not desire a further Sum, after this 1000 l. was paid by Mr. Cottingham, and how much?

Mr. Lockmann. My Lord, I ask your Lordship's Pardon, I don't remember I then ask'd any other Sum. When I saw your Lordship afterwards, I asked your Lordship, if it was not possible to have another 1000 l. You was pleased to tell me, there could be no more paid.

E. of Macclesfield. Did not you solicit for a further Sum, till Mr. Cottingham chid you?

Mr. Lockmann. Mr. Cottingham was a little angry, when I press'd him. I went out of Doors, Mr. Cottingham followed me. I stood in the Yard, Mr. Cottingham came out, and told me he had an Order from my Lord Chancellor to call the Masters to a Meeting, and see what could be done. I said, still this is uncertain, how shall I do if I have not this Money? it will be a great Prejudice to me.

E. of Macclesfield. I desire to know, whether he did not ask a further Sum of 500 l. or 570 l.

Mr. Lockmann. There was an Order, on a Letter of Attorney from Mrs. Chitty, for that Sum. But never, after I was at your Lordship's House at Kensington, did I ask if I could have a thousand Pounds more.

E. of Macclesfield. When was that 500 l. paid?

Mr. Lockmann. I don't know.

E. of Macclesfield. I desire to know, whether between the Time you say you was promised the 1000 l. and the Time of paying it, you did not desire to have the Sum of 574 l. advanced for Mrs. Chitty's Use.

Mr. Lockmann. When your Lordship had told me that 1000 l. was all that could possibly be obtained, I made no further Solicitations.

E. of Macclesfield. How long was it that you came to Kensington, to ask me for that 1000 l. before the other 1000 l. was paid?

Mr. Lockmann. Three Weeks before.

E. of Macclesfield. Then after that Time you never demanded any more?

Mr. Lockmann. After your Lordship had told me that was all that could be obtained, then I desisted from asking any more.

E. of Macclesfield. And that was about three Weeks before the Time you received the Money?

Mr. Lockmann. I believe, between a Fortnight or three Weeks, or thereabouts.

Mr. Com. Serj. I desire he may be asked, whether he can be certain as to the Expressions, whether this was the last Money that was like to be paid, or that my Lord would pay.

Mr. Lockmann. It was, as I remember, in these Words: If the Lady hath no other Fortune

than what is in Chancery, in the Master's Hand; this will be the last of it.

Mr. Sol. Gen. We desire Mr. Atwood may be called.

Mr. Atwood sworn.

Mr. Serj. Pengelly. My Lords, we desire Mr. Atwood may be asked, whether he was in Court at the Time a Motion was made upon an Order in a Cause between Harper and Cate.

Mr. Atwood. My Lords, I was at my late Lord Chancellor's House, where, about the 5th of December last, the Motion was made. I was Solicitor for Mrs. Harper in the Cause. The Occasion of it was, There was an Estate decreed to be sold, and the Money was to be paid into the Master's Hands, who was Mr. Dormer: The Money was accordingly paid, and the Conveyances approved of by the Council, and a Fine agreed upon; but at last the Parties would not execute, unless the Money was paid them; objecting there would be a Deficiency in Dormer's Office: Therefore they mov'd that they might not be obliged to execute the Conveyance, till the Money was applied and paid to the Plaintiff: My Lord Chancellor was pleased to declare thereon, that he had heard there would be a Deficiency of Mr. Dormer's Effects; but it had never judicially come before him; and what Knowledge he had of it was only as publick News, and refered it to Mr. Edwards to examine, whether there was likely to be a Deficiency, or not. I was near two Months before I could get this Order passed; and then the Impeachment came on. The Register told me, he was afraid this Order would do some Mischief. When I had got the Order, I was told by several People about the Town, that Mr. Dormer's Effects were very defective; and that my Lord Chancellor had directed a Composition to be made with one Wilson who was a Banker; and had directed Mr. Hicocks to compound for Half a Crown in the Pound, and that others had twenty Shillings. Lord Chancellor had directed an Enquiry to be made, whether any Deficiency. I was advised to put in these Words: *By what Means*; because I was told then it was, by reason of compounding that Debt with Wilson; but the Register would not let them stand.

Mr. Serj. Pengelly. The making of the Order, in this Case, confirms the Evidence of Mr. Atwood, that his Lordship declared he had heard of it no other-ways than as publick News; because by this Order he directs Mr. Edwards to enquire, whether there was likely to be a Deficiency, or not, although it had been so well known to his Lordship some Years before.

Mr. Serj. Probyn. He says there are Words struck out of the Order; I desire to know, whether those Words were not added by himself to the Order?

Mr. Atwood. Yes, they were added by me before it passed.

Mr. Serj. Probyn. When?

Mr. Atwood. After I had the Order from the Register.

Mr. Serj. Pengelly. When was that?

Mr. Atwood. It was near two Months before I could get the Order passed.

E. of *Macclesfield*. Had you the Order passed before the Impeachment?

Mr. *Atwood*. Yes, I believe I had.

E. of *Macclesfield*. Had you it passed before this Matter came into Parliament?

Mr. *Atwood*. I don't particularly know; I believe it was before your Lordship was impeached.

E. of *Macclesfield*. Whether was it after I had parted with the Seals?

Mr. *Atwood*. I believe after.

E. of *Macclesfield*. How long was it before you added those Words?

Mr. *Atwood*. Two or three Days after I had got the Order.

E. of *Macclesfield*. When was it the Register struck out those Words?

Mr. *Atwood*. I can't say, I believe it was before the Impeachment. The other Side had let those Words be in; but yet the Register struck them out.

E. of *Macclesfield*. Was it after I had ceased to be Chancellor?

Mr. *Atwood*. I believe it was.

E. of *Macclesfield*. Was any thing said, at that Time, of the Accident of *Wilson's* breaking and *Poulter's* going off?

Mr. *Atwood*. I do remember your Lordship said *Wilson* was become Bankrupt, and that he had Money of Mr. *Dormer's*; and you said something of a Person that was sued by *Wilson*, and of a Recovery against him, and of an Action brought for an Escape; and you concluded, upon the Whole, that all you knew of the Matter was only as publick News. This was after you had given an Account of the Matter of *Wilson* and of the Marshal.

Dr. *Sayer*. I desire he may be asked, whether my Lord did not express a Doubt, how these Matters might come out?

Mr. *Atwood*. I don't know what his Lordship was pleased to doubt of.

Mr. Serj. *Probyn*. I desire Mr. *Atwood* would recollect himself, whether there was any Notice taken, how this might come out, when the Report of the Masters should be made?

Mr. *Atwood*. I don't remember any thing tending to that.

Mr. Com. Serj. Whether he took any Memoranda of these Words, and when?

Mr. *Atwood*. No, I took no Memoranda of them, till I was summoned to attend the Committee.

Mr. Com. Serj. I desire Mr. *Atwood* may give a Reason, how he comes to forget Facts, and remember a Form of Words?

Mr. *Atwood*. I don't remember all the Facts that have been asked.

Mr. *Robins*. Whether my Lord did not mention a particular Sum that was owing from *Wilson* to *Dormer*?

Mr. *Atwood*. I believe my Lord did mention a Sum, and I believe it was 18000 *l*.

Mr. *Robins*. Whether he did not mention that *Wilson* had brought an Action of Escape against the Marshal?

Mr. *Atwood*. Yes, that *Wilson* had brought an Action of Escape against the Marshal?

Mr. *Robins*. Whether he did not mention, that *Wilson* had recovered a Judgment against the Marshal?

Mr. *Atwood*. Yes, that *Wilson* had recovered a Judgment.

Mr. *Robins*. Whether was there any thing said of the Escape of *Poulter*?

Mr. *Atwood*. Yes, my Lord did mention, that there was an Action brought against the Marshal, for that very Escape.

Mr. Com. Serj. Whether my Lord having mentioned these Particulars, he did not from thence infer, he could not then tell, how Matters might come out?

Mr. *Atwood*. I do not remember any thing of that.

Mr. *Lutwyche*. My Lords, I shall only make one short Observation. The Lord *Macclesfield* saith in his Answer, that he doth not believe that he had any Discourse with the Masters about the Payment of this 1000 *l*. I submit it to your Lordships, whether there are not four or five Witnesses to it. We have now done with the Sixteenth Article.

Mr. *Sol. Gen*. We shall proceed to our Proofs on the Seventeenth Article. And it will be necessary to lay before your Lordships three or four Orders, for the Proof of this Article.

Mr. *Ralph Paxton*, being called, appeared, and proved the several Orders following, which were then all read.

An Order, dated 18 January, 8<sup>o</sup> Georgij Regis.

Another, dated 8 March, 8<sup>o</sup> Georgij Regis.

Another, dated 5 July, 8<sup>o</sup> Georgij Regis.

Another, dated 22 December, 9<sup>o</sup> Georgij Regis.

*Jovis decimo octavo Die Januarij  
Anno Regni D'ni Georgij Regis  
octavo, inter Jonathan Jones  
Infant' per Eliza Jones Vi-  
dua' prox' Amit' & dicta E-  
liza Jones Quer' Thoma Jett  
Arm' & Petru Wise, Defen-  
dentes.*

UPON opening of the Matter, this present Day, unto this Court, by Mr. Serjeant *Cheshire*, of Council with the Plaintiff *Jonathan Jones*, in the Presence of Mr. *Kettleby*, of Council with the Plaintiff *Elizabeth Jones*; and the Defendant *Wise*, and Mr. *Horseley*, of Council with the Defendant *Jett*. The Council for the Plaintiff *Jonathan Jones* alledged, that *Jonathan Jones* deceased, late Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth*, by his Will, devised one Moiety of his Estate, which was wholly personal, after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wise*, Executors in Trust for the said Plaintiffs, who

duly



duly proved the said Will. That the Plaintiffs having brought their Bill in this Court, to have an Account of the said Testator's Estate, for a Maintenance for the Plaintiff *Jonathan*, during his Infancy, and a Performance of the said Will: Upon the Hearing of this Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her; and the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. And the said Master was to assign a Maintenance for the said Plaintiff, for the Time past; and was also to consider what was proper to be allowed for his Maintenance, for the future. That the said Master, having proceeded to take an Account of the said Testator's Estate, it appeared, that so much thereof was raised by the Sale of *Bank* and *South-Sea* Stock, and brought before the Master, as amounted to Five Thousand, Nine Hundred, and Eighty-five Pounds, Three Shillings, and Four Pence, one Moiety whereof, after Payment of her Share of the Costs of this Suit, belongs to the Plaintiff *Elizabeth Jones*, and has been accordingly paid to her. And the other Moiety belongs to the Plaintiff *Jonathan Jones*, and is now in the Hands of Mr. *Edwards*, one of the Masters of this Court, who succeeded the said Mr. *Dormer*, and to whom the Reference, in this Cause, hath been transferred. That the Plaintiff, *Jonathan Jones*, hath now attained his Age of One and Twenty Years, as by Affidavit and Certificate appears, and is intitled to receive his Moiety of the said Monies, after Deduction of his Share of the said Costs. And having contracted some considerable Debts, for his Maintenance, and otherwise, during his Infancy, for which he is threatened no be arrested, in case the said Debts are not speedily paid: It was therefore pray'd, that the said Master may, out of the Monies in his Hands, pay to the Plaintiff, *Jonathan Jones*, the Sum of Four Hundred Pounds, which, upon reading the said Affidavit and Certificate, and upon hearing the Council for the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wife*, who consented thereto, and the Council for the Defendant, *Jett*, who did not oppose the Payment thereof, is ordered accordingly.

*Jovis octavo Die Martij Anno  
Regni D'ni Georgij Regis octavo,  
inter Jonathan Jones & E-  
liza Jones Quer' Thoma Jett  
Arm & Petri Wise, Defen-  
dentes.*

UPON opening of the Matter, this present Day, unto the Right Honourable the Lord High Chancellor of *Great Britain*, by Mr. Serjeant *Cheshire*, being of Council for the Plaintiff, *Jonathan Jones*, in the Presence of Mr. *Ketleby*, of Council for the Plaintiff, *Elizabeth Jones*, and for the Defendant, *Wife*: It was alledged, that *Jonathan Jones* deceased, late Father of the

Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will, devised one Moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One and Twenty Years, together with the Produce thereof; and made the Defendants, *Jett* and *Wife*, Executors in Trust for the said Plaintiffs; and the said Defendants duly proved the said Will. That the Plaintiffs exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will. And, upon the hearing of the Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties; and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her. And the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared, that so much was raised by the Sale of the *Bank* and *South-Sea* Stocks, and brought before the said Master, as amounted to Five Thousand, Nine Hundred, and Eighty-five Pounds, Three Shillings and Four Pence, one Moiety whereof, after Payment of the Plaintiff *Elizabeth Jones's* Share of the Costs of this Suit, belonged to her, and had been accordingly paid to her. And the other Moiety belonged to the Plaintiff *Jonathan Jones*, and was in the Hands of Mr. *Edwards*, one of the Masters of this Court (who succeeded the said Mr. *Dormer*.) That the Plaintiff, *Jonathan Jones*, has attained his Age of One and Twenty Years, as by Certificate and Affidavit appears, and is intitled to receive his Moiety of the said Money, after Deduction of his Share of the said Costs: And he had contracted, for a Post in the Army, which, with his Equipage, will amount to Two Thousand Pounds, which he is advised will be very advantageous for him to purchase; and therefore it was pray'd, that the said Master may pay to the Plaintiff, *Jonathan Jones*, out of the Money in his Hands, a Sum not exceeding Two Thousand Pounds to be laid out in the Purchase of a Commission, and for other Purposes. Whereupon, and upon hearing of the Plaintiff, *Elizabeth Jones*, and Defendant *Wife's* Council; and hearing an Affidavit of Notice of this Motion to the Defendant, *Jett*, read, and what was alledged by the Council on both Sides: It is ordered, that the said Master do, out of the Money in his Hands, pay unto the Plaintiff, *Jonathan Jones*, the Sum of Two Thousand Pounds; the Plaintiff, *Elizabeth Jones*, and the Defendant, *Wife*, having subscribed the Register's Book, signifying their Consent thereto.

*Jovis*

*Jovis quinto Die Julii Anno Regni  
D'ni Georgii Regis octavo, inter  
Jonathan' Jones & Eliza' Jones  
Quer' Thoma' Jett Arm' & Pe-  
tru' Wise, Defendentes.*

**U**PON opening of the Matter this present Day, unto the Right Honourable the Lord High Chancellor of Great Britain, by Mr. Serj. *Cheeshire*, being of Council for the Plaintiff, it was alledged, That *Jonathan Jones* deceased, Father of the Plaintiff *Jonathan Jones*, and Husband of the Plaintiff *Elizabeth Jones*, by his Will devised one Moiety of his Estate (which was wholly personal) after Payment of his Debts and Funeral Expences, to the Plaintiff *Elizabeth*, and the other Moiety to the Plaintiff *Jonathan Jones*, when he should attain his Age of One and Twenty Years, together with the Produce thereof, and made the Defendants, *Jett* and *Wise*, Executors in Trust for the said Plaintiffs, and the said Defendants duly proved the said Will. That the Plaintiffs exhibited their Bill into this Court against the Defendants, to have an Account of the said Testator's Estate, and a Performance of his Will, and upon the hearing of the Cause, it was referred to Mr. *Dormer*, then one of the Masters of this Court, to take an Account of the said Testator's Estate; and the Surplus thereof, after the Deductions therein mentioned, was to be divided into Moieties, and the Plaintiff *Elizabeth's* Moiety was to be forthwith assigned to her, and the other Moiety was to be placed out at Interest, by the said Master, for the said Infant's Benefit. That the said Master having proceeded to take an Account of the said Testator's Estate, it appeared by several Certificates from the said Master, that so much thereof was raised by the Sale of the *Bank* and *South Sea* Stocks, and brought before him, as amounted to Five Thousand nine Hundred and eighty five Pounds three Shillings and four Pence, that one Moiety thereof, after Payment of the Plaintiff *Elizabeth Jones's* Share of the Costs of this Suit, hath been in pursuance of several Orders of this Court paid to her, and the other Moiety, which belonged to the Plaintiff *Jonathan Jones*, was paid over to Mr. *Edwards*, one of the Masters of this Court (who succeeded the said Mr. *Dormer*). That the Plaintiff *Jonathan Jones*, having attained his Age of One and Twenty Years, and being intitled to receive his Moiety of the said Money, after Deduction of his Share of the said Costs, and he having contracted for a Post in the Army, which, with his Equipage, will amount to two Thousand Pounds, he did, on the eighth Day of *March* last, apply to the Court for that Money, and it was then ordered, That the said Master should, out of the Money in his Hands, pay unto the Plaintiff *Jonathan Jones* the Sum of two Thousand Pounds, the Plaintiff *Elizabeth Jones*, and Defendant *Wise*, having subscribed the Register's Book, signifying their Consent thereto; that pursuant to the said Order, the said Master paid the said two Thousand Pounds, and there now remaining in his Hands of the Plaintiff *Jonathan Jones's* Share of the said Money, about the Sum

of six Hundred and forty two Pounds. That the said Plaintiff *Jonathan Jones*, having present Occasion for the said Money, hath executed a Letter of Attorney to the Plaintiff *Elizabeth Jones*, his Mother, dated the Five and Twentieth of *May* last, empowering her to receive all Monies due to him from the said Master, and the Interest thereof, for the Purposes therein mentioned. It was therefore prayed, that the said Master may pay to the said Plaintiff, *Elizabeth Jones*, the Remainder of the Money which is in his Hands, belonging to the said *Jonathan's* Share, pursuant to the Letter of Attorney, executed for that Purpose, which, upon hearing of Mr. *Horsley*, of Council for the Defendant *Jett*, and what was alledged on both Sides, his Lordship held reasonable, and doth order the same accordingly.

*Sab'ti viceffimo secundo Die De-  
cembr' Anno Regni D'ni Georgii  
Regis nono, inter Prideaux Sut-  
ton Cler' & Anna' Uxor' ejus  
Mercy Sheldon Spinstr' & Egi-  
diu' Lawrence gen' Extor' Wini-  
fred Sheldon Spinstr' Defunct'  
Quer' Elizam Chitty & Job' em  
Russell & al' per Billa' ad revi-  
vend' & Supplement' Defend'.*

**W**H E R E A S the Defendant *Elizabeth Chitty*, on the Eleventh of this Instant *December*, preferred her Petition to the Right Honourable the Lord High Chancellor of Great Britain, shewing, That the Plaintiff and *Winifred Sheldon*, since deceased, having executed their Bill for an Account of the Estate of *Ralph Sheldon*, who died in the *East-Indies*; and to have their Shares and Proportions thereof, pursuant to his Will: It was on the hearing of this Cause, the eight and twentieth of *May*, One Thousand Seven Hundred and Fifteen, declared, That the Defendant *Elizabeth Chitty* was intitled to one Third of the said Estate, under the Will of the Testator *Sheldon*, her second Husband, in her own Right, and to a Moiety of the other two Thirds, in right of, or, as surviving the Children she had by the said *Sheldon*, who were dead, and that the other Moiety of the said two Thirds belonged to the Plaintiffs, or those whom they represented, and decreed the same, after just Allowances, to be paid and distributed accordingly; and Sir *Robert Nightingale*, Bart. since dead, having, by his Answer, admitted to have in his Hands Ten Thousand Four Hundred and Seventy Pounds, three Shillings and Six-pence, Part of the Testator's Estate: It was ordered, That he should carry Ten Thousand Pounds thereof, before Mr. *Dormer*, then one of the Masters, to be by him placed out at Interest, on Government, or such other Security as he should approve of, for the Benefit of the Parties to whom the said should belong. In pursuance whereof, the said Sir *Robert Nightingale* carried the said Ten Thousand Pounds before the said Master, who placed the same out at Interest, and on the Nine and Twentieth of *July*,

July, One Thousand Seven Hundred and Nineteen, though the said Ten Thousand Pounds, with the Interest, which had been received by the said Master, amounting to Eleven Thousand three Hundred and fifty nine Pounds, seven Shillings, and three Pence, the said Master, by his Report, certify'd, That he had placed eleven Thousand three Hundred Pounds, Part thereof, out on the Land Tax, for the Year One Thousand Seven Hundred and Nineteen, at four Pounds per Cent. and that the Nine and Fifty Pounds seven Shillings and three Pence remained in his Hands; that on the third of August, One Thousand Seven Hundred and Twenty, the Plaintiffs, by Petition, applied to his Lordship, That the Master might pay them some Money to carry on this Cause, and for their other Occasions; upon hearing whereof, they were ordered Six Hundred Pounds out of the Money in the Master's Hands, which they have received accordingly. That the Defendant, Elizabeth Chitty, had, ever since the Death of her late Husband, Josiah Chitty, wanted Money, not only to defend the said Cause, but also for her Support, and other necessary Occasions, and that neither she, nor her late Husband, had received any Part of the Principal or Interest before the Master, nor any other Part of the Testator's Estate, except some Jewels which were delivered up by the Trustees of the Testator's Will in India, to her and her late Husband, which, or the greatest Part thereof, she claimed as her *Paraphernalia*, but that she had no Benefit or Advantage thereof, her Husband having sold and disposed of them in his Life-time. Therefore, and for that the Money in the Hands of Mr. Edwards, one of the Masters of this Court, who succeeded the said Mr. Dormer in his Office, were considerably increased by the Interest which had been received by him, and for that the said Mrs. Chitty was, as aforesaid, intitled to two Thirds of the said Testator's Estate, except what should be decreed thereout to her Children, by her first Husband, who were intitled to one Moiety of their Father's Estate, which was possessed by the said Ralph Sheldon, and for that she was obliged to maintain them, it was prayed, That the said Mr. Edwards might, out of the Money in his Hands, and which should be paid in upon the coming in of any of the Securities taken for the same, pay unto the Defendant Mrs. Chitty such Sum of Money as his Lordship should think fit, to enable her to carry on the said Cause, and for her immediate Support, and other Occasions. Whereupon all Parties were ordered to attend his Lordship, on the then next Day of Petitions. And whereas the said Plaintiffs, on the eighteenth Day of this Instant December, also preferred their Petition to his Lordship, shewing, *inter al'* That they were, thro' their great Occasion for Money, forced to apply the greatest Part of the Money, ordered them as aforesaid, towards their Support; and that the said Cause had been long depending, and very expensive, and was likely to undergo greater Travail before the said Master, before the said Account could be taken, so that they had great Occasion for more Money, not only to carry on the said Cause, but also for their Support, and other necessary Occasions; and there-

fore praying, that the said Master might also out of the Monies in his Hands, and which should be paid in, upon coming in of any of the Securities taken for the same, pay unto the Plaintiffs, or their Solicitors, such Sums of Money as his Lordship should think fit, to enable them to carry on the said Cause, and for their immediate Support and other Occasions; and the Matter of the said Petition, being ordered to come on with the Defendant Chitty's Petition; and Council on both Sides this Day attending accordingly. Whereupon, and upon hearing both the said Petitions read, and of what was alledged by the Council on both Sides: His Lordship doth order, That the said Mr. Edwards do, out of the Money in his Hands, pay unto the Defendant, Mrs. Chitty, the Sum of Six Hundred Pounds, and also unto the Plaintiffs One Hundred Pounds a-piece, and it being now alledged, that John Wyvill, Esq; having exhibited his Bill against the said Giles Lawrence, for Payment of a Legacy of two Hundred Pounds bequeathed to him by the Will of the said Winifred Sheldon. It was on the hearing the said Cause, the first Day of December, One Thousand Seven Hundred and Twenty One, decreed, That the said Mr. Wyvill should be paid the said Legacy and Interest, together with the Costs of that Suit, out of the Assets of the said Ralph Sheldon. It is further ordered, That the said Master, do, out of the Money in his Hands, pay the Plaintiff, Lawrence, the further Sum of Three Hundred Pounds, to enable him to satisfy the said Decree.

Mr. Lutwyche. Pray shew Mr. Edwards those Orders.

[The Orders shewn to Mr. Edwards.]

Mr. Lutwyche. My Lords, we desire that Mr. Edwards may be asked, whether he hath paid any Money in that Cause?

Mr. Edwards. Here are two Causes, which is it you mean, that of Jones and Jett.

Mr. Lutwyche. Yes, that of Jones and Jett?

Mr. Edwards. The Money ordered, by those several Orders, hath been paid by me.

Mr. Lutwyche. I desire to know, whether Mr. Edwards can inform your Lordships, whether it is the whole Money, or but in part?

Mr. Edwards. It is the whole Money in the Cause.

Mr. Lutwyche. I desire he may be asked, whether the Money was paid out of Mr. Dormer's Effects, or out of his own?

Mr. Edwards. Out of Mr. Dormer's Effects.

E. of Macclesfield. My Lords, Mr. Edwards is a little mistaken, please to put the Orders in; here are three Orders in one Cause, and one in another; I desire to know, whether in both Causes the whole Money was paid out?

Mr. Edwards. In that in Jones and Jett, the whole Money was paid out, in the other between Sutton and Sheldon, the Whole was not paid, but only Part.

Mr. Serj. Pengelly. We beg Leave to ask Mr. Edwards, whether he did not pay the Whole that was ordered by those several Orders?

Mr. Edwards. Yes, my Lords.

Mr. Lutwyche. Mr. Edwards did tell your Lordships before, that all the Money, arising by Mr. Dormer's Effects, was paid out and gone.

Mr. Serj. Pengelly. My Lords, we have gone through these three Articles that have been opened, and we shall call no more Proof to them.

*Then the House adjourned to Monday next at Ten o' Clock in the Forenoon.*

## The FOURTH DAY.

MONDAY, May 10.

*The Lords being seated in their House, and the Managers being come, and the Earl sitting on a Stool, as before; and his Council and Solicitors at the Bar; the Serjeant at Arms made Proclamation for Silence, as also another Proclamation, That all Persons concerned were to take notice, that Thomas, Earl of Macclesfield, now stood upon his Tryal, and they might come forth in order to make good the Charge.*

L. Ch. J. King. **G**entlemen of the House of Commons, you may proceed.

Mr. Plummer. My Lords, I am commanded by the Commons, to assist in maintaining their Impeachment against Thomas, Earl of Macclesfield; and when I consider how necessary it is for the Honour of his Majesty's Government, that an impartial Examination should be made into the Behaviour of this Earl, while he enjoyed the High Office of Chancellor; I am persuaded, that every good Subject must with Pleasure observe, in what Manner this Prosecution is carried on; it must be a Satisfaction to them, to see the Commons placing a Confidence in your Lordships Justice, and proceeding in the Legal Parliamentary Method by Impeachments, and your Lordships meriting that Confidence, by laying aside all useless Ceremonies, and making the Prosecution practicable and easy, a Harmony between the two Houses of Parliament always to be wished for; and which alone can bring Impeachments to a happy Issue, and deter great Offenders from oppressing their Fellow-Subjects.

My Lords, In former Reigns, Prosecutions of this Kind, have met with other Obstructions, and the Crown has often interposed its Authority to save a Favourite Minister; but, his Majesty, who has no other Views, but the Welfare and Happiness of his People, and who is always attentive to their Interest, was the first who took notice, that the Earl of Macclesfield had abused the Trust and Confidence reposed in him. And who can

(without the deepest Sense of Gratitude) consider the Conduct of his Majesty in this Affair, who immediately dismissed him his Service, and left him to the Justice of an injured Nation? And the Earl of Macclesfield himself will have this Advantage by it, that His Name will be delivered down to Posterity, as a Monument of his Majesty's Paternal Goodness to his People. The immense Liberalities, the great Honours, the high Dignities conferred on him by his Majesty, will be so many Marks of his Royal Munificence to the Earl, while he appeared to be his Worthy and Faithful Servant. And Posterity will with due Veneration observe, that neither the greatest Favour, the nearest Access to his Sacred Person, nor any former Merits towards Himself, and his Royal Family, could in his Majesty's Reign, shelter the Highest Officer of the Crown from Justice, who, presuming on those Advantages, would venture to oppress his Majesty's Loyal and Faithful People.

My Lords, The particular Province, assigned me in this Prosecution, is to make good the 18th Article, wherein I shall have the Assistance of a Gentleman, who will amply supply all the Defects or Omissions I shall be guilty of.

As this Article has been read by your Lordships Clerk, I shall not mispend your Time in a needless Repetition of it; but will observe, that the Substance of the Charge contained in it, Is a wilful Neglect of the High Trust reposed in the Earl of Macclesfield, as Chancellor, That he did not restrain the Masters of the High Court of Chancery, from trafficking with the Suitors Money and Effects, but did permit and encourage that Practice, tho' he was advised to put a Stop to it, and fully informed of the Dangers, which were then likely to ensue, and which have since actually ensued, to the great Loss and Injury of the Suitors of the said Court.

My Lords, As this wilful Neglect is highly criminal in itself, so it is greatly aggravated by the unjust and corrupt Views which induced him to be guilty of it, and the pernicious Consequences which have necessarily attended it; and, my Lords, since you have heard the Evidence that has been given on the former Articles, of the exorbitant Sums of Money which he exacted for the Disposal of the Offices of Masters in Chancery, even after Dormer's Failure, we don't doubt but your Lordships are convinced that he left the Masters, with that unreasonable unlimited Power, over the Effects of the Suitors of the Court, with no other View, but as a Bait and Incitement to others, to purchase those Offices (when Vacancies should happen) at the same, or greater Prices.

As I have stated the Charge contained in this Article, in as clear a Manner as I am able; I beg Leave, my Lords, to make some Observations on the Earl's Answer. He begins with an absolute Denial of his knowing, how the Masters kept or disposed of the Money and Effects belonging to the Suitors of the Court. This Answer, my Lords, was a Surprize to the Commons, as well because such an Ignorance would have been criminal in the Person, who ordered such prodigious Sums of Money into their Hands, and who should be supposed to have had

some

some Care of the Suitors, as also because We have the clearest Proofs imaginable, that he did know it, and it has already been proved by the Examination of several of the Masters before your Lordships. But what Want can we have of Proofs? when the Earl of *Macclesfield* himself, in his farther Answer to this Article confesseth it, by saying, that after Mr. *Dormer's* Misfortune, he thought of several Methods, and several Proposals were made to him by Persons he consulted on that Occasion, to prevent any Inconvenience on the like Accident, for the future. Pray let us consider, What was Mr. *Dormer's* Misfortune? What was this Accident? Why truly, Mr. *Dormer* had trafficked with the Suitors Money and Effects, and had lost near 30000 *l.* And this the Earl of *Macclesfield* knew, and this made him think how to prevent such Inconveniencies, for the future. My Lords, here is one of those Inconsistencies the Commons take Notice of in their Reply, and on which (without any farther Proofs) they might safely demand your Lordships Judgment.

But to consider his Answer farther: He says, he believes it will not be held criminal in him, not to have established any of the Proposals that were made to him by the Persons he consulted on that Occasion: Some Things were proposed that he thought impracticable, some insufficient, and some inconsistent with that compleat Regulation he hoped to make: The Objects, he proposed to himself, were, to make good Mr. *Dormer's* Deficiency, to secure the Suitors from any future Loss, and to make several Regulations relating to the Offices of the Masters: And he thought these would be best done together; nor had he perfected the Scheme of any of them to his own Satisfaction.

My Lords, I am unwilling to make any Observations on this Part of his Answer; it is in itself so gross, I am afraid, if I took it in Pieces, I should appear ludicrous, which I shall take great Care to avoid on so solemn an Occasion.

But I appeal to your Lordships, if a Person was to read this Answer, who was not acquainted with the Times of these Occurrences, whether he must not imagine that the Earl of *Macclesfield* had quitted the Great Seal within some very short Time after Mr. *Dormer's* Failure. Whereas it has appeared to your Lordships, that Mr. *Dormer* went away from that Office in the Year 1720. and that the Earl of *Macclesfield* continued Chancellor till *January* last, which is more than four Years after, during all which Time (by his own Confession) he knew the Affairs of the Masters of the Court of *Chancery* to have been in great Disorder, and to have wanted several Regulations: But, because he could not think of a Scheme perfectly to his Mind to answer all his Designs, he therefore has done nothing. This Answer must be left to your Lordships Judgment, but, I am afraid, my Lords, the letting the Masters go on, without any Check, was the Scheme the most to his Satisfaction, and most effectually obtain'd the Ends he really propos'd to himself; which were the making an exorbitant Gain by the Sale of their Offices, which must have fallen in their Price, if a Stop had been put to

their trading with the Suitors Money.

My Lords, he farther answers, That he remembers no Proposal that he thought would take it totally out of the Power of the Masters to dispose of the Securities or Effects, or effectually secure the Cash. I can't omit taking Notice of the wording this Paragraph; and I believe your Lordships will agree with me, that the Words *HE THOUGHT, TOTALLY, AND EFFECTUALLY*, are thrown in with great Caution. My Lords, We think we can prove to You that a Proposal was made to him, that would have taken it out of the Power of the Masters to have disposed of the Securities and Effects, and to have secured, in great Measure, the Cash; and this Evidence the Earl of *Macclesfield* must be well aware of, for He has it in his Hands as well as We; and I foresee the Strength of his Defence, in this Point, lies in the Caution of his Answer: But, my Lords, if any Proposal was made to him, which would have cured the greatest Part of the Evils the Court laboured under, I am sure your Lordships will hold it criminal in him not to have made use of it, and the rather, because he substituted no other in its Room.

My Lords, He admits he took no Security of the Masters, and says, he was never asked so to do. My Lords, We will prove that he was asked so to do, and that taking Security was Part of the Proposal I have mentioned. In this Place he takes Notice of his Predecessors, who (as he says) were wiser Men than himself, and who took no Security of the Masters. My Lords, We don't accuse his Predecessors, nor are we obliged to justify them; but, if I may be permitted to give my own private Opinion, It is, that if such Misfortunes had happened in his Predecessors Days, and such Application had been made to them, they were so wise, they would have applied a proper Remedy: His not doing so, under these Circumstances, We look on as a plain Permission, and a strong Encouragement to the Masters to traffick with, and employ the Suitors Money for their own Gain and Profit. And it must appear so in a stronger Light, when your Lordships are acquainted that Mr. *Lightboun*, who is himself a Master in *Chancery*, was the Person who made the Proposal, and who must (by my Lord's not using it) plainly see, that my Lord was resolved to lay no Restraint on them, which might have tempted Mr. *Lightboun* himself to have made an ill Use of that Power: But as he professed to my Lord Chancellor his Abhorrence of the Masters abusing their Trust, by alienating the Suitors Effects, and desired my Lord to put a Stop to that Practice; so it appeared by his Accounts given in before the Judges, that he had appropriated the specifick Securities of the Suitors to every particular Cause. And, my Lords, we look on it as a great Aggravation of the Crimes contain'd in this Article, which I have now gone through, That my Lord *Macclesfield* should continue to act with such mean, low Views, as were unbecoming a Master in *Chancery*, when he had the Assistance of a Master, who behaved himself with a Prudence, Integrity, and Resolution, which would have been becoming the Lord Chancellor.

Mr. Cary. My Lords, It is my Province to assist the Gentleman, that spoke before me, in supporting the Charge of the Commons in the 18th Article, which he has open'd with so great Force and Perspicuity, that it is unnecessary for me to give your Lordships more Trouble upon it, than by making an Observation or two on the most material Parts. The Beginning of this Article sets forth, *That the Earl of Macclesfield very well knew, or was inform'd, that the Masters did, or that it was in their Power to dispose of, and employ the Suitors Money and Effects, to which, he is pleas'd evasively to answer, "That he never knew how the Masters kept, or dispos'd of the Money and Effects belonging to the Suitors of the Court."* The contrary of this will be abundantly prov'd, in the Manner the Gentleman has already stated it.

But were it not, my Lords, so strong in Proof, the Guilt to me appears self-evident; 'tis much the same, whether he knew it, or knew it not; his Lordship may take the Alternative. What! did He, Lord Chancellor, supreme Director of the Court, the great Trustee of *England* (who order'd the Money into the Master's Hands, who order'd it out of their Hands) did He know nothing of their Power over it? Was he the only Man in *England* that knew *nothing* of their Deficiency? And if he was, my Lords, Is that Ignorance an Excuse, or Aggravation? But we shall prove to your Lordships, that he not only was told of this Traffick with the Suitors Money, but was foretold the Consequences of it, the Danger of future Losses was pointed out to him, and Proposals for preventing 'em were given him in Writing.

And who was it, my Lords, that made these Proposals? Who gave him this Warning? One of the Masters of the Court, One interested in the Traffick of the Suitors Money, a Gamester at the same Table with the impeach'd Earl. Advice from such a Hand must be sincere and unsuspected; nothing but Justice, or a strong Apprehension of their common Danger, could have extorted it; nothing but the blindest Avarice could have prevented the Compliance with it. But what still renders this Conduct more amazing is, that the impeach'd Lord had not the Advantage of a single Proposal only, and from a single Master, but of several Proposals, and from several of 'em. Mr. Kynaston will inform your Lordships, *That he and other Masters waited on the Lord Chancellor, and propos'd to give Security in Land, or Money, for their Cash, and to make their Trust less by putting the Securities in two Masters Names, or in the Names of the Parties and one of the Masters, with which he then appear'd pleas'd, tho' he afterwards did nothing in it, and express'd his Dislike of the Proposal.* Yes, my Lords, the Proposal was too reasonable to be refus'd, and too self-denying to be follow'd. So far was the unfortunate Lord from following it, or acting in any Manner consistent with it, that soon after the Failure of Mr. Dormer, after these Proposals were made to him, he sells the Offices of several Masters at most exorbitant Prices. And was this what my noble Lord sets forth in his Answer, *as one of the Expedients he thought of, after Dormer's Misfortune, for preventing any Incon-*

*venience, on the like Accident, for the future? Was this the only Method of Cure the noble Earl brought to such Perfection, as to venture to put it in Practice.*

My Lords, the Gentlemen, embarqu'd in the same Bottom with this unhappy Lord, saw the Ship sinking, and propos'd throwing over-board Part of their unjustifiable Gains, to prevent their general Wreck; but the impeach'd Earl does not only boldly steer on the same Course, but takes in Lading, more Weight of Guilt, if not in Defiance of the Danger, certainly in the Neglect of it.

And how, my Lords, does his Answer excuse this Conduct? He admits that several Proposals were made on that Occasion, but *some he thought impracticable, some insufficient, some inconsistent with that compleat Regulation he hop'd to make.* And because some were insufficient, some inconsistent, and not answering the full Idea of Perfection propos'd by his Lordship, Must therefore nothing be attempted? Must we have no Relief, because we despair of an absolute Cure? Must no Remedy be apply'd to a dying Person, because it is not certain it will restore him to his perfect Strength? Thus far indeed is certain, It is much better to do nothing, than to continue such Methods, as first brought the Distemper upon him. We must therefore leave it with your Lordships to judge, whether the Inconsistency of the Proposals with the Earl's private Views was not the true Reason of their being thought impracticable and insufficient. And what those Views really were, the whole Tenor of our Evidence has, and will shew Views beneath the Dignity of his high Office, and far below a Member of this August Assembly.

My Lords, the Commons farther charge this unhappy Earl, *that he not only knew, but conniv'd at, and encourag'd this destructive Traffick:* And in answer to this, He says: "That he gave no Permission nor Encouragement to the Masters of the Court, to employ or traffick with the Suitors Money." We have shew'd your Lordships, he knew it, and knew it in the most affecting Manner, by the Ruin it had produced. We need not shew you that He had Power to prevent it. And surely, my Lords, to know it and not prevent it, in his Situation, was to permit it. And as His not preventing it was a Permission, so his Example was an Encouragement: And when the Masters saw him (the greatest Object in the Compass of their View) taking every indirect Method to make the most of *His High Office*; sure, they must think that Example (join'd to the Necessity he *Himself* laid them under by the exorbitant Prices he exacted) a sufficient Encouragement to authorize them in the like Practices *in theirs*. The Examples of great Men, my Lords, are Encouragements, and the Assembly I see before me is an illustrious Proof, they ought to be so, and will do Honour to those who follow them: And from the Influence those Examples have, and ought to have over the rest of Mankind, it has been suppos'd, that the only Passage to Honour was through the Temple of Virtue; but, my Lords, tho' there be but one Passage to it, there are many from it; and so many are the Frailties of human Nature, that the Building would be imperfect, without a Back-Door to let out, whatsoever follies

ullies or pollutes it : A Door, my Lords, your Ancestors have open'd to former Lord Chancellors.

But we shall call our Evidence, and submit the Whole with the greatest Security and Satisfaction to your Lordships Judgment.

Mr. Plummer. I desire Mr. Lightboun may be called.

[Mr. Lightboun being called appeared

Mr. Plummer. I desired Mr. Lightboun may inform your Lordships, whether he had any Discourse with my Lord Chancellor, about putting the Offices of Masters of Chancery into a better Regulation ?

Mr. Lightboun. My Lords, in order to answer this Question it will be necessary for me to repeat some Part of the Account I gave when I was last at your Lordship's Bar. I then acquainted your Lordships, that in the Beginning of the Summer, in the Year 1722, the Lord Macclesfield, having directed me to attend him, told me that he had heard I had not contributed my 500 l. towards making up Mr. Dormer's Deficiency, as the other Masters had done; that he did not expect I would have stood out, and was sorry to hear of it, as he had a more particular Regard to my Conduct than any of the rest, because I was the only Master of his immediate Choice; and on his Lordship's telling me that it was first propos'd by the Masters, and not by his Lordship, I told him I was not willing to comply with it, and thought it a dangerous Expedient; that it might be hereafter looked upon as an Undertaking one for another, and therefore I would not come into it; and that as this Accident had happened to Mr. Dormer, the like might happen again to others, and might be the Ruin of us all, if such a Construction were put upon it. My Lord was pleas'd to say, it was the only Expedient he could think of for making good the Deficiency. I told him I had as much at Heart the doing of that as any Body; and that if a proper Expedient could be found out to pay Mr. Dormer's Deficiency, and prevent the like Accident among us for the future, by putting the Offices on such a Foot, that the Masters might execute them with Honour to the Court and themselves, and with Safety to the Suitors, I should be glad to contribute to such Regulations. His Lordship said he should be glad if any such Thing could be thought of, and asked me, if I could think of any Method by which that might be done. I told him I believ'd I had, at which he express'd great Satisfaction; and we being then standing, his Lordship desired I would sit down. He then asked me, in what Manner it was that I propos'd the Suitors should be made safe: I told his Lordship that I apprehended it was impossible to expect, that the Masters could give a Security adequate to such a Trust; that there were many Instances of great Officers, whose Trust was so great as to be above giving ample Security, particularly the Tellers of the Exchequer, and the Treasurers of the South-Sea and East-India Companies: But if a competent Security were taken, and such I apprehended might be given, I hop'd it would answer the Intent, and give Satisfaction, since ample Security for so

great Trust could not be expected. I then told his Lordship, that if the Causes of Mr. Dormer's Misfortunes were consider'd, they would be found not only to proceed from Squandering or Misapplication of the Cash, but from Power over the Securities in his Hands; for that the Money could not be so much, but the Securities amount'd to a greater Sum. He said it might be so, but how to prevent it he would be glad to know. I told his Lordship, that if the Securities, for the future, were to be taken in the Names of the Master, and one or more of the Parties, the Suitors would be safe. It was then observ'd, but whether by my Lord, or me, I do not remember, that an Objection might arise to this Method, for that if either the Master or the Party should die, the Trust would survive; and thereby either the Court lose its Power over the Security, or the Master's sole Power over it be restored; but, to prevent that, I propos'd that they might be taken in the Name of two or three, or more of the Masters, with or without the Persons interest'd, as the Court should think proper; and that it was hardly to be imagin'd that all the Masters would betray their Trust, and risque their Fortunes to oblige any one, by suffering him to traffick with the Securities of the Court, taken in their joint Names; especially, if Care was taken, that such Master, as was to be joined, or be a Check upon another Master, should have a Third to be a Check upon him. My Lord Macclesfield object'd, That there was a great Number of South-Sea and India Bonds, and other Securities, payable to the Bearer, that could not be in the Names of any particular Persons, and so could not be secur'd in that Manner; and that it would be troublesome to lock them up. To which I repli'd, I knew no occasion for putting out Money on South-Sea or India Bonds, or such Securities, since there were other Securities sufficient, which might be under a proper Restriction, and which were not partable, but are transferrable in Books at the Bank, or elsewhere, viz. Stocks, Bank-Annuities, Civil-List-Annuities, Four per Cent Annuities, Land and Malt Tallies, and Lottery Orders, which were assignable by Indorsement; and that, if these Securities were taken in the Names of several Persons, it would be impossible for any one Person to dispose of them, without the Knowledge and Consent of all. My Lord express'd great Satisfaction at this Proposal; and then asked me, in what Manner Mr. Dormer's Deficiency would be provided for? I then acquainted his Lordship, that there was always a considerable Cash in each Master's Hands; and that if some Part of that was plac'd out at Interest, in the Name of all the Masters, it would be no Injury to the Owners, if it was ready, when call'd for; and the Produce would raise a Fund to pay Mr. Dormer's Debt; and that it was very likely the Lords of the Treasury might, on such an Occasion, give us the Preference, and let us chuse a proper Part of the Loans on the Land and Malt-Tax; to lend the Money upon; that if any Master wanted any Part of the Money he had plac'd out on that Occasion, to answer the Suitors Demands, such Securities were easily converted into Money. I was

unwilling to fix any Sum for each Master to advance; but believe I did mention 3, 4, or 5000*l.* for his Lordship's Consideration; and took Notice that would amount to 40 or 50000*l.* and would, in due Time, raise a Sum of Money sufficient to answer the Deficiency of Mr. *Dormer*. My Lord made some Doubts; but said he would be exceeding glad to give his Assistance; but was afraid he could not properly order the Suitors Money to be laid out, but for their Benefit whose Money it was. I said, I thought that might be done without any Order, if his Lordship approved it, and the Masters all came into it, and placed it out in all their Names; and that at any Time, by disposing of the Security taken for it, the Money might be raised, when wanted. My Lord made some Doubt, whether it could well be done; but was pleased with the Proposal: And many other Things were said, which I cannot, at this Distance of Time, recollect. I had, my Lords, two Views in it, but won't be positive that I mentioned them to my Lord. I apprehended it would not only raise a Fund to pay Mr. *Dormer's* Debt; but that it would divest each Master of the Power over 5000*l.* of the Suitors Money, which he had in his Hands. I also took Notice, that if some small Security was taken from the Masters, but am not certain that I mentioned any Sum; but believe I might say 5000*l.* and that such a Security, with our Offices, valued at about 5000*l.* a-piece, would, with the Money placed out for the Payment of Mr. *Dormer's* Debt, be a Security for the Money in our Hands, were we but divested of the Power over the Securities, which was four Parts in five of the Trust: And tho' 15000*l.* will not answer the Money which a Master may sometimes have in his Hands; yet, where a Man gives a Security for 14 or 15000*l.* he'll scarce run away for 20000*l.* This, I thought, might be of Service to the Publick, and desired my Lord to consider of it: And his Lordship said, that something might be grafted on this Plan; and desired me to put it in Writing. I told his Lordship, I did not know, whether this Scheme might be agreeable to every Body; that I came into the Office but very lately; and that it was necessary for me to have a good Correspondence with my Brethren; and that I was afraid, if it should be known that I proposed any thing without their Privity, I should be used more unkindly among them than I had already been; and therefore hoped his Lordship would not let them know, that it was my Proposal, nor shew them any thing of mine in writing; and took my Leave of my Lord at that Time. The other Masters knew I had been with my Lord; but I did not communicate the Occasion of my going to him, or the Proposal; but I sounded the rest of the Masters, how any Proposal of this Kind was agreeable to them: Most of them were averse to it, particularly that of divesting them of the Securities; because that shew'd a Distrust of them, and, they said, would diminish the Reputation of the Office. They were against placing out any such Sum as 5000*l.* some were rather willing to contribute annually, than to pay such a Sum of Money down: And finding them averse to it, I

I was a little cautious how I put this Proposal into Writing. It was near a Month before I set about it; and then did it by way of Letter, in which I took Notice in the Beginning, that it was in Obedience to his Lordship's Command.

Mr. *Plummer*. I beg Pardon for interrupting the Witness; I desire he may be asked, if he did not send that Letter to my Lord *Macclesfield*?

Mr. *Lightboun*. I wrote a Letter, to the same Purport or Effect with what I had proposed, except in some Instances which I found other Masters averse to, and was cautious of carrying it too far; and believe, instead of 5000*l.* to be placed out, I only mentioned 2000, or such other Sum as should be agreed on. And though I mentioned a larger Sum, when I was with my Lord, and a smaller by Letter, I left that to my Lord's Direction, as his Lordship should think necessary. I don't remember, or believe, that I took notice in my Letter of the small Security I proposed to be taken, the rather, because the Masters differed much in their Thoughts about that: Some of them were for giving none; therefore I said nothing of it. I thought that was my Lord's Province more than mine; but I stuck the more closely to that of placing out of the Money, for Payment of Mr. *Dormer's* Deficiency, and taking the Securities in several Masters Names. And when I had writ the Letter, I sent it to my Lord about *June*, or *July*, 1722, by my Clerk, who told me he delivered it to my Lord's Servant.

Mr. *Plummer*. I desire to know, if he kept any Copy of that Letter?

Mr. *Lightboun*. I kept the original Draught, which I apprehend I writ the Letter from. I can't say it is an exact Copy; because in transcribing, I might alter Words which I disliked, and put in others; and therefore I am not sure it is a true Copy; it may vary in Form, but not in Substance.

Mr. *Plummer*. I desire he may be asked, whether ever he spoke to my Lord about it, and that my Lord acknowledged the Receipt of this Letter?

Mr. *Lightboun*. My Lords, I think I did say, in the Presence of some of the Masters, when my Lord talked of taking Security in several Masters Names, that, if his Lordship would look into the Letter I writ to him at such a Time, he would find that Proposal made: I don't remember my Lord made any Reply, he did not deny it. But not long before *Christmas*, my Lord did mention this Letter to me, upon this Occasion: When I was passing my Account before the Judges, and the Directors of the *Bank*, I had told them of this Letter; which his Lordship, having heard of, asked me, what I had said about it? I told his Lordship, I had acquainted them with the Contents of the Letter I wrote: Says He, I have that Letter by me.

Mr. *Plummer*. I desire Mr. *Lightboun* may produce the Letter.

Mr. *Lightboun*. My Lords, I have not the Letter.

Mr. *Plummer*. The original Draught you mention.

[Mr. *Lightboun* produces the Draught.  
Mr.



Mr. Plummer. Is that your own Hand-writing, and the Substance of the Letter you sent to the Lord Chancellor?

Mr. Lightboun. It is my Hand-writing, and the Substance of that Letter.

Mr. Plummer. I desire it may be read.

[Mr. Baily reads the Draught.

My LORD,

IN Obedience to your Commands, I here lay before your Lordship my Thoughts upon the Affair you were pleased to mention, when I had last the Honour to wait upon your Lordship; and must own, that a Provision, for the Demand upon Mr. Dormer's Office, might answer our present Purpose: But, with great Submission, I think it concerns the Honour of the Court of Chancery, to find out some proper Expedient to prevent the like Accident for the future: And I beg Leave to observe, that the great Difficulty, which this Gentleman has brought upon himself and the Court, proceeds not only from his Squandering or Misapplication of the Court Cash in his Hands (were that all, his Estate and Office would much more than have answer'd the Demand) but I am afraid it is too obvious, that his Power over the Government Securities, that had been transferr'd to, or brought before him, or upon which he had placed out the Money of the Suitors of the Court in his own Name, has been the Occasion of this great Deficiency, which I hope may be provided for, and the Credit of the Court retrieved and supported, by every Master's advancing 2000 l. or such other Sum as shall be agreed on, out of the Cash of the Court in his Hands; which being placed out at Interest, the yearly Income thereof, together with the Produce of Mr. Dormer's Estate, will answer the Demands that may be expected on his Successor; and will, in due Time, make good the Debt upon the Office, provided the Money that has already, or may hereafter be raised, from his Estate, or any other Way, for that Purpose, be forthwith apply'd to discharge such Demands as carry Interest, or be invested in such Securities as have been disposed of by Mr. Dormer, belonging to the Suitors, to answer the same and the accruing Interest, which I hope the Gentleman that succeeds him has already taken Care of, if not, the Demand will rather encrease than diminish.

And having before observed, from whence this great Deficiency has arose, I submit it to your Lordship, whether the taking all Government Securities for the future, in the Name of two or more Masters, may not prevent the like Misfortune hereafter: And the Deposit to be put out to Interest, to raise a Fund for the Payment of Mr. Dormer's Debt, together with our Office, wou'd in a great Measure, be a Security for the Cash with which we should then only be intrusted.

I expect it will be objected, against the Deposit, that some Masters may not always have that Sum in their Hands; but I will venture to say, 'tis scarce probable that can happen, if the Money be directed as usual, to be brought before the Masters, both by Your Lordship and the Master of the Rolls, without which the Masters can't think themselves much interested in the Event of Mr. Dormer's Affair.

It may also be objected, that the Alteration,

proposed, in the future taking Government Securities, will shew a Distrust; and cause Reflections upon the Masters; but I shall think it a Happiness, to be divested of a Power never to be used, without the greatest Violation of the Trust reposed in us that can well be imagined; and I think it evident, that it had been a much greater, if we had never been intrusted with it; and as this Variation may be begun by ourselves, without any publick Direction or Alteration in future Orders, I think it will rather turn to our Reputation than Disadvantage, and will certainly ease the Minds of the Suitors, which ought to have some Consideration in this Affair. I am unwilling to trespass longer on your Lordship's Time; but if I have the Happiness to have offered any thing thought practicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall, with Pleasure, contribute, as becomes me, to facilitate any Undertaking of this Kind. And that I have as much at Heart the Reputation of the Office I had the Honour to be placed in by your Lordship, as any of my Brother Masters. But as we have different Views, it is not surprizing that we think not alike; which makes me fear that nothing of this Kind will be approved of, unless recommended by your Lordship; and am,

My LORD,

July 19. 1722.

Your Lordship's

Most obedient Servant,

J. LIGHTBOUN.

Mr. Plummer. What Date is it?

Mr. Lightboun. I did not expect, when I wrote this Letter, that I should have been called upon to give any Account of it, and did not put any Date to it; but, to the best of my Knowledge, it was in June, July, or August, 1722; but it is from Circumstances I recollect that, rather than from any Remembrance I have of the exact Time.

Mr. Lutwyche. I only desire that Mr. Lightboun may recollect the Time, when he first mentioned this to my Lord Macclesfield, and this Letter was taken Notice of to him?

Mr. Lightboun. Indeed, my Lords, I cannot do that. I believe it was at a Meeting of several of the Masters, at my Lord's House. I often had the Honour to be admitted to him, with or without other Masters. His Doors and Ear were always open to me; and I was often troublesome to his Lordship. But I cannot recollect the Time, when this was first mentioned.

Mr. Plummer. I think he says the Masters might have different Views. I desire he would explain himself, what he meant by that?

Mr. Lightboun. I meant by that to put my Lord in mind of what I had said, when I had the Honour to be with him last, when his Lordship told me, that the Proposal of a Contribution came from the two senior Masters, I then said that their Design was only to skin over this Wound, till they could get out: That one of them had slipp'd his

his Neck out of the Collar already, and another was about getting out. I told his Lordship, that, as I was but lately come into the Office, I propos'd to spend my Days or wear myself out in the Service of the Court. Therefore, that their Design was to get out, and mine to continue in, was what I meant by different Views.

Mr. *Plummer*. Mr. *Lightboun* hath given your Lordships an Account of his Proposals and Arguments us'd with my Lord Chancellor; I desire to know, whether he us'd any other Inducements to persuade my Lord to make some Orders relating to the Masters?

Mr. *Lightboun*. It was a long Time before I heard any more of this Affair. As they were quiet, without any Application to me for the 500 *l.* or to come into any Contribution, which I was resolv'd against; so I did not think it prudent for me to make any Bustle amongst my Brethren. I thought I had done my Duty, I had given my Opinion when it was required, and I did not stir in it till the Masters apprehended themselves very much aggrieved, by the Variation the Master of the Rolls was pleas'd to make in the Practice of the Court, by directing all the Money of the Suitors to be brought before his Usher, and sometimes to be put out by him without the Masters Approbation; which not only deprived the Masters of any Advantage from thence, but of those Fees that were due to them, on the receiving and placing out at Interest, or paying it out again; and, as I took it, it no Way answer'd the End, nor was for the Benefit or Security of the Suitors: Because if the Trust was too great, and the Suitors Property not safe in eleven Men's Hands, much less was it safe in the Hands of one. Therefore I apprehended there was Reason for Complaint. On this Account we had several Meetings; I was always ready to come into any Representation to my Lord, in hopes that Grievances of all Kinds might be look'd into, and, I believe, often complain'd to my Lord of these Matters. We went to my Lord Chancellor, and acquainted him of our Grievances; my Lord desired us to put them into Writing, we all readily concurred in that: Accordingly we drew up our Complaints of these, and other Incroachments on our Offices, by Way of Representation, which was deliver'd to my Lord Chancellor, and after my Lord had had it some Time, and nothing done, we frequently importun'd my Lord, to consider the declining State of our Offices; and, I concluded, that would bring the other Matters on the Stage, without which, nothing effectual could be done. My Lord said he would have a Conference with the Master of the Rolls, and the Masters, in order to debate these Matters; and I did not doubt, but, upon that Occasion, the Deficiency of *Dormer's* would come out, and that something might be done for us, consistent with the Honour of the Court, and the Suitors Safety. But that Conference was delay'd; the Grievances in all Respects grew greater; we grew more troublesome to my Lord Chancellor; my Lord then said, there was a Necessity of redressing all the Grievances; he mention'd the Masters giving Security, that of taking Securities for the Suitors in other People's Names, and continuing the Masters

in the Enjoyment of their Offices, as they had us'd to have them, and said it would be best to do all together. With this we were put off for some Time, but, on further Sollicitation, my Lord said, he was now determin'd to do something in this Affair, and his Lordship desired a more particular Account of the Grievances complain'd of by the Masters, and their Reasons; and the Inconveniencies to the Suitors that accrue'd from the new Methods, which the Master of the Rolls had turn'd the Business of the Court into; and that the Matter, both with respect to the Suitors and the Masters, might be fully understood, his Lordship press'd, that something of that Kind might be drawn up in Writing and laid before him, and he would make Orders proper to make a thorough Reformation in the Court: And, I remember his Expression to me was, It would save him much Trouble, if what was drawn up by the Masters, not only contain'd the Things which they had Grounds to complain of, but was put into the Form of Orders necessary to be made, for him to consider of, and alter, and add such others as he had prepar'd, or thought necessary. And soon after, a second Representation was prepar'd and was deliver'd to my Lord. And after his Lordship had had it some short Time, there was a Meeting at my Lord Chancellor's, where the Master of the Rolls and the Masters were present; and at that Time there was a good deal of Discourse about the Money. But when the Master of the Rolls began the Topick of his Jurisdiction, exclusive of the King's Commission, Heats arose, and little was done at that Meeting. I think some Persons of Quality came to speak with my Lord, and that broke it up. I was soon afterwards with my Lord, and I ask'd his Lordship what he intended to do: He said he was sorry Matters were got to that Heighth, but that he found if the Masters would give up the Judicature, they might be made easy in their Demands, and Things put upon the old Foot, and the Suitors made safe too; upon that Occasion, I did take the Liberty to say, if there was a judicial Power in the Masters by Vertue of the King's Commission, as it was his Majesty's Prerogative to grant, we could not give it up; and that, for my Part, I would not exchange or barter it for the Custody of the Suitors Money. I believe my Lord propos'd, at this Meeting, to have had the Assistance of the Master of the Rolls in making these intended Orders; and I recollect, that after the Deficiency of this last Representation, which I was present at, I heard that my Lord had shewn it to the Master of the Rolls before the Meeting, which I took amiss, my Lord desiring it for his own private Use: Upon which I went to him in order to withdraw it, and told him it was done in such Haste, that all the Masters had not consider'd it; but whether I alledg'd to him, or He to me; I don't remember, but it was said, that it was very proper the Masters should all sign it; and I think I carried it back to the Masters, and that we all sign'd it; and then it was deliver'd back to my Lord. And, I believe, upon the Face of that Representation it will appear, that it was drawn up at my Lord Chancellor's Request.

The first Representation was chiefly confined to such Grievances as affected our selves, the second is more at large; I don't know whether his Lordship will produce it. Some things in it may seem to bear hard upon his Honour the Master of the Rolls, and may give Offence; but it will be considered, that it was written at a time when there were great Differences between the Master of the Rolls and the Masters. Nay, I think I may say, the whole Court of Chancery was in a State of War.

Mr. *Plummer*. I desire he may be asked, if he ever laid before my Lord Chancellor, the Expectations of the World, that he would reform these Abuses and Grievances?

Mr. *Lightbourn*. I have often mentioned that to my Lord, and pressed it rather more and oftener than became me. I was ashamed to be so troublesome, and I was surprized that my Lord did not do something in it; tho' I soon found, and have often told one or other of the Masters and others, that my Lord would do nothing in it. However, I continued to persevere in pressing it; and expressly mentioned the great Inconveniencies the Court would be run into, for want of a proper Regulation, and with what an ill Grace we could apply to his Successors to redress these Grievances, in Case his Lordship grew weary of the fatigue of Business, and quitted the great Seal; that they would tell us, we had long acquiesced under them; and that his Lordship not having so much as looked into them, they would not care to meddle or interfere in it. I pressed it home to his Lordship, and thought he made Doubts and Difficulties where there were none. Indeed I thought in this his Lordship wanted his usual Resolution, and almost ventured to say so (tho' I know not whether it is very proper to mention it) but I did take the Liberty to tell his Lordship, that if he did not redress these Grievances, unless my Lord *Lechmere* succeeded him, I despaired of seeing them settled on any better Foot. I hope my Lord will pardon my mentioning his Name.

Mr. Serj. *Pengelly*. My Lords, We have done with Mr. *Lightbourn*.

Mr. Serj. *Probyn*. I desire he may be asked, when the first Application was made by the Masters to redress their Grievances?

Mr. *Lightbourn*. I really can't tell. I went so frequently to my Lord, that I cannot distinguish one time from another; I believe other Masters that went seldomer can tell better; but I believe it must be a Year and a half, or 2 Years ago, or more: I cannot tell the Time.

Mr. Serj. *Probyn*. I desire he may be asked, whether there was any second Application, before the Representation was put into Writing?

Mr. *Lightbourn*. Immediately upon the Master of the Rolls's varying the Method of the Court, and Directing the Money to be paid into the Usher, the Masters went to my Lord Chancellor's, which I believe must be before *Christmas*, 1722. I believe Mr. *Holford* remembers it better; and that from time to time, I have often told him that my Lord Chancellor would do nothing in it.

Mr. Serj. *Probyn*. I desire to ask him, when that meeting was between the late Lord Chancellor and the Master of the Rolls?

Mr. *Lightbourn*; That I believe was the beginning of last Summer.

Mr. Serj. *Probyn*. We desire he may say who was then present at that meeting with the Master of the Rolls?

Mr. *Lightbourn*. My Lords, At that meeting with the Master of the Rolls the Lord Chancellor was there, had the great Seal before him; and the two Senior Registers were there, with Pen Ink and Paper before them, in proper Habits, the Master of the Rolls, and all the Masters in their Gowns, and the Secretary was there, and the Masters all hoped the Orders were to be then pronounced; but I can't remember that the Registers set Pen to Paper. The Usher was likewise there.

Mr. Serj. *Probyn*. I desire he may, if he can recollect it, give a particular Account of what passed at that meeting.

Mr. *Lightbourn*. The Masters insisted they had a Right by Custom to have the Money brought before them, where there was any Reference to a Master, whether it was by Orders made upon hearing, or by Interlocutory Orders, or if there was a Direction in that Order, by which the Money was brought in for the Payment, or Application of it; in these Cases they alledged, that the Money had, time out of Mind, been brought before the Master, to whom the reference was directed; and they did admit, that where Money was brought in upon Bills of Interpleader or Interlocutory Orders, where there was no Reference to a Master, the Money had usually been directed to be brought into Court, in Order to be kept till it could be determined whose it was, or to what Use it was to be applied; and there they admitted the Money was formerly kept by the Usher. This I apprehended was insisted upon by the Masters as their undoubted Right, and it was expected an Order would have been then made declaring it so.

Mr. Serj. *Probyn*. I desire to know what further passed relating to Facts only, without any Account of his own Expectations?

Mr. *Lightbourn*. Some Debate arose, about the Master of the Rolls's Judicature, started I think first by himself.

E. of *Macclesfield*. I desire to put Mr. *Lightbourn* in Mind of some things, and first to ask him, whether upon that Application they had made to me in relation to the Alteration or Variation, as he calls it, in the Practice of the Court, by the Orders made by the Master of the Rolls, whether I did not require them to lay Precedents before me, that I might be satisfied how that Matter stood?

Mr. *Lightbourn*. Your Lordship did, but it was long before that meeting, I believe a Year and more.

E. of *Macclesfield*. Whether there had not been like Directions, that the Usher should lay Precedents before me?

Mr. *Lightbourn*, I don't know of any such Directions to him, but I remember my Lord Chancellor called for his Precedents, and wondred he had not brought them, if he had any for his purpose.

E. of *Macclesfield*, I desire Mr. *Lightbourn* may recollect whether the question was not put to the Usher, with relation to the Usage of the Court, to put the Money into the Masters Hands, in all Cases where the Money was brought into Court, to be disposed of, either to be put out at Interest, or paid to Creditors, or Legatees, whether he had any one Precedent to the contrary?

Mr. *Lightbourn*. I remember he had none, and I apprehended the Usher did not make out any sort of Claim to keep such Money.

E. of *Macclesfield*. I don't ask what the Usher made out, but what Questions were asked him about the Usage and Precedents.

Mr. *Lightboun*. I believe they were asked for, and I am sure he then produced none.

E. of *Macclesfield*. Pray recollect, and consider; did I speak to him, as to one that had not any Precedents to produce; or did I make mention as if he had brought Precedents, and ask him if he could say, that among those Precedents there was one to the Purpose, to make out that the Usage was not so?

Mr. *Lightboun*. I say your Lordship blamed him for not bringing these Precedents. I believe your Lordship asked him, if he could bring any Precedent to the Point? and, to the best of my Remembrance, he said he had none, or gave no satisfactory Answer, but such as I thought Evasive; but I cannot remember particularly what your Lordship and he said to each other.

E. of *Macclesfield*. This is a very indifferent Account; since Mr. *Lightboun* hath so good a Memory, I desire to know whether the Usher was not told, that his Precedents had been read, and possibly might have overlooked some that were Material; and therefore desired him to shew whether there was among them any one Precedent, that related to Money brought in, in these Cases?

Mr. *Lightboun*. He produced none.

E. of *Macclesfield*. Did it not appear that he had produced Precedents before, and they had been read, and that possibly I might have overlooked some of them?

Mr. *Lightboun*. On your Lordship's mentioning of it, I do recollect something did appear, that your Lordship had seen his Precedents, and did expect he should have brought more.

E. of *Macclesfield*. I desire he may be asked whether he did pretend he could produce more?

Mr. *Lightboun*. My Lords, I cannot be particular in that.

E. of *Macclesfield*. I desire to know whether he did not own that he had no such Precedents?

Mr. *Lightboun*. In Answer to that, my Lords, I cannot say positively he did or did not; for I believe I have seen some few Orders of antient Dates, that were Precedents of Money being brought into the Usher's Hands, in Order to be disposed of after hearing. But there were but few of them.

E. of *Macclesfield*. My Lords, I desire Mr. *Lightboun* may be asked whether the Registers were not asked about the Practice of the Court and if in all their Observation and Experience the Money in the cases before specified was ordered to the Usher?

Mr. *Lightboun*. They were, my Lords.

E. of *Macclesfield*. And what Answer did they make?

Mr. *Lightboun*. They answered, that the Money, after hearing, and on interlocutory Orders, where the Application was directed, had been usually ordered to the Masters.

E. of *Macclesfield*. I desire Mr. *Lightboun* may be asked, whether it was not after this, that the Master of the Rolls began to speak with relation to the Judicature, and how that was introduced?

Mr. *Lightboun*. I have forgot the Circumstances and Manner of its being introduced by the Master of the Rolls. But I remember one Expression of his Honour's, That he would have the Masters consider how proper it was for them to insist upon a Judicature, which would empower them to order Money into their own Hands.

But how he introduced that Discourse I don't know; but I saw the Lord Chancellor had not a Mind that Topick should be touched upon, and that the Master of the Rolls brought it in much against his Lordship's Inclination; but how I don't remember. If your Lordship puts me in mind, I may recollect.

E. of *Macclesfield*. The Usher, was not he apprized of this meeting?

Mr. *Lightboun*. Yes.

E. of *Macclesfield*. Did the Master of the Rolls give any Opinion relating to this Matter of the Money being paid to the Usher?

Mr. *Lightboun*. He insisted on his own Judicature, and both introduced and stuck to that Discourse.

E. of *Macclesfield*. Do you remember his saying that the Masters must not expect favour at the Rolls, if they contended for Jurisdiction?

Mr. *Lightboun*. My Lords I do not.

E. of *Macclesfield*. You spoke of my irresolution: Was it not with respect to the Dispute between you and the Master of the Rolls?

Mr. *Lightboun*. I could not tell where it stuck, there was some Difficulty made of determining that Matter; but your Lordship did not communicate to me your Reasons why you did not proceed upon that or any other of the Masters Affairs.

E. of *Macclesfield*. I presume, Mr. *Lightboun*, you did not every time you came to me, speak to me of the Affairs wherein the Masters thought themselves hurt?

Mr. *Lightboun*. No, my Lord, I did not.

E. of *Macclesfield*. You sometimes spoke to me about the Money, and at other times relating to the Master of the Rolls; I desire to know, when you applied to me with respect to the Disputes with the Master of the Rolls and the Innovations made on your Offices; if it was not upon that you found me irresolute?

Mr. *Lightboun*. Your Lordship always said it was proper to settle all at one time, that some security should be given by the Masters, and something done to make it reasonable to expect it from them; which was to establish the Masters in their just Rights, and upon that occasion your Lordship mentioned taking Securities in different Persons Names, and upon that Score the old Proposal of mine was revived.

E. of *Macclesfield*. I have no further Question to ask.

Mr. Serj. *Pengelly*. My Lords, we desire Mr. *Holford* may be called.

Mr. *Holford* called.

Mr. Serj. *Pengelly*. My Lords, We desire Mr. *Holford* may be asked, whether at any time, and when, he heard of a Proposal made by Mr. *Lightboun*, and whether it was made publick?

Mr. *Holford*. My Lords, a good while ago, I believe two or three Years, Mr. *Lightboun* and I had a great deal of Discourse about the Condition and Circumstances the Court of Chancery was then in; and about the Confusion that was like to happen by the unfortunate Accident that had happen'd to Mr. *Dormer*. We did talk of a great many things that were proper to remedy it. A great many were the same that are mentioned in the Letter that hath been read. I think I told him, it was very right, especially as to the matter of the Securities, which was the greatest power a Master was trusted with; for, as the Securities were above three Parts in four of the whole trust, if there could be

a way found out to secure that, it would be a taking away three Parts in four of our Trust; and consequently would not leave so great a Power in the Masters; but as long as they were taken in the Name of one Person, and no trust declared, he could dispose of those things, and no body could hinder it. Therefore I thought it proper to be taken in two or three Names. I believe when it was proposed to be in two Masters, it was mentioned there might be a third, and then no harm could happen to the Suitors, unless Corruption ran through the whole Office. I remember sometime after, that Mr. *Lightboun* did shew me the rough Draught of this Letter, which he said he had sent to my Lord; and we read it over together at my House: I told him, it was very right, and that he had put it upon as good a Foot, as upon the first Consideration it could be put upon: That every new Method was liable to Inconveniencies, but for my part I thought it looked fair, in that, as to the Matter of the Securities, the Money in the Masters Hands was left pretty much to the Direction of my Lord Chancellor.

Mr. Serj. *Pengelly*. I desire he may be asked, whether these Proposals that were made were agreeable to him, so far, that if they were directed by my Lord Chancellor, he would have submitted to them?

Mr. *Holford*. Yes, my Lords, I should have readily submitted to them.

Mr. Serj. *Pengelly*. I desire he may be asked, whether he remembers any Discourse of these Proposals before my Lord Chancellor in his Presence?

Mr. *Holford*. I don't remember I ever had the Honour of speaking to my Lord Chancellor about any of them; nor to have been at any meeting where they were spoken of before my Lord Chancellor.

Mr. *Lutwyche*. My Lords, I desire he may be asked, whether he can recollect when he had this Discourse with Mr. *Lightboun*, and when this Draught of the Letter was shewn him?

Mr. *Holford*. About two Years ago; some time after it had been written, and sent to my Lord, Mr. *Lightboun* told me, says he, I have writ to my Lord to the Effect of what we talked of; and I will shew you the Letter; and he pulled out the Copy and shew'd it me.

E. of *Macclesfield*. Was you at that meeting which Mr. *Lightboun* hath mentioned, when the Masters and the Master of the Rolls were there? And what passed, as near as you can remember?

Mr. *Holford*. My Lords, I think it was upon Midsummer Day, if I remember right, and the Masters, the Usher, the Registers, and the Master of the Rolls, were all there. My Lord Chancellor declared there had been some Disputes in the Court of Chancery; and he had called them together to adjust those Disputes, especially in relation to the Money of the Court. I believe the Usher was called upon to know whether he had any Precedents to offer in Justification of his own Right, or of what he claimed as a Right? and the Usher, I think, said at that time, he had no more than he had already delivered to his Lordship; I believe his Lordship said those Precedents were not much to the purpose; the Usher said he had no more, and delivered no more; and after some Discourse, there were several People spoke, the Usher insisting there were some Precedents to the purpose. Then a Dispute arose about the Jurisdiction of the Master of the Rolls; and so the Affair broke up at that time. I think nothing more was done.

Mr. Serj. *Pengelly*. My Lords, we desire that Mr. *Kinaston* may be called.

Mr. *Kinaston* called.

Mr. Serj. *Pengelly*. My Lords, We desire that Mr. *Kinaston* may give your Lordships an Account, whether he knows of any Proposal made to the Earl of *Macclesfield*, relating to the securing the Effects of the Suitors?

Mr. *Kinaston*. Yes, My Lords, I do; there were several Meetings among the Masters privately before they came into an Agreement. I think they all did agree, that they would go to my Lord *Macclesfield*, and propose to him to give Security, and to settle the Matter of the Securities so, that it should not be in the Masters power to dispose of them. I remember it was agreed upon, that it should be so represented to my Lord, and I believe all, or most of the Masters, went to my Lord *Macclesfield*, and did propose it to my Lord. I am very positive some Proposals were laid before him. Some proposed to get People to be bound with them, but there might be some Difficulty in that; others proposed that they should give Land Security, but it was thought likewise that might meet with Difficulties in relation to the Title.

Mr. Serj. *Pengelly*. Was there any Proposal made as to the Securities in their Hands?

Mr. *Kinaston*. Yes.

Mr. Serj. *Pengelly*. In what manner was it proposed that the Securities should be taken?

Mr. *Kinaston*. I am not positive, but it was to this purpose; they should be put in one or two of the Masters Names, and of the Persons concerned. I am not certain how that was, but it was something of that Kind.

Mr. Serj. *Probyn*. My Lords, I beg leave to ask this Witness when this was?

Mr. *Kinaston*. I do not remember the time exactly. I believe it was sometime about *Christmas* was twelve Month.

Mr. Serj. *Pengelly*. My Lords, We shall call no further Witnesses upon this particular Article; but beg leave to refer to your Lordships recollection of what passed Yesterday, from the Examination of all the Masters, relating to the Encouragement and Inducement that proceeded from my Lord *Macclesfield*, to the Masters, to persuade them to make up *Dormer's* Deficiency, if their Offices should be established on their old Foot; which sufficiently proves the Notice the Earl had of their Trafficking and dealing with the Money belonging to the Suitors of the Court. In the next place we shall lay before your Lordships an Order, made by the Earl of *Macclesfield*, of the 17th. of *December*, 1724. Tho' as to the several Proposals made to his Lordship by the Masters, he doubted of the Power he had to make any Order, yet when it was too late, or after the Losses had happened, when the Affair of this great Deficiency appeared, then doth he make an Order, that looks with some Care, but with this Introduction, that it was not usual for the Masters to give Security; tho' it appears to your Lordships that they had offered it, and were willing to do it.

Mr. *Ralph Paxton* proves the Order.

Clerk reads, *Ordo Curiae Jovis Decimo Septimo die Decembris, 1724.*

W Hereas his Majesty has been pleased to appoint a Committee, of several Lords and others, of his most Honourable Privy Council; to make some Inquiries concerning the Court of Chancery,

Chancery, and particularly concerning the Monies of the Suitors of that Court, in the Hands of the Masters or other Officers of that Court, and to consider which way the same may be best secured; and the Lord Chancellor having at their Desire ordered the several Masters to give in their respective Accompts, which they accordingly did; and Mr. Baron *Gilbert*, Mr. Justice *Denton*, and Mr. Justice *Raymond*, and likewise Sir *Nathaniel Gold*, Mr. *Thompson*, and Mr. *Hanger*, three of the Directors, and one of them Deputy Governor of the Bank, having been appointed and desired by the said Committee, to inspect and examine the said Accompts, and who have proceeded so to do, and after having been several Times attended by the said Masters, have made a Report thereof to the said Committee of Council; whereby it appears, that, tho' all the Masters of the said Court have produced before them all the Securities and Certificates of their having the Stock and Annuities in their Names; which upon their Accompts, they appear to be chargeable with as belonging to the Suitors of the Court, and much the greater Part of the Masters have brought before the said Mr. Baron *Gilbert*, and other Persons above named, their Cash or Securities easily convertible into Money, Certificates of Stock, and Annuities sufficient to make good the Ballance of their Accompts: Yet upon the said Report it appears that there are yet considerable Deficiencies of Monies, which were in the Hands of some Masters, who are dead; and that some of the present Masters have not produced the Ballance of their Cash, nor given a satisfactory Accompt how the same is to be made good, and it not having been usual for the Masters of the said Court to give Security for the Money in their Hands, the said Committee thought adviseable, that till this Affair could be more maturely considered, and proper Methods established for security of the Suitors of the said Court, the Effects herein after mentioned, which have upon this Occasion been produced, should be at present secured in the Manner herein after mentioned, and recommended to the Right Honourable the Lord Chancellor, to take such Order therein, as should be proper; all which being communicated to all the said Masters, and the said Report now read in the Presence of them all, except Mr. *Kinaston*, who is indisposed, and thereby prevented from attending; and upon hearing what was alledged by the said Masters, and the Facts of the said Report, so far as concerns their respective Securities in their Hands and Power, and the Ballance of Cash in their Hands not being controverted, his Lordship therefore doth think fit, and so order, that the said Masters, Mr. *Holford*, Mr. *Lovibond*, Mr. *John Bennet*, Mr. *Godfrey*, Mr. *Lightboun*, Mr. *Conway*, Mr. *Edwards*, Mr. *Thomas Bennet*, Mr. *Elde*, and Mr. *Thurston*, all now present, and likewise Mr. *Kinaston*, do forthwith prepare and send to the Bank of *England*, every one a Chest with one Lock, and Hasps for two Padlocks; the Key of the Lock to be kept by the Master, and the Key of one of the Padlocks by Mr. *Smith*, and Mr. *Malthus*, two of the Six Clerks of this Court, or one of them, and the Key of the other by the Governor, Deputy Governor or Cashire of the Bank; and that all the Bonds, Exchequer Annuities and Orders, and other Securities given in upon their said Accompts,

as Securities belonging to the Suitors of this Court, or as the proper Securities of the said Masters, towards making good the Ballance of their respective Cash; and likewise the Bank Notes and Cash so given in, and not since paid to, or laid out for the Suitors of the Court, be deposited in the said Chests, under the Inspection of Mr. Baron *Gilbert*, and the other Persons appointed, as aforesaid, to inspect the Masters Accompts, or of some of them; and that then the Chests be locked up, and left in the Custody of the Bank of *England*; but so to be kept, as that the Masters may have easy Access thereto, to comply with the Orders of this Court, till further Order may be taken concerning the same; and whereas the Masters have in their several Accompts given in particulars of Stock, and of Annuities, transferrable in the Books of the several Companies, standing in their Names, which belong to the several Suitors of this Court, or as their own proper Stock and Annuities, by which part of the Ballance of Cash in their Hands may be made good or secured; it is further ordered, that they do each of them forthwith deliver into the respective Company, a Declaration in writing, wherein such Stock in each respective Company, or the Annuities there transferrable, as by their respective Accompts, appear to belong to the Suitors of the Court, and likewise the Stock and Annuities by them respectively proposed towards making good, or securing their Ballance of Cash, or so much thereof, as shall equal the Ballance of their said Accompt; in Case they have in their Names more than sufficient for that Purpose, it shall be declared to be upon Trust, to attend the Orders of this Court; and the said respective Companies are to take care, that proper Entries be made thereof in their Books, so that such Stock or Annuities be not Transferred, but by Order or Leave of this Court, and the said Masters upon performing the Order above, are to take proper Certificates, Signed by Mr. Baron *Gilbert*, and the other Persons appointed as aforesaid, to inspect the said Accompts, or some of them; and by the Persons keeping the Keys of the said Chests, of the Particulars of the Bonds, or other Securities, and Cash Notes, deposited and locked up in such Chests, as aforesaid, and Certificates Signed by the same Persons, and by a proper Officer of the Bank, that such Chests are deposited in the Bank, and Certificates signed by the proper Officers of the respective Companies, of the Declarations made as aforesaid, by the respective Masters, and of the Entries thereof; and it is further ordered that the *Goldsmiths* Notes, produced by the said Masters, in giving in their Accompts, be by them turned into Bank Notes, and so deposited as aforesaid; and the said several Masters are forthwith to give Mr. Baron *Gilbert* Post-Accompts of their Receipt, and Payments since the former Accompts, and a Copy hereof is to be delivered to Mr. *Kinaston*, he not being now present; and another Copy left at the publick Office of the Masters, with their Clerk there, for their more easy recourse thereto, in order to their exact Compliance therewith.

EDW. GOLDSBROUGH  
Deputy Register.

Mr. Serj. *Pengelly*. By this Order your Lordships will observe, that some of the insuperable Difficulties

Difficulties were surmounted, and some of the Evils Cured; and tho' that Method will not take it totally out of the Power of the Masters, yet why the noble Lord could not have proceeded so far before, is left to your Lordships Determination; we shall not call any further Witnesses on these Articles, we apprehend we have fully made them out. The honourable Gentleman who opens the next Article, will proceed.

Lord *Morpeth*, My Lords, It falls to my Lot, to open to your Lordships the 19th Article of this Impeachment, and, it being sometime since 'twas read at your Table, 'twill be necessary for me shortly to recollect it.

The Article charges, ' That his Majesty, having in *Novemb.* last, directed an Inquiry into the Accounts of the Masters, to the intent, that proper Methods shou'd be taken, for the Security of the Suitors, the Earl of *Macclesfield*, being then Lord Chancellor, and one of the Privy Council, in order to obstruct the same, and to prevent a parliamentary Inquiry into the Condition of the Offices of the Masters, did, in the first Place, advise the Masters to assist each other with Money and Effects; and for their Encouragement, represented it to them, that it wou'd be for their Honour and Service to appear Able and Sufficient, and that if they made a bold stand now, it wou'd prevent a Parliamentary Inquiry. In the next Place, ' That the Earl persuaded several of them, to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their Accounts, that they were able and willing to Answer the Effects in their Hands, tho' the Earl then knew, or had good reason to believe the contrary; and that several of the Masters, according to the Earl's advice, did supply others with Money and Effects, to make a false Shew, and appearance of their Abilities.

Your Lordships take notice, that the time mentioned in the Article, is *November* last; at which time, and for some Years before, the Kingdom had rang of the Abuses and Corruptions of the Court of Chancery, with little hopes of Redress, but from the Justice of Parliament: The Earl cou'd not but foresee, that the Period was then drawing near, when the Cries of the Oppressed and the universal Dissatisfaction, rais'd against his Administration, wou'd, some way or other, force its Relief.

This cry for Justice having reach'd his Majesty's Ear, He was pleas'd to direct the Inquiry mention'd in the Article, and whilst this was depending, the Impeach'd Lord finish'd that Scheme of Iniquity, he had carried on so long without controul.

The Facts charg'd in this Article contain in themselves the vilest Deceit and Treachery; heighten'd, and aggravated by the wicked Purposes, for which they were contrived; First, to have misled the Council Board into a groundless Belief of the Master's sufficiency to Answer the Suitors; and on this Foundation he built a more impious, but more fatal Project, the preventing a Parliamentary Inquiry.

The Answer given by the Earl to this Article deserves a particular Notice; He says, ' That upon great Consideration of *Dormer's* Deficiency, and the Danger there might be of further Inconveniencies with relation to the Suitors Effects, of some Disputes in the Court, and of some Practices of the Masters, which he thought ought to be Reform'd, he was convinced, it was a work of too great Consequence, for him singly

to Attempt; and being highly sensible of his most sacred Majesty's paternal Goodness, did presume humbly to beseech his Majesty, as the Fountain of Justice, to Depute some of his Privy Council to take the Matters into Consideration, My Lords, Seven Years, and more had pass'd since he was made Lord Chancellor, three Years, since *Dormer's* Deficiency, without one honest thought, for any thing that has yet appear'd, or one sincere Step taken by him, for the Honour of the Court, or the safety of the Suitors; if the Examination order'd by his Majesty, did spring from his Lordship's Request, his real intention, in desiring it, will be best known from his former Conduct, and from the Use, we shall prove, he intended to have made of that Inquiry; his past Behaviour has already appear'd to your Lordships, to have been a Series of Extortion and Oppression, constantly attended with the vilest and meanest Artifices to keep it Secret; the King's paternal Goodness was most notoriously abused, by him, who was intrusted to Dispense it; and that Fountain of Justice polluted, which he now dares to name in his Defence.

I think my self justified in charging this Part of his Defence, as an Act of high Dissimulation before your Lordships; and a presumptuous Attempt, to cover his own Guilt under his Majesty's sacred Name, and the Orders he was pleas'd to give for that Inquiry. The Earl has, indeed, acknowledged one Truth, in this part of his Answer, ' That the great Deficiencies, and Danger to the Suitors, and the Practices of the Masters (which he does not name, but says) ought to be reform'd, had convinc'd him, that the Reformation of them was a Work too great for him, singly, to Attempt,

My Lords, The many Prostitutions of the Dignity of that great Office, which have been proved upon him, had doubtless greatly wounded the Honour, and Authority of the Court it self; and the Earl had bound himself so fast to those Masters, whom he had admitted, by the Bands of Corruption, which he had not Power to break thro', that nothing which tended to the Honour of that high Court, or the Advantage of the Suitors, cou'd be expected from his Hands.

The next Passage of his Answer is a wretched Mixture of the most abject Flattery of such of your Lordships, as attended that Committee, to whom, I believe, his Lordship very truly Declares, he was entirely subservient; and of false Praises of himself, for the great Services he contributed to that Inquiry: However, after this Introduction, the Answer goes on and declares, ' That he is greatly surprized, to find himself charged with Obstructing the taking those Accounts, which he had thus desired might be taken, and had promoted with all his Power.

This is a poor Evasion and Affectation of Innocence, and the more surprizing, to come from his Lordship, whose Misconduct had so notoriously been the Occasion of that Inquiry. And the Charge is not, as he insinuates, for obstructing the taking the Accounts, but, for procuring false Accounts, and Representations to be laid before the Council, by which means that inquiry might have been frustrated.

But he proceeds in his Answer to a Declaration, the most astonishing of all others, ' That he never thought of preventing a Parliamentary Inquiry, any otherwise, than by making it unnecessary, and procuring to the Suitors a full Redress of all their Grievances, and rectifying whatever he found amiss; and that he look'd upon to be his Duty

and begs leave to say it here, once for all, in Answer to all the Insinuations of that kind contained in any of the Articles.'

By the last Words the Earl, in a very summary Manner, pronounces his own Acquittal; but your Lordships will observe, that the Article charges him, in plain Words, with actual advising the Masters to misrepresent their Accounts, in order to prevent a Parliamentary Inquiry, and that, if they made a bold stand now, it might prevent one; His Lordship Answers, that he never thought of preventing it, otherwise, than by procuring full Redress, &c.

By this he confesses, he did think of preventing the Inquiry of Parliament.

He has not dared to deny the Facts charged, from which this Design was manifest, because he knew they would be fully proved: But the Subterfuge he lies to, viz. that he did intend to prevent it, by rendering it unnecessary, is impossible to be believed, tho' the Commons shou'd offer no Proofs at all to this part of the Article; unless his Lordship imagines, that he is able to carry on the Imposition so far, as that the concealing from his Majesty the true Condition of the Suitors, by the Methods he was then practising with the Masters, should be taken by your Lordships to be the Means of procuring them full Redress; and it is self evident, that if his Contrivance had taken place, the immediate and full Relief of the Suitors, which was his Majesty's gracious Purpose, had thereby been wholly defeated: The Commons therefore may insist upon it, that this flagrant Circumstance is established by his own Confession, especially since your Lordships find, that in the following parts of his Answer the Earl declares, 'That Mr. *Holford* having subscribed his Accounts, with a Declaration of his Abilities, and Readiness to answer the Suitors, and some of the Masters having used Expressions, as he thought, not so proper, others of them having made no Conclusions at all; he did advise them all to write the same Words under their Accounts, as Mr. *Holford* had done, and did tell them, in great Sincerity and Friendship, that at a Time when so many Mens Mouths were open against them as Insolvent, it would be for their Honour and Interest to make it appear that they were Able.'

Thus far the Answer is a full Confession, that he advised all the Masters to add Mr. *Holford's* Conclusion to their Accounts.

His Lordship says, he was induced to do this from their assuring him they were able; this Assertion will appear to be notoriously false; however, if it had been true, his Lordship, it seems, took their bare Words for it, at the same Time that he declared to them, that so many Mens Mouths were open against them as Insolvent: But here, unhappy Man, he lies again for Sanctuary to the Integrity of his own Heart, and assures your Lordships, 'That he never thought of a Contrivance to have them deceitfully appear to be what they really were not; tho' this Declaration of the Innocence of his Mind stands also in direct Contradiction to the Fact he had just before confessed; and in the very next Lines he again confesses, that some of the Masters, pursuant to his own Directions, did withdraw to add the same Words to their Accounts, as Mr. *Holford* had done to his; which he carried to the Council without looking into them, and, when they were read there, the Masters, it seems, were honest Men than the Earl expected, or would have had them to be; for, notwithstanding his Advice, all of them did not make these Subscriptions to their Accounts.

To the other Charge in the Article; of his advising them to stand by one another and appear able, his Lordship has given a particular Answer, 'That an Order being made upon the Masters, to produce their Securities and Cash, and the Masters complaining of the short Time to produce such great Sums, he confesses, he did say, that he required them to bestir themselves, and might, say that some of their Brethren might perhaps be able to let them have Money, till they could raise it another Way.'

The Excuse he offers for this Advice, is a very unjustifiable one, it is, that the Masters declared to him, that they had not the Suitors Effects ready, which, by the Duty of their Offices, his Lordship knew they ought to have had, but had Effects sufficient to raise the whole, if they could have had more Time. By his own Account of this Matter 'tis plain, that the Masters did at that Time disclose to him one of the Practices, which 'twas his Duty to have reformed; and yet your Lordships see what Consideration he had of it; even at this Juncture he advised them to supply one another, which they accordingly did, and the Deceit prevailed, till the Order for carrying the Securities and Cash to the Bank made the Discovery.

Perhaps, my Lords, I have dwelt too long on the Earl's Answer; but, I think, it will appear to your Lordships to betray such a Confusion of Mind, as nothing but the heaviest Pressures of Guilt could have produced, and is a stronger Conviction of him than a thousand Witnesses.

I will, in the next Place, give some short Account of our Evidence to this Article. The Masters themselves will prove the Earl's Directions, either given by his own Mouth, or by his Secretaries, when they were required to make up their Accounts to be laid before the King in Council, that they should stand by one another, and give the best Account, they could, to prevent a Parliamentary Inquiry, and that they need only to produce or shew Bank or Goldsmiths Notes, and that it was a critical Juncture, and that the Strong should assist the Weak, and that they must make a Stand, and defeat the Designs of their Enemies.

We shall farther prove his Lordship's express Directions to the Masters, to add the same Conclusion to their Accounts, as Mr. *Holford* had done to his, which was, that they were able and ready to answer their Balances; tho' the Earl did not so much as ask any of them whether they could make it good, and some of them declar'd the contrary; and at that Time also he told them, that it would be for their Honour and Service, and that it would look well to the Council to appear able and willing.

We shall also prove, that this false Advice of the Earl was followed by several of the Masters, in both Respects; and that afterwards, when the Suitors Effects were to be carried into the Bank, several of them who had before appeared able, now proved deficient in great Sums, and Bank and Goldsmiths Notes, and other Effects, to a great Value, with which several of them had been accommodated, and which they had produced to the Persons appointed to examine the Accounts, and which, as appears by the Reports on your Lordships Table, they had sworn to be their own, and not lent them for the Purpose of accounting, now vanished, and a Deficiency appeared of fourscore thousand Pounds and upwards, which still continues.

This Evidence will fully maintain our Article, and, if any Proof is necessary, will sufficiently clear up the Earl's Intentions.



My Lords, The Part which still remains to me is such, as I own my self utterly unable to perform, I mean, to aggravate this Offence in such Manner as it deserves; the amazing Scene this Article has opened, must not be judged of singly, and by it self; nor can it be accounted for but as the Off-spring of a Mind thoroughly debas'd, and flowing from the most incurable Corruption: And tho' they have issued from that Source, as from an unexhaustible Fountain, yet it can't be denied, but as the Earl's thirst for Lucre grew stronger upon him, with that his Invention also has constantly improved into some new Device or Management for securing his exorbitant Advantages, by preserving the Secret. 'Twas a remarkable Law, in one of the wisest of the Grecian Governments, arising from their Dread and Abhorrence of a corrupt Judge, *That no Man, bred up to Merchandize, should be admitted into any Office of Judicature, till he had quitted that Employment for at least ten Years*; and the Reason was, because the Fingers of Merchants had been too much used to Traffick.

The Earl's Administration, in the highest Seat of Justice in this Kingdom, has appeared to your Lordships to have been one continued pyritical Trade; during the Course of which, from Time to Time, as Opportunities have offer'd, he has prey'd alike upon Masters and Suitors; his craving Appetite was, in no Sort, check'd by the approach of Death it self; and the Hand of a dying Chancellor, as he express'd himself to one of the Masters, was open'd to receive that unjust Gain he had so plentifully fed upon in full Health: To which, and his other Misbehaviours, your Lordships now see, that not only the Ruin of many even of the Masters, but the Dishonour, Distress and Confusion still remaining in that part of the publick Justice must be imputed; and how groundless and unaccountable soever the repeated Assertions in the Earl's Answer, that the Masters freely and voluntarily parted with their Money to him now, appear to him to be; yet, from the Unwillingness and other conscious Circumstances, with which he has since, at several Times, refunded some parts of his extorsive Gains, tho' the Guilt is not lessen'd, his Lordship is thereby Self-condemn'd.

The Fund out of which he has raised his unwarrantable Profits, ought to have been held by him as sacred and inviolable, being deposited in the Sanctuary of his own Court: His Extortions therefore must be judged of, not as private Violations of Property, but as Pillage taken from the Treasure of the Publick; the Livelihood of the Widow and Fatherless, under the Protection of the Law, in a Court of Justice; great part of it, perhaps, dedicated to Charities: And how far your Lordships may, in this Respect, consider it as a sacrilegious Plunder, is left to your Judgment: However, the injuries done to distressed, shipwreck'd Sufferers, have been always esteem'd the highest Barbarity.

But the Methods the Earl has used from Time to Time to excuse and cover his Crimes, tho' they were the natural Refuge of an obstinate unrelenting Mind, yet are more heinous than the Crimes themselves. Your Lordships can't forget the Oath of his Office, which he has set forth at large in his Answer; he was sworn to *do Right to all manner of People, poor and rich, according to the Laws and Usages of the Realm, and not to do, or suffer the Hurt of the King, if he could hinder it; if not, clearly and expressly to make it known to him, with his true Advice and Counsel*. 'Tis surprizing to find his Lordship to have so utterly abandon'd all Regard to this solemn Obligation, as the whole Course of his Behaviour fully demonstrates. You have also heard

the Oath he caus'd to be administer'd to the Masters, immediately after he had shared with them the Estates of the Suitors; by which Oath *they were likewise sworn neither to do Hurt to the King, nor to do any Fraud to the Hurt of any of the People*; and it has appear'd in what Manner they have since been practis'd and tamper'd with by the Earl himself, in order to conceal and suppress the Knowledge of the Grievances of the Subject, which he had procur'd; sometimes they were threaten'd, at other Times cajoled and seduced, but always deceived; and this Artifice, disclosed by this Article, was his last Shift. When he saw the Storm began to arise, he deliberately contriv'd to turn the fatherly Goodness of his bountiful Master to the Destruction of his People, and, by this most unparalleled Attempt, to have render'd the Throne it self the Shelter of his Iniquities, and accessory to his Oppressions; but 'twill now appear, that this was conducted to another Point, to skreen himself from the Justice of Parliament.

My Lords, There have been Crimes so unexampled, and of so horrid a Nature, that the Malefactors have been try'd at Midnight, and immediately drown'd, and the Journal Books burnt, in Compassion to Mankind, that the Memory of the Proceeding being destroyed, the Crime it self might not be propagated.

The Offences of the impeached Lord are ripened to a Fulness surpassing all Belief, too big indeed for the ordinary Hand of Justice; but the Commons of *Great Britain*, whose Inquiry he vainly flattered himself he could prevent (tho' the Terrors of it had long lain upon his Breast) have, by this Time, I presume, convinc'd his Lordship; and his Example will, I hope, convince the World, that no Offender, how great or subtil soever, can escape their Justice, of which this publick Proceeding will be an eternal Monument, as well as of the Shame of the unfortunate Earl.

The Lord *Bacon*, one of his Predecessors, made a frank Submission to your Lordships Ancestors upon the Accusation of the Commons, and taking Comfort to himself from his Afflictions, uses these Words, 'That hereafter the Greatness of a Judge or Magistrate shall be no Sanctuary or Protection to him against Guilt; and that, after his Example, it was like, that Judges would fly from any Thing in the Likeness of Corruption, tho' at a great Distance; which tends to purging the Courts of Justice, and reducing them to their true Honour and Splendor.' He did, indeed, urge it as no small Excuse for himself, that Bribery and Corruption, the Vices of which he stood impeach'd, were the Vices of the Times; but the Commons rejoyce to find, that the Earl, now before your Lordships in Judgment, has no Ground to claim the same Excuse.

The Admonitions left by that penitent great Man, and the just Punishment he underwent, have, I believe, conduc'd to prevent the like Evil for near an hundred Years, tho' they had not an immediate Effect: For an eminent Historian of those Times has recorded, that some Time after his Sentence in Parliament, meeting the Earl of *Middlesex*, then Lord Treasurer (whom he had Ground to suspect to have been instrumental in his Disgrace) in Discourse with him he recommended it as a Rule to be observ'd by the Earl, and all great Officers, to

Remember a Parliament will come.

And the same Author further observes, that tho' the Lord *Bacon* had not the Spirit of Divination, and tho' the Treasurer despis'd and laugh'd at his Advice, yet, within two Years after, the Treasurer also was condemn'd in Parliament for Bribery, Extortions, Oppressions, and other grievous Misdemeanors.

I will conclude with one Observation more : It may, my Lords, be too justly apprehended, that the most dangerous Symptoms of a declining Commonwealth do then appear, when Men in the highest Stations in Government, especially those which concern the Administration of Justice, shall be so far lost to all Sense of Virtue, as to be guilty of such odious Crimes as those now charg'd upon the Earl; yet, we promise our selves, that your Lordships Justice, in the Punishment of those Crimes, will afford us a hopeful Prospect of a reviving State; and that whenever the Crimes and Misdemeanors of this unfortunate Earl shall hereafter be mentioned, it will be remembered at the same Time, for the Honour of your Lordships, and the Benefit of the whole Nation, that he received a Condemnation suitable to his Guilt.

Mr. Snell, My Lords, I would gladly have been excused *this Service*, because I have been extremely indispos'd, ever since I receiv'd the commands of *the House of Commons*, and because I am otherwise truly sensible of my Inability to execute those Commands, in the manner they ought to be executed. But these Reasons, being thought insufficient by *others* to prevail for my absence, it is no longer a Matter of Choice, and I must comply with the duty *impos'd* upon me. Your Lordships therefore will be pleas'd to consider (as the Truth is) that what I have to say is only the Product of a few Hours, and that it is impossible for me, in so short a time, to offer any *Observations*, any *Arguments*, but such as will appear crude and indigested on this *great and important Subject*.

The Earl then *at the Bar* stands under an *Impeachment of all the Commons of Great Britain, of high Crimes and Misdemeanors in his late Office of Lord high Chancellor*, and tho' the Charge against him in the *Article* now under your Lordships consideration, be of a different Nature, yet in every Circumstance it is as highly *criminal*, as any of those that have gone before it. The Accusation hitherto has generally run upon *Corruption in the sale of Offices, Extortion, and a Series of foul Practices* to cover and conceal the deficiency in *Dormer's Office*, which had drawn upon him an *Universal Cry* for Redress. All the little Arts, that had been play'd over and over again upon the *Masters*, either by applying to their Hopes, or Fears, as opportunity offer'd, had prov'd ineffectual; and some other expedient must be found out, some new Stratagem invented, to quiet the clamours of the *injur'd Suitors*. These clamours had justly arisen from a Supposition of the *Masters Insolvency*, and no Method could be so likely to serve his turn to appease them, as one, that would make the *Masters seem* to be solvent. He therefore ventur'd to advise them to assist one another, to represent their Circumstances in a false Light, by Subscribing their Accounts as Mr. *Holford* had done; and thus he propos'd to deceive the *Suitors*, and to make the *Masters* appear to the World able to answer the Monies and Effects in their Hands: But this last Effort was as unsuccessful as his former. For if the *Masters* were able and sufficient, what reason could he have for his Apprehensions of a *Parliamentary Enquiry*? If they were not able, he had indeed reason for such Apprehensions, which leaves your Lordships no room to doubt, but that *this Advice* was given with a View only to keep the Affair out of Parliament; and the constant Anxiety he labour'd under to secure that *main Point*, does more than *decypher* the Secret of the whole Transaction.

Now, my Lords, this extraordinary Step could not proceed from any Doubt the Earl could have,

whether the Parliament was able and willing to redress these Grievances and Inconveniencies, or whether it would contribute its Assistance to the Relief of the *Suitors*: No, my Lords, he knew very well, that the Parliament was the proper Place for redressing *Abuses in the Courts of Justice*. He was sensible too, that it had always interpos'd with *Accusations* and *Impeachments*, and that *ill Actions* had, in no Age, met with Favour there. He could have no Hopes that his Ambiguity of Expression, his Dexterity in playing upon Words, in wresting their proper Sense and Meaning, could stand him in any Stead; or that all his Subtilty could be a Match for the Wisdom of the Legislature: But, perhaps, he might imagine, that a *Committee of Council* might be wrought upon, and misled by Appearances, at least so far, as to *protract the evil Day*; and who could tell what Time or Accident might bring about? Another *Act of Grace* might come, and expunge the whole Score.

I should have congratulated your Lordships and the House of Commons, and even the *accused Earl himself*, if the *just Apprehensions* he conceiv'd of a *Parliamentary Inquiry* had rais'd in him a *compassion* equal to the *Sufferings of the Suitors*: If it had begot a Repentance of his former Misdeeds and Crimes, and a resolution of future Innocence and Uprightness: But your Lordships find, it had a very different Effect; it only produced a vile Contrivance to guard himself against Punishment for what was past, and to make it more difficult hereafter, to detect him in the *same Practices*. This is a *behaviour* my Lords, which is so far from deserving your *Mercy*, that it calls aloud for your *Indignation*, as well as *Justice*. This is a *Circumstance*, which is not only a high aggravation of his Guilt, but a great Indignity to the Authority and Honour of Parliament; which I hope will never be eluded by the Artifice of the *most cunning and skilful*, nor controul'd by the influence of the *most powerful and favour'd Minister of State*.

But, if the *impeach'd Earl's Actions* may be allow'd to be any Proof of his Intentions, the Fact stated in this Article goes further, and implies a *bold and desperate Attempt* to mislead his Majesty, and to obstruct his gracious Endeavours to find out proper Methods for securing the Money and Effects of the *Suitors*, which is an Instance on one Hand of his *baseness and ingratitude to his Sovereign*, to whom he ow'd every thing; on the other of his *injustice and barbarity to those of his fellow Subjects*, whom he had *injur'd*, whom he had *oppress'd*, during the whole course of his *Tyrannick Administration*.

What, my Lords, must have been the Consequence, if *this Contrivance* had pass'd? And it would have pass'd upon a Prince of less Discernment than his Majesty. Whenever it had been discovered, all the Obloquy would have been thrown upon his *Sacred Person*, as if he had been engaged in a *Confederacy* to *skreen* that guilt which he was labouring to *detect*. But the *Earls avaricious Temper* had set so wrong a Bias upon his Actions, that the *Means* by which he propos'd to shelter himself, and to conceal his Depredations, have brought upon him (what he so long dreaded) this *just and necessary Prosecution*.

As to the *Earl's Answer to this Article*, I hope I may be excused the Liberty of saying, that it is either *vain, evasive, or false*.

He begins with enumerating the many Inconveniencies and Abuses, which he thought necessary to be reformed in the Court of Chancery, and with assuring your Lordships of his good Intentions to contribute to the Reformation of them; but your Lordships will best judge of this pretended Zeal, and of the Sincerity and Candour, with which it is urged, by considering the constant Tenor of his Actions, by examining whether he can produce any Instance of his having endeavoured to correct these Abuses, or to remove these Inconveniencies. Now I don't find thro' his whole Answer, nor have I heard it asserted, that he ever attempted any Thing of that Kind. On the Contrary, it is too apparent, that many of them took their Rise while he presided in Chancery.

In the next place, my Lords, he arrogates to himself the Merit of *that Enquiry*, which his Majesty had directed to be made by a *Committee of his Privy Council*; and insists, that it was the Effect of his Application.

How true this Assertion is, some of your Lordships may know. But the Part he acted in *that Enquiry*, might have oblig'd him to Silence, or at least have restrained him from boasting of his Conduct. The *Commons* charge him directly with obstructing the Methods then propos'd for securing the Property of the *Suitors*; and it is not a sufficient Answer, to say, that *this Enquiry* was begun at his Instance, and that he pres'd the *Masters* to bring in their *Accompts*: For all this may be true; and yet he might give them the *Advice* I have already mention'd, and complain'd of to your Lordships. Surely, my Lords, it is a Justice due to his Majesty, to observe upon this *vain-glorious Part* of the *Earl's* Answer, that, whatever Share He had in setting *this Enquiry* on foot, all the good *Fruits*, to be hop'd for from it, are the Result only of his Majesty's *Paternal Care* of his People.

He further says, That he never thought of preventing a *Parliamentary Enquiry*, any other ways, than by making it unnecessary, and by procuring the *Suitors* a full *Redress* of all their *Grievances*, &c.

This is another Instance of his *Disingenuity*: For the *Grievances* complain'd of, could no where be redress'd but in *Parliament*; and therefore nothing more can be understood by the Words [*Any other ways, than by making it unnecessary*] than by making it SEEM unnecessary; which is a poor and mean *Prevarication*.

Nor is there any Credit to be given to what he urges in Excuse for his *Fraudulent Proposal* to the *Masters*, viz. That while the *Accompts* were taking, all the *Masters*, at least all that he saw, except *Mr. Kinaston*, had declared that they had *Effects* sufficient to answer their whole *Accompts*, &c.

For we shall prove to your Lordships by *Mr. Thomas Bennet*, and *Mr. Kinaston*, that it is false, unless you'll suppose them *perjur'd*: For they are very positive, That the *Earl* never ask'd them whether they had *Effects* to answer, or not, or were able to pay in their *Cash-Balance*: Nay, they are sure they did not tell him so, because in *Fact* it would have been false, if they had.

Besides, Your Lordships will have the concurrent *Testimony* of almost all the *Masters* to prove, that (while they were making up their *Accompts* to lay before the *Committee of Council*) they were directed by *Cottingham* and *Dixon* to assist one another in making a *Shew* of their *Abilities*; and that some of them, viz. *Mr. John Bennet*, *Mr. Godfrey* and *Mr. Conway*, complied with this *Direction*, which we must ascribe to the *Earl* himself, as being given by his *Two Chief Agents* and *Ministers*.

Who is it, my Lords, that has been guilty of the Crimes laid in *this Impeachment*? It is a *Peer of Parliament*! A *Lord High Chancellor of Great Britain*! And how precarious must be the Property, how deplorable the Condition of the Subjects of this Kingdom, if such Crimes should not be punish'd in so *exemplary* a manner, as to carry down *Terror* to all succeeding *Chancellors*?

My Lords, If I have express'd my self with too much *Acrimony* on this occasion; if what I have said, has any way offended the *Impeach'd*

*Earl*, I hope he will do me the Justice to believe, that I meant it only in *Detestation* of his Crimes, and not in *Disrespect* to his Person. For I assure him, I should have been heartily sorry for the Misfortune he has brought upon himself; if it had proceeded from *Ignorance* or *Neglect*, and not from an *insatiable Appetite* after *illegal Gains*, which he is pleas'd to mis-call *Voluntary Presents*, and for which I must ever entertain the *Utmost Abhorrence*. I will therefore conclude with a Word of Advice out of the *Scriptures* for his future Conduct, That he shall receive no Gift; for a Gift blindeth the *Wise*, and perverteth the *Words* of the *Righteous*.

*Mr. Serj. Pengelly*. My Lords, we beg leave that *Mr. Thomas Bennet* may be examin'd, and that he may give your Lordships an Account of what pass'd after this *Inquiry* directed by his Majesty, begun; what Order and Direction the *Masters* receiv'd from his Lordship in the Execution of that *Inquiry*?

*Mr. Tho. Bennet*. My Lords, I think, on the 3<sup>d</sup> of *November* last we receiv'd an Order from my Lord *Chancellor*, to make up our *Accompts*. It was a very particular Order, express'd abundance of *Items*, and *Columns*, in what manner those *Accompts* were to be made up. The *Masters* had a Meeting on this occasion; and a great many, if not all of them, agreed, that the making up of the *Accompts* in that manner as my Lord *Chancellor* had directed, was impracticable in so short a time; for we were directed to do it forthwith. It was represented by some of the *Masters* to *Mr. Cottingham*, and I believe, by him to my Lord *Chancellor*, that it was impossible to do it in so short a time, and it would take up a Month or two, or more. I did not know what other People could do: It had begun to make up my *Accompts*; I could have done it in a short time, having been in but a little while: Others, indeed, that had been in twelve Years, and must have given an *Accompt* of the whole *Proceedings* of that time, could not do it. I was inform'd by my Brother, that he could not have done it in a Year: But soon afterwards I was told, that the Order was dispens'd with by my Lord *Chancellor*; and all we were to do, was to make up an *Accompt* of the *Balance* of the *Money* and *Securities* that were in our respective *Offices* distinctly, the *Money* and *Securities* in Two *Distinct Columns*, only the *Sum total* at the *Bottom*. This Order the *Masters* all comply'd with, as appears by their *Accompts*: And between that and the 9<sup>th</sup> Day of *November* following, we had several *Messages* from my Lord *Chancellor* by *Mr. Cottingham* to dispatch these *Accompts*; for they were much wanted, being to be laid before the *Committee of Council*. On the 10<sup>th</sup> of *November* we had express Orders to appear at my Lord *Chancellor's* House with our *Accompts* ready. All the *Masters*, except *Mr. Conway*, were there.

*Mr. Serj. Pengelly*. I desire he may be ask'd, if there was any other Meeting before that of the 10<sup>th</sup> of *November*?

*Mr. Tho. Bennet*. I think there were some Meetings at *Mr. Edwards's* House by *Mr. Cottingham's* Direction, before, and after that at my Lord's House. At those Meetings, at one of them, I particularly remember (which was the most material of all) *Mr. Cottingham* brought *Mr. Dixon* with him, and introduc'd him, saying, we need not be afraid of *Mr. Dixon*; for he brought him there by my Lord's Direction, because he himself

was deaf, and could not well hear what was said. Upon that he began his Message, and said, Our Accompts were then laid before the Council just at that time: But, said he, suppose my Lord Chancellor or the Council should expect, that the Bonds and Securities should be inspected, would you be willing, that any Officer from him should inspect your Books and Securities? The Masters answer'd, They were ready and willing to do it; I don't remember any body that oppos'd it. The next Question Mr. Cottingham ask'd, was, Whether we could produce the Ballance of our Cash, and shew that we had the Money? To that all the Masters spoke in general, that they were under a great Concern and Surprise, and desir'd to know what Mr. Cottingham meant by that: Whether it was only to produce the Money, or the Money to be taken from us? and whether there was any Danger of that? Says Mr. Cottingham, You are only to produce the Ballance of Cash, and shew it. We ask'd, whether we should produce it in Goldsmiths Notes, or Bank-Notes? Says he, I believe Goldsmiths Notes will serve: You are to shew the Ballance of your Cash; but I think, Bank-Notes will do better. Upon that, Mr. Lightbourn said, I don't know what the Consequence of this may be. Suppose, when we have produc'd these Notes, they should be detain'd from us, I am afraid most of the Goldsmiths Shops about *Temple-Bar* would be shut up the next Day, and Inquiry would be made what Holiday it was, and Thousands of Families might be ruin'd by this Transaction. Mr. Cottingham propos'd, You may stand by, and assist one another. Mr. Kinaston said, I find, we are like to be sacrific'd, and given up; for my part, I will neither borrow, nor lend: Any one that borrows is a Knave, and he that lends is a Fool. Upon this, the Masters were in great concern. Mr. Cottingham and Mr. Dixon went back to my Lord Chancellor, and staid about an Hour and half, and then return'd to us, and said, my Lord was very busie, and dismiss'd us, and so we went home.

Mr. Serj. Pengelly. When was the next Meeting?

Mr. Tho. Bennet. I don't remember; we had several Meetings. I don't remember when the next was.

Mr. Serj. Pengelly. What pass'd on the 10th of November in the Presence of my Lord Macclesfield, at his House?

Mr. Tho. Bennet. When we came to my Lord Chancellor's House, upon the 10th of November, all the Masters then present carry'd up their Accompts: Two or three had not their Accompts ready; my Brother and Mr. Conway had not theirs; but all that were ready, carry'd them up to my Lord, and, according to Seniority, deliver'd them to his Lordship. The first was Mr. Holford: He had added to his Accompt, a Letter, I don't remember the Words, or that it was read; but I remember a Subscription, which my Lord Chancellor read, and that he said it was very good, and he lik'd it very well, and, I think, he laid it down upon the Table. The next Master gave his Accompt, and so all the rest. My Lord look'd them all over; some of the Masters he objected to. I remember, I had written at the Bottom of my Accompt, as near as I can remember, *I am ready and willing that the Bonds and other Securities in my Hands, may be inspected by such Person as your Lordship shall appoint.* My Lord, after

looking them all over, said, he lik'd Mr. Holford's Subscription, and, says he, I wish you would all make use of that: For it would be for your Honour and Service, to make your selves appear able and sufficient to answer the Effects in your Hands. Somebody ask'd my Lord, what might be the meaning of this Commission being appointed by his Majesty? This, says he, I apprehend, will prevent a Parliamentary Inquiry.

Mr. Serj. Pengelly. We desire that Mr. Bennet may repeat the Expression my Lord made use of, to persuade them to subscribe, as Mr. Holford had done.

Mr. Tho. Bennet. That they might appear able and sufficient. I think, those were the Words.

Mr. Serj. Pengelly. My Lords, I desire he may be ask'd, whether my Lord had at that time made an Inquiry of the Masters, whether they were able and sufficient?

Mr. Tho. Bennet. I can only answer for my self. My Lord did not ask me, whether I was able and sufficient; but only directed me to write that Subscription that Mr. Holford had done; and I did go down, and write, in effect, that Subscription. I did subscribe thus: 'My Lord, I have all the Securities standing in my Name, as in the within mention'd Accompt are specified; as also the Tallies, Orders, and Bonds in my custody; and as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto. The Words, *to a Demonstration*, which are in Mr. Holford's Subscription, I omitted, because I could not make it out to the Lords of the Council.

Mr. Serj. Pengelly. My Lords, We beg leave to produce these Accompts, and shew to your Lordships that Subscription of Mr. Holford, that was to be followed by the other Masters, and the first Subscription of Mr. Bennet.

Mr. Onslow. Pray, tell my Lords, if you can remember, was there any other Expression made use of at that time?

Mr. Tho. Bennet. The Expression was, It would be for our Honour and Service, to appear able and sufficient.

Mr. Onslow. No other Words?

Mr. Tho. Bennet. And it would be a means to prevent a parliamentary Enquiry.

Mr. Onslow. Was there nothing mentioned relating to a Stand?

Mr. Tho. Bennet. I don't remember that then; Mr. Cottingham said something of that at a Meeting at Mr. Edwards's.

(The Subscription shew'd to Mr. Bennet. And proved by him to be Mr. Holford's Hand.)

Mr. Serj. Pengelly. My Lords, we beg leave, that this Subscription may be read, which was to be follow'd by all the Masters.

Clerk reads.

'I have all these Securities standing in my Name, as in this Accompt is specified, and will procure Certificates from the proper Offices, that I have, and had them before the Account, if your Lordship requires it. And as to the Money, I am ready to give your Lordship satisfaction, to a Demonstration, that I have it in my power to answer it to every Person, that shall appear to be entitled to it, and who can give me a Legal Discharge.

Mr. Serj. Pengelly. We beg leave to read Mr. Tho. Bennet's First Subscription, that my Lord was not satisfy'd with.

Clerk

*Clerk reads.*

My Lord, I am ready and willing the Securities in the foregoing Account mention'd, shall be inspected by such Person or Persons as your Lordship shall be pleas'd to appoint.

*Tho. Bennet, 10th Novemb. 1724.*

*Mr. Serj. Pengelly.* Your Lordships observe, there is nothing in this Subscription, as to the Cash, and the producing it. Now we beg leave to see the subsequent Subscription.

*Clerk reads.*

10 Nov. 1724. My Lord, I have all the Securities standing in my Name, as in the within mention'd Accompt are specify'd; as also the Tallies, Orders and Bonds in my custody. And as to the Money, I am ready to give your Lordship satisfaction, that I am able to answer it to every Person that is entitled thereto.

*Tho. Bennet.*

*Mr. Serj. Pengelly.* Your Lordships observe, he hath left out the Words *To a Demonstration*, because he thought that he could not so clearly make it out. I beg leave to mention, that these Accompts and Subscriptions thus alter'd, were actually deliver'd in, and laid before the Council, and are the Original Accompts.

*Mr. Serj. Probyn.* My Lords, I would ask Mr. Bennet, when this Proposal was offer'd to him, that he should subscribe as Mr. *Holford* had done, whether he made any Excuse, or pretended he was not able to do it?

*Mr. Thomas Bennet.* No, I did not; I did as the rest of the Masters did.

*Mr. Common Serjeant.* I desire he may inform your Lordships when this was?

*Mr. Thomas Bennet.* I think, it was the 11th or 12th of November; I can't be positive as to the Day.

*Mr. Kinaston called.*

*Mr. Serjeant Pengelly.* My Lords, we desire that Mr. *Kinaston* may give your Lordships an account, whether he was present at this Meeting on the 10th of November, and what pass'd there relating to their Accompts?

*Mr. Kinaston.* Yes, my Lord, I was there the 10th of November.

*Mr. Serjeant Pengelly.* What pass'd at that time at the Earl of *Macclesfield's*?

*Mr. Kinaston.* I think I came there before the rest of the Masters, or only two or three were there before me. We gave my Lord an account, that we had drawn out our Accompts of the Securities and Cash, and the Ballance in each Master's Hands. Soon after the rest came. My Lord first receiv'd Mr. *Holford's* Accompt, being the Elder Master. A Letter at the End of his Accompt was read: My Lord seem'd to be affected with, and to approve very well of it. There was some Writing at the End of it relating to the Ability. My Lord said, it would do very well to have something to the same purpose at the End of the other Masters Accompts, and mention'd to us to go down and write it; accordingly we did go down, and most of us, if not all, did write to that purpose.

*Mr. Serjeant Pengelly.* Can you recollect what Expressions the Earl of *Macclesfield* used, to recommend it to the Masters?

*Mr. Kinaston.* My Lords, I can't justly recollect; I think it was, It would look well before the Council, and prevent a further Enquiry, or a Parliamen-

tary Enquiry, I am not positive which: But that I understood to be the meaning of it.

*Mr. Serjeant Pengelly.* What was it that would look well to the Council?

*Mr. Kinaston.* What Mr. *Holford* had writ at the Bottom of his Accompt, *That they were ready, &c.*

*Mr. Serjeant Pengelly.* My Lords, I desire he may be asked, whether there was an Enquiry made by the Earl of *Macclesfield*, as to his Ability or Sufficiency?

*Mr. Kinaston.* No, I am sure as to my self; and I don't know as to any body else.

*Mr. Serjeant Pengelly.* I desire he would inform your Lordships, what Subscription he had first made, and what was added, or what Advice was given?

*Mr. Kinaston.* I had writ before: My Lord, the Person I employ'd to write out this Accompt, has only gone thus far as to the Number of the Bonds. I have brought the Bonds with me, and desire you'll appoint any Person to inspect them, and the other Securities I have here given an account of.

*Mr. Serjeant Pengelly.* What was writ afterwards? This is wrote with a different Ink than that before: *And as to the Money, I am ready to pay it to the Persons entitled thereto.* That is with a different Ink.

*Mr. Kinaston.* I believe, upon looking upon it, I went down with the rest, and writ that in the Parlour at my Lord's House.

*Mr. Serjeant Pengelly.* I desire he may be asked, whether he, or any other of the Masters then receiv'd any Explanation how this Sufficiency or Ability was to appear?

*Mr. Kinaston.* Not then, I don't remember any thing of it.

*Mr. Serjeant Pengelly.* Or at any other time?

*Mr. Kinaston.* Some time after this, this was the 10th of November, and I believe, between that and the 16th, when we were to attend the Judges, the Masters were summon'd to meet at Mr. *Edwards's* House: I understood, it was a Summons from my Lord *Macclesfield*; and when we were here, there came Mr. *Cottingham* and Mr. *Dixon*. I don't remember all the Discourse; but they were telling us what was to be done: First, we were to produce our Securities, and there would be no great Nicety in producing them: And then, next, we were to produce the Ballance of Cash: And I remember, on that, Mr. *Cottingham* said, You must stand by one another, and assist one another. Bank-Notes, said he, will be best; but if you can't get them, then Goldsmiths Notes. You must get one or other to produce and shew.

*Mr. Lutwyche.* I desire he may be ask'd, what he thought he meant by the Proposal of getting Goldsmiths Notes, or Bank-Notes?

*Mr. Kinaston.* I did take the meaning in the worst sense, to be, for the Masters barely to make a Shew of them; and that made me complain; and I spoke warmly, and said, I saw what the Design was; and whoever borrow'd any Money on that Occasion, was a Knave, and he that lent it was a Fool.

*Mr. Lutwyche.* I desire he may be ask'd, whether there was any Recommendation by Mr. *Cottingham* or Mr. *Dixon*, and in what particular Expressions those Recommendations were made?

*Mr. Kinaston.* I believe, Mr. *Lighboun* express'd himself, That if they borrow'd Goldsmiths Notes, and they were detained, the Goldsmiths Shops would

would be shut, and People would be enquiring what Holiday it was.

Mr *Lutwyche*. I desire he may be asked, what was said about making a Shew? if Mr *Cottingham* own'd what was the meaning of those Words?

Mr *Kinaston*. I don't remember: They were pretty warm, and said they would go to my Lord *Macclesfield*, which they did, and return'd again.

Mr *Plummer*. My Lords, I desire he may be ask'd, whether it was generally understood among the Masters, that giving of Bank-Notes and Goldsmiths Notes was to be understood Borrowing?

Mr *Kinaston*. I understood it so my self, and I believe several others did; Mr *Lightboun*, and Mr *Holford*; and some of the others did so, by what they said.

Mr *Serjeant Pengelly*. My Lords, we have done with this Witness.

Mr *Serjeant Probyn*. My Lords, I desire to ask this Witness the same Question that I asked the other; and that is, whether at the time when this Proposal was made to him, that he should subscribe as Mr *Holford* had done, he made any Objection to it?

Mr *Kinaston*. No, I did not make any Objection to it. I had been there first, and with my Lord, and at the farther end of the Room, that I remember less what happened at that time, than other People did.

Mr *Lightboun* called.

Mr *Serjeant Pengelly*. My Lord, we desire that Mr *Lightboun* may give an account of what passed at this Meeting, relating to the bringing in of the Accompts?

Mr *Lightboun*. What Meeting? that at Mr *Edwards's*, or that at the Earl of *Macclesfield's*?

Mr *Serjeant Pengelly*. That at Mr *Edwards's*.

Mr *Lightboun*. I was at Mr *Edwards's* about that time, at some Meeting when our Accompts were talked of, but whether it was before they were delivered in, or afterwards, I cannot tell. We had so many Meetings about that time at Mr *Edwards's*, that I don't remember exactly, which was before, and which was after. I remember, at the Meeting when Mr *Cottingham* and Mr *Dixon* both were there, there was some Discourse relating to the Producing of the Securities, and of the Ballance of the Cash. I then asked, whether we should produce it in Bank-Notes, or Goldsmiths Notes, and I understood, it was hinted that the Goldsmiths that we had dealt with, would assist any Master that wanted Money, but by whom it was said, I can't recollect. The Answer I made to that, was, that I should be sorry that any Master should borrow Notes of a Goldsmith, and that they should be stay'd or secur'd when produc'd, which I apprehended would be done; and next morning several Goldsmiths would be forc'd to shut up their Shops, and it would look like a Holiday in *Fleetstreet*.

Mr *Lutwyche*. Do you remember any thing concerning a Net?

Mr *Lightboun*. I don't remember the Expression of a Net.

Mr *Lutwyche*. What application was made to any of the Masters to carry in their Accompts, and to whom?

Mr *Lightboun*. My Lord *Macclesfield* one morning sent for me, and desired me, that when the Accompts were brought into the Council, I would be thereabouts, that if there was any occasion to clear up or explain any thing, or give farther satisfaction to the Council, I might be ready. I told

his Lordship, I would give no satisfaction about any one's Accompts but my own. But if his Lordship pleased that I should attend, I would be thereabouts; and if his Lordship pleased, I would have another Master with me: I nam'd Mr *Holford*, and my Lord desir'd me to acquaint Mr *Holford* with it, which I did; who said, he was ready to go with me to answer any Questions that should be ask'd, arising on the Perusal of his Accompts.

Mr *Lutwyche*. What did he desire you to attend for?

Mr *Lightboun*. To resolve any Question or Difficulty that should arise before the Council. After this, Mr *Cottingham* told Mr *Holford* at Mr *Edwards's*, that my Lord desir'd that Two of the Masters should attend the Council with the Accompts of the whole, and that Mr *Holford* being the senior Master, should be one, and he was to choose whom he would have go along with him; and I having given Mr *Holford* intimation before of my Lord's Inclination, Mr *Holford* desir'd me to go with him. I told him, I did not care to carry in any other Accompts than my own; as I had not concern'd my self in other Masters Accompts, I would not then begin; I would not carry any but my own, and no body else should carry mine; I would not be a Representative of the Body. Upon that, Mr *Holford* recollected himself, and said, nor he neither; he would carry no Accompts but his own. I said, the Accompts were call'd for by my Lord Chancellor, and not by the Privy Council, and thereupon I thought it proper to wait upon my Lord Chancellor, and deliver them to him.

Mr *Lutwyche*. Your Lordships will observe, the Persons thought most proper to appear for the rest of the Masters, Mr *Holford* and Mr *Lightboun*, were so apprehensive of the Masters being deficient, that they did not care to appear for them. I desire Mr *Lightboun* may be ask'd, what pass'd on the 10th of November, when the Accompts were deliver'd to the Earl of *Macclesfield*?

Mr *Lightboun*. My Lords, upon the 10th of November my Accompt was not ready at the time I was to deliver it. I rather chose it should not be ready; because I did not care that it should be carry'd in by any body but my self. However, I waited at the proper time; and when we came there, Mr *Holford* deliver'd in his Accompt, and a Letter he had writ to his Lordship, and fix'd to his Accompt, which was there read. My Lord seem'd to like the Letter, and took notice of it; and I think, another or two, who were my Seniors, deliver'd in their Accompts. When it came to my turn, I acquainted my Lord, that mine was not ready; but I would go home and finish them, and attend his Lordship with them at the *Cock-pit* by Eight of the Clock. Accordingly I did, and sent it in to his Lordship.

Mr *Lutwyche*. What pass'd farther relating to their signing of the Accompts?

Mr *Lightboun*. I know nothing of it; for I went away to finish my own.

Mr *Serjeant Pengelly*. My Lords, we desire that Mr *John Bennet* may be call'd.

Mr. John Bennet appear'd.

Mr *Lutwyche*. My Lords, we desire that Mr *John Bennet* may be ask'd, whether he was at this Meeting at Mr *Edwards's* House, and what pass'd at that time?

Mr *J. Bennet*. My Lords, I was at that Meeting at that time, when Mr *Cottingham* and Mr *Dixon* came in, and told us they came from my Lord Chan-

Chancellor; and Mr *Cottingham* said, he had brought Mr *Dixon* with him, because he was deaf, and could not well hear. Mr *Cottingham* said, he had Two Questions to propose; first, whether we were willing that all our Bonds, and other Securities in our Custody, should be inspected by him or any other? All of us were willing, and agreed to that. The second was, whether we were willing, or would produce the Ballance of Cash in our hands before the Council? To this the Masters made a Stand, and said, The Cash was considerable; and it could not be presum'd that they kept it lock'd up in Chests or Trunks in their own Houses; that was the way to have our Throats cut: But we believ'd we could do it in a reasonable time. To which Mr *Cottingham* said, Can't you produce it in Bank-Notes or Goldsmiths Notes? Bank-Notes, said he, will be best; but do it in Goldsmiths Notes, if you can't get Bank-Notes. To which Mr *Lightbourn* said, If we produce them in Goldsmiths Notes, and there should happen to be a Net thrown over 'em, and they should be secur'd, the Goldsmiths might be oblig'd to shut up their Shops, and People would be enquiring what Holiday it was; and it might be a great Damage to those Goldsmiths.

Mr *Lutwyche*. I desire he may be ask'd, whether any thing was said of assisting one another?

Mr *J. Bennet*. Mr *Cottingham* press'd us very much to help and assist one another, as far as we were able.

Mr *Lutwyche*. Whether was any other Expression made use of by him?

Mr *J. Bennet*. I don't remember there was: But he repeated it several times, that we should stand by, and assist one another with Cash.

Mr *Plummer*. My Lords, I desire to ask this Witness, if, in pursuance of the Advice given by Mr *Cottingham*, he did assist any of the Masters, or was assisted by any of them?

Mr *J. Bennet*. One of the Gentlemen did assist me with Cash, which is lock'd up in the Chest: I gave him Security for it. And as to my assisting any body, Mr *Conway* inform'd me, he had a Real Security for 9000 *l.* and begg'd, if I could, that I would assist him with 5000 *l.* and in two or three Days I should have it again: I told him, I had in my Accompt mention'd my Cash, and that I had offer'd to make up the Ballance by my Real Estate, and so could not assist him with any Cash. He ask'd me, if I had any Bonds by me? I told him I had 2000 *l.* Bonds; and if he could engage to bring them back to me in two Days, he should have them: And upon lodging a Bag of Writings with me, which he told me was a Real Security for 9000 *l.* I accordingly did lend him them, and he brought them back again to me in two Days time.

Mr *Plummer*. I desire he may be ask'd, what his Inducement was for lending the Bonds?

Mr *J. Bennet*. The Real Inducement was the Real Security which was given me: But it had been recommended by Mr *Cottingham* too.

Mr *Plummer*. I desire to know whether he open'd the Bag, to see what the Security was, or took it by Content?

Mr *J. Bennet*. No, I did not open it; Mr *Conway* assured me it was so.

Mr *Plummer*. What use did he make of those Bonds?

Mr *J. Bennet*. Indeed I don't know.

Mr *Lutwyche*. My Lords, I desire he may be ask'd, whether those Bonds belong'd to the Suitors of the Court?

Mr *J. Bennet*. They were brought in by the Suitors of the Court after my Accompt was deliver'd in, and I must give them in my Post-Accompt: Therefore I said, I must have them again in two Days time.

Mr *Serjeant Pengelly*. I desire he may be ask'd, whether this was after he had given in his own Accompt?

Mr *J. Bennet*. Yes, it was after I had given in my own Accompt of my Money-Securities, and the Accompt of my Estate.

Mr *Serjeant Pengelly*. I desire to know what Subscription Mr *John Bennet* made to his Accompt at first, and what afterwards?

Mr *J. Bennet*. I came to my Lord *Macclesfield* just after the Gentlemen had been delivering in their Accompts; and they were below, writing their Subscriptions to their Accompts. I had then made no Subscription to my Accompt; they told me what my Lord had recommended to them to write; and I had one of them laid before me. I took my Pen and Ink, and varied it in some measure, and made the Subscription in this Manner: 'I have all the Securities in my Name, as specified on the other side; and all the Bonds and Orders are in my Custody; and I am ready to satisfy your Lordship, that I am able to answer the Money to every Party, that is Entitled, or shall have a Right to receive it.'

*J. Bennet.*

Mr *Lovibond* Called.

Mr *Lutwyche*. My Lords, I desire he may be asked, whether he was present at this Meeting (that hath been so often mention'd) at Mr *Edwards's*?

Mr *Lovibond*. My Lords, I was there but a very little while.

Mr *Lutwyche*. I desire he may be asked, while he was there, whether any thing was proposed, and by whom, for the Masters to lend one another Money or Notes?

Mr *Lovibond*. There was Mr *Cottingham* and Mr *Dixon*, and one of them said, that the Masters should stand by one another, and recommended it to them to Assist one another with Bank-Notes or Goldsmiths-Notes.

Mr *Serj. Pengelly*. To what purpose?

Mr *Lovibond*. Neither of them said to what purpose.

Mr *Serjeant Pengelly*. What was the Discourse about at that time?

Mr *Lovibond*. The Discourse was about the Accompts, and how every Man's Ballance was to be made up.

Mr *Serjeant Pengelly*. I desire to know, during that time, whether Mr *Lovibond* observ'd that Mr *Cottingham* or Mr *Dixon* went to my Lord Chancellor?

Mr *Lovibond*. Yes, my Lords, they both went, and I came away, and did not stay till they return'd.

Mr *Serjeant Pengelly*. I desire to ask, Whether Mr *Lovibond* did not lend some of the Masters some Money?

Mr *Lovibond*. I lent some Money to Mr *Bennet*.

Mr *Serjeant Pengelly*. How much was it?

Mr *Lovibond*. It was 10,200 and odd Pounds.

Mr. Serjeant Pengelly. I desire to know, whether Mr Lovibond was present upon the Delivering in of the Accompts on the 10th of November last?

Mr Lovibond. Yes, my Lords, I was.

Mr. Serjeant Pengelly. I desire he would look upon that Subscription he at first made upon the Accompt, when he deliver'd it in.

Mr Lovibond. It is here.

Mr Serjeant Pengelly. Read it.

Mr Lovibond reads. 'All which before-mention'd Particulars I am ready to answer on Demand, or to give Security so to do, whenever requir'd.

H. Lovibond.

Mr Serjeant Pengelly. I desire he may be asked, whether my Lord Macclesfield made any Objection to any part of that Subscription, and what Part in Particular?

Mr Lovibond. He made an Objection to the latter Part of it, because that might imply that my Effects were not ready.

Mr Serjeant Pengelly. Whether did you alter it afterwards, or was it recommended to you to alter, and in what manner?

Mr Lovibond. My Lord Macclesfield mention'd, that Mr Holford's Conclusion of his Accompt was most proper; and I had best alter it to that, and make that the Form; accordingly I did, I went down Stairs, and alter'd it as it now stands.

Mr Lutwyche. Read this Subscription.

Clerk reads.

'All these Securities standing in my Name as in this Account is specified, I am ready to procure Certificates from the proper Offices, that I have, and had them before this Account, if your Lordship requires it; and as to the Monies, I am ready to answer it upon Demand to every Person entitled thereto, and who can give me a Legal Discharge.

November 10th 1724. H. Lovibond.

Mr Lutwyche. My Lords, I beg leave to make one Observation upon this: I would not trouble your Lordships with observing upon every one of them; but there is something very particular and remarkable in this Case of Mr Lovibond's. Mr Lovibond had said, as the Truth of the Case was, when he deliver'd in his Accompt, and this Subscription, that he was able to produce or give Security, &c. That would have lookt before the Council as if the Money was not ready to be produc'd, it was only giving Security; and for that Reason this Alteration is to be made, to make it look as if he had the actual Ballance in his hands.

Mr Serjeant Probyn. My Lords, we desire he may be asked, whether at the time that he wrote this Subscription, he was not able to produce the Ballance?

Mr Lovibond. My Lords, I did in my Conclusion offer it; and I could have done it the next Day.

Mr Strange. I desire he may be asked, whether he could have done it out of his own Estate, or Effects?

Mr Lovibond. I could have done it out of my own Estate.

Mr Strange. Did not you mention the Sum of 10,000 and odd Pounds lent? I desire to know, whether you took Real Security for it?

Mr Lovibond. Yes, I have a Real Security.

Mr Strange. In Land?

Mr Lovibond. Yes, in Land.

Mr Plummer. I desire he may be asked, if my

Lord Macclesfield asked him any Questions about his Ability?

Mr Lovibond. No, my Lord did not ask me any Questions about my Ability.

Dr Sayer. I desire he may be asked, whether at that time he did not believe, that all the Masters were sufficient and able to make good their Accompts?

Mr Lovibond. I did believe so, from what Discourse I heard pass among themselves. I had no Knowledge of their Affairs, or of their Estates.

Mr Edwards called.

Mr Serjeant Pengelly. My Lords, I desire Mr Edwards may give your Lordships an account of what pass'd at this Meeting at his House?

Mr Edwards. My Lords, I received a Message from Mr Cottingham, to know if I would give Leave for the Masters to meet at my House? to which I consented. Some came before Mr Cottingham, and asked me if I knew what this Meeting was about; I could give them no Account of it. Mr Cottingham soon after came, and the rest of the Masters. Mr Cottingham said, he had two or three Matters to lay before them; One was, whether we were willing that our Bonds and Securities should be inspected, by my Lord Chancellor, or by any Person he should Appoint? Every body consented hereto. I think, another thing was, my Lord Chancellor thought it proper, we should carry our Accompts to the Council: There were some objected to that, and we thought it not proper; and the Conclusion of that was, we were to deliver them to him, as being most proper for my Lord Chancellor to carry them to the Council.

Mr Serjeant Pengelly. Was that all that was offer'd at that Meeting?

Mr Edwards. Really I don't know but that there was a third thing mention'd. I can give you but a very imperfect Account of this Meeting; and that for this reason, it was not thought proper that my Servants should come in, and they oblig'd me to go often out, which I did; and afterwards I heard the chief Substance of this Meeting. And I remember, that after I had heard the main Matter, I said, Gentlemen, the chief Consideration is to get your Money ready as soon as you can; I think the intent is plain to get the Money away from you.

Mr Serjeant Pengelly. Whether do you remember any Advice that was then given, relating to the making up of the Ballance?

Mr Edwards. No, my Lords, I do not remember: I heard something afterwards by the Masters, about producing Notes; but if any thing was mention'd about it, it was when I was out of the Room.

Mr Serjeant Pengelly. Whether on the 10th of November you was present at the Earl of Macclesfield's?

Mr Edwards. Yes, my Lords, I was.

Mr Serjeant Pengelly. Look upon that Accompt and Subscription.

Mr Edwards looks upon it.

Mr Serjeant Pengelly. I desire he may be asked, what Subscription he first made, when he gave it in, and whether any Alteration or Addition was made by him afterwards?

Mr Edwards. Some of the Masters were at my Lord Chancellor's before me: I did not think it necessary, nor had written any thing to my Accompt before I came there: So I went into a Room,



Room, and writ this that was first writ: ' My Lord, I am ready and willing, the Securities in the foregoing Accompt mention'd, shall be inspected by such Person or Persons as your Lordship shall be pleas'd to appoint.

H. Edwards.

Mr Serjeant Pengelly. What other Subscription was made after that?

Mr Edwards. After I had made this Subscription, I carried my Accompt, and deliver'd it to my Lord Chancellor; who looking upon this Subscription, did not seem to approve of it: But he thought Mr Holford's more proper, and desir'd me to alter it, that all might be as Mr Holford's was: I then went out of the Room, and transcribed the Substance, if not the Words, of Mr Holford's upon my Accompt, and then I deliver'd it to my Lord again.

Mr Serjeant Pengelly. Read that Subscription.

Mr Edwards reads.] The several Sums of Money and Securities mention'd in this Accompt are what have come to my hands since I was admitted a Master, separate from what were in the hands of Mr Dormer during the time he was a Master (the Account whereof, by reason of the Shortness of time, I have not been able to settle; but will as soon as possible) and for which I am ready to procure Certificates from the several Companies and Offices, if your Lordship requires it. And as to the Moneys, I am ready to pay it to every Person lawfully intitled thereto, having a proper Discharge for the same.

Nov. 10. 1724. H. Edwards.

Mr Serjeant Probyn. My Lords, if they have done with this Witness, I desire he may be asked, if he was not ready to pay his Ballance according to his Subscription?

Mr Edwards. Yes, I was; I could have paid it in a Week sooner than the time requir'd.

Mr Conway called.

Mr Soll. Gen. My Lords, I desire that Mr Conway may give your Lordships an account whether he was at this Meeting?

Mr Conway. My Lords, I was present at the first Meeting at Mr Edwards's House, when Mr Cottingham deliver'd my Lord Chancellor's Command, that we should provide and prepare out Accompts: But nothing more happen'd during the time of my stay at that Meeting: I went away immediately. At the second Meeting Mr Cottingham and Mr Dixon were there: Mr Cottingham had a great Cold; and, as I remember, there were two Proposals made: The first was, in relation to our Bonds and Securities; and the 2d. was in relation to the Money and Cash. After every Master had deliver'd his Opinion to these Points, Mr Cottingham and Mr Dixon went to wait upon my Lord Chancellor with an account of what the Masters had said; and before they came back, I was gone.

Mr Serjeant Pengelly. I desire he may be ask'd, whether at that time, when it was propos'd to the Masters to produce their Cash, whether they said they were able to do it?

Mr Conway. Every Master deliver'd his Opinion as he thought fit. Mr Lightboun merrily said, If we produced Goldsmiths Notes, and they should be secured, the Goldsmiths Shops would be shut up, and People would be enquiring what Holiday it was. Mr Kinaston made some Observations; every one spoke as they thought fit.

Mr Serjeant Pengelly. I desire he may be asked, whether they all declared, they were able and ready to make good their Accompts?

Mr Conway. I think they all did.

Mr Serjeant Pengelly. Whether to produce their Effects or their Cash?

Mr Conway. I am not sure, whether it was mentioned Cash or Effects; we made no distinction at that time between Cash and Effects.

Mr Serjeant Pengelly. I desire he may be asked, whether he himself declared, that he was able and ready to produce his Effects?

Mr Conway. I did declare it at that time, as I afterwards writ, that I would endeavour to produce my Effects.

Mr Serjeant Pengelly. Whether there was any, and what Advice or Instruction given, relating to their assisting of one another?

Mr Conway. No such thing happened while I staid there.

Mr Serjeant Pengelly. I desire it may be asked, whether Mr Conway at any time afterwards borrowed any Money of any of the Masters, and of whom?

Mr Conway. The first time I attended the Judges and the Directors of the Bank, I did bring my Securities, and an Account of my Effects at the same time, without borrowing a Farthing from any Person: Before the Securities were gone through, and the Account of my Effects taken, it was observed, that the same was liable to Objection, as consisting of Land, Mortgages, Bonds and Notes, and things of that kind. And before I went, I was told, that some of the Masters had taken an Oath; I desired to know what that Oath was: It was answered, that it was a voluntary Oath; and I said, I could only swear, that I had Effects to answer; and that I would endeavour to turn those Effects into Cash, and so withdrew.

Mr Serjeant Pengelly. I desire he may be asked, whether he borrowed any Money?

Mr Conway. Some time after this I waited upon Mr Godfrey; and before I came away, he asked me if I had any Bonds? I told him I had; then pray, says he, let me have what you can spare, and send them immediately: Whereupon I went home, and sent him 5000 l. India-Bonds. Some Days after that I expected Mr Godfrey to return me the Favour; and I carried to him Effects to (as I apprehended) the Value of 6 or 7000 l. or more; and I desired him to lend me Bonds, and he seem'd unwilling without the Security, and he kept the Security.

Mr Lutwyche. He hath not answered to those Questions, whether he borrowed Money, and what Sums.

Mr Conway. Mr Godfrey lent me upon the Bonds, 9000 l. and Mr Benner, 2000 l.

Mr Lutwyche. Only to pursue this Question; I desire to know, whether the Securities were turned into Money, or into Notes?

Mr Conway. Yes, my Lords, they were turn'd into Notes.

Mr Lutwyche. I desire he may be asked, whether they were lock'd up, or he did take them back again?

Mr Conway. I took them back again.

Mr Lutwyche. What became of them afterwards?

Mr Conway. Some of them I paid off, others I returned to the Person that had advanced me Money on those Bonds.

Mr

Mr. *Lutwyche*. I take it, he says, he had the Effects that produced those Notes from Mr. *Godfrey* and Mr. *Bennet*; therefore I desire to know, what became of those Notes after he carried them back from the Judges?

Mr. *Conway*. I returned them to the Person that had advanced me the Notes on those Bonds.

Mr. *Lutwyche*. Who was that?

Mr. *Conway*. The Goldsmith, Mr. *Rogers*, at *Temple-Bar*.

Mr. *Plummer*. I desire to know when he returned those Bonds again?

Mr. *Conway*. In a few Days after.

Mr. *Lutwyche*. My Lords, it may be Necessary to Examine how it was that he persuaded the Goldsmith to let him have those Notes?

Mr. *Conway*. I gave him Bonds for them.

Mr. *Lutwyche*. Whether were those the Bonds that you had from Mr. *Godfrey* and Mr. *Bennet*?

Mr. *Conway*. They were.

Mr. *Lutwyche*. Whether they were not Delivered to the Goldsmith in the Nature of a Pledge for those Notes?

Mr. *Conway*. Yes, they were.

Mr. *Lutwyche*. What became of the Bonds?

Mr. *Conway*. I return'd them.

Mr. *Lutwyche*. To whom?

Mr. *Conway*. To Mr. *Godfrey* and Mr. *Bennet*.

Mr. *Serj. Pengelly*. When he carried back the Notes to the Goldsmith, at that time, whether he took up the Bonds?

Mr. *Conway*. I did.

Mr. *Serj. Pengelly*. As I apprehend, he says, he had lent Mr. *Godfrey* 5000*l.* *India-Bonds*, and in return he expected that Mr. *Godfrey* should Assist him; I desire he may be asked this Question, Whether the 5000*l.* in *India-Bonds* he supplied Mr. *Godfrey* with, was after or before he produced his Cash to the Committee?

Mr. *Conway*. After.

Mr. *Serj. Pengelly*. Was it before *Godfrey* had done it?

Mr. *Conway*. After he had produced his Securities.

Mr. *Serj. Pengelly*. Was it before or after he had produced his Cash?

Mr. *Conway*. It was after he had produced his Securities, and before he had produced his Cash.

Mr. *Serj. Pengelly*. My Lords, we think it will be very necessary to lay before your Lordships a General State or Account of the total Deficiency; to shew how much, upon the Examination and Enquiry that hath been made, the total of the Deficiencies in the several Offices amount to; and we apprehend, that we are able likewise to give an Account of some Additional Deficiencies that have been discovered since. I apprehend, there was at that time near 100,000*l.* Deficiencies.

Mr. *Serj. Probyn*. I desire he may be asked, whether at that time when he wrote the Subscription, he was able to pay the Ballance of his Accompt?

Mr. *Conway*. I was, in Effects I had, and I said no otherwise.

Mr. *Sandys*. I desire he may be asked, if my Lord *Macclesfield* asked him as to his Ability?

Mr. *Conway*. No, my Lords, he did not; to my remembrance he did not. I deliver'd my Accompt to Mr. *Cottingham*.

Mr. *Serj. Pengelly*. I desire he may be asked, what Deficiency there remains upon his Office; whether he can recollect how much it is?

Mr. *Conway*. My Lords, I believe it is 13,000*l.* my Charge, of which I can take off something in my Post-Accompt.

Mr. *Serj. Probyn*. I desire he may be asked, whether he is now able to make good the Deficiency in his Office?

Mr. *Conway*. Yes, my Lords, I am.

Mr. *Serj. Probyn*. Whether he hath made any Conveyance of any Estate as a Security for it?

Mr. *Conway*. I have.

Mr. *Serj. Pengelly*. I desire he may be asked, whether any thing, or how much hath been rais'd out of that Estate?

Mr. *Conway*. It is made so very lately, that I don't know that any thing hath been raised since; it is but a few Days ago that it hath been made.

Lord *Lechmere*. My Lords, I would be glad to know, as there is a Ballance of 13,000*l.* whether he stands indebted to any other Persons, but to the Suitors of the Court, and to whom?

Mr. *Conway*. No, my Lords, I don't owe any thing to any body, to my Knowledge.

Mr. *Lutwyche*. I should be very glad if Mr. *Conway* could extricate himself out of the Difficulties on Account of the Deficiency in his Office. It is very proper to inquire how, and by what Estate, that is to be made good.

Mr. *Conway*. It is to be made good by an Estate in Land.

Mr. *Lutwyche*. I desire to know whether that Estate is settled, whether it was not settled upon his Marriage?

Mr. *Conway*. It was never settled on my Marriage. I was Tenant in Tail, and Wife and Son joined with me in levying a Fine.

Mr. *Lutwyche*. Whether it is not settled by Will?

Mr. *Conway*. I was Tenant in Tail by the Will of my Father; I have levied a Fine, and my Wife and Son have joynd with me.

Mr. *Onslow*. What Interest had your Son in it?

Mr. *Conway*. No Interest, as I apprehend; but I thought it was Necessary he should joyn to take off all Difficulties and Objections to the Title.

Mr. *Onslow*. Whether there are no Annuities charged upon that Estate, and what they are?

Mr. *Conway*. There are no Annuities charged on that Estate.

Mr. *Onslow*. No Payment to the Mother?

Mr. *Conway*. There is out of another Estate.

Mr. *Onslow*. What are the Rents of the Estate you have secured for the Payment of this Money?

Mr. *Conway*. Between 5 and 600*l.* a Year.

Mr. *Onslow*. Is that your Computation, or is it let at so much now?

Mr. *Conway*. I can't say it is all let so; there are some Demelns.

Mr. *Onslow*. What are the Rents of that Part of the Estate that is let?

Mr. *Conway*. I take it to be 500*l.* a Year.

Mr. *Onslow*. What, let at 500*l.* a Year!

Mr. *Conway*. Yes, or thereabouts.

Mr. *Onslow*. Do you Reckon the whole Estate to be worth 500*l.* a Year?

Mr. *Conway*. No, I don't reckon in the whole Estate, but only that which is Conveyed for the Securing of this Money.

Mr. *Onslow*. Then I desire to know, what are the Rents of this Estate as it is let?

Mr. *Conway*. I take it to be 500*l.* a Year, or thereabouts, that is applied for, and as a Security to Answer my Deficiency.

Lord *Lechmere*. This 13,000*l.* Ballance due to the Suitors, which he says are secured by this Estate, I would be glad to know how the Deficiency came, and what is become of this 13,000*l.* that is due to the Suitors?

Mr. *Conway*. The Occasion of it was, my coming into the Office cost me to my Predecessor 6000*l.* I paid besides 1500*l.* upon my Admission, and 500*l.* Contribution towards making good Mr. *Dormer's* Deficiency.

Mr. *Onslow*. How was the rest of the Debt Contracted? You have mention'd but about 8000 Pounds.

Mr. *Conway*. I believe I might, upon Account of my Brother, borrow 1500 or 2000*l.* to satisfy his Account to the Crown.

Mr. *Serj. Pengelly*. Out of what Cash did you repay it?

Mr. *Conway*. I believe it might be out of the Office.

Mr. *Onslow*. What is become of the rest; how did you Apply the Remainder?

Mr. *Conway*. The Remainder, I can't tell but I may have so much due among my Acquaintance; I believe I may.

Mr. *Onslow*. Did you then lend your Acquaintance out of the Suitors Money?

Mr. *Conway*. I believe I might at times lend Friends out of the Cash that remained dead and useles, and because I apprehended it was Secure.

Mr. *Onslow*. You say, you have lent to several of your Acquaintance out of the Suitors Cash; I would have you name any one Person to whom you have lent any of the Money of the Office?

Mr. *Conway*. I remember a noble Person, if it is proper to mention his Name, to whom I lent 2600*l.* he is now dead.

Mr. *Serj. Probyn*. I don't know whether your Lordships will not be pleased to confine the Managers to examine only to the particular Article they are now on.

Mr. Onslow. We are now upon the Article of the Deficiencies, and the Question hath been asked by the Council for the Noble Lord, whether this Deficiency can be made up by Mr. Conway? therefore it is proper to know, whether this Deficiency is likely to be made up, and to know where the Money is, and therefore I would ask who this six and twenty hundred Pounds was lent to?

Mr. Serj. Probyn. My Lords, I submit it, whether that Question be proper, because Mr. Conway hath given Land Security to make good this Deficiency; and therefore it is not material for your Lordship's Judgment to enquire how this Deficiency happened.

Mr. Lutwyche. I am very sorry to lay before your Lordships the Reasons and the Order upon which he was committed. I apprehend it extremely material upon this Point, and ariseth from what the Council for the Noble Lord have entred into themselves; for they have asked, whether he was able to make good his Deficiency: Now is it not proper for us to ask the particular Circumstances, to find out the Truth, whether he is so or not. Therefore I beg leave to ask one Question, not waving the other, Whether he hath assigned over all his Debts that he could, to make good his Deficiency?

Mr. Conway. I have assigned over all my real Estate.

Mr. Lutwyche. Whether he hath assigned over this 2600 l. due to him?

Mr. Conway. That is applied.

Mr. Lutwyche. Applied, How?

Mr. Conway. Applied amongst my Causes.

Mr. Lutwyche. Did he lend a Nobleman a Sum of Money, and apply it to a Cause?

Mr. Conway. That Sum of Money you are pleased to enquire after, I applied to a Cause.

Mr. Onslow. He said he lent a Sum of Money, &c. I desire he may be asked, who this 2600 l. was lent to?

Mr. Conway. I was applied to by a Nobleman to lend him the Sum of 2600 l.

Mr. Onslow. By whom was you applied to?

Mr. Conway. By my Lord Bulkeley, and accordingly it was advanced to him, and it is since applied in a Cause.

Mr. Onslow. Applied, How?

Mr. Conway. Applied in a Cause, with the Approbation of the Parties.

Mr. Onslow. Hath it been repaid?

Mr. Conway. No, It is applied in a Cause of a Suitor, and now it remains as Security.

Earl of Abingdon. I am so nearly related to that Noble Lord that is mentioned, that I must do that Justice, as to put Mr. Conway in mind, as I did Mr. Hicocks before, That if any Question is ask'd him, which may personally subject him to any Penalty, or as he hath the Bar Gown may concern his Client, he ought to be left to his Discretion, whether he will or will not answer.

Lord Lechmere. A Person is not obliged to answer any thing that may criminally affect him; but where the Enquiry is after a Debt, in Order to explain his Oath as to his Sufficiency, which is the Matter of Debate, surely that is material, and ought to be answered to; and I desire to be informed, whether this 2600 l. which he said was lent this Noble Lord out of the Suitors Money, was repaid to him by my Lord Bulkeley, and when?

Mr. Conway. It is not repaid. It is applied in a Cause, the Parties have approved of it as a Security.

Lord Lechmere. When was this Money in the Hands of my Lord Bulkeley applied to the Benefit of any Suitor, and by what Order or Authority?

Mr. Conway. It is some Time since, some Months ago, five or six Months ago.

Lord Lechmere. Was this by any Order of the Court of Chancery?

Mr. Conway. No, my Lords, by the Approbation of the Parties.

E. of Macclesfield. My Lords, if you please to give me Leave, I would suggest something, that possibly may help towards the better understanding him. If my Guess be right, this relates to his Post-Accompt. He hath said his Charge is 13,000 l. And he hath said, he could discharge 2000 l. or more, of that Ballance by a Post-Accompt; Now I apprehend this he is speaking of now, is that Article of the Post-Accompt. I don't know, if I guess his Meaning right; but I desire he may inform your Lordships, in case it be otherwise.

Lord Lechmere. It may be for your Information to know who are the Persons to whom this is applied; that it may be known whether it is in the Post Accompt or not?

Mr. Onslow. My Lords, We desire first to know, what Security my Lord Bulkeley gave?

Mr. Conway. He gave a Bond and Judgment.

Mr. Onslow. Who is it you have applied the Security to?

Mr. Conway. It is in the Cause of Faulconberg contra Faulconberg.

Mr. Onslow. Do you reckon this Part of the 13,000 l. now deficient?

Mr. Conway. No, I do not reckon it in that Sum.

Mr. Onslow. Your Lordships will please to recollect, that his Deficiency is 13,000 l. We ask him how that Deficiency came; he hath given Your Lordships an Account of 10,000 odd hundred Pounds; and first said the Residue was in the Hands of his Acquaintance, and named 2600 l. Money of the Suitors to be in the Hands of my Lord Bulkeley; now he saith this last Sum is not Part of the 13,000 l. Therefore now I would ask, how the Remainder of his Deficient Money was applied, or how the Debt happened?

Mr. Conway. If my Lords will please to give me Leave to explain it; As to the Remainder of the 13,000 l. you have been pleased to reckon 10,000 odd hundred Pounds to be made out; then there is 2100 l. odd Money I have laid out in Land, which I have since conveyed, which makes 12,000 odd hundred Pounds; and the rest I have in Bonds and Notes, which I have to make up the Residue.

Mr. Lutwyche. I desire he may be asked, whether he hath those Notes, and they are ready? I desire to know, whether they have not been paid into Court to make up his Deficiency?

Mr. Conway. No, I humbly hope to have it allowed me on my Post-Accompt, being applied in the forefaid Cause with Approbation of the Parties.

Mr. Onslow. We have done with him; and leave him to Your Lordships Observation.

Mr. Thompson called.

Mr. Serj. Pengelly. My Lords, we beg Leave, that Mr. Thompson may give Your Lordships an Account, upon the Inspection and Examination of those Accompts, how much the Deficiency of the several Masters amounted to?

Mr. Thompson. So much as the several Masters stood charged with by their own Accompts, and did not lock up or produce proper Securities for, I account a Deficiency; and by this Rule, I have collected the Deficiencies of the several Masters, from the Reports made to the Committee of Council.

Mr. John Bennet's Deficiency amounts to L. 17,541: 15: 10.

Mr. *Conway's* Deficiency in his Cash only amounts to L. 10,039: 4: 4  $\frac{1}{2}$ , but Mr. *Conway*, while his Accompts were under Examination, sold 2000 l. South Sea Annuity, and 3500 l. South Sea Stock; and of the Money arising thereby, he paid to the Suitors, to whom such Annuity and Stock did belong, no more than L. 2593: 9: 3. so that his Deficiency is increased by the Sum of L. 3550, somewhat more or less, according to the Price he sold at.

Mr. Serj. *Probyn*. Was what he sold, part of the Suitors Security?

Mr. *Thompson*. Yes. — Mr. *Kynaston's* Deficiency amounts to L. 26908: 11: 3  $\frac{1}{4}$ .

Mr. *Thomas Bennett's* Deficiency amounts to 9075 l. The Total of the Deficiency of the present Masters is L. 67,114: 11: 5  $\frac{1}{4}$ .

The Charge that remained upon Mr. *Borret's* Office, amounted to L. 56,050: 10: 1  $\frac{1}{2}$ . But Mr. *Bennet* and Mr. *Godfrey*, the Masters, who had the Care of his Effects, gave it as their Opinion before the Judges and Directors, that the Effects he left, would produce 44,000 l. and upwards; so that I compute the Deficiency of Mr. *Borret's* Office at L. 12,050: 10: 1  $\frac{1}{2}$ .

The Total Charge upon Mr. *Dormer's* Office, when he resigned to Mr. *Edwards*, amounted to L. 49,604: 11: 11; but Mr. *Edwards* has paid in Discharge of that Sum, the Sum of L. 23,725: 15: 9  $\frac{1}{2}$ . so that the Deficiency of Mr. *Dormer's* Office amounts to L. 25,878: 16: 1  $\frac{1}{2}$ .

Mr. Serj. *Pengelly*. Whether in that is Mr. *Wilson's* and Mr. *Poulter's* Security included in *Dormer's* Accompt?

Mr. *Thompson*. Mr. *Dormer's* Deficiency I take to be L. 25,878: 16: 5  $\frac{1}{2}$ ; and the whole Deficiency I take to be L. 105,043: 17: 8  $\frac{3}{4}$ . And if any Securities or Sums of Money belonging to the Suitors are omitted in the Masters Accompts, such Securities and Sums are not included in this Estimate.

E. of *Macclesfield*. Have you had before you the Administrator, either of Mr. *Borret* or Mr. *Dormer*?

Mr. *Thompson*. No, my Lord.

Mr. Serj. *Pengelly*. My Lords, we shall beg Leave to call one Witness to give Your Lordships an Accompt of another Deficiency of 2000 l. upon Mr. *Conway*, which is not charged in his Accompt. We desire that Mr. *Sanderfon* may be called.

Mr. *Sanderfon* sworn.

Mr. *Lutwyche*. We desire, that Mr. *Sanderfon* may give Your Lordships an Accompt of any Money in Mr. *Conway's* Hands, and how much it is, that is not brought to Accompt?

Mr. *Sanderfon*. My Lords, I was concerned as a Solicitor in a Cause in Chancery, between Sir *Erasmus Norris* and *Alexander Norris*; soon after the Accompts were brought into the Registers Office, I went to look and see if Mr. *Conway* had charged himself with a Sum of Money paid in, in that Cause. I found by his Accompt, that it was not charged. I had drawn up the Accompt, and given a Copy of it to Mr. *Conway*, which he did not deny, but he said, there was not so much by 1 or 200 l. Said I, there is no Entry at all of the Cause, and no mention of any Sum. I told him, it was an Omission not to mention the Cause or Sum. He said, that he believed it was not so much, he did therefore not mention it. I asked him, why he did not insert, how much it was as he thought it? He said, because he would pay in all.

Mr. Serj. *Probyn*. We desire he may be asked, how much the whole Money in that Cause was?

Mr. *Sanderfon*. L. 2274: 8: 11. besides Interest from Lady Day last was Twelve-month.

Mr. *Sol. Gen.* My Lords, this is the Sum of the Account we had to lay before Your Lordships of the Deficiencies, notwithstanding the Masters represented themselves as able to pay the whole. We would not represent it to Your Lordships, that this will certainly be the Loss, because some of the Masters have given Security for some Part; tho we apprehend the Security given will not be sufficient for half.

E. of *Macclesfield*. I desire to ask Mr. *Thompson*, whether this Charge he makes upon Mr. *Borret's* Office be a Charge taken from the Office, or only an Account taken from Mr. *Meller*?

Mr. *Thompson*. This Charge was taken from the Vouchers, which Mr. *Meller* produced.

E. of *Macclesfield*. Are there any Payments allowed, made by Mr. *Borret* in his Life time?

Mr. *Thompson*. A great many.

E. of *Macclesfield*. Who gave You an Account of that?

Mr. *Thompson*. Mr. *Meller*, my Lord.

E. of *Macclesfield*. But I speak of the Money paid by Mr. *Borret* himself, not what Mr. *Meller* paid. Have You any Account what Mr. *Borret* paid out himself?

Mr. *Thompson*. The Account we had of this, was from one Mr. *Parker*, as I think his Name was, who was Clerk to Mr. *Borret*. He produced several Receipts for Sums paid: And the Masters in Chancery, who had the Care of Mr. *Borret's* Effects, allowed the Books and Papers produced by Mr. *Parker*, to be the Books and Papers belonging to Mr. *Borret's* Office.

E. of *Macclesfield*. As to the Effects belonging to Mr. *Borret*, who gave you the Account of them?

Mr. *Thompson*. Mr. *Bennet* and Mr. *Godfrey*.

E. of *Macclesfield*. Do you know who is Administrator to Mr. *Borret*?

Mr. *Thompson*. I have heard that Mr. *Paxton* is.

Mr. *Nicholas Paxton*. Yes, my Lords, I took out Administration to Mr. *Borret*, about the middle of April last.

Lord *Lechmere*. I desire to ask Mr. *Thompson*, whether the Computation he hath made of the several Deficiencies, amounting to an hundred and five thousand Pounds, whether they are taken from the Voluntary Accompts of the Masters delivered in, or whether any of the Suitors were concerned in those Accompts, or have been Parties to such Computations?

Mr. *Thompson*. From the Masters Voluntary Accompts only.

Mr. Serj. *Pengelly*. I beg Leave to ask one Question, which arises from the Question, which the Lord within the Bar hath been pleased to ask, whether Mr. *Godfrey* and Mr. *Bennet* were not the Masters that appeared, and were employed under the Earl of *Macclesfield* at that Time, and had the Custody of the Effects of Mr. *Borret*?

Mr. *Thompson*. Mr. *Bennet* and Mr. *Godfrey* were the Persons that appeared to us to have the Care and Custody of Mr. *Borret's* Effects.

Lord *Lechmere*. As to the Nature of these Deficiencies, I think he says, these Deficiencies arise upon the Cash Balance. Then I would be glad to know, whether in the Accompts that he hath perused, and in the Computation of those Deficiencies, the several Deficiencies of the Cash Balance arise upon the whole Balance, or is appropriated to any particular Suitors concerned in those Balances?

Mr. *Thompson*. No Part of the Cash Balance is appropriated to any particular Suitor.

Mr. *West*. My Lords, the Commons have now produc'd a very long, and as they apprehend, a very full and convincing Evidence, in Maintenance of the Impeachment by them Exhibited against *Thomas Earl of Macclesfield*, for High Crimes and Misdemeanors; and I am commanded to acquaint Your Lordships, That they do not intend to trouble this House with any further Examination. But, my Lords, the Commons considering the Length and Variety of the several Facts and Circumstances, that have been offer'd, are of Opinion, It may be of Service to that Cause, in which their Zeal for publick Justice has made them to engage, that the whole of what they have insisted upon or produc'd, shou'd in such Manner, as I am able to obey their Commands, be shortly recapitulated and presented in one View to Your Lordships Consideration.

The Charge in general, and the several Articles of it, have been fully open'd by those Gentlemen, who preceded me upon this Occasion. The Witnesses who have been examined, and the other Evidence that has been read, have been fully considered, so far as they relate to those Particulars, that were the immediate Occasion of their being produc'd; I shall not therefore waste Time, by enumerating once more the Articles of the Charge, nor by too minutely repeating the whole Evidence that has been given: But shall endeavour to reduce this long and various Examination to some general Heads, that may express the Substance of the general Articles, and then remind Your Lordships of what I can recollect to have been most materially offer'd in Support of them. To this End, my Lords, I beg Leave in the first Place, to observe that strict Union and Connection there is between the Crimes of which this Earl stands charged. Your Lordships cannot but remark, that the Articles mutually support, and almost prove each other; so that if any one be admitted to be proved, it is difficult, if at all possible, to doubt the Truth of the rest.

*A wicked and corrupt Design and View to raise and procure to Himself excessive and exorbitant Gain and Profit*, was the fatal Principle, from which all this Mischief sprung. It was this that prompted the Earl of *Macclesfield* to extort those large Sums of Money, which he received from the several Persons, whom he admitted to the Office of Masters of the Court of Chancery. The gratifying this Avarice engaged his Lordship to neglect every other Consideration, to overlook that Care he ow'd to the Suitors of the Court, and to admit Persons of small Abilities, and every way unqualified for the Discharge of so great a Trust. — This, obliged him to connive at, and permit the fraudulent Practice of paying the Excessive Price of their Places, out of the Money belonging to the Suitors of the Court. — That again, forc'd him to suffer, or rather to encourage the purchasing Masters, to Traffick and Game with the Estates of the Suitors. — There was no other way, by which these liberal Purchasers, cou'd Reimburse themselves. — And this Circumstance, even after it was apparent the Suitors were likely to loose a great Part of their Effects, reduc'd him to the unhappy Necessity of refusing to take those Measures, that were necessary to prevent that Practice for the Future. And when the fatal Effects of this unbounded Liberty, which he permitted the Masters to enjoy, began to appear, then was He compell'd to become a Confederate with the deficient Masters, to prevent its being known to the World. — From hence sprung the unequal Composition with *Wilson*: The partial Orders for the Payment of Money: The private Contribution, to answer the most pressing Demands: And from hence his own Liberality to *Lockman*. But when all these

Methods prov'd ineffectual, and he found the Cries of the Widows and Orphans had reach'd His Majesty, then, my Lords, did the Lord High Chancellor of *Great Britain* combine with these Masters, advise and persuade them to make false Representations of their Circumstances and Accounts, in Order to deceive His Majesty, to frustrate His most Gracious Intentions for the Good of His Subjects, and to prevent (what He most fear'd) a Parliamentary Inquiry.

These, my Lords, are the malignant Consequences of that Corruption of which the Earl of *Macclesfield* is accus'd; and which the Commons apprehend to be perfectly consistent with the whole Tenor of his Actions; during the Time of his being Chancellor.

The Commons began their Evidence with that Oath, which it was prov'd the Earl had taken, in Consequence of the Statute of the 12 Ric. 2. and which was administred in the usual and accustomed manner. I should not have reminded Your Lordships of this Circumstance, if it was not for that unaccountable Attempt, to quibble away the Sanctity of an Oath, and to represent it as a meer Ceremony and Form, for no other Reason, but because it was read to him in *French*, and when he kiss'd the Bible, His Lordship and the Clerk said nothing to each other. They afterwards gave other Evidence, relating to such Profits as he had made of the Office of Chancellor, which he did not admit in his Answer. But I do not apprehend it necessary to mention them particularly to Your Lordships.

The first general Head of Accusation against the Earl, is, That he *Corruptly, Illegally, and Extorsively insisted upon, and received great Sums of Money, for the Admission of several Persons into Offices relating to the Administration and Execution of Justice.*

To lead the Way to this Charge, the Commons began their Evidence with the 9th Article, which relates to his taking 100 Guineas from *T. Bennet*, for permitting him to resign his Office of Clerk of the Custodies, and for procuring a new Grant of that Office to *Hugh Hamersly*.

The Commons chose to begin with this Article, not because they thought the Sum taken so considerable, as to have any great Influence upon the Judgment Your Lordships may give upon this Occasion; but because the Fact discovers the Man, and fully explains, what manner of Mind he must be endow'd with, who could stoop to an Action so low and fordid. This Article does of it self lay a Foundation of Probability for the others, in which he is charg'd with the extorting of much larger Sums. It is true, His Lordship in his Answer gives himself a very different Character, and offers to produce a Catalogue of his own Generosities. What Argument there would be in this when produc'd, I cannot comprehend. I will therefore endeavour to save Your Lordships that Trouble. I can admit even more than is desired. Instead of being Generous, I will suppose his Lordship (far from the Truth) to have been profuse. Yet still would it prove nothing. For surely, it is not a new Character in History, that even Squanderers should be Rapacious.

To prove the Particulars of this Article, the Resignation of *Bennet* and the new Grant to *Hamersly*, were both prov'd. And as to the Payment of the Money, Mr. *Cottingham*, who was Secretary to my Lord *Macclesfield*, and who, thro' the whole Course of the Evidence, appears to have been his great Agent and Confident: He owns the Receipt of the hundred Guineas, and swears he paid 'em to the Earl, within a Day or two after he received them. He also owns the Consideration, for which this Money was paid, That it was

for

for permitting *Bennet* to surrender his Place. — Were there no Evidence but *Cottingham* alone, the Commons think they have sufficiently prov'd this Fact. But the Evidence of *T. Bennet* puts it beyond Contradiction, and makes it manifest, that the hundred Guineas were in a manner extorted. — He swears soon after he was admitted a Master, he was desirous to part with his Place of Clerk of the Custodies; and to that End apply'd to *Cottingham* for my Lord *Macclesfield's* Favour, and acquaints him with the Person, to whom he desired the new Grant should be made: *Cottingham* upon this speaks to my Lord, and some short time after tells Mr. *Bennet*, that neither my Lord nor himself knew *Hammersly*. Your Lordships may remember that the Earl by his cross Examination, seem'd to endeavour at some small Triumph upon this Circumstance. My Lords, it is not so wonderful, that *Cottingham* should not speak Truth, there is no giving Evidence to the Tone of the Voice, nor the Air and Manner, in which a Conversation is carry'd on; more especially, if it be considered, that *Cottingham* was a Man who doubtless upon these Occasions would not have known his Father without the mediation of Gold. *Bennet* was surpriz'd at this Speech, as well he might, when *Hammersly* lived next Door to *Cottingham*. However, *Cottingham* at last explain'd the Mystery, by letting him know, a Present was expected by the Earl, and *Cottingham* himself own'd, he did say the Earl insisted upon a Present.

Mr. *West* was here interrupted by the Earl of *Macclesfield*, who said that *Cottingham's* Words were not, That he insisted upon, but that he expected a Present. Upon which Occasion Mr. *Onslow* represented warmly to the Lords, that the Behaviour of the Earl was Irregular, and that the Managers ought not to be broken in upon while they were speaking. And then Mr. *West* went on,

My Lords, It is my Duty to represent the Actions of this Earl in the strongest Light; and the strongest Light is the justest Light. Upon Recollection I do not think the Word I us'd to be of Force equal to the Fact. My Lords, The Expectations of a Chancellor, communicated by a Secretary to a new made Master, is more than to insist. But be that as it will; *Bennet* in Answer to these Expectations, represented the Hardship of being oblig'd to pay Money upon this Occasion, when he had so lately paid a very large Sum to the Chancellor; and by Way of Argument told him, that when he came into the Place himself, he paid nothing; and his Brother told him, that Lord *Copper* upon the like Occasion had taken nothing, because as that Noble Earl said, Nothing was due. At last, my Lord *Macclesfield* and his Secretary, being both inexorable, *Bennet* agreed to pay the One hundred and five Pounds. After this Agreement was made, *Cottingham* acquainted his Lord with the Bargain, and then told *Bennet*, that the Earl agreed to it: But withal, that it was a great Favour he would take so small a Sum; and *Cottingham* at the same Time made this very remarkable Declaration, That if Mr. *Bennet* would bring the hundred Guineas, he need take no farther Trouble, for the Chancellor would apply to the King for Leave for him to resign, and would take Care of the other necessary Steps. And accordingly the Bargain was executed in that manner. For Mr. *Bennet* knew so little of the intermediate Proceedings, that he has told Your Lordships he knows not how, or by whom the Warrant came into the Hands of the Clerk of the Patents.

It is difficult not to feel some Indignation rise at the bare relating this Meanness! mean it would have been in any Man: But for a Peer of Great Britain, an Earl,

Lord Chancellor of the Kingdom, and a Chancellor so oblig'd and so dearly bought, to prostitute so many illustrious Characters, in so low a manner as to become a Broker for the Hire of 100 Guineas, is astonishing! But, my Lords, when I consider that this Earl was at the same Time one of the Lords Justices of the Kingdom, in a Commission to execute some of the Functions of Majesty itself, I want Words to express such a Transaction in its proper Colours.

My Lords, I have mentioned the Evidence relating to this Point something the more particularly, because the Proof comes up to the express Words of the Statute of the 12 of Ric. 2. and proves, as I apprehend, beyond Contradiction, that the Earl of *Macclesfield* dispos'd of this Place for Gift and Brokage.

Before I quit this Article, I beg Leave to observe to Your Lordships, that my Lord *Macclesfield* in his Answer insists upon it to be the Right of the Chancellors to accept Presents; and therefore owns he did in this Case accept a Present. But then he avoids, as he every where else does, the naming any particular Sum that he accepted. I wou'd willingly ask, why this Precaution, if what he did was lawful and right? I would also observe, that there is something strangely equivocal in that Part of his Answer, where he denies he insisted on 100 Guineas, or any other Sum. This Answer, both explains his extorsive Method of proceeding, and almost demonstrates the Practice of it. For it is very remarkable His Lordship does not deny he insisted upon a Present in General, but only that he did not insist upon any particular Sum.

My Lords, Your Lordships will find by the Course of the Evidence, that this Artifice of not naming a particular Sum was not peculiar to this Instance; but my Lord *Macclesfield*, whenever a Master's Place, or any other Place was to be sold, carefully avoided fixing the Price by demanding a certain Sum. No. — It was more gainful to set every Thing up to the best Bidder, and resolve never to dispose of any Office, till the Sanguine Purchasers, by bidding on each other, were artfully screw'd up (voluntarily to offer a Present, as his Lordship gently phrases it, but as the Commons think, they have prov'd the Fact to be) a Corrupt and Exorbitant Price, equal to the avaricious Wishes of the Seller.

The next Instance to which the Commons call'd Evidence, was the illegal Sale of several of the Offices of Masters in Chancery. Now, my Lords (not to be too minute in mentioning the Evidence) it is manifest from the Oath of Office, which they take, from the Commission granted to the Masters in Conjunction with the Judges, and from the Evidence given by Mr. *Meller*, relating to that subordinate Jurisdiction, which they exercise, That these Offices do relate to the Administration and Execution of Justice.

My Lord *Macclesfield*, in his Answer to this Part of the Charge, industriously is silent as to the particular Sums which he received, altho' Your Lordships will observe, that Payment of the individual Sums charged in the Articles has been prov'd by the Persons themselves, who paid the Money. *Kinaston* and *Bennet* are express as to the Payment of 1500 Guineas each; Mr. *Elde* is positive as to his carrying to the Earl 5000 Guineas in a Dutch Basket; and Mr. *Thurston* swears, he left 5000 Guineas with Lady *Macclesfield*. Now my Lords, as the Earl insists that it was a known Perquisite of the Great Seal to accept of Presents upon the admitting new Masters; why does he not own the Receipt of the several Sums, with which he is charg'd? If it was a known and establish'd Perquisite, doubtless the Sum payable would have been as known and establish'd.

blind. And this Consideration I apprehend to be the Reason of his Lordship's Caution. He cou'd not but feel the Absurdity of his own Argument, and yet I will admit as much as his Lordship or his Council can desire upon this Occasion. His Predecessors possibly may have accepted small Gratuities from new Masters, after their Admission. Therefore *He* may publickly, and without any other Consideration, *sell* them to the best Bidder for the most he cou'd get. My Lords, the Argument wou'd have been just as good, during the Time that it was usual for the Gentlemen at the Bar, to give New Years Gifts to the Chancellor, to prove he might have sold his Favours, and boldly suffer'd no one to plead before him, who wou'd not farm his Practice, and pay the full Price of what it might be worth.

To support this *Imagination* of its being a common Perquisite of the Great Seal, my Lord *Macclesfield* does in his Answer aver, that every one of the Masters I have named, did *voluntarily and of their own Accord* send a Present to his Lordship *on Occasion* of their respective Admittances. How far it was a Present the Evidence I shall mention to Your Lordships will fully explain. At present, I beg Leave to observe the Equivocalness of these last Words, *On Occasion of their several Admittances*. This was not accidental, but calculated on Purpose to make the whole appear like a common and usual Perquisite. As the Words stand in the Answer, the natural Construction is, that these Masters *voluntarily* made the usual Present to his Lordship, after they were admitted to their Offices: And yet the critical Sense of the Expression does not exclude the Payment of the Money, even by way of Bargain, before their Admission. For even in that Case, the Money may as truly be said to have been paid *on Occasion of their Admittance*. I should not have mentioned this Part of the Answer, if it was the only Instance of his Lordships deviating from Truth. I should have imagin'd it to be an Oversight, of either his Lordship or his Council. But by the Observations, that have been made by the Gentlemen who opened the several Articles Contradiction, Equivocation, and (I wish I cou'd not say) Untruth shine in every Part, and appear to be the predominant Qualities of the whole. My Lords; I mention this, not only as an Aggravation, but even as a Proof. For what Cause must it be that reduces a Man of the Abilities this Earl is known to possess, and of the Character *He* did once enjoy, to make use of such mean, such contemptible Arts? Arts! Unworthy a great Man; unpractic'd by an innocent Man, and I doubt not, will prove useless to the Guilty.

The Fact upon the Evidence appears to be thus, *Kinaston*, *Bennet*, *Elde* and *Thurston*, all concur in this Circumstance, That they paid their Money before they were admitted into their Offices. Mr. *Cottingham* also owns that he received the Money of Mr. *Kinaston* and Mr. *Bennet*, and carry'd up the Basket of Mr. *Elde* before any of them were sworn. All these Persons likewise agree, and *Cottingham* confirms their Testimony, that they apply'd to him as the proper Person to recommend them to my Lord *Macclesfield*, and to be inform'd of what Sum they must offer, in order to render themselves acceptable to his Lordship: The Evidence of *Kinaston* proves it to be a direct Bargain, for he swears, when he acquainted *Cottingham* of his having agreed with *Rogers* for the Purchase of his Place, that he offer'd but 1000 *l.* as a Present to the Chancellor: Upon which *Cottingham* said, he wou'd not mention to my Lord any Sum under 1500 *l.* and when *Kinaston* agreed to give that Sum, *Cottingham* again represented that it must be Guineas, upon which the 1500 Guineas were paid.

Mr. *Bennet*, he says, that when he had agreed with Mr. *Hiccocks*; he also applied to *Cottingham* to know what Sum was necessary to be paid the Earl. *Cottingham* agreed that a Present was necessary, but he wou'd not name the Sum. Upon this, after *Bennet* had consulted with his Brother and Mr. *Godfrey*, he again went to *Cottingham*, and offered 1000 Guineas; but *Cottingham* dissatisfy'd with this, shook his Head, and said, *He would not go to the Chancellor with that Sum, a great deal more had been given, and he hoped he would not lower the Price*. *Bennet* however still press'd *Cottingham* to offer the 1000 Guineas, to which *Cottingham* replied, there was *no hagling with the Chancellor; and that if he would not give more, he might be absolutely refused, and lose the Place*. *Bennet* struck with this Reply, agreed to give the 1500 Guineas, tho' *Cottingham* graciously told him, he need not bring it in Money, for Bank Bills would do as well. I cannot help observing, that there was a strange Caution used as to the Payment of this Money, altogether inconsistent with the Nature of an established Fee, or regular Perquisite. Mr. *Bennet* sent his Clerk to take out the Bills in a feign'd Name, and for this Reason, because otherwise they could not so easily be parted with. *Cottingham* it seems, was something jealous of a Man, who had the Confidence to persist so long in offering but 1000 Guineas, and therefore the first Word he said to him, when he repair'd to the Chancellor to be sworn in, *Have you brought the Money?* *Bennet* answered like a Man, who perfectly well knew the Family, He should not have ventur'd to have come without it. Upon this the Money was paid, the Master was sworn, and the whole Bargain fully executed.

These kind of Bargains were now become so much the Subject of common Discourse, that the Earl thought it necessary to be something more Cautious, and even *Cottingham* was not now to be so much in the Secret as formerly. Mr. *Elde* applied to the Chancellor himself, and without any Ceremony offers his Lordship 5000 Guineas for this judicial Office. The Earl it seems, was not at all offended with this Liberty, but answered with the engaging Familiarity of a great Man; *Thee and I must not make Bargains. I will treat thee in a different Manner from others*. My Lord *Macclesfield* was as good as his Word, for upon this *Elde* went to the Secretary, and offer'd him 5000 Guineas, and he reported to his Lord what pass'd: so that *Cottingham* was not dismissed this Service at once and the matter was so far agreed, that Mr. *Elde* went in a Chair to the Earl's House, with his Basket, in which he swears, he put 5000 Guineas, and delivered it to *Cottingham*, who carried it up to his Lord. But at the same Time he swears, he did not know what was in it. Upon this *Elde* was introduc'd, and sworn into his Office. Your Lordships will observe that the BASKET was no Part of the Bargain, and therefore the scrupulous Earl return'd it back to him Empty.

The last Person examined as to this Point, was Mr. *Thurston*, and *He* also was treated in a Manner different from all others. He was certainly better recommended than any of them, and in the Strength of that was very well received. Upon which he was Sanguine enough to expect he should have the Place. But, my Lords, before he was recommended, Mr. *Thurston* likewise apply'd to *Cottingham*, and offer'd 5000 Guineas. *Cottingham* said he would report; but he was not trusted to return an Answer.— In the mean Time Care was taken by the artful spreading of Rumors, That Mr. *Thurston* should hear the Chancellor intended to give the Place away to another Person. Alarm'd at this, and seeing all other Methods of Recommendation avail'd

nothing, he applied to my Lady *Macclesfield*; and after using several Arguments to no purpose, *As that his Name had been printed in the publick News to be the succeeding Master; That Persons applied to him for the Business of the Office; and That his Reputation and Character depended on his Success;* He at last told her he did not expect to have the Place for nothing, and therefore he left Bills for five thousand Guineas upon the Table, and so retir'd. These he found were the best Arguments, and the best Recommendation; for within two or three Days after he was sworn into the Office. This new Way of Proceeding, deceiv'd even *Cottingham* himself so much, that he even scrupled to take his own Fees. I know not whether I ought to mention any other Particulars; but by the Questions put to the Witnesses, when they were cross examined, it seems as if his Lordship would persuade you, that this was entirely a Transaction between Mr. *Thurston* and my Lady *Macclesfield*, and in which he was in no wise concern'd. If your Lordships can believe that the Earl intended really to give away this Place for nothing, the Earl will be fortunate: For Mr. *Thurston* himself own'd, he did not think he should have had the Place, if he had not left the Money.

I have repeated this Part of the Evidence more fully to your Lordships, because, as I apprehend, it clearly explains the Earl's artful Methods of Extortion, and also proves that in this whole Proceeding, *The Money, instead of being voluntarily given, was unjustly extorted, and that instead of being a Present or usual Perquisite, it was an illegal and corrupt Bargain and Sale of Offices, relating to the Administration and Execution of Justice.*

The last Thing I shall mention to prove this Point is an Evidence to his Lordship, most unexceptionable. I mean the Earl of *Macclesfield* himself; for my Lords, consider once more his Answer in Relation to this very Point. What Caution! What Equivocation! What Confusion of Mind! That could make him even forget the time of his own Impeachment. What other Circumstances of Guilt! That during the Course of this Tryal have been visible to your Lordships—Bank Bills taken out in feign'd Names, the Secrecy with which the Money was paid, the dead Silence as to the Price agreed: One five thousand Guineas in a Basket; another five thousand Guineas left on a Toilett; and lastly, his own Declaration to the Masters almost in a Body. How much they, how much himself might be affected. I submit to your Lordships what Inference is to be drawn from all these Particulars. The Commons are persuaded all flow'd from this Principle, That his Lordship, the Masters, the Seller, and the Buyer, were all conscious that the whole Transaction was illegal and corrupt.

Before I quit this Head of the Charge, I must take Notice of that part of his Lordship's Answer, wherein he hopes that the receiving Presents on such Occasions is not Criminal in it self, or by the Common Law of this Realm; and that there is not any Act of Parliament whatsoever, by which the same is made Criminal. I hope his Lordship intends that the Words, *Or by the Common Law of this Realm* should be understood as Explanatory of the Expression, *Criminal in it self*; otherwise it supposes a very strange Distinction. For surely an Action cannot be conceived to be *Criminal in it self*, and at the same time *not contrary to the Common Law of this Kingdom*. Is it possible for any one to imagine, that Corruption in the Officer is not the necessary Consequence of being obliged to purchase his Place? This is *in Terminis* the Reason of the Statute of *Edw. VI.* Is it possible for any one to imagine, that Oppression of the Subject must not be added to this Corruption?

Or, can the Man, who sells these Places, with no other View than to satisfy his own Avarice, retain his Integrity, and be a severe or competent Check upon the Actions of those Officers, to whom he has sold? And that is the Reason of the Judgment reported by *Moor*, viz. *That the Sale of Offices is Malum in se, Moor 781. Stockwith and North. and therefore finable.* But when to what I have now said, I add the Consideration of the Oath enacted by the *Statute 12. Rich. II.* (his Lordship will be pleased to add his own Opinion and Apprehensions) I do not conceive it possible to doubt, but that *the Sale of Offices relating to the Administration of Justice, is Criminal in it self, Criminal by the Common Law, and Criminal by Act of Parliament.*

The next Point to which the Commons gave Evidence, is the necessary Consequence of what I last mentioned: I mean the admitting Persons to the Office of Masters, who were of mean Substance, and every way unqualified for that Trust. The Evidence given of the Deficiency, now in several of those Offices, is so full and uncontestable, that I shall avoid the Repetition of it, and only just name Mr. *Thompson*, and refer your Lordships to the Report made to the Council, the Orders of the Court of *Chancery*, and the other Papers now upon the Table. Their being deficient at this time is a violent Presumption, and that in Point of Law is some Degree of Proof, that they were of small Substance at the time of their Admission. How else is it to be conceived! That Masters, who have been so short a time in their Offices, should be so much in Arrear? *Kinaston* was admitted but in *August 1721*, and in *1724* there appears a Deficiency of *26,908l.* *T. Bennet* is admitted but in *June 1723*, and in little more than a Year there is a Deficiency of *16,075l.* And it is remarkable, that both these Masters have sworn, all they were Owners of in the World, was not sufficient to have paid the vast Prices they gave for their Offices. Yet these Men were chosen out to be trusted, one with near *50,000l.* and the other with near *100,000l.* of the Money belonging to the helpless and the miserable. By the skill my Lord *Macclesfield* shew'd the other Day, in endeavouring to prove a Man illegally worth a *1000l.* or *1500l.* who had own'd himself to be worth nothing; your Lordships may see it was not want of Knowledge how to make an Inquiry, that made his Lordship neglect it. It was because he never once concern'd himself, whether they had Substance or not. The Sum he himself was to receive, *was his only Consideration, and therefore his only Care*; for as Mr. *Bennet* has expressly declared, he never once asked him, either before or after his Admission, any one Question in order to be inform'd of his private Circumstances.

And yet, my Lords, these are the Men, whom his Lordship, as Mr. *Waller* has particularly sworn, thought fit in open Court, and while he was sitting in the sacred Seat of Truth and Justice, to declare *Men of as great Fortunes, Abilities and Skill, as had ever sat in that Court.* I much more readily concur in the Truth of the other part of his Lordship's Declaration, and proved by the same Witness, *That he had great Satisfaction in the having admitted most of the Masters himself.* The Reason Mr. *Waller* gave, in Answer to some quibbling Questions of his Lordship's, for his particularly remembering this remarkable Speech, is clear and convincing to every Man; *That the Astonishment he was struck with at the Hearing, made him to remember it.* And happy would it be for his Lordship, was it possible ever to be forgotten!

But what could make the Earl of *Macclesfield* break out into this Panegyrick? A Reason so mean, and at the same time so gross, that I almost wonder even his Lord-



Lordship would venture to act upon it in Publick. A Day or two before this happened, a Master died, and a new Purchaser was to be invited.

I have just now mention'd the Satisfaction his Lordship had in the Sale of these Offices. The Effect of which was, that the Earl conniv'd at and permitted the unjust Method that was practis'd, for the purchasing Masters to pay the Price of their Offices, out of the Money belonging to the Suitors of the Court. This Practice the Commons Charge to have been notorious, and the Evidence produc'd to your Lordships prove that it was so. *Godfrey, Conway, Kinaston, and Bennet* swore, that this Circumstance induc'd them to become Purchasers; and indeed as to them, the Fact proves it self, even though they had not sworn it to be so. For they have both own'd, they were not able to buy without it; nay, they were so low, that even the fifteen hundred Guineas they paid the Earl himself, was out of the Suitors Money. And thus far the Earl of *Macclesfield* himself has own'd in his Answer. But alas! That would prove nothing, if it was not accompanied with a Fact, that cannot be disbelieved; *My Lords, He has repaid the Money!*

After this, I think, I need not repeat the Evidence so minutely as to explain the particular Method, in which this Fraud was transacted. The whole seems obviously calculated for no other End or Purpose, than to induce Persons of small Abilities to become Purchasers, by facilitating and making easy the Method of Payment. And indeed it was so easy, that I wonder his Lordship did not meet with Persons, who would agree to give one half of the Money, for an opportunity of running away with the other. And if they had, I do not see but his Lordship's Defence would have been just as good as it is now. Such a Price might with as much Reason be called a Perquisite, as his condescending to take but five or six thousand Guineas, when no one would give more. It is true, my Lord *Macclesfield* does in his Answer say, that he was ignorant of this Practice. But I apprehend his Lordship to be as much mistaken in this, as he has been in other Particulars. For, my Lords, it appears by Mr. *Bennet's* Evidence, that he not only knew of this Practice, but endeavour'd to conceal it.

It happened that when this Mr. *Bennet* delivered his Accounts to the Privy Council, he concluded with a very remarkable Article; *Item, In the Hands of Persons of Ability and Honour 9075 l.* My Lord *Macclesfield*, at sight of this Particular, asks him the Reason of it; Mr. *Bennet* explains it, That as to 1575 l. he meant his Lordship, and as to the Residue, Mr. *Hiccocks*, of whom he bought, had detain'd so much of the Suitor's Money in his Hands, by way of Payment for his Place, and at the same time he complain'd to his Lordship of the Hardship with which he had been us'd. The Consideration that induc'd him to give so large a Price, was his being immediately to receive a very large Cash; and yet the first time he wait'd on Mr. *Hiccocks* for that purpose, he could get but 1500 l. and that upon the hard Terms of giving a Receipt for 9000 l. During this Conversation, *Bennet* swears, the Earl said with some Concern, *That his Accounts were made up the worst way in the World, for every Body would now judge, that what he paid for his Office, came out of the Suitor's Money, and that what had been so much suspected would be now discovered, and what he himself had taken so much Pains to deny, whenever he was asked the Question.* After this his Lordship and *Bennet* enter into a serious Consultation, how to make up this Affair. The Chancellor bids him go to Mr. *Hiccocks*, to try what he would do. But it seems he could not be brought to do more, than to lend 2000 l. which *Bennet* absolutely refused, and in-

stisted upon its being given him, or not at all. He reported this to the Earl, who displeas'd at it, said, *Hiccocks* should pay 2000 l. and that he himself would repay the 1575 l. but it should be in such a manner, as that *Bennet* should not know in what manner it was done. Most profound Politicks this! *Bennet* afterwards told your Lordships, that he found the Earl intended to trick him out of this Money; for several Times and Places were appointed for Payment, without any Effect. And therefore the Accounts were delivered in, and the Story comes out. Your Lordships certainly observ'd, that my Lord *Macclesfield* was very much offended with Mr. *Bennet's* Evidence, and therefore took Care to cross examine him most accurately. But that Fatality which constantly attends Guilt, was so strong upon him, that the Answers given by this and almost every other Witness, to the Questions propos'd by the Earl, and his Council, evidently, as I apprehend, destroy his own Answer, and confirm our Accusation. But, my Lords, it is not only the Answers of the Witnesses, but even his Lordship's own Questions that afford Evidence against him. For to what part of the Charge am I now speaking? Why to that, wherein he is accus'd of knowing and endeavouring to conceal the Practice of paying the Purchase out of the Suitor's Money. And what does his Lordship ask? *Did not you at this Meeting tell me, that if Hiccocks would pay 2000 l. you then would make up the rest your self?* By his Lordship's own Confession therefore, *Bennet* was with the Earl upon this Occasion; they did talk upon the Subject *Bennet* has inform'd your Lordships. *Hiccocks* retaining the Suitor's Money, was part of the Conversation. Else why should he pay 2000 l.? His Lordship did concert how to make up this Affair, and consequently how to conceal the whole. To this Question of the noble Lords *Bennet* answers consistently with what he had said before, *That he did not say, if Mr. Hiccocks would pay 2000 l. that then he would stand the rest.* And the Reason he gives is good, *He was not worth the Money.* Your Lordships remember the other part of the Dialogue. I shall only add, That the Earl being angry at this Evidence, asks Mr. *Bennet*, *And how could you, as an honest Man, offer to buy a place, when you were not worth the purchase Money?* I submit to your Lordships, whether it was not as honest for him to buy without Money, as for his Lordship to sell without Right.

I have now stated to your Lordships the Fact, as to this scandalous Practice. And I think it can never be thought reasonable to suppose the Earl of *Macclesfield* only ignorant of what every one else knew: Or that he did not know of what he endeavour'd to conceal. And if it is certainly true, that the Office of Chancellor is an Office of the highest Trust, it is as true, that every wilful Neglect of what is necessary to be done, in order to discharge that Trust, is criminal. It cannot be doubted, but that this Practice was unjust, and fraudulent upon the Suitors of the Court. It cannot be doubted, but that the Earl of *Macclesfield* knew of this Practice. It cannot be doubted, but that the Chancellor was the proper Person, because in Fact, he was the only Person, who could, *ex Officio*, either remedy or prevent this Abuse. What ought to be the Consequence of these Premises, the World will learn by your Lordships Judgment.

Hitherto, my Lord's Avarice, *unincorrupted Avarice!* has been the only Principle of this Earl. In what follows, your Lordships will perceive Apprehension and Fear begin to mingle in all his Actions; and for this Reason the Bankruptcy of *Dormer* was to be concealed, that the Clamours of the World might be hush'd. It has appeared in Proof to Your Lordships, that upon *Dormer's* absconding the Deficiency in his Office amounted

mounted to upwards of 52,000 *l.* for the Account upon the Table which reduces the Ballance to 49,000 *l.* was made up long after the Masters had been obliged to contribute their 500 *l.* each.— When *Dormer* run away, it is natural to imagine, that even this Chancellor should have turned his Thoughts to the Security of the Suitors: Not because it was his Duty so to do, but as Mr. *Dormer* was a Master whom he had not had the Satisfaction to admit himself, he might with the more Security have given himself the Show at least, of acting vigorously in Relation to his Affairs. By the Evidence that has been given it appears his Lordship's Behaviour was quite the Reverse; my Lord *Macclesfield*, instead of being Sollicitous for the Good of the Suitors, was apprehensive only of the loss that might happen to himself, by sinking the Price of Places, and thereby defeating that gainful Trade he carried on in the Sale of them. But this Thought was attended with another Consideration, that this open Acknowledgement of the Bankruptcy of one Master might induce the World to suspect the Abilities of the rest, and as he best knew what Care, what Circumspection he had used upon their Admission, so he was determined to prevent an Incident of that kind. With these Views therefore every Step that was taken was mysterious, and the Deficiency itself with the utmost Caution kept secret; so secret, that at last some of the Masters themselves, his own Masters, for that very Reason, refused to contribute any farther towards it. *It is a bottomless Pit, says one; we know not what it is, says another.*

The first Step the Earl took was to direct Mr. *Rogers* and Mr. *Hiccocks* to carry on a private Negotiation with *Dormer*, for his Return into *England*, assuring him in his Lordship's Name, that his Person should not be confin'd, provided he made an Assignment and Discovery of his Estate and Effects. Upon this *Dormer* returns, and executes an Assignment; but I do not find he was ever examin'd upon Interrogatories, or that any of his Creditors attended, in Order to enquire into the Truth of his Discovery. Your Lordships observe, that the Promise of Liberty was Conditional; but *Dormer*, and the Earl, tho' for very different Reasons, were equally afraid of this Commitment; and therefore his Lordship took Care not to direct any Proceeding, that might lay him under a Necessity of doing it. If there was nothing else in the Case, this Behaviour was sufficiently Gross. But, my Lords, it was still worse, for Mr. *Lightbourn* has acquainted Your Lordships, that soon after *Dormer*'s Failure, he waited on my Lord *Macclesfield*, and told him, that he suspected the Account given in by *Dormer* was not Fair and Just; and that therefore he ought to be committed for Example sake. This Witness added another Circumstance, that justifies what I have before suggested to Your Lordships, as the Reason of the Earl's Conduct. He says, that in this Conversation with his Lordship he intimated and gave broad Hints of his suspecting the Abilities of some of the other Masters; he represented that the Year 1720 had been a very fatal Year, and might affect the Masters as well as other People; that what had been might be, and several other matters of this Nature. Your Lordships remember the manner, in which this Evidence was given, there was an Air of Probability and Truth, that appeared in it; he own'd indeed, when the Noble Earl ask'd the Question, for fear, I suppose, lest Your Lordships should want Proof of there having been such a Discourse, that he did not name any Master in particular whom he suspected. He did not know how far an Action might lye, and if known, it would make him unacceptable to his Brethren, and himself might be made uneasy in his Office, and several other Reasons of that kind; and therefore he chose to express himself in gene-

ral Terms. Your Lordships will observe that the Earl was very early in this Resolution, some way or other, to patch up this Affair of *Dormer*'s, so far at least, as to make it last his Time: For Mr. *Knaflon* has informed Your Lordships, that when he was in Treaty with Mr. *Cottingham*, to be admitted Successor to Mr. *Borret*, he objected this very Deficiency of *Dormer*'s as a Reason why the Chancellor should not insist upon so large a Sum, since the Consequence of it must naturally lessen the Value of the Office. But he made light of it, and said, it would soon be made up. Mr. *Edwards* also, who succeeded *Dormer*, said he never would have bought the Office, if he had not been assured the Deficiency would have been made good. Here Your Lordships may also remember, that my Lord *Macclesfield* by cross examining this Gentleman, laboured to prove, that the Masters had actually agreed, in all Events, to make good *Dormer*'s Effects. Mr. *Edwards* said, *he could not say 'twas actually agreed, he hoped they would, and by Conversation he had had, imagined they were inclined so to do, &c.* Upon this the Earl asked, *From whom then had you those Assurances that it would be done?* His Lordship (ever fortunate in his Questions!) I believe was not well satisfied with the Answer; for says *Edwards*, *I had 'em from Cottingham and Godfrey.* Their Names and Qualifications are well known to Your Lordships.

The next Step that was taken, relates to the Composition of a Debt of 24,046 *l.* due from one *Wilson* a Banker, to the Estate of Mr. *Dormer*. This Composition the Commons do aver the Earl did direct and establish, in an unwarrantable and clandestine manner. On the other hand, my Lord *Macclesfield* does in his Answer say, that it was done in the proper and usual manner: Your Lordships will judge of the Truth between us. The Commons, to prove their Averment, have produced the Original Instrument of Composition, by which it appears that this Debt of 24,000 *l.* was to be discharged for the Sum of 1463 *l.* in Money, and an Assignment of 10,000 *l.* or a proportional Part of what should be recovered of a desperate Debt of 22,600 *l.* due from one *Poulter* (who also is a Bankrupt) to *Wilson*.

The Introduction to this Affair was thus; Mr. *Edwards*, to whom *Dormer* assigned his Effects, acquainted the Chancellor that *Wilson* proposed a Composition, but apprehended he had not Power to conclude any such Agreement. To this the Chancellor agrees, and therefore advised him to apply to the Court by way of Petition for that Purpose. *Edwards* followed this Advice, and petitioned. Upon which the Earl referred the matter to Mr. *Hiccocks*, who made his Report, which being annexed to another Petition, the Composition was confirmed. In the Answer which the Earl gave to the second Petition, these Words are inserted, *Of which give Notice forthwith:* To what Purpose these Words were inserted, I cannot comprehend, unless it was to deceive the poor Master, who trusted him, into Ruin, by craftily laying a Ground Work for throwing the Blame of the whole upon him, unless he could divine to whom this Notice was to be given. For his Lordship took Care not to give any Directions, as to what Persons, or in what manner it should be done.— During this whole Transaction *Wilson* was never examined upon Interrogatories: No one Creditor ever summoned to attend: the Character of *Poulter* perfectly unknown, or by what they did know, they might have reasonably suspected what afterwards happened: No Knowledge of *Wilson*'s Affairs, but what he communicated himself; the first Proposal he made was accepted; no Consultation with any other of *Wilson*'s Creditors; and to show how useful that might have been, it has been proved to Your Lordships, that *Wilson* has paid several of his Creditor their whole Debt.

This was the Care the Earl thought fit to take of the Suitors of the Court: Doubtless he imagin'd, that tho' more vigorous Measures might secure more Money, yet they might at the same Time make the Circumstances of the Court too publick; for, at the same Time his Lordship took abundant Caution to prevent any of these Particulars coming to the Knowledge of the Suitors, or of the World. For, my Lords, not one of these Facts appear upon any Record or Register whatsoever; the Whole was a private and clandestine Transaction between his Lordship, two or three Masters, and the Bankrupt himself. Your Lordships have a Certificate from the proper Officers for what I now say, *That none of these Petitions, Reports, or Orders, were ever regularly drawn up, or filed.*

My Lords, this Caution, this Secrecy, this Mystery, is a strange Way of proceeding for Justice and Equity; but, if the contrary be supposed to have been his Intentions, the Whole is of a Piece, natural and consistent.

Permit me, my Lords, once more to observe upon his Lordship's Cross-Examinations. And, first, He very nicely examin'd *Edwards*, as to what he had receiv'd by virtue of this Composition; and certainly it receives a wonderful Justification from Mr. *Edwards's* owning that he received in *October* last 1000 *l.* The next Point he examin'd to, was his Lordship's Diligence in securing *Dormer's* Effects. The Commons brought Evidence to shew, that some of *Dormer's* Estate had been conceal'd, and, for ought I know, it may be true, that one *Goodfellow*, by his Lordship's Means, did give the Administrator (appointed since his Lordship's Dismission) the first Notice of it. The Fact is, that a Parcel of old Hops, 500 *l.* the worse for keeping, were not long since sold for the precise Sum of 100 Guineas. To which I shall only say, that I wonder his Lordship chose to recal *that Sum* into your Lordships Memory.

My Lord *Macclesfield* hitherto might possibly meet with the Approbation of those Masters, on whom he vouchsafed to smile: Both he and they seem to have consider'd themselves as in an Interest separate, and quite opposite to that of the Suitors. His View was to keep the Circumstances of the Court secret, and to prevent any Thing that might happen to lessen his Profits in the Sale of Places: *Theirs* was to retain the Money of the Court in their Hands, and for that Reason to hush any publick Clamour that might occasion the taking it away. I think I am not mistaken in this Conjecture, because I find his Lordship himself was of the same Opinion: For this was the great Artifice and Machine, which his Lordship employ'd, to terrify them into a Contribution of 500 *l.* each, towards supplying the Deficiency of *Dormer's* Office. To shew how much this Custody of the Money was in the Masters Thoughts, your Lordships will be pleas'd to remember, that all the Masters own'd, that it made a very considerable Article in what they call'd, the Profits of their Places. Mr. *Holford* (on whom the only Blemish I know, is the Misfortune he has had of being a Master) acknowledg'd, in answer to a Question propos'd by a Noble Lord, *That he understood it so; for he never propos'd to lock the Money up, but to employ it for his own Use.* In fact, it was what the Masters bought, and what the Chancellor sold, or rather, Widows,

Orphans, Lunaticks, the Wards and Suitors of the Court were the wretched unhappy Merchandize, in which the Earl of *Macclesfield* thought fit to deal. When *Kinaston* was to buy, he swears that *Cottingham*, or *Rogers*, or both, recommended it to him as being the Senior Office, and therefore the best. And *Cottingham* himself own'd the first Day of this Tryal, that he had acknowledg'd to a Committee of the House of Commons, that he said to Mr. *Kinaston*, *You have purchased a very good Office; for there is a great deal of Money in it.* But, my Lords, the Thing proves itself: Consider the Nature of the Office, the Attendance and Labour that is required; deduct the unlawful Interest made of the Suitors Money; how can the honest Fees (even supposing it lawful to sell) be worth 6, 7, 8, or 9000 *l.*? I leave this for my Lord *Macclesfield* to explain, and shall at present take it for granted, that the Masters esteem'd the Custody of the Money to be Part of their Bargain.

That there was, in fact, a Contribution by the Masters of 500 *l.* each, is evident from the Receipts now upon your Lordships Table; and Mr. *Holford* fully explains the Method that was taken to draw them into it. He received, soon after the Report of *Dormer's* Bankruptcy, an Order from Mr. *Cottingham* to prepare and bring in his Accounts to the Chancellor; soon after that, it was intimated to him, that a Contribution of 500 *l.* was necessary towards supplying the Deficiency of *Dormer*: Upon which he paid his Money, and his Accounts (tho' ready, as he swears expressly) were never afterwards called for.

*Lightboun* was another Master, who received Orders to prepare his Accounts; but not paying his Money, *Cottingham*, some short Time after *Dormer* broke, ask'd him if he had not heard of the Proposal to contribute 500 *l.* *Lightboun* own'd he had: *Cottingham* then said, 'twas necessary to raise some Money to go on, and that, if he contributed, possibly the Money might be repaid. Still *Lightboun* was inflexible, and said it was a dangerous Step, and he wou'd not pay the Money. Upon this Refusal, he inform'd your Lordships, that he was look'd upon as a very troublesome Fellow among the Masters, and little Arts were us'd to make him uneasy in his Office: But when this likewise prov'd ineffectual, the Earl himself, at last, condescended to talk with him, and in the beginning of the Year 1722, he was taken into his Lordship's Study; and the Earl told him, he was sorry to hear he did not pay; desired him to consider the Consequences, and how dangerous it was, not to take Care of *Dormer's* Affair. Upon this, *Lightboun* still refus'd to pay, saying he did not know how far a Contribution of this Kind might be constru'd to be an Undertaking of the Masters to answer one for the other: At the same Time he boldly and honestly represented to the Chancellor, how cautious his Lordship ought to be; that this Method was no Cure for the Mischiefs; and that as to its being propos'd by the Senior Masters, 'twas no Argument to him, and ought to raise some Jealousy in his Lordship, since they were visibly endeavouring to withdraw from the Court, and came into a Project of this Kind, only to keep up the Credit of the Court, till they found an Opportunity of selling their Places at great Rates, and a great deal more to this Purpose; and concluded with a peremptory Refusal to contribute.

However, as the other Masters paid their Money, the Earl was not discouraged, but depended upon it that some Time or other (as he told Mr. *Edwards*) he should be able to force Mr. *Lightboun* to comply, and therefore, as he thought, he had by this Means contriv'd a Fund to answer any Demands upon Mr. *Dormer's* Office, he went on, just as if there had been no Deficiency at all. By the Orders that have been read to your Lordships, and by the Evidence of Mr. *Edwards*, who paid the Money, it appears that he made several Orders for the Payment of Money, without any Regard to that due Proportion all the Suitors of the Court were entitled unto. His Lordship in his Answer says, It was not incumbent upon him, *ex officio*, to declare an Average. If it was not his Duty, my Lords, for God's sake, whose Duty was it? This is too gross to be a Sin of Ignorance. A Barrister of but a Term's standing knows, nay, it is obvious to the lowest Capacity, that where several Persons have Demands out of one Common Fund, and that Fund proves to be defective, all ought to be upon the same Foot, and be paid in an equal Proportion. Mr. *Lightboun*, Mr. *Edwards*, both represented to him the Hardship of one Creditor's receiving his whole Demand, and another Creditor, who had equal right, losing his whole Debt. The Reason therefore of this otherwise absurd Proceeding cou'd only be, that the Declaration of an Average wou'd publish that Deficiency to the World, which he had us'd so many Stratagems to conceal.

I cannot conclude this Part of the Evidence, which relates to that Criminal Design the Earl carried on of concealing this Deficiency, and of deceiving the Suitors of the Court, without reminding your Lordships of one other Instance of this Noble Earl's great Regard for Truth and Veracity. Mr. *Atwood*, who was the Solicitor in the Cause of *Harper* and *Chase*, in which the Deficiency of *Dormer* being mention'd, the Earl took occasion to declare, *That indeed he had heard of the Deficiency, but nothing of it had ever come judicially before him; and that he knew nothing of it but as publick News.* This, my Lords, was after he had paid 1000*l.* towards it himself. After what I have said, I shall not attempt to aggravate this Prostitution of the Seat of Justice. But this did not satisfy his Lordship: That his Dissimulation might for ever remain upon Record, he thought fit to pronounce an Order, that is now upon your Lordships Table, and dated no longer ago than in *December* last; in which he directs the Master to enquire, whether there was any Deficiency in *Dormer's* Office? and whether the Suitors were likely to lose any Part of their Money, or not?

Your Lordships know the Contract that was made between the Chancellor and the Masters: I therefore shall not waste your Time in mentioning Evidence to prove, that they, who gave such vast Prices for the Custody of the Money, did not neglect the Opportunity of employing it for their own Use. The Proof is but too visible: They who are rich, confess it; and they who are poor, dare not deny it: It was the necessary Consequence of his Lordship's Extortion; and that put it out of his Power, to take those Measures that were necessary to prevent that Practice. The Misfortunes of the *South-Sea* Year were so universal, that surely any Man of even com-

mon Sense wou'd have been upon his Guard: *My Lord Macclesfield* knew, that these Masters gam'd with the Suitors Money themselves, or for an extravagant Interest lent it to those who did: *He* knew that this was the occasion of *Dormer's* Deficiency: *He* knew that the other Masters had it still in their Power to do the same; therefore he permitted it: He took no Measures to prevent it; therefore he encourag'd it.

- But what cou'd engage this Earl (whose Understanding is no wise question'd) after so fatal a Year, thus to risque his own Character; and what perhaps he values more, his own Fortunes, not only upon the Understanding, the Integrity, but even the good Fortune of a parcel of Men, whom he had thus pick'd up, without either Enquiry or Care? My Lords, *as the Borrower is to the Lender, so a Corrupt Chancellor is the Servant of his Confederate Officers.* He durst not put a stop to their Practices (tho' his own Estate was embark'd with theirs) lest Resentment and Revenge shou'd make 'em discover the infamous Secrets, with which they were entrusted. How durst he demand Security from those whom he had admitted, knowing they were able to give none? Surely, my Lords, no Reason, but such as I have now mention'd, cou'd induce his Lordship to neglect (and a long Neglect amounts to a Refusal) the obliging these Masters to give Security, or else to call them to a strict Account, as to their Cash and Securities, after he had been inform'd by Mr. *Lightboun*, that some even of the Masters were to be suspected. But Mr. *Lightboun* this Day went farther; he represented the Danger of trusting Men with such vast Sums: That this Credit had been the occasion of all the Losses in the Court, and therefore propos'd a Scheme of Security, to prevent any Losses for the future. The Chancellor did not absolutely reject this Proposal; that was too gross even for himself: He therefore desires Mr. *Lightboun* to put it in Writing: 'Tis done; and his Lordship most carefully kept it by him for two Years, without taking any notice of it. But, my Lords, there is one Circumstance in this Neglect, that in Equity (and surely a Chancellor will not decline to be try'd by that Rule) makes his Lordship answerable for a very large Sum in one Case only, without entring into any the other Consequences of his Crime. Mr. *Kinaston*, your Lordships remember, was prov'd to be deficient in the Sum of 26,000 odd hundred Pounds; and yet, my Lords, this very *Kinaston* did, in the Year 1722, propose to his Lordship, to give Land, or other Security, for the Effects with which he was entrusted. I know his Lordship will object what this Gentleman has before sworn, in relation to his own Circumstances: But what is it to the Suitors, whose Land it is, provided it be pledg'd for their Safety? *What Answer, my Lords, must we give to our Fellow-Subjects, those unhappy People, who are undone, I will not say by Kinaston's and the other Masters Deficiency, but his Lordship's own wilful Neglect?* I will not take up any more of your Lordships Time upon this Head. In what I have already mention'd, it is proved, notwithstanding what the Earl in his Answer says to the contrary, that he knew the Masters converted the Money of the Suitors to their own Use. And he himself owns, that he did not insist upon any Security from them. In a late Order of his own making, he has recited it not to be usual in the Court of Chancery,

Chancery, for the Masters to give Security; and therefore in his Answer covers himself under the Practice of his Predecessors. My Lords, the Reasonableness and Necessity of Security depends upon the Greatness of the Trust committed, and the Qualities of the Persons intrusted. In Dr. *Eddisbury's* Case, tho' there was a Stop, yet there was no Loss, for his Estate prov'd sufficient to answer all Demands. And therefore his Lordship's Argument, in my Apprehension, amounts to this, That because his Predecessors did not insist upon Security from Persons who wanted none, therefore he might justly entrust those who were able to give none.

My Lords, I am come to the last Head of our Charge, and your Lordships will now see the Earl of *Macclesfield* abandon'd to all his Fears! even Avarice forsakes him! The Dread of a Parliamentary Inquiry sits heavy on his Mind; and I firmly believe, he now repents his having illegally taken this Money, because he parts with it to prevent, if possible, that Punishment he most justly deserves for having received it. He finds all his Arts in vain to hinder his Practices being known to the World; and therefore his whole Study is now bent how to ward off their coming into Parliament.

The first Instance of this appears in the Case of Mrs. *Chitty*. The Fact is thus: An Order was made for the Payment of 1000*l.* to her, Part of a Sum upwards of 11,000*l.* belonging to her, and which had been paid into the Hands of Mr. *Dormer*. She, it seems, assigns this Order to a very importunate Solicitor, one Mr. *Lockman*, who, as he has told your Lordships, diligently pursu'd the Chancellor from *London* to *Kensington*, from *Kensington* to *Westminster-Hall*, and the Court of *Chancery* it self. He represented to his Lordship the Circumstances he was in; that he had compounded some *South-Sea* Contracts, and absolutely wanted, and insisted upon his Money to compleat his Agreement, and set himself at Liberty. The Chancellor finding himself so press'd, was at last forc'd to promise him, that he would take care to get the Money paid. Upon this he summons a meeting of the Masters, in order to persuade them to pay the Money, by a Contribution of fifty Pounds each; and in the mean while it had been given out among them, that such a Contribution was expected. *Cottingham* himself, as Mr. *Lightboun* says, told it to him, and at the same time made a fresh Demand of the old Sum of 500*l.* and ask'd him what Answer he would send to the Chancellor? *Lightboun* prudently replies, he would deliver his Answer himself; and in the mean while he applies to the other Masters, tells them the ill Consequences of what they had done, and works them all up to a Resolution not to comply with this fresh Demand. He desires 'em not to give the Chancellor false Hopes, but to speak their Mind freely. And thus prepared, they all repair to his Lordship's House. I need not upon this Occasion repeat the Names of the Witnesses, for all the Masters present concur in giving the same Testimony. His Lordship began the Conference with asking Mr. *Lightboun*; in a very angry Tone and Manner, why he did not pay his 500*l.*? Who reply'd, he had often told his Lordship the Reason, and that he neither cou'd nor wou'd pay, and was confirm'd in his Resolution, by his having since heard all, or most of his Brethren, repent of their Compliance. The Earl, without regarding *Lightboun's* Reason, propos'd the Necessities of the Court to the other Masters, in relation to this 1000*l.* The

Masters not seeming willing to comply, he us'd many Arguments to persuade 'em to it: He desires 'em to consider the Consequences; the Occasion presses, and Clamours grow strong; and if this Affair was not taken care of, *Dormer's* Deficiency must break out; and therefore what he propos'd, was the only way to prevent a Parliamentary Inquiry. Upon this *Lightboun* interpos'd, and said, If it was so, he could not help it: That he had rather lose the keeping of the Money and Securities, than hold it upon those Terms. The Chancellor reply'd, But that is not the worst: Suppose the House of Commons should in a Committee of Justice resolve, that your Offices relate to the Administration of Justice; that the Buying 'em is contrary to the Statute of *Edward VI.* and therefore forfeited. Consider (says he) tho' it may affect me, as to the Disposal of these Places for the future, yet it will affect you much more in the Loss of your Places; and therefore, upon the whole, desired them to agree to the Contribution. My Lords, the Masters were Proof against his Lordship's Eloquence, and *seriatim* refus'd to comply. Upon which the Earl was struck, and with a vast Concern said, Then I will pay it my self. What Guilt, what Fear, must this Noble Earl be sensible of, thus to part with that Money he had so sacrific'd his Honour to get! In this manner the Earl parted with his Masters, and *Lockman* returns again to the Charge; and at last, meeting the Chancellor in the Room behind the Chancery Court, he got a Promise from him, that Mr. *Cottingham* shou'd pay the 1000*l.* But at the same Time his Lordship (I suppose, to get rid of so troublesome a Suitor) advis'd him not to engage with the Widow *Chitty*; for if her Money in the Court of Chancery was all her Fortune, that Sum was all she was like to have. Soon after this, *Cottingham* paid the Money. But it seems he forgot to desire *Lockman* to keep the Secret; so he told it about so much, that *Cottingham* meeting him rebuk'd him for it, saying, *Can't you fare well, but you must cry Roast Meat?* Your Lordships undoubtedly remember, that the Earl endeavoured to shew, by Cross-examining, that he had generously given this 1000*l.* to Mr. *Lockman*, out of meer Charity and Compassion to his miserable Circumstances. *Lockman* reply'd very reasonably, that his Circumstances were not so low as to want his Charity; for he might have discounted the Order; and he did not think it a Favour that he was paid his own.

The Evidence I have now last mention'd to your Lordships, even without the Assistance of other Proof, almost maintains the whole Charge. By the Testimony of a Cloud of Witnesses his Lordship here confesses the Sale of Offices, and owns that Sale to be illegal: He acknowledges his being acquainted with *Dormer's* Deficiency; and at the same time endeavours to conceal it: He in a manner confesses his own Guilt, pronounces Sentence upon himself, and therefore proposes Methods to prevent a Parliamentary Inquiry.

But, my Lords, there is still more behind: There is not only a Connection among the Articles, but the Crimes charg'd in 'em rise upon each other. Hitherto his Deceit has extended only to the Subject, but now he attempts the Throne it self. His Majesty graciously directed an Inquiry to be made into the Disorders of the Court of Chancery. His Lordship knew that this dutiful House of Commons wou'd not interpose in the Affair, till his Majesty's Commands were obey'd, and therefore he now summons all his Arts and Skill to ward the Blow, and deceive his

his Majesty into a Belief, that the World had taken a false Alarm; and that the Circumstances of the Masters were much better than they were represented to be: That they were able to answer all Demands; and that consequently the Suitors of the Court were not in any Danger. His Agents are sent among the Masters, to encourage them to stand by each other; that they should make a bold Stand, and defeat the Designs of their Enemies. He himself becomes their Councillor, and advises, and (without Inquiry, or Regard to either Truth or Justice) he persuades them to make such a Subscription to their Accounts, as might mislead the Council in any Report they should make to his Majesty.

All his Thoughts, Counsels, and Measures, are now swift and precipitate. Your Lordships have heard Evidence of the several Discourses of *Cottingham* and *Dixon*; the meeting of the Masters at Mr. *Edwards's*, and the last Conference with the Chancellor himself; all within two or three Days of each other, and all tending to the same End of deceiving the King, and preventing the Parliament. My Lords, all the Masters concur in the meeting at the Chancellor's House; when, it seems, his Lordship, upon considering their several Accounts, declared his Approbation of Mr. *Holford's* Subscription; and without any the least Inquiry into their Abilities and Circumstances, he advis'd them all to make the same Subscription as Mr. *Holford* had done.

Your Lordships have likewise heard it prov'd, that the Masters, in order to make a Shew, were advis'd to assist and stand by each other. *Bennet* and *Conway* are both Instances of this Counsel's being put in Practice; and — But why should I abuse your Lordships Patience with particularly recapitulating the Evidence that has been this Day given? I observ'd the Attention with which it was heard, and any Thing I can say, will only weaken that Impression it must naturally have left on your Lordships Mind. I shall therefore conclude the Whole with an Observation from the Parliament-Roll of *Henry IV. Complaints and Subsidies belong to the Commons, Judgments belong to the Lords, and Redress is the Glory of the Crown.*

My Lords, The Commons have now discharg'd their Duty; they have declar'd their Grievances, explain'd the Crimes, and produc'd the Offender. They are assur'd the King will of his Fatherly Goodness, grant a just Redress, and apply a proper Remedy; and they doubt not but your Lordships will pronounce a righteous Judgment.

*Then the House adjourned to Wednesday next, at Ten of the Clock in the Forenoon.*

*Wednesday, May 12. The fifth Day.*

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence; as also another Proclamation, That all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Tryal, and they might come forth, in order to make good the Charge.

*L. C. J. King.* Gentlemen, You that are Council for the Earl of *Macclesfield*, may now proceed.

Mr. Serjeant *Probyn*.

*May it please your Lordships,*

I HAVE the Honour to be Council for the Noble Lord within your Bar, the Earl of *Macclesfield*, who stands impeach'd for High Crimes and Misdemeanors in the Name of all the Commons of *Great Britain*.

My Lords, When I consider the Importance of this Charge, in respect to the Noble Earl impeach'd, the great Experience and wise Conduct of the several Gentlemen of the House of Commons, who are intrusted to manage the Prosecution, and the great Variety of Arguments they have used to enforce and aggravate their Charge, it is with the utmost Concern that I presume to appear before your Lordships in his Defence; not but that I am well assured of the Truth and Justice, the Strength and Fulness of the Defence which may be made in his behalf, but out of real Consciousness of my own Inability to discharge so great a Trust.

Unequal to it I should have been, had the longest Time been allowed me to prepare myself; but I shall now appear much less capable, having so very little, so few Days Notice of your Lordships Pleasure in appointing me for that Service.

If therefore I shall be so unhappy, as to offer any Thing in this Case less proper, or correct, than might otherwise be expected from me, I hope I shall obtain your Lordships greater Indulgence.

The Offences, which are charged to be committed by the Noble Earl impeach'd, are contained in many Articles, no less than twenty one in the Whole; but the Gentlemen of the House of Commons have been pleas'd to wave several of them, and, I hope, when your Lordships have heard us, and our Evidence, you will be pleas'd to acquit him of all the rest.

These Articles have been conceived with the greatest Caution, and open'd with the greatest Art, heighten'd with every Circumstance that may induce Repentment, and urged against the Noble Earl impeach'd with a particular Zeal, well becoming the great Concern which those Gentlemen always shew for what they apprehend the Publick Service, and the faithful vigorous Discharge of the great Trust reposed in them by the House of Commons.

The impeach'd Earl is pursued back from his late Resignation of the High Office of Lord Chancellor, through every Stage of Publick Life; and, with inquisitive Eyes, they have also view'd and pry'd into even his most private Transactions, so as not even the least Indiscretion has pass'd unobserved.

Some Actions, which in themselves are truly innocent, and are declared to be so by the constant uniform Practice of all the Great and Honourable Persons that have gone before him, are here represented as highly culpable.

Others, which we humbly apprehend, are not only innocent, but commendable and meritorious, even his personal Acts of Charity, are imputed to him as Crimes.

But in one Respect I must beg leave to congratulate the impeach'd Earl, and think it is his great Felicity, that in this so publick an Examination, so strict and rigid a Scrutiny into his whole Conduct, at least ever since he was first advanced to the Great Seal, there is not one Objection made, one Instance given of Corruption, Partiality, or Oppression, in his own personal Administration of Justice; and therefore, I hope, I may well conclude (since it is admitted by the Prosecutors themselves) that he has deny'd Justice to no Man, he has delay'd Justice to no Man, he has sold Justice to no Man.

The principal Objection that seems to be rely'd on by the Learned Managers, and the only one which I humbly apprehend can any Way affect the impeach'd Earl in the present Case, is, that possibly he may have been too easily led into a good Opinion of some Persons, who in the Eye of the World appeared

appeared to be Men of good Substance, and fair Reputation, Persons that were recommended to him by others of undoubted Honour and Credit; that he has admitted these Persons into Offices of great Trust and Profit under him; and they have at length been found not to have deserved the good Opinion, which he at first had been persuaded to entertain of them.

Some of these Officers have been negligent, others unfaithful in the Discharge of their Duty; and in their Crimes 'tis now attempted to involve the impeach'd Earl as their Principal and Patron.

And, in regard the principal Complaints against the Noble Earl are founded upon the Disposition of the Offices of Masters in Chancery, therefore it has been thought necessary (in the Preamble of the Articles exhibited) to represent the Masters in Chancery as Officers of very great Trust, sworn to serve the King and his People, and associated to the Lord Chancellor by particular Commissions, for his Assistance in the due Administration and Execution of Justice.

My Lords, what Use Masters in Chancery might formerly be of, and what Assistance to the Lord Chancellor they might antiently give, I know not, but at present they seem to be of very little Advantage to him in the Determination of Causes in Court.

They sit indeed in Court, at proper Distances, on each side the Chancellor, and sedulously attend his Motions, but never pretend to advise or interpose in Judgment.

They have likewise the Honour to be named in Commissions of Association to the Lord Chancellor; but the whole Body are not always named in such Commissions, but only such particular Persons as his Majesty is pleased to think fit: And this appears from one of the oldest Commissions that has been produced and read before your Lordships, I think it was the Commission granted to *Robert Southwell* and others the 9th of *October*, 4 *Edw. VI.* wherein there were not more than four or five of the Masters named; tho' I believe in the later Commissions their Names are usually all inserted. But what Power or Authority is given them by this Commission? None at all, that they can execute of themselves in the Absence of the Master of the Rolls, or some of the learned Judges named therein; for the Judges and the Master of the Rolls are only included in the *Quorum*.

But, my Lords, Commissions of this Kind are not uncommon: Clerks of Assize, and other Officers, are named in the Commissions of Association to the Judges of Assize, in their respective Circuits, yet act as Ministerial Officers only under them.

And I humbly apprehend, that in this Case it has been sufficiently proved before your Lordships, by a Gentleman (that was once a very good Master in Chancery) that they now pretend to exercise no judicial Authority whatsoever.

They examine and state such particular Matters and Facts, as the Court is pleased to refer to them, for its better Information, and which the Court itself has not Time to look into; they settle Accounts depending between the Suitors of the Court; they look into, and take Counsels Opinions upon Titles of Estates bought and sold by Order of the Court; and they tax Costs.

This seems to be their principal Concern; and yet in this they are not absolute Judges, they deter-

mine nothing finally; for when they have made such Enquiry as the Court directs them, they only certify their Opinions of the several Matters referred to them by way of Report, which Report is not conclusive to the Parties; for either of the Parties that thinks himself aggrieved by such Report, may take Exception to it; and the Court, on hearing such Exception, will controul the Master's Report, and determine as they think Just. And in case the Parties themselves do not controvert the Matter reported, but totally acquiesce and submit to it, yet is not the Master's Report a final Judgment, nor will bind the Parties thereto, till it be afterwards confirmed by the Order of the Court: It receives its Authority and Sanction from the Order of the Court, and has none without it.

But it was certainly very rightly judged by the learned Managers, and they have thought it very material for them, to advance the Reputation of these Offices; in order to make it more penal to have any Present or Compliment made to the Great Seal, upon the Admission or Resignation of the Masters.

Another Observation was made by one of the learned Gentlemen of the House of Commons, in relation to their general Charge, which is this; They charge; that the Earl, in or about *May*, One thousand seven hundred and eighteen, by the great Grace and Favour of his Majesty, was constituted Lord Chancellor, and did thereupon take the usual Oath for the due Execution of that Office, and such other Oaths as have been accustomed; in order, as I conceive, to insinuate, that he had acted contrary to, or in Violation of some particular Oath, which had been administer'd to him.

The Earl in his Answer admits, That on the fourteenth of *May*, One thousand seven hundred and eighteen, he took the Oath of Office as Chancellor; which is set forth in his Answer; that at the same Time he took the Oaths of Supremacy and Allegiance, but no Oath of Office, except that above set forth.

To this Part of the said Earl's Answer, the learned Managers are pleased to object, That the Oath prescribed by the Statute of *Richard the Second*, had been frequently administer'd to the Noble Earl, but that he had forgotten that Oath in his Answer, as well as in his Conduct and Practice.

And to prove this Fact, *Mr. Eyre* (one of the Officers of the Exchequer) was produced, on whose Evidence it did appear (as we apprehend the Fact truly is) that when the Honourable Privy Council are annually assembled in the Court of *Exchequer*, to prepare a List of Names of proper Persons to be presented to his Majesty, for his Choice of Sheriffs for the Year ensuing, and the Judges then also attending, one of the Officers of the Court reads over the very Words of the Statute of *Richard the Second* in *French*, and then the Bible is presented to the Noble Lords, and others of the Privy Council, and also to the Judges present, which they kiss, and then proceed to the Nomination of the Sheriffs for the several Counties in *England*.

My Lords, I must observe that upon this Occasion no formal Oath is administer'd, in pursuance of this Act of Parliament; nor any Entry or Record made of any Oath taken by all or any of the Persons present.

The words of the Act of Parliament are, That the Chancellor, Treasurer, and other great Officers therein named, the Justices of the one Bench, and of the other, the Barons of the Exchequer, and others, who shall be called to ordain or make Justices of Peace, Sheriffs, or other Officers therein named, or any other Officers or Ministers of the King, shall be firmly sworn that they shall not ordain, name, or make such Officers for an Gift or Brokage.

This Act of Parliament doth direct an Oath to be administer'd, tho' the precise Form of the Oath is not prescribed.

But the Act of Parliament it self can't be called that Oath which it self directs; nor the reading or hearing that Act of Parliament read, be called the administering or taking that Oath: The Oath must be something distinct from the Act of Parliament which directs it.

Therefore, my Lords, I humbly submit it to your Lordships, that the reading of this Act of Parliament, upon this particular Occasion, is rather used as a particular Exhortation or Admonition to that August Assembly, how they ought to demean themselves in that single Instance of their Duty (the Choice of Sheriffs) than to have an universal Obligation in respect to the Nomination of all other Officers in general.

If this was intended to be administer'd as an Oath of Office, then being once taken by any Person in Office, it need not be taken again, during the same Person's Continuance in the same Office; but this Act of Parliament is annually read over upon the Return of every Election of Sheriffs, and seems to be particularly applicable to that Duty.

Sheriffs are indeed very great Officers, have whole Counties under their Influence and Jurisdiction; and therefore very singular Care ought to be taken in their Nomination.

The Chief Justices and Judges present upon that Occasion, use the same Ceremony of *Kissing the Book*; and if this should be interpreted an Oath, it would be of great Extent, and the Consequence of that must be, that the best Offices should have no Candidates for them; for the latter Part of the Oath, directed by this Act, is, That none, who pursueth by him, or by other, privily or openly, to be in any manner of Office, shall be put in the same Office, or any other.

So, if this be consider'd as an Oath, every one of the great Persons that have taken it, must be indifferently obliged not to give any Office to any Person that hath even ask'd, or made Application by himself, or any one in his Behalf, for that or any other Office whatsoever.

If this Construction, which is now contended for, was admitted, a great many Persons might be thought guilty of Perjury, who themselves never apprehended it; and how far the Guilt of this Perjury may be extended, is not easy to determine.

But, my Lords, it is not the Noble Earl's Intention to incur the Censure of quibbling himself out of the Obligation of an Oath, or the Letter of an Act of Parliament; we beg leave to insist, that in whatever Light this Transaction is taken, it can't be constru'd to be the taking an Oath within the Intention of the Charge contain'd in the present Articles, which is, That he took the Oath of Office, and such other Oaths as have been of Right accusom'd.

This Charge, my Lords, must be confined to some reasonable Time, wherein these other Oaths charged must be supposed to be taken: I apprehend it can relate

to such Oaths only, as the Noble Earl took at the same Time, when the general Oath of Office was administer'd to him.

And the Earl, by his Answer, certainly understood it in this Sense; otherwise, to make a compleat Answer to so general a Charge, he must have been under a Necessity, to have set forth all the Oaths which he hath taken in his whole Life-time, at least, since his first Oath as Chancellor.

He took the Oath of Office as Chancellor the fourteenth of *May*, One thousand seven hundred and eighteen; this Proceeding in the *Exchequer* is proved to be in *November* following: Who would understand that this Charge intended to couple two Transactions together, that in themselves were so distinct and remote!

Having thus endeavour'd to remove these Objections, which seem to be no Part of the Charge, but only used as introductory to it, I shall now proceed to the Charge itself.

The first and general Charge is, That the said Earl, not regarding the Obligation of his Oath, or the Duty of his Office, but entertaining wicked and corrupt Designs and Views to procure himself exorbitant Profit, by divers unjust and oppressive Practices, whilst he continued in the Office of Chancellor, did illegally, corruptly, and extorsively, take and receive to his own private Use great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

This is insisted on by the Gentleman, who first spoke, as an Offence of the deepest Dye, which strikes at the very Root and Foundation of all Civil Government; and to render it more odious, it is introduced as an Act of the highest Ingratitude to his Majesty, as well as injurious and oppressive to his Subjects. To demonstrate this, it is represented, that upon the said Earl's being appointed Lord Chancellor, in *May*, One thousand seven hundred and eighteen, his Majesty was pleased, of his Grace and Bounty, to bestow upon him the Sum of fourteen thousand Pounds in Money, and to grant him several other yearly Pensions and Payments, which another Gentleman (in observing the Evidence given on this Head) was pleased to say, did, together with the usual Salary, Fees, and Profits, belonging to the Office, amount unto near ten thousand Pounds *per Annum*; and this was strongly urged as enough to satiate the Appetite of the most Avaricious, and prevent any illegal and corrupt Extortions of other Sums from his Majesty's Subjects.

To this, my Lords, we hope your Lordships will think the Noble Earl has put in a very plain and satisfactory Answer.

That he had for several Years before his Advancement to the Great Seal the Honour of serving his Majesty in the Office of Chief Justice of the Court of *King's-Bench*; and as a Reward for his good and faithful Services in that high Office, his Majesty, out of his Royal Grace and Favour, upon the tenth of *March*, One thousand seven hundred and fifteen, was pleased to advance him to the Dignity of a Peer of this Realm; and for the better Support of that Honour, to grant him a Pension of twelve hundred Pounds *per Annum*, and to declare his Royal Intentions of giving the said Earl's eldest Son an Office of considerable Profit, when Opportunity should offer.

That in *May*, One thousand seven hundred and eighteen, his Majesty was pleased to appoint him Lord Chancellor; on the fourteenth of the said Month of



of May, he took the usual Oath of Office, and at the same Time the Oath of Supremacy and Allegiance, and no other Oath of Office.

That during the Time he continued in the Office as Lord Chancellor, he enjoy'd the usual Salary, Fees, and Perquisites; which Mr. *Pincent* (who was called as a Witness to this Particular) proved to be about eleven or twelve hundred Pounds *per Annum*.

That his Majesty also granted to him the Salary of four thousand Pounds *per Annum*, during his Continuance in that Office; which was not particular in his Case, but constantly granted to, and enjoyed by all his Predecessors.

That to this, his Majesty was further pleased to sign a Warrant to him for fourteen thousand Pounds, as mention'd in the Articles; whereof two thousand Pounds was the usual Allowance to other Lord Chancellors, or Keepers, towards the Expences in entering upon the Office; and the rest was his Majesty's Royal Munificence, and received as such.

The Noble Earl likewise admits, that his Majesty was also pleased to grant his only Son, then going to travel, an yearly Pension of twelve hundred Pounds, determinable upon his Majesty's granting him one of the Offices of Teller of the *Exchequer* for Life; which was accordingly granted, and he came into the Possession of it, in One thousand seven hundred and nineteen, whereby that Pension determined; so that the yearly Payments to his Lordship were but six thousand four hundred Pounds *per Annum*, besides the Pension of twelve hundred Pounds to his Son, which soon after determined, upon his coming into Possession of his present Office.

This is all the Revenue which the Noble Earl received during his Continuance in this great Office: And, I humbly presume, this can't be thought excessive, considering the great Fatigues, Difficulties, and Expences, that necessarily attend the Execution of this high Office: Perhaps other Offices might be found, that are less difficult in the Execution, and yet superior in Profit.

But, my Lords, the Objection does not seem to turn that Way; but rather, that this Noble Lord, not contented with these several Instances of Royal Grace and Bounty, illegally, corruptly, and extorsively took and received other great Sums from other Persons to his own Use.

This the Noble Earl expressly denies, and says, That during his Continuance in the Office of Chancellor, or at any other Time, he never once had a Design or View, or even a Wish, to raise to himself any exorbitant Gain or Profit, much less to extort Money by any unjust or oppressive Methods whatsoever.

And indeed, my Lords, this is a Charge that gives the Noble Earl at once the greatest Trouble and Surprize; he never suspected a Crime of this Sort, so contrary to his Nature, and the whole Tenor of his Life, could ever be objected to him: And to shew, that this is without any Foundation of Truth, the present Circumstances of his Family and Fortune (when laid before your Lordships) will abundantly demonstrate and convince Mankind, that he is not that rich, that avaricious, and corrupt Man, as he is represented.

As he has received large Bounties from his Majesty, he has been abundantly liberal to Persons that were proper Objects of Charity; and his Purse has been always open to succour and relieve the Distressed.

This, my Lords, brings me on to the material and principal Part of the Charge, which is, That he did illegally, corruptly, and extorsively take and receive to his own private Use great Sums of Money, in Breach of his Oath, and Violation of his Duty as Lord Chancellor.

The Instances given of this corrupt taking of Money refer to the several Sums mentioned in the five Articles, which the Gentlemen of the House of Commons were pleased first to enter upon, and which relate to the several Sums of Money received from the four Masters in Chancery, mentioned in the fifth, sixth, seventh, and eighth Articles, and the Clerk of the Custodies mentioned in the ninth.

If the Charge contained in these several Articles be a Crime, it must appear to be so in its own Nature, to be an Offence at Common Law, or made such by some Act of Parliament. I submit it to your Lordships, that taking a Present, or taking Money from Persons upon their Recommendations or Nominations into Offices, though they do concern the Administration or Execution of Justice, is not a Crime in its own Nature; it is no Act of Immorality; it is no Act of Injustice to any Man; for no Person has any particular Right to these Offices, but his Advancement must be owing to the Favour or Friendship of him, who has the Right and Power of Nomination: And if the Office it self be valuable, so is the Right of Nomination to it, and may be esteemed as Part of the Estate of that Person to whom it belongs: And if we consider it in this Light, I think it can't be denied but that every Man has a natural Right to dispose of his own Estate or Interest, his own Friendship or Favour, upon what Consideration he pleases: It is his own, and therefore he has a Right to make any just and legal Advantage of it.

From hence; my Lords, I would beg leave to infer, that the taking a Gratuity or Sum of Money from any Person, upon his Nomination to one of these Offices, is not criminal in it self, if simply considered, and distinct from the Good or Evil Consequences that possibly may attend it.

And, in the next Place, I humbly submit it to your Lordships, that it is not a necessary Consequence, that every one that buys an Office, must and will behave himself either unfaithfully or corruptly in it. Instances may be given, and those very antient ones, of Offices of Justice, Offices of the highest Character in the Administration of Justice, that have been purchased, and purchased from the Crown.

In Mr. *Madox's* History of the *Exchequer*, Page 43. we find that *Richard Fitz-Allured*, in the Time of King *Stephen*, fined fifteen Marks of Silver, that he might sit with *Ralph Bassett* to hold the King's Pleas; and in Page 743. of this Book it appears, that *Ralph Bassett* was the King's Justicier. Here we see one of the Justices of the *King's Bench* purchasing his Office for fifteen Marks in Silver.

And in the same Page of the said Book it appears, that in the seventh Year of King *John*, *Walter de Grey* gave the King five thousand Marks *pro habenda Cancellaria Domini Regis tota vita sua, & pro habenda inde Charta Domini Regis.*

These, my Lords, are great Instances what the antient Usage was, in purchasing even the highest Offices of Justice.

Inferior Offices were doubtless disposed of in the same manner; and if this had been thought Criminal, we should have had some Instances in our Law Books, wherein they would have appeared to have been adjudged so.

I beg your Lordships leave to consider in the next Place, and that very briefly, whether this can be taken to be criminal within the Words of the Statute of *Edward VI.* which has been taken Notice of by some of the learned Managers.

By the 5th and 6th of *Edw. VI. c. 16.* it is Enacted, *That if any Person or Persons shall at any Time thereafter bargain and sell any Office or Offices, or take any Money, Fee, or Reward, or any other Profit, directly or indirectly, for any Office or Offices, which shall in any wise touch or concern the Administration of Publick Justice; All and every such Person and Persons that shall so bargain and sell, or take any Money, Fee, or Reward, for such Office or Offices, shall not only lose his Right, Interest and Estate in such Office or Offices, but also every Person and Persons that shall give or pay any Sum of Money, Reward, or Fee, shall be adjudged a disabled Person in the Law, to have, occupy, and enjoy the said Office or Offices.*

This is the Purport of this Act of Parliament, so far as it relates to the Offence charged in these Articles; and I apprehend it cannot be extended to the present Case.

Here are no prohibitory Words, that Persons shall not bargain and sell Offices, nor any Words declaratory that they could not do so before by Common Law.

And all Penal Laws are to be construed favourably for the Benefit of the Subject, and not extended beyond the Letter.

But on the contrary, by the many Proviso's after contained in this Act of Parliament, it is plain that all Offices, before the making of this Act, might be bought and sold without Offence; and many Offices are authorized and intended by the express Proviso's of this Act, to continue to be bought and sold for the future.

For by the first Proviso in this Act, it is declared not to extend to any Office of Inheritance, which is an express Declaration that Offices of Inheritance were to be bought and sold even after the Act should take place.

The second Proviso I apprehend is stronger to our Purpose; for by that it is declared, That this Act shall not extend to any Contract made or agreed before the first of *March* then next, but all such Bargains and Contracts to be good, as if the Act had never been made.

And, my Lords, there is yet a further Proviso, That this Act, or any Thing therein contained, shall not extend, or be prejudicial, or hurtful to any of the Chief Justices of the King's Courts, commonly called the King's Bench and Common Pleas, or to any of the Justices of Assize, as now be, or hereafter shall be, but that they

and every of them may do in every behalf, touching and concerning any Office or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act, any Thing therein contained to the contrary thereof notwithstanding.

What is that which these great Officers of Justice might have done before the making this Act? They might have given, granted, bargained, or sold, the respective Offices under them, in such manner as they thought fit; and by this Proviso they may continue to do so still.

What Alteration then is made in the Law by this Act of Parliament? Here is no new Offence created, but a particular Penalty given, to be inflicted on all that shall buy or sell Offices, not contained in any of the subsequent Proviso's; that is, the Contract made between the Buyer and Seller is declared void: The Party selling loses his Estate and Interest in the Office; and the Party buying is render'd incapable to hold and enjoy it.

In *Castle's Case, Cro. Jac. 644.* it was adjudged, That when a Statute appoints a Penalty for the doing a Thing, which was no Offence before, and appoints how it shall be recovered, it shall be punished by that means, and no other.

Therefore, my Lords, in the present Case, supposing that the Presents proved to be sometimes made to the impeached Earl, upon the Nomination of Masters in Chancery, can be interpreted a selling of an Office, or taking Money for an Office, within the Intention of this Act of Parliament, it can be liable to no other Punishment than what the Act it self directs; and this the Noble Earl has already suffered by his Loss of the Great Seal. The Statute inflicts a Penalty upon the Seller of an Office, only of forfeiting the Nomination to the Office for the future; and no other Penalty or Punishment ought to be inflicted by virtue of this Act of Parliament; and consequently the Offence as now charged against the Noble Earl, and the Facts as proved before your Lordships, cannot subject him to any Punishment or Judgment, that can be prayed in this Prosecution, upon the present Articles of Impeachment.

But, my Lords, there is another Answer, which the Noble Earl has been pleased to make to this Part of the Charge against him, and which I hope your Lordships will have great regard to.

It is the Example of the many great and learned Persons, who have executed this high Office before him.

The Precedent is too antient, for us to discover when it was first made; and I humbly submit it to your Lordships, that the immemorial constant Usage and Practice of it in all Ages since, will sufficiently establish the Reasonableness and Justice of the Precedent.

The same Objection, which is now made against the Noble Earl impeached, in this particular Instance, might undoubtedly have been insisted upon against every one of his Predecessors.

And I doubt not but we shall be able to prove, that these Officers have made Presents to the Great Seal, as frequently and constantly as the several Vacancies have been supplied.

This Noble Lord has only followed the Example of his Predecessors; he has trodden in their Steps: And I must beg Leave to say, There must be something peculiar in his Case, if the same Paths, which lead them to Honour and Immortality, shall betray him to Infamy and Disgrace.

This Objection, my Lords, some of the Learned Managers of the House of Commons were well aware of; and therefore they have endeavour'd to distinguish the present from the preceding Cases.

They admit it to be true, that small Sums have been formerly given to, and accepted by former Chancellors, upon Admissions into these Offices, by way of Compliment or Present, and this without a Crime: But then they urge, that the Sums now complain'd of are exorbitant; they are bargained, haggled for, and given unwillingly by the Purchaser; and that there is a great difference between a Present given, and a Price bargained for and paid.

My Lords, I can't deny but that this Distinction is just: A Present implies a voluntary Gift of something less than the Value of the Thing given, or promised, for which that Present is to be made; a Price, the full Value of the Thing contracted for.

And I think the present Earl's Case is exactly within this Distinction, and justifies the Earl's Answer in this respect.

The Present which Mr. *Kinaston* made to the Earl, upon his Admission, was One thousand five hundred and seventy five Pounds. The Price he paid Mr. *Rogers* for the Purchase of his Office, was no less than Six thousand Pounds.

The Present which Mr. *Thomas Bennet* made to the said Earl, upon his Admission, was One thousand five hundred and seventy five Pounds. The Price he paid Mr. *Hiccocks* for the Purchase of his Office, was Seven thousand five hundred Pounds.

Mr. *Elde*, upon his Admission into the Office, upon the Death of Mr. *Fellowes* (the former Master) made a Present to the late Chancellor, of Five thousand two hundred Pounds. But when his Lordship consider'd the Greatness of the Sum, he returned him all but Eighteen hundred Pounds: When at the same time Mr. *Lucas* offered Six thousand Pounds for the same Office.

Mr. *Thurston* has also proved, that he left Bank-Notes to the amount of Five thousand two hundred and fifty Pounds, sealed up in a Letter at the Earl's House, before his Admission, upon Mr. *Borret's* Death. But when the Lady, to whom the Letter was directed, discovered how great the Sum was, she, without any Application made to her for that Purpose, return'd all but Two thousand Pounds.

And this, my Lords, was done before the Seal before *Michaelmas*-Term last, before the Masters were ordered by the Privy-Council to give in their Accounts; and when the present Prosecution was not in any sort apprehended: And it is likewise proved, That Mr. *Lucas*, upon this Occasion, renewed his Offer of Six thousand Pounds for the Office; and Mr. *Thurston* was admitted for a less Sum of Money.

These, my Lords, we humbly hope and insist are not Instances of a corrupt Mind, an avaricious, rapacious Temper, such as some of the Gentlemen Managers have been pleas'd to represent them. On the contrary, we humbly hope, that upon the Evidence already given, it plainly ap-

pears, that these Payments were not Sums of Money extorted and unwillingly paid by the Gentlemen, who were admitted into the several Offices that have been mentioned, but Presents voluntarily made, and press'd upon the Earl Impeached, with such Application and Earnestness that shews, that at the time they were offered, the Persons offering, thought they were not equal to the Value of the Favour they expected. And their Impunity was so great, that Mr. *Thomas Bennet* one of the present Masters, that has been so often Examined, would endure no Delay, but impatiently press'd to be Sworn into his Office, at a time when the late Chancellor was sick, and by his Physician thought to be dying. This may rather be said to be extorting a Favour from the Impeached Earl, than Money from Mr. *Bennet*, ev'n upon his own Evidence.

My Lords, We do humbly insist, That as the Noble Earl within your Bar was not conscious of any Crime in accepting these Presents, so he is justified in so doing, by the Example of many successions of great and learned Men, who have done the same in the like Case. And should this now be adjudged Criminal, what Numbers of very good and just Men must be involved in the Imputation of this Guilt? It must necessarily spread an universal Cloud of Infamy and Reproach over the Ashes of many just and upright Sages of the Law, whose Memories have hitherto been preserved as venerable and sacred; Men who despised Riches, and abhorred the remotest appearance of Bribery, and never were, nor were suspected to be Corrupt: yet these Men thought it a just Duty, owing to themselves and Successors, to adhere to the known and just Rights, the ancient established Fees and Perquisites of their Offices; and believ'd it as justly due to them, as the Salaries which were annexed to their said Offices.

My Lords, We shall beg Leave to shew that this has been the ancient Usage and constant Practice of all Ages; and that the several Great Persons, who successively have presided in the greatest Courts of Law and Equity, from the earliest Times to the present, have disposed of the several Offices in their Gift, as they became vacant, for Money.

Frequent Instances of this kind will be produced before your Lordships, in our Evidence.

My Lords, I would not be understood to mention this, so as to insist that the Actions or Examples of the greatest Persons will alter the Nature of Good and Evil, or give a Sanction to any Action that in itself is really Criminal; but only as an Argument (and I apprehend it a very strong one) to prove, that it was the concurrent Opinion of all those Great Persons that have taken Presents, upon their Disposition of Offices, that it was not Criminal to do so.

The Opinion and Judgment of so many Learned Persons must have very great Weight in a Case of this Nature: And if in strictness it can't be said to justify the Action, it will certainly very much Ex-tenuate the Guilt.

In the next place, the Gentlemen are pleas'd to proceed to shew, That Masters in Chancery, being, as before represented, very great Officers in that Court; the Noble Earl within the Bar, for his own corrupt Gain, has admitted Persons into that Office, that were not duly qualified for it, and forced them to give great Prices, and bartered and haggled for such Prices.

This, my Lords, is urged as the greatest Inconvenience, That Men who have no Substance of their own, should be trusted with such large Sums of other Persons Money.

It is insisted, That Honesty, Probity, and good Substance, are absolutely necessary for the Suitors Security; yet Inferior Persons have been put in by his Lordship, who had little or no Substance of their own: That they paid great Sums for their Places, yet paid it out of the Suitors Money; and that this was known, connived at, and encouraged by the Noble Lord that then presided in the Court of Chancery. This therefore could only be with a view to enhance the Price of those Places: For what would not People hazard, who had Nothing of their own to lose? If any Profit could be made, it was their own; if any Loss, the Suitors; for no Security was given to answer the Effects in their Hands.

My Lords, It must be confess'd, that this way of Arguing has a very popular Appearance, and finds an easy Access to every Ear.

The Court of *Chancery* must be admitted to be the greatest Court of Justice in the Kingdom: And it must be also admitted, That the Business of that Court has of late Years increased, in Proportion, more than any other Court; and consequently, much greater Sums of Money are now deposited in the Hands of the Masters of that Court, than formerly.

This may possibly make it to be wished, that some better Method might be found out for the Suitors Security. than has been formerly used.

But in what Manner this Reformation is to be made, is beyond the Power, or at least the Prudence of any one Judge or Chancellor to determine; the ancient Practice of every Court is the Law of that Court; and it would be a dangerous Experiment for any one presiding Judge to vary it: If any ill Consequence to the Suitors attended such an Alteration, he that made the Alteration would certainly be answerable for the Consequences of it; for every Suitor will then say, Why was the ancient Practice vary'd? he that made the Alteration, surely did it for his own Advantage; and then every Argument that in the present Case is only colourably made use of, in that would be obvious and natural, and be apply'd with double Force.

He that acts without a Precedent, acts upon the Peril of his own Judgment: But he that acts against Precedents, against ancient, concurrent, uniform Precedents and Practices, is without Excuse, and justly to be suspected of some particular View, in the Language of the present *Articles*.

The Earl of *Macclesfield*, when he was first intrusted with the Great-Seal, found the Suitors Money in the Custody and Care of the Persons who were then Masters of the Court, and without any Security given or demanded for it.

He consider'd, that his Predecessors were a Succession of Great and Honourable Persons, of equal if not greater Sagacity and Learning, Probity and Experience, than any that ever had fate in any Court: they found the Masters in Possession of the Suitors Money upon the same Establishment, and they left them so.

Was it proper or prudent for him to oppose his single Opinion to the united Judgment of so many wise and great Men that had gone before him? Surely, no. Inconveniencies had been seen before, and Deficiencies had happened, and those

Deficiencies had been supply'd by a voluntary Contribution of the other Masters then in Being. Why was not Security then demanded? and why not all the other Masters then called upon to bring in their Accounts, to prevent the like Deficiency for the future? If that Method had been thought either prudent or practicable, no doubt it would have been then taken: And this being then not done, or ever before or after attempted to be done, is a good Argument, that it was not expedient, or, it may be, possible to be done, at least upon the single Authority of one Lord Chancellor. And that therefore is a good Excuse for the Omission or Neglect in that Particular, in the present Case.

But, my Lords, It is now objected, That as the Sums of Money in the Masters Hands are greater than ever, and it may not be proper to alter the ancient Method of the Masters receiving and keeping it for the Suitors Benefit; yet greater Care ought to be taken of the Persons to be admitted Masters, upon Vacancies and Resignations. And therefore another part of the Charge against the Honourable Earl Impeached, is, That he appointed Persons to be Masters of the Court, that were not proper or sufficient either in Substance, Knowledge, or Probity.

These are said to be all essential Requisites in the Character of every good Master; but grossly neglected in the present Case: And a Reason is given, or (if I may presume to say it) rather invented, in the present Case, that it was the Advantage of the Earl Impeached, to put in such Unqualified Persons; because such Persons would be drawn in, to give larger Prices for their Places, and consequently it redounded to the Earl's Advantage.

My Lords, I must beg Leave to observe, that in the Evidence that has been given, there has not been any one Instance proved (or at least, that I can recollect) that any of these Masters were really Insufficient in any of the Particulars objected to, at the time of their respective Admissions into their several Offices; or at least that the Noble Earl Impeached, then knew that they were Insufficient, or had any reason to suspect it: They were all Gentlemen of good Families, well Educated; each of them a Barrister at Law (which, I submit to your Lordships, is not the least expensive Education) and had all visible Fortunes, and appeared as Persons in very plentiful Circumstances.

Ev'n Mr. *Conway* and Mr. *Thomas Bennet* (who are the Persons intimated to be the least qualified in Point of Fortune and Substance) had at that time very good Estates in their Possessions; Mr. *Bennet* had then also a very valuable Office, Clerk of the Custodies; had married a Lady of considerable Fortune, kept a Coach and decent Equipage in Town; was the Son of Sir *John Bennet*, tho' a younger Son; and the whole Family then seemed to be in a very prosperous Condition. Mr. *Thomas Bennet* has proved to your Lordships, that he was worth Twenty thousand Pounds, in the Year 1720. And it does not appear, that the late Lord Chancellor was ever inform'd of any Incumbrances upon his Estate (tho' now, he says, there are great ones) or that his Circumstances were less at the time of his Admission, than in the Year 1720. Surely then the late Lord Chancellor had at that time no reason to suspect his being unqualified in Point of Substance.

Mr. *Conway* had also then a very good visible Estate in Land, an Estate of Four or Five hundred Pounds a Year; had been Receiver-General of several Counties in *Wales*, had discharged his Office punctually, and produc'd his *Quietus* to the Lord Chancellor, before Admission.

Mr. *Kinaston* had, at the time of his Admission, an Estate of Four hundred Pounds a Year in Land, Timber of very considerable Value, and a Personal Estate of Two or Three thousand Pounds; and moreover, was a Gentleman of a very good Family and unblemished in his Character.

Mr. *Thurston*, I think, the Gentlemen of the House of Commons don't object to in any respect. None of their Reputations, in respect of their Probity, have been called in question, till their late Misfortunes: And as to their other Personal Endowments, their good Sense and Judgment, I need only refer to your Lordships own Observations, upon their several Examinations in the present Tryal.

But, my Lords, great Strefs seems to be laid, upon the Masters paying for their Offices, out of the Suitors Money; or replacing the Money so paid, out of the Suitors Money.

Suppose that was the Practice amongst the Masters; does it appear to your Lordships, that the Impeached Earl had any Notice, or the least Information given him of this Practice? Or if he had known it, how could he possibly have prevented it? Certainly, no other way, than by ordering all the Money immediately out of their Hands. And then another Difficulty would have occurred, how that Money should have been disposed of. Publick Societies would not submit to be under the immediate Direction of the Court of Chancery; and no private Person could be trusted with so great a Sum, or give Security for it.

The Masters of the Court are in nature of Cashiers; they subsist upon Trust and Credit; and no Security can be expected to answer the Quantity of Cash in their Hands, more than in the Case of a common Banker. People will trust Men in Credit with the Custody of a Thousand Pounds; when if they propos'd to borrow an Hundred Pounds on Security, would scruple to let them have it. But the Objection is carry'd yet farther: It is said, If Security could not be expected, why were not their Books inspect'd, upon one's transferring to another, and Schedules taken of their Effects?

To this it must be answer'd, That the Lord Chancellor has not Leisure to attend this Duty Personally. And what other Person can be appointed more fit to be trusted (as an Inspector of the going-out Masters Accounts) than his Successor, who is to stand charged with all the Money and Securities, and the whole Effects transferred?

Can any Obligation incline a Man more strongly to Care and Exactness in Business, than private Interest? And his own private Interest will oblige him not to make himself accountable for more than he actually receives, and has transferred to him. And when the succeeding Master has examined the Effects of his Predecessor, by proper Schedules approved of by himself, they are then transferred to him by a General Order of the Court, and he becomes accountable for what is so transferred.

This, my Lords, we humbly submit, has been the ancient Usage and Practice of the Court in these Cases; and that the same Method was used

by the present Earl Impeached, the same Care taken, as had been formerly in the like Cases by any of his Predecessors.

But, my Lords, I would beg Leave to submit it, That supposing it to be possible that greater Care might have been taken by the late Lord Chancellor, in inspecting the Schedules and Transfer of the Effects of Masters to their Successors; Does it appear that the Suitors of the Court have been any way injured or prejudiced by that pretended Neglect? Or would the greatest Care, the greatest Exactness in this Particular, have given the Suitors any greater Advantage or Security? Certainly, not at all: For let the Effects of the preceding Master be never so carefully and justly Examined and Scheduled, and after that transferred, and actually delivered to the succeeding Master; has not the new Master, to whom these Effects are thus carefully and justly delivered, the same Power over them, to manage and dispose at his Pleasure, as he would have had, in case such Transfers had been made with less Caution and Exactness, as in the present Case?

If any corrupt Agreement had been made by any new Master, upon coming into his Office, and previous to this Transfer, to have repaid or replaced any Sum of Money, before borrowed by him, either for the Purchase of his Office, or any other Occasion; Could not he have complied with this, and paid it out of the Suitors Money or Effects, the very next Moment after they were transferred to him? And would the previous Care and Caution in any degree obstruct or prevent his so doing? I apprehend, not at all; for as soon as the Master is in Possession of the whole Money and Effects, he may return any part that he pleases to his Predecessor, by virtue of any Agreement before made for that Purpose; which would be as much to the Prejudice of the Suitors, as if what was so returned to the Predecessor, after a Transfer made, had been retained in the first Instance by the Predecessor, and never actually delivered over to his Successor.

Therefore, my Lords, this Security, as project'd, is but Imaginary, and gives the Suitor no greater Advantage than he had before; and consequently this ought to be no Ingredient of Complaint against the Impeached Earl.

But, in the next place, it is strongly urged, That tho' the Noble Earl, during his High Offices, might not have Leisure to attend little Occurrences, or regard small Neglects; yet the Going-off of Mr. *Dormer* should have awaken'd him; some Care should, upon that Accident, have been taken. If what had pass'd before was only Supineness, this was a Wilful Neglect; and not enquiring into the State of his Affairs, and securing his Person and Effects for the Suitors, was concurring in Defrauding the Suitors.

My Lords, This was indeed a remarkable Occurrence: The Going-off of Mr. *Dormer* was unforeseen, and unsuspected: His Person was withdrawn, and out of the Power of the Court; but all imaginable Care was taken to secure his Effects.

The two Senior Masters immediately were directed to enquire into his Effects, secure his Chambers, and put a stop to all Transfers in his Office. What more possibly could be done in this Emergency, his Person being out of the Power of the Court?

A Proposal is made on his Behalf, That if the then Chancellor would engage that his Liberty should be secured to him, he would return, and discover

discover and assist to get in his Effects. This is thought reasonable, and for the Suitors Benefit, and accordingly complied with; and thereupon the unhappy Man returns, and not only makes the best Discovery of his Effects, but delivers all in his Power, for the Benefit of the Suitors. Could any thing be more Advantagious to the Suitors, or contribute more to their Interest than this?

The Impeached Earl had indeed promised his Person should not be Imprison'd; and it would have been the highest breach of Faith to have departed from it. Had not that Promise been made, Mr. *Dormer* had not Return'd, nor any Discovery been made by him; but by this Means they had the Benefit of the best Discovery that could be had, and the best Assistance the Noble Earl could give them. He never deny'd or discouraged any Application that was made by or for the Interest of the Suitors in that respect, nor endeavour'd to conceal the true State of his Effects, and the Condition of his Office. And as to the Expressions insisted on to delude the Suitors, by saying, as has been objected, That Mr. *Dormer* was only gone to take the Air, and would soon return; tho' these Expressions have been much insisted on, in the Arguments against the Impeached Earl, I do not remember that they have been mentioned in the Evidence.

And, my Lords, to shew that the Impeached Earl did all that was in his Power to render what Assistance he could give the Suitors; when a new Master was to be appointed, he left the Disposition of the Office to the Direction of the other Masters: And Mr. *Edwards* gave no less than Five thousand Pounds for that Office of Mr. *Dormer's*, which was wholly apply'd towards the making up his Deficiency. By this Enquiry, *Dormer's* Real Estate was secured to the Suitors; and it was expected by the Earl himself, and by Mr. *Edwards* that succeeded Mr. *Dormer*, that the rest of his Deficiency, which was then uncertain, would have been supplied by the other Masters, provided they could be continued in their Offices upon the old Establishment.

It may not be improper to observe further in this Case, That Mr. *Dormer's* Deficiency does not appear to have happen'd through any Extravagance of his own, or by his Misapplication of the Publick Money: He employ'd Mr. *Wilson*, then a Person in good Credit, as his Banker, and entrusted him with his Cash. *Wilson* had Dealings with *Poulter* in the fatal Year 1720. *Wilson* was reduced, and stopped Payment; his Debt to Mr. *Dormer* was then Twenty four thousand and forty six Pounds; this, Mr. *Dormer* assigns to Mr. *Edwards* his Successor in the Office, it was all that Mr. *Dormer* had, all therefore that he could restore, and more than could be got in: For Mr. *Edwards* applying for this Money, found Mr. *Wilson* not able to pay the whole Debt, and thereupon a Proposal is made of a Composition.

The Masters considering this, thought proper to Petition the Lord Chancellor, That it might be referred to the Senior Master, Mr. *Hiccocks*, to Examine and Report, Whether it was for the Benefit of the Persons Entitled, that a Composition should be accepted.

The Master to whom this Question was referred, Reports it Reasonable; and an Order is made, upon a second Petition preferred, That the Composition should be accepted.

This, my Lords, we apprehend, was an engaging in this Affair with all the Zeal that could be desired on the Earl's part; no Evidence of any Design or Endeavour to conceal the Deficiency: All or most of the Masters consulted upon this Composition, and consented to it: And as for those that were not Parties to it, they are not bound by it.

But it is objected, That this Transaction was Private and Clandestine between the Masters and the then Chancellor; not carried on in the usual Manner, nor any Notice given to the Suitors in Reality, tho' a Pretence of uncertain Notice mentioned at the Bottom of the Order.

My Lords, we hope this cannot affect the Noble Lord within the Bar; it is the Duty of the Chancellor to pronounce Orders in Court; but it is the Care and Duty of the Solicitors or Clerks in Court to see them Drawn up, Entred and Registered, in proper Time and Form.

The Substance of the Order is pronounced by the Court: The Form is the Act of the Register; and the Chancellor can't have Leisure to attend the Entries of all his Officers.

Fourteen hundred Pounds was paid in upon this Composition; One thousand Pounds has been brought in since out of *Poulter's* Effects: So much has been secured at all Events by this Composition, and the Suitors have received the Benefit of it. Have the Gentlemen on the other Side shewn, that without this Composition any thing could have been secured to the Creditors in General, or that any other Creditor has obtained more advantagious Terms? It was said indeed that other Creditors had received their full Demands: But I submit to your Lordships, that no Proof has been made thereof, only an uncertain Hear-say of small Sums lent, to give him new Credit after his first Absconding. But when the Composition was made, a good Debt was subsisting to *Wilson* from *Poulter*, and Judgment obtained against him, and he committed to the *King's-Bench* Prison in Execution. The Marshal suffers him to Escape: Thereupon an Action is brought, and Judgment obtained against the Marshal, for his Escape; and at length the Marshal is run out of the Kingdom, to avoid making a proper Satisfaction.

What a Series of evil Accidents concur to increase this Misfortune, and prevent the just Design of the Earl to do the Suitors all the Justice in his Power! But to whom has he been Defective, if all prudential Steps have been taken? It is hard that he should answer for the Consequence, that he could not, it was not in his Power to prevent.

But, my Lords, in the 15th Article, it is objected to the Impeached Earl, That to carry on his unjust Purposes, in Concealing *Dormer's* Deficiency, in *February* One thousand seven hundred and twenty. he ordered the Masters to bring in their Accounts of their Cash, Effects, and Securities; not with a real design to Examine the Accounts, and Secure their Effects, but to terrify them into a Contribution; and threatned that the Cash should be taken out of their Hands, if they did not comply; by which means he got nine of the said Masters to contribute Five hundred Pounds a-piece out of the Suitors Money, and then no farther Proceedings were had upon their Accounts.

My Lords, One would have thought that these Proceedings, which so plainly tended to the Good of the Suitors, could not by any Artifice have been interpreted to their Prejudice.

In *February* 1720, my late Lord Chancellor (finding Mr. *Dormer's* Deficiency like to be greater than at first it was apprehended) was willing to look into the State of the Accounts of the other Masters, to guard against the like Misfortune; and at the same time proposes to them to advance Money to help to pay Mr. *Dormer's* Deficiency. Five hundred Pounds a-piece is raised by nine of them, and applied accordingly; the last of these Five hundred Pounds paid in *August* 1721. And upon the 7th of *November* 1721 a second Letter is written to hasten these Accounts, and every Argument used that could be thought likely to induce them to it: But the Labour proved too difficult, and the Pursuit was forced to be given over 'till a more convenient Time and Opportunity should present. What was done in this Instance also, I beg Leave to say likewise, was following the Example of another Great Man, in the Method he took in the Case of Dr. *Eddisbury*, and that has some Circumstances less favourable than the present: Dr. *Eddisbury* was always in Town, or at least within the Reach or Power of the Court, and yet his Person was not secured for many Years after his first Failure.

Upon the 29th of *January*, 7 *Annæ*, there is an Order entred in his Case, (the only one we can find on the File) for Dr. *Eddisbury* to deliver up his Effects to the two Senior Masters: It recites, That Dr. *Eddisbury* had several Sums and Securities for Money in his Hands, and that several Orders had been made for Money out of his Hands; which were not complied with; and that he declared himself not able to pay; and that his Accounts given in were not full: It is therefore Ordered, That in four Days time after Notice, he do Account to the several Masters, and deliver in to the said Masters what he hath in Hand, and the Report to be taken in ten Days.

My Lords, By this Order it appears that Dr. *Eddisbury* had several Orders made upon him for Money to be paid, not in Average, for some Time, and those Orders not complied with; and that he had not given full Examination, and had Prevaricated with the Court; yet the last Extremity, the Committing his Person, and ordering Payment in an Average, was not thought of, 'till it was certainly known and he had actually confessed that he had not Assets to pay the Whole.

In the present Case, Mr. *Dormer* was Examined; discover'd his Estate, assigned the Whole in Trust for the Suitors, but died before the Enquiry could be perfected.

In Dr. *Eddisbury's* Case the other Masters contributed at first to supply his Deficiency, as they since did in the Case of Mr. *Dormer*: And this without doubt was so done, in hopes that his Effects, when fully discovered, would in time prove sufficient to answer all, or much the greatest part of the Suitors Demands: And thus far both Cases are parallel, and Orders made for Payments to the respective Suitors in general, as they applied for them. And no Average was directed in the Case of Dr. *Eddisbury*, 'till it appeared ev'n by his own Confession, that his Assets were not sufficient to make good the Suitors whole Demand: And when the *quantum* of the Deficiency was known, Payments were directed by the Court to be made in Average. So, in all probability, in due time the like Order would have been made in the present Case: But that could not possibly be done 'till the Value of Mr. *Dormer's* Effects could be known

and ascertained, in order to fix the Proportion to be paid, in Average. And this, my Lords, to this time, through the many Accidents before mentioned, it has not been possible to effect: And therefore, the not directing Payments in an Average, can't be reasonably objected to the present Impeached Lord as Criminal: His Intention throughout the Whole appears to be calculated for the alone Service and Benefit of the Suitors of the Court, without any Prospect or Possibility of Advantage to himself. His Design was, to procure every Suitor full Satisfaction for his Demand: And if nothing had happen'd to interrupt so just a Design, 'tis possible that his great Zeal for the Publick Good, and his indefatigable Industry, might in due time have had their desired Effect.

But greater Powers have now interposed; and this Difficulty being found to exceed the single Authority of a Chancellor, may be thought to deserve the greater Power, Care, and Wisdom of the Legislature.

My Lords, What afterwards happened in the Case of Mrs. *Chitty*, is in part answered, in what has been observ'd upon the last *Article*; and I humbly apprehend, that a plain Narrative of that Fact, will be a sufficient Answer to the Objection that has been made in this respect. The Earl of *Macclesfield* having no certain Account what Cash of Mr. *Dormer's* remain'd in his Successor Mr. *Edwards's* Hands, made Orders for Payment of Sums of Money, from time to time, as Application was made in Court; and particularly to pay Mrs. *Chitty* One thousand Pounds, part of Eleven thousand Pounds of her Money which had been brought into Court in Mr. *Dormer's* time. Mrs. *Chitty* assigns this to Mr. *Lockman*. Mr. *Lockman* applies to Mr. *Edwards*, the present Master, for Payment, and is there disappointed of his Money: Then he applies to the Lord Chancellor, and represents the pressing Necessities they laboured under, That the Payment of One thousand Pounds to him at that Juncture of Time, would be of greater Service to him than the whole Money could be at any future Day: That this Sum of Money, if immediately advanced, would make his Creditors easy; and without it, he must inevitably be thrown into a Goal.

This, my Lords, we shall be able to make out in Proof (tho' Mr. *Lockman*, upon his Examination, deny'd it,) and the late Chancellor, out of pure Compassion and Charity to this Gentleman, and believing his Circumstances to be as he represented them, pays him the Money out of his own Pocket; and at the same time, or soon after, told him, that he must expect no more from him, but must wait 'till Mr. *Dormer's* Effects could be got in, or the Money could be advanced some other way.

What Objection can be reasonably made to this part of the Impeached Earl's Conduct? To deliver a Suitor in Distress; to extend a Charitable Arm to rescue him from the very Gates of a Prison just opening to receive him. If this be a Crime, and to be objected to him by the very Person who now enjoys his Liberty, as the Gift of this Noble Lord's generous but undeserved Bounty; I must not pretend to say that he has many Virtues.

On the contrary, I hope it will abundantly appear to your Lordships, ev'n from this Instance, and from the whole Series of this Noble Lord's Conduct, that he firmly believ'd that all the Suitors of the Court, would, in due time, be made

easy, and their whole Demands be made good to them. And had the whole Body of the Masters as cheerfully concurred in this good Design, and contributed as generously to support the Honour of the Court, and themselves, 'tis more than probable that the Suitors would not long have had any just Occasion of Complaining, nor your Lordships the Trouble of this Prosecution.

It was for this End, that the Masters were so often called upon to make a reasonable Contribution, and all Arguments made use of that would either persuade or terrify them into a Compliance, in making the Suitors easy, 'till a proper Fund or Method could be found out to give them entire Satisfaction. Most of the Masters, I think all but one, were convinced that this was a reasonable and just Proposal, and express'd a Readiness to come into it; and 'twas for this Purpose, that they were bid to consider of the Consequences of forfeiting their Offices, and of a Complaint in Parliament.

And for whose Benefit were these Arguments thus made and pressed upon the Masters? Who could profit by their Compliance, or suffer by their Refusal? Not the Chancellor himself: He had no other Interest to serve, no Inclination to gratify, but a just Zeal for the Publick Good, and a generous Concern for the great Loss that was like to happen to the Suitors of the Court, without his vigorous Interposition and Assistance.

This, my Lords, I humbly hope, appears to be the sole and just Principle upon which this Noble Lord has founded all his Designs and Actions, to restore the Credit of the Court, which had been greatly injured by other Mens ill Conduct; to procure the Suitors in general the best Satisfaction that could be obtain'd; not partially preferring one to another, but endeavouring to do every Suitor full and equal Justice, in order as their Complaints were brought before him.

As to the Expressions proved to be made use of by the Impeached Earl, in the Case of *Harper*; surely they can have little weight.

Can it be imagined, that after so many Transactions had happened in the Court of *Chancery*, in relation to Mr. *Dormer's* Misfortunes, and the great Losses that were like to happen to the Suitors thereby, the then Chancellor himself should be the only Person that had never heard of it; and ev'n after such time as he had been endeavouring to find out Means to remedy so great an Evil? Could any Man of less Sagacity than he must be allowed to have, conceive that he could be credited, ev'n in the Court wherein he presided, in saying (as it is now represented) That he was a perfect Stranger to the Affair of Mr. *Dormer*; that he had heard nothing of it, but as idle News, a flying Report, that might be true or false? No, my Lords, that certainly could not be his Intention, in speaking the Words that are said to be uttered by him on this Occasion.

But when a Purchaser under the Decree of the Court, that had paid his Money into the Master, and required his Conveyances to be executed, could not procure the Parties interested to execute, without actual Payment of the Purchase-Money to them at the time of the Execution, and that Money was sunk in Mr. *Dormer's* Hands; this first brought the Deficiency of Mr. *Dormer* in Judgment before his Lordship; and it was the first time it came regularly before him in Judg-

ment. Upon this he declared, That then it was a proper Time for him to make a strict Enquiry into this Matter: He could not properly enter upon this Enquiry, upon the uncertain Reports of Persons about the Town, or upon any private Conversation or Information that he might have received, and possibly might have the Expression of common Talkers of News; but now that it came Judicially before him, he would thoroughly Examine into the whole Matter, and endeavour to apply a proper Remedy.

This, my Lords, we shall prove to be the Occasion and Manner of the speaking these Words, by Persons that were then present in Court; and this happened but in *December* last was *Twelve-month*; and accordingly it was ordered to be put under the immediate Examination of Mr. *Edwards*, who succeeded Mr. *Dormer* in the Office, and who must therefore be admitted to be the most proper Person to perfect that Enquiry, and also because he was the most concerned in the Consequences of it: But Time has been wanting to proceed as far as he intended in that necessary Work.

My Lords, Tho' by this time, it can't be pretended but the late Chancellor, as well as every other Person belonging to the Law, must know of Mr. *Dormer's* Deficiency; yet I believe, that none had then discovered, or ev'n imagined how great it was; and that ev'n his Lordship, and most other Persons, were persuaded, that whatever should appear to be wanting in his own Effects, would be supply'd by the other Masters; or some other Method would be found out to prevent any real Loss to the Suitors; and in Virtue of this Persuasion, Orders were made for Payment of Money to the Suitors, as they apply'd for it, without directing an Average.

This is exclaimed against, as contrary to all Equity; Some to have all, and others to lose all, when they were all to be paid out of one Common Fund.

My Lords, Had it been proved to you, that when these Orders were made, it had legally appeared to the then Chancellor, that Mr. *Dormer's* Effects would at all Events prove Deficient, and that no way had been foreseen, whereby that Deficiency could have been supplied; I must admit this Objection would have been very strong: And in that Case, to have order'd full Payment to those Suitors who first applied, and left nothing for those that came after, would have been a manifest Partiality.

But this is not the present Case. When the Court ordered the first Payments to be made, it does not appear in Proof (as I humbly apprehend) that there would at last be any certain Deficiency in Mr. *Dormer's* Effects, or at least no pretence of judging how great that Deficiency was like to be. And consequently, the Payment of the whole Demand to the Suitors that first applied, does not necessarily infer that there would be any Loss to those which came after. His Effects, upon further Enquiry, might possibly come out to be more than were at first discovered; they might prove sufficient to answer all Demands: Or in case the Deficiency was not very great, a moderate Contribution from the other Masters, or, it may be, a reasonable Addition intended to be made to that by the Chancellor himself, would have supplied that



that Defect. And that this was really intended, I apprehend that the Evidence already given does abundantly demonstrate.

Another Objection has been made; That very great Sums of Money have been deposited in the Masters Hands, without any Security; and that some Proposals have been made to the Noble Earl, for securing in some measure those great Sums, and preventing the Masters having too great Power over so great a Cash.

Mr. *Lightboun*, one of the present Masters, first mentioned the Proposals: He had before communicated it to Mr. *Holford*. The Chancellor received it kindly, desir'd him to reduce it into Writing; took Time to consider of it, and frequently talked with him about it; always shewed an earnest Desire that this might be done, but thought the proposed Scheme not effectual. Many Consultations were had upon this Proposal; at last he summons all the Masters of the Court, the Registers, the Usher, and other Officers of the Court; obtains the Favour of the Master of the *Rolls* to joyn with him and them in the general Consultation; and every one expected some effectual Resolution would have been made, upon this grand Affair.

But the Master of the *Rolls* then taking notice that there were other Things in the Court that required a Reformation, as well as this; and taking notice that the Masters in *Chancery* had lately assumed to themselves a Power of Judicature in the Court, in opposition to him; insisted, That this pretended Power of Judicature in the Masters should be given up by them, before he would enter into the Debate of the other Question.

Mr. *Lightboun*, upon whose original Proposal this Great Assembly was convened, was the first, if not the only Person that opposed the relinquishing this new-assumed Power, tho' he knew the Consequence would be the Destruction of the other Proposition which himself had made.

He preferred the Affectation of this Power of Judicature in his Office, more than the Interest of all the Suitors; and upon this, the great Expectation of this solemn Meeting was disappointed, and nothing done.

What could a Lord Chancellor do more, that has the Honour of the Court and Interest of the Suitors the most at Heart?

Mr. *Lightboun* himself tells your Lordships, That after this last Attempt proved unsuccessful, he began to think there was but one single Lord in the World that had sufficient Spirit to undertake it.

But during all this time, nothing had happened to give the late Chancellor any just Jealousy or Suspicion of the Deficiency of any of the other Masters. They are proved to have often declared they were Sufficient; nay, they have themselves sworn, upon the giving in their Accounts, that they were able to make good the Balance. The Noble Earl Impeached, sincerely thought they were so; and therefore when their Accounts were brought to him, in order to be laid before the Council, in Obedience to His Majesty's gracious Commands, he did all that was in his Power or Capacity to forward that good Design, and make it successful: He ordered the Masters to speed their Accounts: And when they were brought before him, he observing that the Senior Master had under-written his Account in a full, and plain, and more direct Manner than the other Masters had done, he told them, He liked the Form which Mr. *Holford* the

Senior Master had used, and thought it a proper Precedent for the rest. They all complied, without Hesitation or Objection; no one pretended they had not Sufficient then in their Hands to make good their Balance; and accordingly subscribed to it, That they were able and willing to Make-good their respective Balances; or to the like Effect.

Can it be imagined, that this so fair and candid a Transaction, intended for the Satisfaction of the Council, and the good Security of the Suitors, can by any means be interpreted an Imposition upon His Majesty, by the late Chancellor? It was for His Majesty's Service that the Accounts should be laid fully and truly before Him in Council; and it must likewise be a great Satisfaction to His Majesty, to find that his Subjects Money in the Masters Hands was secure, by seeing their Acknowledgment, under their Hands, that they were Able.

The late Chancellor knew no more than any of the rest of the Honourable Privy-Council, or His Majesty himself, that this Declaration was false; and therefore it was equally an Imposition upon Him and Them; but no Fraud, no Crime in the Chancellor himself; which is the Objection now made against him. And indeed, many of the Masters which have been now Examined before your Lordships, have, upon their Evidence, Declared, That the Subscription thus made to their Accounts, were true, and that in Fact they have given good and effectual Securities to answer the respective Balances of their Accounts.

How hard a Work this Regulation of this great Abuse in the Court of *Chancery* was, the late Experience has shewn; and a total Reformation of it hereafter, would have proved more difficult, without the prudent and cautious Preparation, which the Noble Earl within the Bar has made for it, and which in due time he might have been able to effect.

Thus, my Lords, I have endeavoured (but very imperfectly, I am sensible, and confusedly) to offer what occurs to me in the Impeached Earl's Behalf. I ask your Lordships Pardon, and His, for taking up so much of your Time so unprofitably. What Omissions I have made, I doubt not will be supplied by the several Learned Gentlemen that are to speak after me.

I have this very great Satisfaction, that before your Lordships, the Merits of this, or any other Cause, will not suffer through the Incapacity of the Advocate on the one side, nor the Solemnity of the Prosecution on the other. When Facts are proved before your Lordships, no Observations can be equally Instructing as your Own. And upon the Evidence given, your Lordships will undoubtedly form a Just Judgment: A Judgment, I humbly presume to hope, That the Impeached Earl is Not Guilty of any of the Articles exhibited against him.

Dr. *Sayer*. My Lords, I am likewise a Counsel for the Noble Earl Impeached.

I am afraid it may seem somewhat improper, that I should engage in a Proceeding of so much Difficulty, foreign to the Profession in which I am bred: But as the very great Obligations I have to the Earl, prevail on me so far to forget my own Unfitness, I hope they will, on your Lordships, to excuse it.

The Articles exhibited by the Honourable the House of Commons, charge him with *Corruption*

tion and Extortion, in the most odious Manner; and the Learned Managers have heighten'd every Circumstance with the greatest Art and Eloquence; every Ill-Turn which his Actions, his Words, his very Omissions could be imagined capable to receive, hath been given; Suspicions and Jealousies have been rais'd; and every Consideration forgot, which could interpret them in his Favour.

This, my Lords, was their Duty, as Managers; and tho', by some, undertaken with Reluctance; yet, I may venture to say, it has been perform'd by all with great Success and Reputation.

But however unanswerable their Eloquence may be, we hope to be able to defend the Earl against the Facts they have alledged; and shew, That they were either not done, or done with Innocence and Honour. Against *meer Imaginations*, nothing can secure him, but your Lordships Candour and Justice.

The words *Orphans*, and *Widows*, and *Lunatics*, have been employ'd to raise Tenderness and Compassion, and arm your Lordships against every Argument which we can offer. Well was it commanded by the *Jewish Law*, *Not to respect the Person of the Poor, in his Cause*; knowing the Disposition of Human Nature, and the Necessity of guarding against this generous Weakness. This Caution ought particularly to be remembered by *Englishmen*, who are allow'd to be more subject to an Excess of it, than those of any other Nation.

The Learned Managers have very rightly observ'd, how much your Lordships Honour is concern'd in this Prosecution. My Lords, It was with the greatest Satisfaction I heard them say it; for I am by it induced to think, that notwithstanding the Zeal which has been express'd, they will be much pleas'd to find every Member of your Lordships Body Innocent.

It appears from the Answer, and needs no Proof, That the Noble Earl was once *Lord Chief Justice of the King's-Bench*: And his Conduct in that great Station, will, I hope, be some Defence.

I may appeal to those Gentlemen who are now Managers against him, whether they have not applauded him with Warmth? whether they have not commended his Zeal and Intrepidity in the Cause of Liberty and our Country? his steady Adherence to the Protestant Succession? his uninfluenced Behaviour? My Lords, I would ask, whether then they did not praise and love him? whether they did not esteem his being placed in that High Station (which he executed with Honour) their Comfort, their Security.

My Lords, I beg Pardon for replacing those Times before your Thoughts, or for desiring any to consider, how an Accusation against him, supported by *meer Refinements*, would at that time have been regarded. My Lords, his experienc'd Merit would then have silenc'd every Objection.

If there wanted any Evidence of the High Character he bore while in that Station, we might appeal to the great Rewards His Majesty has bestow'd upon him: Those very Graces which have been exaggerated against him, are the noblest Testimony in his Favour. His Majesty thought him worthy of the Great-Seal, because he had found him faithful in his other Trusts. His Majesty approved him, because his Subjects had:

It was for their Sakes (the constant Motive of his Choice) that He appointed him Lord Chancellor.

This once was the Earl's Character; this once his Merit: These were, nay, are still our Obligations to him. My Lords, *experienced Worth* has a Right to greater Confidence and Credit: This is a Rule of Evidence, and of common Justice; and unless the most convincing Proofs are offered, your Lordships never can believe, that one who has done so greatly Well, can do so Basely as is suggested by the Charge.

But supposing, upon so very strict an Enquiry into the Conduct of any Great Man, *something amiss* was found (for the Greatest are but Men, and must have Failings) yet is former Merit not quite to be forgot. *Publick Services* are thought just Reasons for Remission of the highest past Offences, though done perhaps *meerly* with a View of obtaining it: And shall those done upon a more generous Principle, arising from an honest disinterested Heart, deserve a less Regard?

But, my Lords, that I may have the better Opportunity of observing, on the Evidence brought for the Commons, as well as on the Arguments offered, I shall beg Leave to follow the Learned Managers in the Method they took themselves.

The Foundation of their Charge, is, The disposing of several Offices for considerable Sums of Money. This is the Corruption! This the Extortion! And to aggravate the Guilt of this, and raise your Lordships Indignation, the Preamble sets forth, "That in or about May 1718, the Earl was appointed Lord Chancellor of Great-Britain, and did thereupon take the usual Oath for the due Execution of that High Office, and such other Oaths as have been accustomed." And the subsequent Articles proceed to charge his Lordship with Breach and Violation, of his Oath, as Lord Chancellor. The Learned Gentlemen who had the Conduct of the Evidence, justly sensible of the Expectation they had rais'd by this Aggravation, did attempt a Proof.

The Earl, in his Answer, had set forth at large, the Oath he took as Lord Chancellor, when first appointed; and had insisted, that he took no other Oath of Office. Was this the Oath the Earl had thus broke and violat'd? No, it was not this; but one, which, by the Articles, he is no-where charged with ever having taken. Upon the Choice of Sheriffs, it seems, the 12th of Ric. II. is annually, in Old French, read over by the Clerk; and all present at the Council kiss the Bible. It is this Transaction with which they would affect the Earl. But, my Lords, it is notorious, that the Statute is so far grown obsolete, that in no other Instance besides this of Sheriffs, is it at present taken notice of. And as the Oath upon this Occasion must be absolutely confin'd to the Choice of them; so is it evident, that the Statute it self never did nor was intended to reach Officers of the nature with these in question; as I shall further observe. And indeed, with the Oath directed, the Statute is so extremely rigid, that I must own, for my part, I do not see any Service it can do Society, in its full Extent. It may perhaps afford some Protection to a First Minister, in laying him under the Obligation of an Oath, to put none into any Office who shall pursue or solicit by himself or by other.

However,

However I can't help thinking that the Learned Manager had but very small pretence for the Reflection he was pleased to make, in saying, that the Earl seemed to have forgot this Oath not only in his answers, but in his conduct; when it appears that he himself had forgot how he had charged it in his Articles. If he will cast his eye back upon them, he will find that the Preamble makes mention of no Oaths, but what were taken by the Earl upon his Majesty's Appointment of him to the Seal, and the Articles charge him only with Violation of his Oath, as Lord Chancellor.

Having justified the Earl's Memory in this Point, I proceed to justify his Conduct in others; and I hope the Defence he has made by his Answer will have its Weight with your Lordships: the Earl has insisted, "That the making Presents has been long used and practised in the Time of his Predecessors; That such Presents have been reckoned amongst the antient and known Perquisites of the Great-Seal; that the making and accepting them has been Notorious to all the World, and never before looked upon as Criminal, or complained of as such." My Lords; this (as far as Proof is requisite) We shall make fully appear by great Numbers of Witnesses, who are able to speak to both the Opinion and Practice of the Earl's PREDECESSORS. To this, it has indeed been said, that the Earl may be Guilty, tho' his Predecessors have escaped uncondemned or unpunished. My Lords, the Examples we have followed are too Worthy to lead us into Guilt: but, my Lords, if the Earl has only done what they have done, and received what they esteemed an honest Perquisite; was the Practice in it self not quite so regular at first, yet, *Sunt tolerabilia, quæ consuetudo comprobant*.---Usage (if antient) has so great Authority, that it makes the Common Law of England, and tho' with us it cannot repeal a Statute, or destroy its Force, which it does in other Countries, yet, my Lords, there is an Equity to be observed; and Reason as well as Humanity must inform your Lordships, that no Man ought to be treated with the utmost Severity, which an old Statute may direct; when great Examples may have led him to the Act, and a long Connivance of his Predecessors promised him Security from Censure.

But the Earl's Defence stops not here; he says, "He humbly hopes that the giving or receiving Presents on such Occasions is not Criminal in it self, or by the Common Law; and that there is not any Act of Parliament whatsoever, by which the same is made Criminal, or subject to any Punishment." To this the Learned Gentlemen have given but very general Answers. Some have by Rhetorick, instead of Reason, endeavoured to persuade your Lordships, that the Act it self is highly Sinful, and that the Corruption in selling Offices is greater and far more dangerous to Society, than even selling Justice it self: Others have talked of Common Law, and Statutes, but have produced none, except those of 12th of Rich. 2 and 5 and 6 of Edw. 6th, and a few Inferences drawn from them, which I shall speak more largely to immediately: And as the Learning and Experience of those Gentlemen are too great for any Law to escape their Observation, as is their Honor to reserve any for their Reply, I shall take it for granted, that since no other has been mentioned, that there is no other.

My Lords, the Writers upon the Law of Na-

ture have properly distinguished between selling Justice and Offices concerning the Administration of Justice: and not as the Learned Managers have done. With them the selling Justice is absolutely forbid, is absolutely Corrupt and Immoral. The selling Offices is Matter of meer Policy, varied in different Governments, prohibited in some, allowed in others.

Among the Romans the Law in this Particular, fluctuated and changed, and tho' the Sale of Offices was generally forbid, yet it received great Alterations, as the Emperors or the People were disposed: When Elections of the Magistrates were Popular, the *Suffragia*, or Votes of the People were bought and sold; but as this Practice produced frequent Riots and Disorders, frequent Laws were made to restrain it, which are still extant, and part of the Body of the Civil Law: However, all proving unsuccessful, the Emperors took occasion from it to usurp upon the People, and name the Magistrates themselves: This Translation of Authority carried the Benefit to Courtiers, and other Men of Power, who took a sort of Brokage for their Interest. *Theodosius*, the Emperor, so far gave Countenance to this Practice, that he even allowed an Action for the Recovery of what was promised for Procurement of any Place. In process of Time the Emperors themselves participated and took a Share of this Advantage, which introduced a distinction of *Suffragium Dominicum*, and *privatum*. *Suffragium privatum, quod Alicui datur; & Dominicum, quod Imperialibus rationibus inferebatur*. This Distinction, as well as the Practice, is very Evident from the two Novels of Justinian, which were intended absolutely to prevent for the future all Sale of Offices. In Novel 161. it is said, *Ejusmodi Dominica suffragia magnum reddebant pecuniarum cumulum*; and in Novel 8. that by the Prohibition, *Questus immodicus imminuitur imperio*.

It is well known that in France, the Laws have varied in like manner. Sometimes the Sale of Offices were permitted, sometimes forbid: but at present, and for this last Century, it has been so far encouraged, that Officers retain the Right of Resignation even in Succession, and transmit it to their Heirs, in case they have paid the Annual Tax or Duty within the Year.

I mention this to shew what the Opinion has been of other Governments, that they have not esteemed this Practice so highly Criminal, or unreasonable; and as they have not, so neither have we: for notwithstanding what has been urged with so much Ingenuity (according to my poor Apprehension) that very Statute of Edw. 6th, so much insisted on, is the strongest Proof which can be given, not only that in particular instances the Sale of Offices is now permitted, but that it was in general before that Statute, by the Common Law of England. This Statute in Sect. 3d. Enacts, that "All Bargains, Sales, Promises, &c. shall be void." And yet by Sect. 6th, it makes Provision, that "It shall not extend to any Bargain, Sale, Gift, Grant, &c. concluded and agreed before the First Day of March next coming, but that the same Bargain and Sale so concluded and agreed, shall always remain, continue, and be in such force, strength, and effect, as if this Act had never been had or made." If Bargains and Sales, agreed before the First of March, are to continue in such Force, &c. as if this Act had never been made, the Consequence to me seems cer-

tain, that *those Bargains and Sales had Force*, and that they were *before Effectual and Legal*; for otherwise the Provision would be absurd and ridiculous.

The 7th Section of this Statute still goes further, and makes a perpetual Provision, that "This Act, or any thing therein contained, shall not in any wise extend, or be prejudicial or hurtful to any of the Chief Justices of the King's Courts, commonly called the King's Bench, or Common Pleas, or to any of the Justices of the Assize that now be, or hereafter shall be; but that they, and every of them, may do in every Behalf, touching, or concerning any Office, or Offices to be given or granted by them, as they, or any of them, might have done before the making of this Act."

If this Statute be Explanatory of what the Common Law was before, and as such it was insisted on, it is certainly impossible to doubt, but that by the Common Law the Sale of Offices was allowed: "the Chief Justices, &c. may (TOUCHING THEIR OFFICES) do as they might have done before." This Act is to prevent the Sale of Offices, and yet not of their Offices: They had been used to bargain, and sell them, and still may do it, for this Act is not to be in any wise prejudicial, or hurtful, to any of them. This is the plain Sense, this the very Language of the Provision.

But I humbly conceive that this Provision is not only an Evidence of what the Common Law it self was, but that the Act of Richd. 2d. (of which I before made mention) could never be intended to reach Offices of this Nature; for as the Act of Richd. 2d. directs an Oath, which the Chief Justices, &c. are expressly required to take, can it be imagined without the greatest Extravagance of Fancy, that the Legislature should be so very forgetful, as to guard and secure to them a Privilege, which they could never exercise without the highest Perjury?

This, my Lords, is the only Statute, which, as I apprehend, any ways concerns the Charge brought against the Noble Earl: But does this Statute make the Sale of Office Criminal? Does it direct a Punishment, or even by any general Clause forbid the Practice of it? 'Tis true the Bargains are hereby made void, the Person who sells, does lose his Right of Nomination, and he who gives or pays, is to be adjudged disable in Law to have the Office. My Lords, these are the Discouragements, which the Legislature then thought proper to lay such Bargains under, these the only Penalties: If the Earl has by his Conduct done what this Statute disapproves; if he has bargained and sold Offices, which your Lordships judge within the Statute, and the constant Usage of his Predecessors will not give Protection, the Statute points out your Lordships Justice. But, my Lords, this unfortunate Great Man, we think, has already more than satisfied this Law, he has resigned the Seals, and yet stands Impeached before your Lordships.

Offences are to be judged of by the Penalties and Punishments the Legislature has annexed; for in determining the Penalties, it determined the Sense it had of the Offence: When Penal Laws are made, it must always be supposed, that a Consideration was had of the Malignity of the Act forbid, and of its Influence on Society, and that the Punishment directed was esteemed adequate and just: By this rate it is easy to guess

what the Legislature thought of the Offence of selling Offices. And, indeed, it would have been (if I may use the Expression) unbecoming the Legislature to have inflicted severer Penalties, while by the same Law it permitted the first Judges in the Nation to do what it seemed to condemn in others.

When a Law is once past, the Transgressor of it is subject only to what that Law directs; to inflict a greater Punishment, would be deserting Law, and acting arbitrarily. This Observation will hold in every Instance, in Matters of Common Justice, as well as Publick Policy: To forbid to Rob, or Murder, is only to enforce what was always Law; to forbid to sell Offices, is to lay a Political Restraint on Acts indifferent. And yet in the former Case, to punish the Offender beyond the Law, would be unjust and arbitrary. Are Prohibitions merely Political more Sacred? Or is a Trespass against them more severely to be treated, than one against the Law of Nature, the Law of God? No, Your Lordships (I say it with Submission) are the Supreme Judges of the Nation; as such, the Supreme Judges of the Law; for by the Laws your Lordships always judge: It is the peculiar Blessing of our Nation, to have known certain Laws, to be the Guide of our Actions, and the Measure of our Punishments; to secure to us this Blessing has been the Labour and the Glory of our Ancestors. For the Sake of this, the REVOLUTION is beloved; and for a steady Adherence to this Sacred Rule, his MAJESTY is esteemed the Joy, the Safety, the Liberty of his People.

I beg Pardon for dwelling so long upon this Subject; but the Honourable Gentlemen of the House of Commons having made the Sale of Offices the Foundation of their whole CHARGE, I thought it of some Consequence to prove to your Lordships, that it is no ways Criminal in it self: And, my Lords, if it be not Criminal, Where is the Corruption? Where the Extortion? Is it in the Manner of receiving Presents? How that was, the Learned Serjeant of Council with me has already given your Lordships an Account: An Account, which we hope does sufficiently justify the Earl against the Imputation of Higling, or of screwing up the Candidates to what they gave. But as these several Articles will be more fully spoke to, when we come to produce our Evidence, I shall pass them over with an Observation or two. If the Earl had so great a Thirst for Gain, and was so resolutely bent to amass such excessive Sums of Money, it is to me very strange, that whenever his Opportunity offered, and he had the free and full Disposal of an Office upon a Vacancy by Death, he should always receive a much less Sum, than what from the very face of the Articles themselves appears constantly to have been paid by Master to Master. Had the Earl put the Office up to Auction, or even insisted on a Price, Is it probable that he should not be able to obtain one as great?

However, as I pass, I can't help taking notice of the Circumstance with which the Article of Mr. Thurston's admission is introduced, "That Borret died insolvent, greatly indebted to the Suitors, and the said Earl did without securing a just Satisfaction admit him:" Your Lordships must have observed, that the Earl is not so much as charged here with a knowledge of this insolvency; and, my Lords, knowledge only can create the guilt. If the Earl did not know it, can your Lordships censure him? If it be asked

asked why he did not? Mr. *Godfrey*, who was produced and Examined by the Managers, has already given a full Answer: Mr. *Godfrey* was most intimate with the Affairs of *Borret*, and as such was directed by the Earl to inspect them; he has deposed, that he told the Earl, he thought *there would be no deficiency in his Office*, this (your Lordships may remember) he said was his *own* sincere Opinion, and he gave good Reasons for it. Mr. *Borret* had a very good Income, reputed 400*l.* per *An.* besides his Place, he had lately married a Wife of Fortune, his Family lived with his Father-in-Law, and he himself a Man of no Experience; my Lords, Mr. *Godfrey* told you, he was so fully in this Opinion, that when Mr. *Green*, the deceased's Uncle, made a demand of a Debt, he was *greatly surpris'd, not Imagining that he had owed one single farthing*. Whence this Deficiency (if there is any) none can tell: But, my Lords, that fatal Year of 1720 is not so long past, as to leave us quite without conjecture; a Year, my Lords, when the *contagion* was so virulent, that scarce any *virtue* was left *uninfected*; and those who sunk under it, remarkably deserve our pity, as sad instances of human frailty: *To this Year*, the Masters owe their whole distress, and to them the Earl, tho' innocent, *this aggravated Charge*: But, my Lords, supposing a deficiency in this Office, and known too by the Earl himself, what *Satisfaction* to the Suitors was from him expected? What could he possibly secure? There is but *one Method*; which, I hope, he will not by the *Managers* be thought *criminal* in not taking, since it is *that*, which they themselves condemn as *illegal* and *corrupt*.

It may be expected, that I should shew some Regard to the 9th Article: But as it is that which the learned Gentlemen made choice of to begin with, I apprehend *greater* Difficulties than I see, and therefore shall leave the Consideration of it to those, who are much more able to surmount them than myself: But I must ask Pardon, that I can't reach a distinction on which great stress has been laid: It has been observed by more than one, that in this case, the Money was paid for the *resignation*, and not for the *admission*; Is there any real difference, whether the *Buyer* or the *Seller* pays the *Complement*? Must it not be supposed that it was considered in the Bargain, and part of it? Or is it imagined that a greater hardship was in this case done Mr. *Thomas Bennet*, by a seeming *obstruction* of his inclination to part with an Office, when in fact the Earl could not *hinder* his resigning it? For notwithstanding the Observation made by a learned Gentleman, that the *Lord Chancellor* was the *King's Officer*, and therefore a resignation to the *Crown* was the same as to him; yet am I from his very great Abilities persuaded to believe, that he is not so entirely a stranger to the *Thought* of that *high Office*, as not to be able to distinguish the *Crown* from the *Seal*, and to know that in many instances of *Patronage* they are different: The *Lord Chancellor* being the *King's Officer*, a resignation to him may in some cases be equivalent in Law to one made to the *Crown* itself, but never *è contrario*. As to this particular Office, and indeed to many others of the like Nature, we shall make it fully appear, that tho' the *Officer* himself is in the *Nomination* of the *Crown*, yet has he always been under the *recommendation* of the *Seal*, and has as constantly paid *acknowledgment* to the *Lord Chancellor*.

Upon these Charges are built the whole of the following Articles: Every Expression, every Action which could bear an ambiguity, has been collected to form a Crime. The Earl has *received* Money for his *Offices*, his aim is therefore *gain* by *Sale* of *Offices*, an easy inference; and whatever is after *said* or *done*, or *vice versa*, is at first *suspicion*, and then an *Evidence* against him.

But, my Lords, before I proceed to try Particulars upon this Head, I must beg your Lordships patience to compute in general the very small Advantage the Noble Earl could propose by the *Scheme*, the learned Gentlemen have projected for him: The Office of Lord Chancellor is *precarious*, and only *during Pleasure*: The *King*, for his Subjects Welfare, *jealous* of every Minister, and ready to remove the greatest Favourite upon the very first Offence; and upon this contingency, what would the *chance* of disposing of a Master's Place be worth? A very trifle, I may boldly say, not so much as what he has *refused* the Opportunity of *gaining* upon every compleat vacancy he has disposed of. And can your Lordships suspect a Character once so dear, once allowed so worthy, of doing such little Things, I should say, such base Things, for no Advantage, and yet to promote this *illegal* and *corrupt* Gain on which his Heart was eagerly set? The noble Earl is further charged "with having admitted several Persons to the Offices of Masters, who were at the time of small Substance and Ability: Against this there lay an obvious Objection; Why Persons of small Substance? when the Earl might have, and indeed always had, when of his own Choice, others of sufficiency. Wherefore, to make their Charge consistent, a *fraudulent* Method is supposed to be introduced of paying for their Places out of the Effects of the Court; a Method best suited to such Persons: But your Lordships Justice must have led you to observe, that they *no where* so much as *insinuate*, that the Earl *knew* them to have been as charged: They were sensible of the proper Caution he had taken, and (as it will appear in Evidence) that not only previous Inquiries were always made, and none admitted, who came not well recommended, or personally known to the Earl himself; but that when several Candidates have offered, his Lordship has been so unmindful of the *little Views*, he is supposed ever to have acted with, that he has constantly *preferr'd* him he thought the *worthiest*, tho' the *present* to the Earl was far *less* than what others gave him Expectation of. This surely, my Lords, will be enough to *Vindicate* his Care; and tho' it should appear, that he was *deceived* in any single Instance; nay, tho' the *Man* himself should be the *Evidence* of his own *Deceit* and *Fraud*, yet I hope, my Lords, *such Person* will have his full Compliment of Credit, if he is believed in the Character he gives of himself. But to make some excuse for the Earl's good Opinion of this Mr. *Thomas Bennet*, and his Circumstances, I must observe, that it is Evident from his own Account which lies upon the Table, that when he was admitted, he had an *Estate* of between 5 and 600*l.* per *An.* he had besides an *Office* for Life of 250*l.* per *An.* he kept his *Coach*, and then lived in *Reputation*: However, I must confess, that in further Proof of his great *Integrity*, this Gentleman has deposed, that part of his Estate was then *Mortgaged* for more than it was worth. I should upon this

this Occasion put your Lordships in mind of what happened upon this Gentleman's *Confrontation*, because he has been *singular* in his Evidence on *more* Facts than *one*; but we shall take another Opportunity of displaying this *Worthy Person's* Veracity, that your Lordships may know *how much* Regard to pay to him, by seeing *how little* Regard he has for Truth.

As to the *Schedules*, the neglect of which is made so *Criminal*, it would be enough to say, that the taking them could not prevent the *Fraud* complained of; for what would be the difference in *deducting* the *Sum* agreed on for the *Purchase* upon the *transfer*, or *repaying* in the *minute* after? And if the new Master is *really* able and *sufficient*, where is the *injustice* done in either case? But we submit whether such *Schedules* must not be made between Master and Master: For without them their *Accounts* cannot be settled; and as it is for the *Interest* of him who *succeeds*, so is it for the *Security* of the other who *resigns*. But supposing the *Practice* to have been as charged, and their *Transfers* were not *complete*, the only Consequence I see is, that *both* Masters are *bound*, and the *Suitors* have by it a *double* *Security*. It has happened so in the Cases of both Mr. *Hiccocks* and Mr. *Rogers*; they imprudently retaining the *Effects* of the Court, for the Sale of their *Offices*, have thought it proper to *Petition* the *Lords* Commissioners to *repay* the *Money*: So that some good Fortune has attended this *Practice*, ill as it is, the *Suitors* have by it got so much *Money* more, than what otherwise they would have had.

My Lords, when *Dormer's* Affair (tho' sufficiently unfortunate) is considered by your Lordships, I hope that the noble Earl will not be thought to have acted otherwise than as became his Character: Upon the first notice of the misfortune, the Earl took all possible care both to *save* the *Effects*, and *secure* the *Office*; he sent the two senior Masters to *search* his *Chambers*, and to *stop* the *Transfers* of all *Stock*, which stood in his Name, in any of the publick Companies. My Lords, had the Earl that *Eye* on *Gain*, had he had that *apprehension* of *discovery*, which is represented, he would scarce have taken *this* last *step*, which must and did make a *suspicion* of the *Office* publick: When Mr. *Dormer* was returned, and upon *such* *Terms* as the *Managers* themselves can't say were unreasonable to grant to one, whose Person was out of reach, and whose *Effects* and *Accounts* were in the greatest *Confusion*: His *Liberty* was all he asked, and that upon *Condition* only of a *full* *discovery* and a *fair* *Assignment* of all he had. I say, my Lords, when Mr. *Dormer* was returned upon these *Terms*, which we hope he has honestly performed, his *Office* was *Sold*, and every Thing done, *not* to *Conceal*, but to *supply* the *Deficiencies*. I would not enter too minutely into the *Composition* with Mr. *Wilson*: It will, I conceive, be a full and satisfactory Answer to the Charge, to observe, that as the *Suitors* were not *Parties* to it, they can no ways be *injured* by it. If the *Composition* be *precarious*, *trifling*, and *unjust*, the *Suitors* are still at *Liberty* to proceed: If *more* could be had, they still may have more; but till *more* is *recovered*, it must be admitted that the *little*, which is *gained*, is owing to the *Composition*. Had the *Suitors* been *Parties*, the *Order* so much com-

plained of for its Irregularity would not have been made *without* a *Notice*; but as Mr. *Wilson*, whose particular Interest it was to have them *Parties*, did not desire it, we apprehend the *Order* to be in *usual* *Manner*. My Lords, the *Masters* (as is in Evidence) having in some Measure *engaged* themselves to make good the *Deficiencies*, if any should happen, the Earl could have no reason to doubt the Justice of the *Proposal* of Mr. *Wilson*, after Mr. *Hiccocks* had reported it, and Mr. *Edwards*, the *Successor* in the *Office*, had *prayed* the Earl to *order* him to accept it.

It seems, my Lords, a very forced and unkind Construction, which the *Articles* put upon the *Accounts* his Lordship had required of the *Masters*: but the worthiest Behaviour may be thus misconstrued. The *Masters* themselves had made the *Proposal* of *contributing*, and it will appear that they all (except Mr. *Lightboun*) did pay their *Money* voluntarily. What occasion then for such Methods as are suggested to *terrify* and *oblige* them to this *Contribution*? Is it in Proof that the requiring the *Accounts* did influence one single *Master*? No, my Lords, but, on the contrary, you will find that the *Payment* by the *Masters* did not prevail on his Lordship to desist; for it will be in Evidence, that the Earl still persevered, and that by the Earl's direction a *Letter* was wrote to the *Masters*, after the several *Payments* were made, complaining of their *Delay*, and requiring their *Accounts*. The Earl, indeed, upon Representations, did afterwards think the Method *impracticable*, which he is the better justified in saying, because the very same Method has been since found so by the *Honourable* Committee for *Inspecting* their *Accounts*, and departed from as such.

Upon this Subject of *Dormer's* Deficiency, I must beg Leave to remind you of what Mr. *Edwards* told your Lordships. He said, "That they were all of Opinion, that the Deficiency would be made up; and unless he had believed it, he would not have entred into the Office." If Mr. *Edwards*, who was so much concerned, was in this Persuasion, why might not the Earl too with Innocence? And, my Lords, this Persuasion, this Expectation, is, I humbly conceive, a very satisfactory Reason, why the Earl, had he been obliged to have declared an Average *ex officio* in common Cases, might be excused the doing it in this.

As to the Cases of *Chitty* and *Harper*, when the Circumstances which attend them, are laid before your Lordships, the Inferences drawn from each will appear equally unreasonable: for the Earl can no more be supposed to have intended a *Concealment* of *Dormer's* Deficiencies by the *Order* he made, after he had expressly mentioned in open Court the several *Accidents*, by which they had happened, than he could by the *payment* of 1000*l.* to Mr. *Lochman*, when he told him, that it would be the last *payment* Mrs. *Chitty* was likely to receive, the residue being in great danger from *Dormer's* Deficiency. But when we prove to you the very great distress Mr. *Lochman* represented himself to be in, your Lordships will be convinced that the *Money* was by the Earl advanced from no other motive, than a generous and compassionate Regard to him: This at that time was Mr. *Lochman's* own Sense of it, this he has often since acknowledged, tho' upon his Examination he was pleased to claim it as his Right, and own no Obligation.

I think

I think it will be (I should say, it is already) very full in Proof, that the Earl desired a *thorough Reformation of his Court*; and tho' Difficulties have obstructed it, yet surely, my Lords, it can't be imputed to any omission of his in the light the Charge would place it. There were *Difficulties*, not only with Regard to the *Masters and their Accounts*, but to their *Jurisdiction and Privileges*: *Difficulties* of such a nature, that one of the Witnesses thought, they required the *greatest Resolution to surmount them*. If the noble Earl had not a *Resolution quite sufficient*, it might perhaps be his misfortune, but surely not his Fault. But what *Proposals of Security* the Masters could possibly make, which they esteemed *useful or convenient to themselves*, and the Earl should *refuse*, I can't conceive. I imagined from the *Scheme*, on which the Charge is founded, that *their Interest had been the same*, had been *one*, and what served *their purpose*, must have served the *Earl's*; and yet now we are told the contrary.

How the Learned Gentlemen have made out the several *Deficiencies*, must be considered, when we are upon their Evidence to that Article: I will only observe, that no *permission or encouragement* of the Earl's has been proved, by which they are *increased*; that no *Money* has been *compelled* into Court by any *Order* he has ever *made* to *advance* their Offices, nor any *Countenance* given by him to any one *ill Practice*.

How far the Earl is guilty of *obstructing the inquiry his Majesty had directed*, or how far he was instrumental in *deceiving the Council-Board*, we submit upon their own Evidence: It appears, that at the meeting at Mr. *Edward's House*, all of them *declared* they were able to answer their several *Ballances*; and when the *Subscriptions* were Signed, they were *believed* to be as they had declared themselves: If they were, where was the *Fraud* in the *Proposal to assist each other*? Or how could it be understood to *make a false Appearance* with *Propriety of Language*, or common Justice? But it is remarkable, that this *Advice*, however fair and honest, was not given by the *Earl*, but by Mr. *Cottingham*, and without his *privity or knowledge*, and *occasionally* in *Conversation* with the *Masters*: And as to the *Subscription*, which they *added*; did the Earl use any *Arguments* to persuade them to it? Did he *press* them, or even *desire* them to Sign it? No, they themselves confess, that he but *barely recommended it*, as being what their *senior Master had*, and *better in Form than some others*, which were then *produced*: He used no *Arguments*, he *press* them not; and they, *honest Men* (as they themselves have deposed before your Lordships) made no *Scruple or Objection* to it; I beg Pardon: I should do Justice to Mr. *Thomas Bennet*, who I think had *his Scruple* to the Word *Demonstration*. So that if *false Representations* have been made, they who have *made* them are the *guilty*, they have *deceived* the *Council-Board*, and *not the Earl*; the *Action* was their own, free and *unsolicited*.

But, my Lords, not to detain your Lordships longer; one of the Learned Managers seemed sensible of the force of *one Evidence* we have

to offer in *Vindication* of the Earl from the Charge of *Avarice*; and therefore, without denying a *publick Fact*, he was pleased by his *Eloquence* to try whether he could not bring *Charity itself* under suspicion: Whether he could not *confound* the difference between the *most worthy Generosity*, and the *Luxury and Debauchery*, and the *Riots of a CATILINE!* What innocence is *secure* against the *Power of such Eloquence*? My Lords, had he not thought *this* a Defence against the *very Foundation* of the whole Charge, he would not have *surprised* us with such an *Answer*: He well knew that the Earl could have *Orphans and Widows*, the *poorer Clergy*, and the *Youth of the University*, to appear and acknowledge their *Obligations* to him; *Obligations* made *greater* by being *unasked*; I cannot say *unexpected*, because every *Object* in distress within his *Knowledge*, had Reason to expect *Relief*. I would ask the Learned Gentleman, whether *Expences of this kind* were part of *CATILINE's Profuseness*?

This, my Lords, will be an *Answer* to their oft repeated *Imputations*, and must clear the Earl from all *suspicion* of ever having acted from such *sordid motives*, or from any *thirst or impotence of Gain*. Is it likely that he should *incourage* the *highest Villany* to *raise* a *Sum*, and then *apply* it to *relieve the Poor and the Distrest*? Is it credible, at the same time, that *Virtue and Baseness* should thus *jointly govern* him? Hard indeed is the *Condition* of the Earl, when *his very Virtues*, when *his most commendable Actions*, are *turned to his Disgrace and Injury!* But under all, it is a great *Satisfaction* to him, that your Lordships are his *Judges*; and he submits his whole *Conduct* to your *Justice*.

Mr. *Lingard*, Common Serjeant.

My Lords, the Gentlemen that have gone before me upon this Occasion, have so fully opened the *Nature* of the noble Earl's defence in general, that I shall not presume to take up any more of your Lordships *Time*, by following them in that *Method*; but shall confine myself to the *5th, 6th, 7th, 8th, and 9th Articles*; and shall beg leave to inform your Lordships what we have to lay before you in relation to the *Matters* contained in those *Articles*. But before I proceed, I shall beg your Lordships *Permission* to go out of those *Articles*, so far as shortly to observe, that in the *Preamble* to the *Articles of Impeachment*, where the several *Favours and Advantages*, which the noble Earl at the Bar received from the *Crown*, are enumerated, those which were the *peculiar Marks* of his Majesty's *Royal Bounty* to him, and those which were the *ordinary Benefits and Allowances*, which the Earl enjoyed in common with his *Predecessors* in that *Office*, are so blended together, and set in such a *light*, that at least it gives an occasion to mistake some of the latter *Sort*, for those of the former; if it does not amount to an *Insinuation* to that *Purpose*, in order to enhance the particular *Advantages* which the noble Earl has received, above what they really were:

My Lords, I should be injurious to that noble Lord, who is possessed with Sentiments of the deepest Gratitude to his Majesty, should I endeavour to lessen the Instances of his Royal Munificence towards him: And I purposely omit mentioning any thing of the noble Earl's Merit upon this Occasion (tho' I humbly apprehend that I should be thought very excusable in so doing) because I am sensible, that he chooses to owe every thing purely to his Majesty's goodness: Yet as he has (very properly, as we humbly apprehend) in his Answer, set one of those Matters in its true Light; by informing your Lordships that the Annual allowance of 4000*l. per Ann.* mentioned in the Preamble to the Articles, and which he admits to have been granted to him, during the Time he should continue Lord Chancellor, is no way particular in his Case; but that the same has, for many Years past, been constantly granted to, and enjoyed by his Predecessors; give me leave, my Lords, for a Proof of what is so insisted on, to refer your Lordships to what appears upon your own Journal, in the Case of the Lord Somers, upon the Impeachment exhibited against him by the House of Commons, for high Crimes and Misdemeanors; wherein the Introduction of the Charge in the 8th Article, this Appointment of 4000*l. per Ann.* to him is alledged in Aggravation of that Charge against him. His Lordship, by his Answer thereto, admits, that during his Custody of the great Seal, he did receive the Profits and Perquisites thereto belonging, which before his Time were become very inconsiderable; and that he did also receive an Annual allowance from his then Majesty of 4000*l. per Ann.* being the like Pension that had been allowed to several of his Predecessors. This, we humbly apprehend, plainly shews both that this allowance has been usual, and likewise the Reason of making such allowance; which is the inconsiderableness of the ordinary Profits and Perquisites belonging to that high Station.

I shall now proceed to the Articles I proposed to speak to; in which the Matter, which is charged as Criminal upon the Earl, is, That he did illegally, corruptly, and extorsively, insist upon, take and receive, the several Sums of Money therein respectively mentioned, for the admitting the several Persons named in the 5th, 6th, 7th, and 8th Articles, to be Masters of the Court of *Chancery*; with a small variation in the 8th Article, by way of Aggravation, that there was a deficiency in that Office; which is there taken notice of: And for permitting *Thomas Bennet*, as it is alledged in the 9th Article, to resign his Office of Clerk of the Custodies; which is agreed to be a Charge much of the same Nature with that in the four preceding Articles; and is alledged to be against the good and wholesome Laws and Statutes of this Realm.

It has been strongly insisted on, by the Gentlemen appointed to manage this Prosecution, that this is a Matter which is *Mala in se*, and consequently a Crime at Common Law, as well as expressly against the Statute of 12. *Rich. 2d.* and 6th of *Edw. 6th.* and no Means,

that could be thought of, have been wanting to represent it under all the most aggravating Circumstances, and in the most odious and frightful Appearance, that the blackest Colours could give it.

My Lords, The Earl by his Answer denies that he did at any time insist upon the Sum of 105*l.* or any other Sum of Money, to permit or accept of the Resignation of *Thomas Bennet*, mentioned in the 9th Article; or did refuse to permit or accept thereof, until the said *Thomas Bennet* had agreed to pay the same, or any other Sum of Money on that Account: Which is a denial of that, which is properly the Charge in that Article: He does indeed admit, that he did receive a Present from *Thomas Bennet*, under the Circumstances mentioned in the Answer to that Article; and likewise that he accepted the Presents, which were freely and voluntarily sent to him, by the several Persons mentioned in the four preceding Articles; in two of which Instances, all, and in the other two, great part of what he so received, has been returned. But his Lordship very rightly (as we humbly apprehend) insists upon it in general, that the acceptance of Presents upon such Occasions has been long used and practised by his Predecessors; and that they have been reckoned as the antient and known Perquisites of the said Office: That it is not Criminal in itself, or by the Common Law, or against any Statute of this Realm; or subject to any Judgment, which can be prayed in this Prosecution.

The Gentlemen of the House of Commons, my Lords, in order to support what they have insisted upon, and to make it appear that such an Acceptance of Presents is Criminal, have caused the Statute of 12. *Rich. 2d.* to be read to your Lordships; and have produced Mr. *Ayres*, to give an Account of the Ceremony, which is annually practised upon the Occasion of Nominating of Sheriffs.

I won't presume to act the Casuist, or trouble your Lordships with any Niceties, by questioning, whether what passes upon that Occasion ought to be esteemed an Oath or no; but, my Lords, I hope I may venture to say, that it is very plain, it is no Oath of Office in general, for this Reason, because if it had been so, the once taking it had been sufficient; and there would have been no occasion of repeating it Annually, in the slight Cursory manner Mr. *Ayres* has given an Account of, upon one particular Occasion; which likewise shews, that what is then done, is confined to that matter only, which is then transacting, and not intended to be generally obligatory in other Things.

If the accepting of Presents, upon occasion of recommending, or admitting Officers to Places, had been understood to be Criminal, in the Eye of the Common Law, or against the Statute of 12. *Rich. 2d.*; no doubt, but in so great a length of Time, Precedents might have been produced, where Persons had been censured, or punished, for a Practice, which has been represented to your Lordships as the most vile, and pernicious Sort of Bribery and  
Corrup-



Corruption; and yet, notwithstanding the many marks of the Severity of the Government against Bribery and Corruption, which have been taken Notice of, the Gentlemen of the House of Commons have been pleased to acknowledge, that there is no Precedent, no Judgment to establish and warrant what they assert to be Law in this Point.

My Lords, I beg leave to say, that a stronger Argument than this, can hardly be thought of, to prove that this Behaviour is not illegal: It is a method of reasoning in our Law, and, I conceive, consonant to the general reason of Mankind; That where a thing never has been done, it is to be supposed there is no ground or foundation for the doing it. Nor can this way of Reasoning be avoided, but by supposing that there never has been any Instances of this nature before, or those so rare, and private, that the Government had no opportunity of taking notice of them: A Supposition, my Lords, so extraordinary, that there is hardly room to admit of it: and therefore, when we shall, with your Lordships Permission, lay before you, Instances of this thing having been frequently and openly done; it will not be so much, in order to prove the contrary of such a Supposition, as to give an opportunity to your Lordships, and to intreat you to reflect on the great Abilities, and unquestionable Integrity of those excellent Persons, who have acted in the same manner; the Notoriety and Openness with which this has been transacted, and the perfect Silence of the grand Inquisitors of the Nation, and the whole Legislature in regard thereto: and then to consider, the clearness and force of such a Comment upon the Law, both from the Actions of those, whose Characters will not allow of a Suspicion, that they would act contrary to what they apprehended to be the Law: And from the Silence of those, who should and would, no doubt of it, have taken severe Notice of it, if it had been thought to have been so.

But suppose, after all that has been said, that this was still a doubtful point, would it not, my Lords, be extremely hard to rouse up an old antiquated Law, which for so many Centuries has quietly slept, without exerting it self, without fixing any Mark, or leaving any Traces of its Force and Vigour, to point out the Danger attending such a Practice; a Practice that has been owned and countenanced by such great and unexceptionable Men, and objected to by none; and which from thence, might well receive the Appearance of being fair and innocent: Would it not, I say, my Lords, be very hard, without some previous Notice of the Danger, to put this Law in Execution, to unsheath this rusty Sword, to wound this Noble Earl with? We hope your Lordships would think so, if it were capable of hurting him, which we humbly apprehend it is not; and that, if there is any doubt remaining with your Lordships, as to the Legality of the Earl's Behaviour in this Point, that the Statute of 6th. of Edw. 6th. will clear it up beyond question; and that it will manifestly appear by that Statute, that accepting of Presents is neither *Malum in se*, against the

Common Law, or the Statute of *Richd. 2d.* and that this Statute of *Edw. 6th.* must be looked upon as a declarative Law in those Points, or otherwise, it must be allowed (which none here will suppose) that the Legislature of this Kingdom has made a Provision to sanctifie a moral Evil; (for that is the Import of *Malum in se*) to allow, permit, and even encourage, contrary to the Statute and Common Law, a Practice not only immoral, and vile, but of the most pernicious Tendency and Consequence, if the Representation made of it by the Gentlemen of the House of Commons is to be regarded.

My Lords, I shall pass by the fourth Paragraph of that Statute, whereby it is provided, that the said Act should not extend to Offices of Inheritance: tho', I presume, the Largeness of the Estate can hardly be thought to alter the moral Nature of the Action. By the 6th Paragraph, there is a Saving for all Bargains, Sales, Promises, and Agreements, of or for any Office, made before the first of *March*; and such Bargains, Sales, and Contracts, are exempted out of the force of that Act. Your Lordships will be pleased to observe, This Session of Parliament began the 23d. of *January*; so that this saving Clause makes a Provision for futurity. My Lords, this would be to establish Iniquity by a Law, if the accepting a Present on occasion of admitting a Person into an Office, was immoral and criminal, as has been asserted. But if it were so, and likewise against the Statute of *12. R. 2d.* and contrary to the supposed Oath, taken in pursuance of that Statute; what, my Lords, must be thought of the last Paragraph, which provides, that the Act should not extend to the Chief Justices, or Justices of Assize, that then were, or thereafter should be? These all Annually take the same Oath (if it is to pass as such) upon the same occasion of nominating of Sheriffs, as Mr. *Ayres* has informed your Lordships; and are consequently, by virtue thereof, under the same Obligation in this respect, as a Lord Chancellor: And can your Lordships suppose that so many Reverend and Learned Persons, who, from their known Duty of Attendance, must be presumed to be present in your Lordships House, whilst this Law was there under Consideration, would have forbore informing their then Lordships, how contradictory those Parts of this Statute were to the Common Law, and the Statutes of this Realm, especially that of *Rich. 2d.*? Can it possibly be conceived, that the whole Legislature would pass a Law, not only to allow, in several Instances, the Practice of what was so contrary to the Law of Reason, as well as the Common and Statute Law; but even to give a Licence, and Encouragement, to break an Oath prescribed by Statute, and Annually repeated? And that no Body should ever scruple the doing so, or discover the illegality of this Practice, but upon this unfortunate Occasion? And yet, my Lords, monstrous as these Suppositions are, they must (as I humbly conceive) be allowed of, or it must be granted that such Acceptance of Presents is not *Malum in se*, or contrary to the Statute of *Rich. 2d.*

2d. And I hope it is plain, that this Statute of *Edw. 6th*, is in effect a declarative Law in those Points.

My Lords, The Gentlemen of the House of Commons seem'd sensible of these Difficulties; and therefore they have with great Industry, endeavour'd to distinguish what the Earl has done, from the Common and Ordinary way of accepting of Presents, upon such Occasions. They have told your Lordships, that his method was Haggling and Extorsive; and have given it abundance of other hard Names: they have, to confirm it, inform'd your Lordships, that the Prices lately given, have been higher than those formerly accepted upon the like Occasions: tho' they have not condescended to attempt the Proof of it.

My Lords, As the manner of the Earl's taking of Presents will depend in a great measure upon the Evidence, which has been offer'd to your Lordships, upon these Articles; I shall beg leave to take some short Notice of it. As to the 9th Article, *Mr. Thomas Bennet* has been pleas'd to inform your Lordships, that he did desire to have the Earl's Recommendation of *Mr. Hammersley*, to succeed him as Clerk of the Custodies; and that being told at the second meeting with *Mr. Cottingham*, that a Present would be expect'd, he said it was a very hard and unreasonable Thing to expect a Present from him, who had so lately paid a large Sum, upon his being admitted into his other Office: But upon its being insist'd on, that an 100 Guineas should be paid, he was forc'd to comply therewith, and agree to pay it.

My Lords, I humbly insist upon it, that if an entire Credit were to be given to what *Mr. Bennet* has said upon this Occasion, it would not amount to a Proof of the Charge contain'd in this Article: The Corruption and Extortion therein complain'd of, being restrain'd to the Consideration of permitting and accepting the surrender of the Office there mentioned; all the other Parts of that Article being only introductory to, or in Aggravation of that suppos'd Offence. But *Mr. Bennet* has not mention'd to your Lordships one Syllable of the Earl's having refus'd to permit or accept a surrender of that Office, or of his having received any Sum of money in Consideration of his permitting or accepting *Mr. Bennet's* Surrender thereof.

But, my Lords, we must beg leave to submit it to your Lordships Consideration, what Credit is to be given to *Mr. Bennet's* Evidence, so far as it does go, for this purpose. The Gentlemen of the House of Commons have thought fit to call *Mr. Cottingham*, as a Witness to this Article; who owns that in his first Discourse with *Mr. Bennet* upon this occasion, he told him, he believ'd a Present would be expect'd to the Great Seal, and that *Mr. Bennet* freely offer'd 100 Guineas, before *Mr. Cottingham* spok'd to the Earl about that Affair. He expressly contradicts *Mr. Bennet* in what he said of *Mr. Cottingham's* insist'ing upon 100 Guineas, and *Mr. Bennet's* Agreement to give that Sum at the second meeting, *Mr. Cottingham* swearing, that the offer of 100 Guineas was voluntary on

*Mr. Bennet's* part; and that it was at their first meeting. There are several other Contradictions in their Evidence; but I shall only take notice of that, where *Mr. Bennet* pretends, that *Mr. Cottingham* assert'd he did not know *Mr. Hammersley*, his next door Neighbour. This *Mr. Cottingham* denies, and *Mr. Bennet* is forc'd in some measure to retract what he had so positively sworn; and comes down to a Belief only, that *Mr. Cottingham* said so, but will not be positive.

It is something surprizing, that after they have done *Mr. Cottingham* the Honour to call him as a Witness, and given him a Credit by so doing, Hints should be flung out, that *Mr. Cottingham* knows no body, except where there is Gold in the Case; that Gold is a great clearer of the Eye-sight, and the like Insinuations, to the lessening his Character. But why then did they call him as a Witness? Surely, my Lords, if he is a Person not to be believ'd, it was not altogether so proper to produce him as a Witness before this August Assembly. But, my Lords, we shall ease them in that matter, by throughly establishing *Mr. Cottingham's* Reputation; tho' it is something unusual to support the Reputation of a Witness produced by the other side: And we hope your Lordships will then find no difficulty in determining, whether *Mr. Bennet* or *Mr. Cottingham* deserves most to be credited.

In support of the 5th Article, *Mr. Kinaston* is call'd as a Witness. I shall take no notice of any part of his Evidence, but what relates particularly to the Charge in this Article, the money paid upon his Admittance, and the Circumstances of that Transaction. *Mr. Kinaston* indeed has said, that he would willingly have paid but a 1000 *l.* upon his Admittance; and accordingly offer'd that Sum, which *Mr. Cottingham* would not hearken to; and therefore he submitted to pay 1500 Guineas; but he owns at the same time, that he has not a very exact Remembrance of what pass'd upon this occasion. *Mr. Bayley*, to whom *Mr. Kinaston* refers, and who was his Agent in this Business, in his Evidence has given your Lordships an Account, that *Mr. Kinaston*, when he understood that 1500 Guineas was apprehend'd to be the Present he intend'd to make, said, that he thought it was only 1500 *l.*; but mentions nothing of the Offer of a 1000 *l.* It is very strange, if that had been the case, that he should not have taken notice of that likewise. But *Mr. Cottingham*, who is again call'd as a Witness, shews the reason why no notice could be taken of such an Offer; and that is, because there really was none such. He denies that *Mr. Kinaston* offer'd 1000 *l.* and swears that the Sum offer'd by *Mr. Kinaston*, was 1500 Guineas, and withal declar'd, that he would acquiesce under what the Earl should think fit in that matter; and informs your Lordships, upon his being interrogated by the Gentlemen of the House of Commons to that purpose, that he never did acquaint the Earl with what pass'd upon that occasion, till the whole thing was agreed and settl'd; and that, when he was inform'd of it, he express'd himself to be well satisfi'd therewith. Surely, my Lords, here are no extraordinary Endeavours or Artifices us'd to enhance the Price; no haggling, by first naming one Sum, then another,

ther; but at once the matter is proposed, and at once agreed and concluded.

To prove the 6th Article, my Lords, Mr. *Thomas Bennet* is called again; and here again the like misfortune happens as before; Mr. *Bennet* differs widely from Mr. *Cottingham*, who is called upon the same side to prove the same Article. Mr. *Bennet* says, that he acquainted Mr. *Cottingham*; that he thought a 1000 *l.* was enough to give upon his Admittance, and with his Reasons for such Opinion; but that, however, he was willing to give a 1000 Guineas. Mr. *Cottingham* has Sworn that no such Offer was made, that nothing of that Nature passed; but that Mr. *Bennet*, upon being informed what had been done before upon the like occasions, freely offered fifteen hundred Guineas.

My Lords, The very nature of the Thing, upon the Circumstances agreed on all Hands, speaks strongly in favour of Mr. *Cottingham*, and in contradiction to Mr. *Bennet*, as to what is asserted by each of them upon this occasion. Your Lordships observe in what condition the Earl is agreed to be in at that time; had Mr. *Bennet* apprehended that he had so very hard terms put upon him, as he would not have your Lordships believe he did: Would he not have stayed some little time, to have seen the effect of so violent a distemper, as a Pleuretic Fever? which his Lordship then laboured under in a very high degree; especially when Mr. *Bennet* appeared at the same time to be in no very good State of Health himself; of which he was reminded by Mr. *Cottingham*, who was so far from acting the rapacious part, in behalf of the Great Seal (which was not in a way to suffer, by the admission of a Person likely to make a new Vacancy by Death) that perceiving Mr. *Bennet* to look yellow, and out of order, he desired him to consider what he was going to do, when he took a Place for Life in his Condition. Mr. *Bennet* told him, it was only a Cold; and that therefore he would proceed. This Gentleman, who was so cautious, as he pretends, as to the Sum he was to give upon his Admittance, and which he then thought to be so unreasonable, hurries on this Affair, under these Circumstances of his own, as well as the Earl's State of Health; and tho' out of order, as he himself owned, presses an extorted Sum of 1500 Guineas, into the Hands of, probably, a dying Chancellor. Will not your Lordships think it more likely, that Mr. *Bennet* apprehended, that as the Price of Things then went, he might not, under a new Chancellor, come into the Office upon so easy Terms as were then offered him; rather than that he thought himself to be hardly used upon that Occasion? And here, my Lords, I beg leave to take Notice of what has been urged, to induce your Lordships to look upon this Acceptance of Presents, by the Earl in particular, to be Extorsive; which is, that the Sums of money given upon these, and the like Occasions, are lately greatly increased. Your Lordships will be pleased to observe upon what has hitherto appeared, that the Sums taken by the Earl upon the Admission of a Master into the Room of one deceased, have been constantly less, than what the Masters, who have resigned, have had as a Consideration for so doing. And it is very easy to account for the late increase of the Sums given upon these Occasions, without any Extortion in the matter. As personal Estates have vastly increased within these few Years, and Settlements, and Provisions for Families, have been made out of the Publick Stocks and Funds, the Business of

the Court of *Chancery* hath increased proportionably; and consequently, People would be more desirous of, and give more money for, the Purchase of these Offices, which were improved by such increase of Business. And as the common Interest of money is grown lower, it is natural to suppose, that People would be the more ready to invest their Fortunes in those Things, which were likely to produce a better Income, even in Proportion to the risque that was run upon their Lives, than could be made of money in an ordinary way. But whether that, which I have mentioned, or whatever else may be the Cause of it, it is so plain and notorious that all Places and Offices have of late Years increased in their Value, that it would be mispending your Lordships Time to enter into the Proof of it.

My Lords, As to the Admission of Mr. *Elde* into his Office, and the Acceptance of a Sum of money upon that Occasion, which makes up the Charge contained in the 7th Article; and as to so much of the 8th Article, as relates to the like Transaction with Mr. *Thurston*; there is not the least Colour or Pretence from the Evidence, which has been given to support those Charges, to ground a Supposition of Haggling, or driving a Bargain. On the contrary, from that very Evidence it appears, that what was done by Mr. *Elde*, and Mr. *Thurston*, was perfectly free and voluntary; and attended with a good deal of Solicitude and Uneasiness in the latter, lest his Offers should not be accepted; the Circumstances of which I shall not trouble your Lordships with repeating. And tho', from the Troubles he has since met with in that Office, he has something altered his Opinion of it, your Lordships will be guided by what he then thought, and acted. Your Lordships will be pleased to observe from the same Evidence, that great part of the money presented by those Gentlemen, has been returned to them again; and tho' it is some time afterwards before it was done, it was plain, there was a much earlier Intention of doing so. Mr. *Elde* has informed your Lordships, that in *May* following his Admission the Earl intimated to him, that he would return part of the money: And Mr. *Thurston* received several Messages, which plainly appeared to be in order to a Return of part of the money which he had given; tho', on Occasion of his being out of Town, it was some time after before he knew the meaning thereof, or had the money returned.

My Lords, There is one particular Circumstance in the 8th Article, which has taken up a great deal of your Time; that I mean of the Deficiency in Mr. *Borret's* Office. Why that matter was inserted there, and why it has been so much laboured, and your Lordships troubled with so much Proof about it, I must own myself at a Loss to conceive; unless it be allowed and admitted, that the taking of money, upon the Admission of a Person to the Office of one of the Masters of the Court of *Chancery*, is not purely and simply *Malum in se*, illegal, and contrary to the Statute of *Rich. 2d*: But that, if it be done to raise money to make good the deficiency in the Office, as was done in the Case of Mr. *Edwards*, which your Lordships have upon this Occasion heard of, it is right and well. How otherwise can the Deficiency in the Office be an Aggravation of the supposed Crime of taking a Present upon the Admittance of a Person into it? Is it unreasonable to admit a new Master into an Office wherein there is a deficiency? Is it not as necessary to fill up that Vacancy as any other?

Certainly more so, in order to have one, whose Duty obliges him to a more particular Care of the Affairs thereof, which seem more to want it. The Aggravation then of the Fault, or rather the Fault itself, must consist in the not applying the money received, towards the discharge of the deficiency. But how can it be a Fault not to do so, unless there had been an Obligation so to have applied it? And how can there be an Obligation to make such Application of the money, where there is so strong an Obligation, as has been insisted on, not to raise any money at all by such means? My Lords, we humbly apprehend, that the endeavour to aggravate what is charged as a Crime in this Article, has weakened, at least, what is laid as the Foundation for its being a Crime; and this with little or no Success in the Proof, attempted to be made of this matter; so far, I mean, as relates to the Earl's Knowledge of the Deficiency, or his want of Care to be informed of the State of that Office.

I won't repeat what Mr. *Godfrey* has said upon this Occasion; your Lordships perceive that he and Mr. *John Bennet* were thought the fittest Persons to inspect the Affairs of Mr. *Borret*, after his decease; and were accordingly appointed to do so: And upon having examined Things, as well as they then could, were both of Opinion, as Mr. *Godfrey* says, that there was no Likelihood that there would be any Deficiency; and with this the Earl was acquainted. Mr. *Bennet* indeed, differs something from Mr. *Godfrey*, as to the Account which he gave of this matter; but not so much, tho' his Account was to be taken, as would answer the Purpose for which he was called; the aggravating the Charge in this Article against the noble Earl, who, there is no Room to doubt, would have acted as generously in this Case, as he did in the Case of Mr. *Edwards*, upon his coming into *Dormer's* Office, if the Circumstances, as represented to him, had been in any near degree alike.

My Lords, I have thus stated the matter of these several Articles, to the best of my Remembrance, in its true Light, as it stands upon the Evidence already given: We shall beg leave to call some Witnesses to prove, that several noble and great Persons have taken Presents upon these Occasions: Men of excellent Characters, some of whom several of the Gentlemen of the House of Commons have taken such Notice of, that I may safely venture to say, that they will concur in the Opinion, that they were Persons of so much Integrity, that they would not have taken such Presents, if they had thought it illegal so to have done; and of so great Abilities, that their Judgment must be of the greatest weight in this Point. We shall further trouble your Lordships to explain the nature of the Payment of 64*l.* which Mr. *Thomas Bennet* told your Lordships he made, over and above the 100 Guineas, paid by him on Account of the Office of Clerk of the Custodies. He might, no doubt, if he had pleased, have informed your Lordships, that the most part of this 64*l.* was either paid to the Clerks of the Office, or belonging to other Officers, and that not above 33*s.* came to the Great Seal; and we apprehend that to have done so, would have been more agreeable to the Sincerity, with which a Witness ought to speak, than to have left it in that general manner, where it might look like another Payment to the Earl. And I hope your Lordships will excuse my observing upon this Occasion, the unhappy Circumstances of the noble Earl at the Bar: If he takes a small Sum, as this of the 100 Guineas for Instance, it is poor, pitiful, and a Prostitution of his

Honour; if a larger Sum is taken, he is avaricious; greedy, rapacious, and I don't know what: Tho' your Lordships will observe, the Sums accepted are regulated according to the Nature of the Office, on Account of which they are given. My Lords, his very Care in other Instances is made his Fault, his Actions must be all supposed to be done with corrupt Views; and yet his not Acting is equally blamed; it is Carelessness, and Neglect. This is the Light in which his whole Behaviour has been set before your Lordships, and that with all the Aggravations and Vehemence imaginable. But it is your Lordships, who, in a superior and calmer Station, are to weigh and judge of these matters. It is from you the noble Earl is to expect Judgment; and it is his Happiness, that it is so. And in order thereto, when we have laid this Evidence before your Lordships, together with an Order, which shews the Payment of the moneys received from Mr. *Thomas Bennet* and Mr. *Kinaston*, into the Court of *Chancery*; we shall submit the matter of these Articles to your Lordships. And notwithstanding all the severe Things which have been said upon this Occasion, we humbly hope your Lordships will be of Opinion, that the noble Earl at your Lordships Bar, is not guilty of any of the Charges contained in these Articles.

Mr. Serj. *Probyn*. My Lords, we now proceed to call our Witnesses, and to prove the several Facts we have opened; and we beg leave to proceed in the same method as the Gentlemen, who are the Managers for the House of Commons, have done. As they began with the 9th Article, so we in our Evidence shall likewise begin there; and show that Presents have constantly been made to the Great Seal upon all Admissions into the Office of the Clerk of the Custodies; and that in many other Offices under the Direction of the Great Seal, Presents have been usually made by the respective Officers on their Admissions; and this hath been the known uninterrupted Usage; and every Chancellor hath taken them as customary Presents. We desire, in the first place, that Mr. *Roger Lewis* may be called.

Mr. *Roger Lewis* sworn.

Mr. Serj. *Probyn*. We desire he may be asked, how long he hath been concerned as a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. I have assisted as Clerk of the Custodies of Lunatics and Idiots, for the space of about 35 Years.

Mr. Serj. *Probyn*. I desire he may be asked, who was the first that came into the Office of Clerk of the Custodies in his Remembrance?

Mr. *Lewis*. Mr. *Henry Wynne* was the first that came in after I was Clerk there.

Mr. Serj. *Probyn*. Who succeeded Mr. *Wynne*?

Mr. *Lewis*. Mr. *Roger Thompson*?

Mr. Serj. *Probyn*. I desire he may be asked, whether Mr. *Thompson* be now living or dead?

Mr. *Lewis*. Mr. *Thompson*, as I have been informed, hath been dead about these 9 or 10 Years past.

Mr. Serj. *Probyn*. I desire he may be asked, whether any Present or Compliment was made to the Great Seal on Mr. *Thompson's* Admission?

Mr. *Plummer*. My Lords, I object to the Answering of that Question; and desire to know, whether your Lordships will have Evidence against Gentlemen that are dead, who are no way capable of Answering for themselves before your Lordships here? If my Lord can shew any Title or Right he had to sell this Place, we are ready to hear him; but to give Evidence against a Person that is dead, and cannot speak for himself; I submit that to your Lordships.

Mr.

Mr. *Lutmyche*. My Lords, this matter is very proper to be objected to now, and it is very necessary for your Lordships Determination in the Beginning of this Affair. I see by this Question, and their Opening, what large Compass the Gentlemen have taken, not only as to these Offices, but as to many other Offices Presents were given. I take the proper Question before your Lordships to be, Whether this be lawful by the Laws and Statutes of the Realm? and if that be the Question, I submit it whether it is material to give an Account what other Persons have done? Whether, when a Person is brought upon a Prosecution for an Offence against the Law, it be material for him to say, that other Persons have been guilty of the same Crimes? This is a Question at Law upon the Construction of the Statute; and they say it is necessary for them to give these Instances, to shew the Judgment of those great Persons upon the Act of Parliament; but sure I am, it was never yet attempted to give in Evidence the Actions of other Persons in order to expound a Statute. The Exposition of a Statute must be founded on the Words of the Law, and not on the Actions of other Persons. In all the Experience I have had in cases of Prosecutions for Crimes founded on the Common Law, or on Acts of Parliament, Gentlemen argue from what the Law is, what Authorities have been in those Cases, and what the Construction hath been in former Judgments. My Lords, this is a matter of great Consideration to your Lordships, not only upon the Account of the Precedent, but also upon the Account of the Time that your Lordships are like to spend, if you are to go through all the Offices of the Law, to shew how many great men have accepted Presents. It will take up a great deal of Time, without any Fruit at all. But, my Lords, there are other Considerations which will prove it unreasonable to admit of this Evidence: At present your Lordships have under your Consideration the Case of this noble Lord within your Bar; but would they in Defence of him impeach others, not here to defend themselves? Many of them are dead, others are living: Will you try Persons not accused, and without being present to answer for themselves? But, my Lords, with respect to ourselves, is it reasonable for us to take upon us the Examination of several Facts, without knowing who the Persons charged are, what the Circumstances of the Case were? Are we to shew the Difference, or state the Circumstances? It is impossible for us to do it. My Lords, this being the Nature of the Case, it is a matter for your Lordships Judgment, now in the Beginning, that your Lordships may see the Extensiveness of the Evidence they have hinted at, and intend to produce. That which we insist upon is two things, that it is not material, and that there is no manner of Notice for the Persons so charged to make any Defence, or to shew how the Circumstances of the Case were. So, my Lords, we must beg leave to have your Lordships Judgment in this matter.

Mr. *Sol. Gen.* My Lords, if the noble Lord produceth any one to make out his Innocence, we do not oppose it. But if the noble Lord endeavours to shew what the Law is from the Practice of other People, it is altogether improper. It is impossible that the Law can be judged of by the Practice of other People in committing the same Facts. That can't have the Weight of the Opinion of a great Man. The Opinion of a learned Person, not con-

cern'd in the Question, is an Opinion of weight; but the Opinion of a Person concerned in the Question, is not to be look'd upon as of any Authority. If the noble Lord makes Use of this Kind of Evidence, by way of mitigation, or of lessening his Offence, in that View it can be of no Significancy: Because the Aggravation or mitigation of the noble Lord's Offence must arise from the particular Circumstances, Manner, and Facts of his Offence. We must submit it therefore to your Lordships Consideration, whether this is a proper Inquiry or no.

Mr. *Serj. Probyn*. My Lords, we beg leave to insist upon it, that this is a proper Question; and very material for the noble Earl's Defence. He hath insisted in his Answer, 'That what is objected to him in this Instance, hath been long used and practised in the Time of his Predecessors; and that such Presents have been reckoned among the ancient and known Perquisites of the Great Seal; and the making and accepting thereof hath been notorious to all the World, and never before looked upon to be criminal, or complained of as such; and that he humbly hopes, that the giving or receiving of a Present on such an Occasion, is neither criminal in itself, nor by the Common Law of this Realm; and that there is not any Act of Parliament, by which the same is subjected to any Punishment or Judgment, which can be prayed in this Prosecution; and the said Earl further hath said, that he thinks himself obliged humbly to lay this before your Lordships, not only in his own Defence, but in Vindication of the Honour of so many great and excellent men, who have been his Predecessors in the same Office, and have all along done the same, for which he is now complained of; and also of others, who have been Lord Chief Justices of the King's Bench, and Common-Pleas, Masters of the Rolls, and Judges, who have likewise received Presents in money, upon the Admission of the several Offices under them in the respective Courts of Justice wherein they presided; and who, the said Earl is assured, never apprehended themselves to be guilty of any Crime against any the good and wholesome Laws or Statutes of this Realm: And therefore we take it to be our Duty to give proper Evidence to support this Part of the noble Earl's Answer. But, my Lords, it is objected by the Gentlemen that are Managers for the House of Commons, that they are not prepared to enter into this Proof, because they had no Notice that such Evidence would be given: In Answer to which we humbly submit it, that the Answer the noble Lord hath given, that several presiding Officers in the Courts of Law and Equity have always received such Presents, is sufficient Notice to them to be prepared to answer such Evidence as might be offer'd to support this Allegation. My Lords, as to the other Objection, that the Opinions of great men are not Evidence in their own Cases, we submit it that in this Case it is a material Circumstance. Though the Precedents of great men, (whose Names they are unwilling to hear) who have taken Presents in like Cases, and not thought it criminal, may not controul your Lordships Judgment in this Particular, yet I humbly apprehend that such Instances cannot but have great weight in the Event of this Case. They are material Circumstances, strong Inducements to incline your Lordships to believe, that this noble Lord had

had no avaritious, no corrupt Design, in accepting the common customary Presents that were voluntarily tendred to him. And since it is made so material a Part of his Defence, and that he might well think himself innocent and secure in following the Examples of so many honourable and learned Persons, of which we are prepared to give your Lordships many Instances in Evidence; and since they have Notice of it, and that the noble Lord hath insisted upon it in his Answer, we humbly beg your Lordships will admit us to give the several Instances in Evidence.

Mr. Com. Serj. My Lords, I beg your Lordships Patience. My Lords, we humbly apprehend this is very proper and regular Evidence. I think there can be no Evidence more proper. If the noble Lord should have the Misfortune to be thought culpable, will he not appear under another View to your Lordships, when he hath had the Concurrence of several great Persons, of whose Integrity, Honour, and Knowledge, no Question hath ever been made? If he himself hath introduced this Practice, and set it up by himself, it will then most certainly be an Aggravation; if he hath done no more than others have done, it will be an Extenuation. My Lords, taking it in that Light, there is no Reason why this Evidence should not be given. But, I hope, your Lordships will further consider of the present Case: Here is a Law insisted upon of several Hundred Years standing, that makes this Criminal: It is owned that there hath been no Determination or Judgment at Law, that this is Criminal: Practice, especially in Respect of old Statutes, hath oftentimes been allowed and admitted to explain the Sense and meaning of those Statutes. There are no Records preserved of this, and therefore we are under a Necessity to confine our selves to such Evidence as we can produce of living Witnesses, and therein we apprehend we are proper, as it is Part of the matter in Issue before your Lordships. Your Lordships are as well to try the Earl's Answer, as the Common's Articles. Another Circumstance they are pleas'd to mention against receiving this Evidence, is, the taking up of your Lordships Time. Your Lordships have had the Goodness and Justice to hear, with great Patience, a very long Evidence, with repeated Observations and Openings of the Articles, in order to prove a noble Peer, one of your own Body, to be Guilty: Can it be supposed that your Lordships will not have that Patience, which is due to all People in Favour of Innocence, and when one of your own Body stands impeached? For these Reasons we humbly hope that this Evidence shall be admitted; and that the noble Earl shall have the Benefit of this Explanation, what the Sense of so many great and excellent men hath been of this old and doubtful Statute.

Mr. Robins. My Lords, we apprehend your Lordships will not be of Opinion, that this will be to defend the present Impeachment, by the Impeaching of others. We lay it down as the Foundation of our acting, that our Predecessors have done the same, notwithstanding this Statute of *Edward the 6th.* and therefore it is a reasonable Inference, that this was not taken to be within the said Statute. We apprehend it cannot reflect upon any that are either Dead or Living; and that, as we are in Defence of this noble Lord, we are at Liberty to examine Wit-

nesses; to prove that other Persons, his Predecessors, have done the same.

Mr. Strange. My Lords, I apprehend we have the same Right to justify our selves by Precedents, as they have to accuse us by Precedents. What the noble Earl's Predecessors in other Instances have done, hath been mentioned by Way of Aggravation. The Case of *Dr. Eddisbury* hath been mentioned over and over by the Gentlemen of the House of Commons; and they have aggravated the Offence of the noble Earl, for not following that Precedent; and as they had a Right to aggravate the Earl's Offence, by not following the Precedents of his Predecessors, so we think we have the same Right to shew in other Instances, that we have followed the Examples which have been set us by our Predecessors. But they say, this is against Law: Whether that is so, or not, is the Question; and it will be material for the Decision of that Question, to take into your Consideration, what hath been the Opinion of great Men in all Ages, upon this Act of Parliament. Continual Usage, from Time to Time, even from the making of the Act of Parliament, is the best Exposition of that Law. Contemporary Usage, or the Opinion of those, who were at the Time of the making of a Law, hath always been esteemed the best Interpretation of that Law; and therefore, as we shew the Usage to be conformable to what we now insist upon, I humbly hope it will have a great Influence upon your Lordships, as to the Exposition to be now put upon this Act of Parliament: It hath been said, This Way of Proceeding tends to accuse great Persons of Honour, &c. some that are Dead, and some that are now Living; we shall not enter into so nice a Debate: it is sufficient for us that it is proper and necessary Evidence for the Defence of our Client. It is a material Evidence in this Case, whether other Persons have disposed of these Offices, and have incurred any Penalty; if they have done it, I humbly apprehend that no Objection remains against our entering into the Evidence of that Kind. Whatever is your Lordships Judgment in Point of Law, it is material for your Lordships Consideration, whether this noble Lord hath set this on foot of his own Accord, or hath not trod in the Paths of his noble Predecessors? Your Lordships will take it into your Consideration, and whatever the Point of Law may happen to be, it must be said, that if this noble Lord did err, he erred with his Predecessors.

Earl of *Macclesfield.* My Lords, I would not trouble your Lordships, if I did not think it necessary to insist upon your Lordships admitting this Evidence: Indeed, if I thought it would impeach the Character or Reputation of any of the noble Lords, who have been my Predecessors, whether they be now dead or alive, I would undergo any Punishment rather than do it. But I hope it was innocent, both in them and me; and that its being done by Persons of such unblemished Honour, will be one strong Argument of its being so; and, my Lords, I protest their Example was the single Reason with me for doing of it; and if it had not been done before, I would not have done it: This was the true Ground of what I have done. For what these Gentlemen say, my Lords, that this is not material, and that the Law must be proved by Law Books and Judgments, I thought the Common

Law was common Usage, and that which hath constantly and openly been done without being censured or blamed, cannot be contrary to Common Law. If this be not allowed, I am highly obliged to these Gentlemen, that they have not accused me for taking Money in many other Instances, relating to my Office; to instance in one only, upon the passing of every Patent there is a small Fee due, and constantly paid to the Great Seal; if they had accused me of this, and called it criminal, I know not what to have said to it, unless Usage and Custom had justified it; I claim it as a Right, and unless Usage will prove the Right, I know no other Way. I own this is something different: In that Case, I insist on a particular Sum by Usage: I do not insist in this Case that there is a particular Sum due as a Fee, but that I had a Right, or Liberty, to accept of such a Sum as the Party should give: But, say the Gentlemen, this Evidence is to make other Persons Criminal; That is very true, if this be a Crime. These Gentlemen take it for granted; but whether it be a Crime or no, will be for your Lordships final Determination: And I hope your Lordships will not be of Opinion, that it is a Crime. If it should come out to be in your Lordships Judgment a Crime, it will be a great Censure upon my Predecessors, who all, as it is well known by every Body, did the same Thing. But if this be understood to be a Matter, that is admitted to have been practised, and to need no formal Proof, I had rather let this Examination alone: It is uneasy to me, to enter upon any thing that can draw a Reflection upon any Person: therefore I submit it to your Lordships.

Mr. Serj. *Fengelly*. My Lords, The Managers are accountable to the Commons for any Thing they admit without their Direction; therefore, unless they are satisfied and convinced that they ought to admit it, it is not to be expected for the Managers to do it. It is said, that the Things offered are in Extenuation; that it would be a greater Guilt, if there were not former Examples to justify it: I apprehend for that Reason it is an improper Time to insist upon this now: Because Matters of Aggravation or Extenuation must come subsequent to your Lordships Determination on the Articles, and will be the Consideration of your Lordships, when you come to consider of the Judgment that is to be given. I have known by frequent Experience, in Prosecutions of a Criminal Nature, that where the Defendant hath been convicted, he hath been allowed to lay Circumstances before the Court in Mitigation of the Punishment: And if, hereafter, this comes to be considered of in this Manner, the Managers will have an Opportunity to give a proper Answer thereto. If in this Answer he had insisted on it as an established Fee supported by Custom, and had claimed it as of Right, it had been proper to have examined Witnesses in Support of that; but when he insists upon

it as a Matter of Discretion, and of Explanation of an Act of Parliament, we cannot admit it. It is not proper to give in Evidence that, which doth not make good the Defence in Answer to the Articles. We cannot admit a Thing of this Nature, which may be attended with great Inconveniencies. We do not know what may be grafted on such an Admission; therefore we beg Leave to submit it to your Lordships Determination.

Mr. *Lutwyche*. My Lords, It is said very roundly, That this is an old doubtful Statute; and therefore you ought not to take Notice of it. As to the Doubtfulness of it, I believe it is too plain; as to the Obsolescency of it, it is a Statute that is read every Year in the Court of Exchequer. And therefore whatever Doubts may be of this Matter at the Common Law, yet this Statute makes it plain. And I desire the Council for the Noble Lord to tell us, where any Statute is more plain and positive; and wherein they have shewn the least Doubtfulness in the World, but rather object that it hath gone too far. Doth any Judge, in Point of Evidence, on an Indictment for Breach of a Statute-Law, permit Persons to give Evidence, that others have been guilty of the same Facts, and that therefore it is no Breach of the Law? Suppose this is to be considered as doubtful, on Construction of the Statute, what then is the common ordinary Method? It is well known, that the Jury find the Fact specially, and it is referred to the Court for their Opinion on the Law. My Lords, give me Leave to mention how this Matter is; here is an Act of Parliament, a general Act, the Judges are to take Notice of it, it is plain and positive. The Council make a Doubt on the Construction of this Statute; it is insisted upon that other People have done it, and have not been punished; and would such a thing be ever permitted to be found by a Jury, or would any Regard be had to it if found? I apprehend the noble Lord, who hath been a great Master of Evidence in his Time, would not have permitted it to be done: they have shewn no Precedent for it: In its own Nature it is unreasonable. Are we to examine into the particular Manner and Circumstances of every particular Case of the several Persons that are now either Dead or Living? It is unreasonable, it is unprecedented, to offer such Evidence; and I hope your Lordships will not admit of it.

Mr. *Plummer*. My Lords, the Council for the noble Lord take that for granted which we deny. The admitting these Witnesses to be examined, is admitting that it is not a Crime. Reputation is of great Value, and great Care ought to be taken of it; and we are willing to take Care of the Reputation of the noble Lord's Predecessors. I am not a Lawyer, but I never heard that that was not a Crime, which an Act of Parliament says is so. And that this is a Crime, I beg Leave to remind your Lordships, that he himself declared so to the

Masters in Chancery, that they had bought their Places against Law. I take that to be a fair Confession that his Opinion was, that it was a Crime.

Lord *Lechmere*. Before the Council withdraw, I would have this Question explained to me by the Council of the noble Lord, whether this Practice be insisted on as a Proof of a Right in the Great Seal to take this as a Perquisite, or whether it be offered as an Extenuation?

Mr. Serj. *Probyn*. My Lords, we insist upon it in both Respects.

Then the Managers and Council were order'd to withdraw; and after some Time, being called in again,

Lord Chief Just. *King*. Mr. Serjeant *Probyn*, It is their Lordships Judgment that you are at Liberty to proceed in your Evidence, as you were going on.

Mr. Serj. *Probyn*. My Lords, we desire Mr. *Roger Lewis* may be called again.

Mr. *Lewis* called.

Mr. Serj. *Probyn*. My Lords, I desire this Witness may be asked, how long he hath been a Deputy in the Office of the Clerk of the Custodies?

Mr. *Lewis*. About five and thirty Years.

Mr. Serj. *Probyn*. Who was then in the Office?

Mr. *Lewis*. Mr. *Henry Wynne*.

Mr. Serj. *Probyn*. How long did he continue in that Office?

Mr. *Lewis*. About Twelve Months.

Mr. Serj. *Probyn*. Do you know who succeeded him?

Mr. *Lewis*. Mr. *Roger Thompson*.

Mr. Serj. *Probyn*. My Lords, I desire he may be asked, whether any Present was made by Mr. *Thompson*, on his Admission into the Office?

Mr. *Lewis*. I do not know of any Present made by Mr. *Thompson*.

Mr. Serj. *Probyn*. By Mr. *Wynne*, or Mr. *Thompson*?

Mr. *Lewis*. No; but Mr. *Wynne* told me —

Mr. Serj. *Probyn*. Is Mr. *Wynne* living or dead?

Mr. *Lewis*. He is Dead.

Mr. Serj. *Pengelly*. My Lords, we beg Leave to object to this, what a particular Person told him is not Evidence, we hope this shall not be admitted.

Mr. *Lutmyche*. They know this was never allowed.

Mr. Serj. *Probyn*. If the Man be living, the Objection is good, but now he is dead, we hope it may be allowed.

Mr. Com. Serj. The Gentlemen object, that we are not at Liberty to ask what hath been declared concerning that Matter by a Person that is now dead; we humbly apprehend it is within the Rule of Evidence, and I must appeal to the Memory of your Lordships, whether it is not good Part of the Evidence that hath been given by the Managers.

Earl of *Macclesfield*. My Lords, what we are giving Evidence of, is of a Thing transacted thirty five Years ago; the Parties are

all dead: he is about to give you an Account of what he did, and was said to him at that Time by his Master, in his transacting that Affair. If the Person that said it were now alive, to be examined to it himself before your Lordships, it would not be Evidence without examining him; but if dead, what he said concerning this Fact may be given in Evidence, it is concerning the Party's own Act, and what he told him at the Time it was doing. Therefore we hope they will not oppose this Evidence, which in the Nature of the Thing is all that possibly can be now given.

Mr. Soll. General. My Lords, I hope this is what your Lordships will not suffer to be done. I never knew the Sayings of a dead Man given in Evidence to prove a particular Fact: They have been only admitted in Proof of general Usages and Customs; but as for a particular Fact, lying in the Knowledge of a particular Person, by his Death you have lost your Evidence.

Earl of *Macclesfield*. My Lords, if they will insist upon it, we must withdraw.

Mr. *Plummer*. This Man here is upon his Oath; but the Evidence that he must give of the Saying of another, must be of a Saying not upon Oath.

Lord *Trevor*. If there be a Difference in Opinion between the noble Lord and the Managers, they must withdraw. But I don't see any Reason to withdraw. I will tell my Opinion, that such an hearsay Evidence is no Evidence.

Mr. Com. Serj. I desire he may inform your Lordships, whether he knows any Thing as to the Transaction of his own Knowledge?

Mr. *Lewis*. I know that Mr. *Wynne*, whether he had surrendered, or was going to surrender, I don't remember, but he told me —

Mr. Serj. *Pengelly*. My Lords, they are going on again in the same Way.

Mr. Serj. *Probyn*. Do you know any Thing of your own Knowledge?

Mr. *Lewis*. I had Money in my Hands of Mr. *Wynne*'s. He told me —

Mr. Serj. *Pengelly*. Evidence of this Sort is by your Lordships Judgment not to be permitted.

Mr. Serj. *Probyn*. He informs your Lordships, that he hath known this Office thirty five Years. Now, I desire that he may declare what hath been the Usage on Surrenders and Admittances into this Office of Clerk of the Custodies, whether any Present, or Gratuity, hath been made to the great Seal?

Mr. Serj. *Pengelly*. This is the same Thing again.

Mr. Soll. General. If Gentlemen put this general Question with no other View but to draw out what your Lordships have determined to be no Evidence, we must oppose it. It is a plain Question, Whether he knows of his own Knowledge that any Money was given? And we desire he may be confined to his own Knowledge.

Earl of *Macclesfield*. The Gentlemen say, that as to Matters of Usage, it is usual to enquire what old Men have said and declared. I apprehend this is a Matter of Usage we are



how inquiring after; but if your Lordships are of Opinion that this should not be asked, I believe he doth not know any Thing of his own Knowledge of the Money being actually paid to the great Seal.

Mr. Serj. *Probyn*. My Lords, we desire that Mr. *William Oaker* may be called.

Mr. *Oaker* sworn.

Mr. Serj. *Probyn*. My Lords, we desire that Mr. *Oaker* may be asked whether he knows of any Demand, or Claim, made upon the Admission, or Surrender, of the Clerk of the Custodies, and by whom?

Mr. Serj. *Pengelly*. My Lords, this Question is contrived in an odd Manner. The Question must arise upon the Fact, not antecedent to the Fact. The Question of any Claim before, should be whether he knows of any Money paid, and in what Manner?

Earl of *Macclesfield*. It is the stronger, if it is claimed and paid: But I apprehend, if it were only claimed, it is Evidence.

Mr. *Oaker*. I don't well understand the Question as it is put, but I remember in my Lord *Comper's* first Time, in the Year 1710, that Office was transferred from Mr. *Thompson* to Mr. *Edwards*; I was then Secretary of the Lunaticks, and I remember I inquired of one or both of those Gentlemen, if any Present was made to my Lord on that Occasion, and was answered, that nothing had been usually given in the Case of that Office, and that they had satisfied my Lord thereof. Afterwards, when my Lord *Comper* had the great Seal again, and I was again Secretary of the Lunaticks, his Lordship was pleased to observe to me, that he had suffer'd himself to be imposed upon in several Matters, when he had the Seal before, and instanced particularly in the Affair of transferring the Office of Clerk of the Custodies; and said he was very well satisfied those Gentlemen had imposed upon him, by assuring him that nothing had usually been given on transferring that Office; for he was well assured there had been Presents on that Occasion, and did not see any Reason why there should not: And his Lordship ordered me to enquire, as particularly as I could, what had been given, and by whom, that he might know what to do if a Thing of that Kind should happen again.

Mr. *Plummer*. My Lords, I believe this Gentleman was Servant to my Lord *Comper*, when he was Chancellor last; I desire to know if any Vacancy of this Office happen'd in the last Time that he was Chancellor.

Mr. *Oaker*. There was a Vacancy in the last Time. I don't know what Sum of Money was given for it?

Mr. *Plummer*. My Lords, I desire this Witness may be asked, if he ever knew that my Lord *Comper* did take any Thing for the Surrender of this Place?

Mr. *Oaker*. I don't know, I believe he had nothing the first Time, but he thought himself imposed upon in it, and bid me inquire about it. As to the second Time, I never could inform my self what was done in it.

Lord *Lechmere*. I desire he may be asked, Who it was that surrendered this Place of Clerk

of the Custodies, and to whom? Name them!

Mr. *Oaker*. The first was Mr. *Thompson*, who surrendered to Mr. *Edwards*, he surrendered to Mr. *John Bennet*, and Mr. *John Bennet* surrendered to Mr. *Thomas Bennet*.

Mr. *Onslow*. My Lords, I desire before Mr. *Oaker* goes, that he may explain himself which of those two Times it was that my Lord *Comper* said he was imposed upon?

Mr. *Oaker*. It was the first Time.

Mr. *Onslow*. I desire to know if he took any Thing at either Time?

Mr. *Oaker*. I don't know, otherwise than as I have before declared.

Mr. Serj. *Probyn*. My Lords, we desire that Mr. *Edward Dupper* may be called.

Mr. *Dupper* sworn.

Mr. Serj. *Probyn*. My Lords, I desire that Mr. *Dupper* may be asked, whether he knows of any Sum of Money that hath been paid, or received on the Surrender, or Admission, of any Clerk of the Custodies?

Mr. *Dupper*. I did not see any Money paid: I did give my Lord *Macclesfield* an Account that there had been 250 Guineas paid upon a former Surrender of that Office before this Mr. *Hammersley* was admitted.

Mr. Serj. *Probyn*. From whom had you that Information?

Mr. *Dupper*. My Lords, I don't know how far I may be permitted to name that Person's Name.

Many Lords. Name him.

Earl of *Macclesfield*. Was it from one that had the Custody of the great Seal?

Mr. *Dupper*. Yes, my Lords.

Lord — — Who was it from?

Mr. *Dupper*. I had it from my Lord *Harcourt*: My Lords, I cannot say I saw the money actually paid; neither can I say, that his Lordship received this money. But I was a Servant to my Lord *Harcourt*, and his Lordship kept an Account of the Profits of the Office of Lord High Chancellor in his Time, in his own Writing; and I made two Copies of that Account in a large hand-writing for his Lordship's Use; and I generally made two Copies of each, for fear one should be lost or mislaid when wanted: One of these Copies I kept by me, which I have here; in it is an account of the yearly Profits of that Office, and there is this particular; *Item*, of 250 Guineas received for the Surrender of the Office of Clerk of the Custodies, which I copied from a *Memorandum*, or Account of his Lordship's own hand-writing.

Mr. Serj. *Pengelly*. My Lords, I don't know what he is going to do. I hope there is very little notice to be taken of what he hath said: A Man tells a Story that is a Servant: I hope no Credit will be given to what he says.

Mr. Com. Serj. My Lords, I desire he may inform your Lordships, when it was that he gave an Account to the Earl of *Macclesfield*; that so much money had been paid, and upon what Occasion it was?

Mr. Serj. *Pengelly*. Give an Account! he knows nothing.

Mr. Com. Serj. My Lords, I hope you will not think it an improper Question. He says, that he gave an Account, I desire to know what he

he gave an Account of, and if he knows upon what Occasion it was?

Mr. *Dupper*. My Lords, the Reason of my giving this Account was, There was a Dispute between Mr. *Cottingham*, who was my Lord *Macclesfield's* Secretary, and my self, about the Office of Clerk of the Custodies. Mr. *Cottingham* told me, that Mr. *Fennet* was going to surrender his Place of Clerk of the Custodies: I asked him, to whom? He told me, it was to his Neighbour Mr. *Hammersley*. I answered, I am very glad to hear it; there will then be a piece of money for my Lord Chancellor. Mr. *Cottingham* said, That is more than I know; was there ever any money paid upon the Transfer of this Office? I said, Yes, I remembred there was, and I never knew any Offices or Places under the Great Seal transferred without an Acknowledgment paid to the Great Seal. He asked me what? I told him I had a Copy of the Account of the Profits of the Great Seal, kept by my Lord *Harcourt* in his Time, and that I would look into that Copy, and tell him what had been paid on the Surrender of that Office. I did look into that Copy, and the next day I told Mr. *Cottingham*, that 250 Guineas had been paid on the Surrender of that Office. And afterwards, and before the Transfer, I told my Lord *Macclesfield* of it.

Mr. *Strange*. When Mr. *Hammersley* was named, I desire to know if Mr. *Cottingham* did not at that time call him his Neighbour?

Mr. *Dupper*. I did not know Mr. *Hammersley* at that time; but Mr. *Cottingham* called him his Neighbour.

Mr. *Plummer*. My Lords, I desire he may be asked, if he told my Lord *Macclesfield* of this before Mr. *Bennet* resigned to Mr. *Hammersley*?

Mr. *Dupper*. Yes, I did my Lords.

Mr. *Lutwyche*. My Lords, I desire to ask him one Question. I think he is pleased to say there is no Place under the Great Seal, but what an Acknowledgment is taken for: I desire to know whether he himself hath not a Place given him by that noble Lord for his Life?

Mr. *Dupper*. No, my Lords.

Mr. *Lutwyche*. Had you no Place at all given you?

Mr. *Dupper*. I have the Reversion of a Place, which is not fallen as yet.

Mr. *Lutwyche*. What Place is that?

Mr. *Dupper*. The Sealer's Place.

Mr. *Lutwyche*. Do you enjoy that Place?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Was there any Money given for that Place?

Mr. *Dupper*. No, Sir: It is what I had for fifteen Years Service. I was his Clerk, and I acted as his Steward, in Town and Country, a great many Years; and his Lordship was pleased to give me that Reversion as a Reward for the Labour and Pains I took in his Service.

Mr. *Serj. Pengelly*. My Lords, I desire he may be asked, how long after it was that he carried this Account to Mr. *Cottingham*, that he speaks of, how long after he had found it?

Mr. *Dupper*. I don't exactly remember: But as near as I can guess, it was the next Day, the first time that I saw him afterwards.

Mr. *Serj. Pengelly*. I desire he may be asked,

whether at that time he gave Satisfaction to Mr. *Cottingham*, that it ought to be insisted upon?

Mr. *Dupper*. I told him so much had been given for the Surrender of that Office, and I never knew of any Office under the Great Seal transferred without Money.

Mr. *Lutwyche*. I desire Mr. *Dupper* may acquaint your Lordships what the yearly Value of that Office is, that was given to him?

Mr. *Dupper*. I never was in Possession of it.

Mr. *Lutwyche*. Do you know what is the yearly Value of it?

Mr. *Dupper*. No.

Mr. *Lutwyche*. Can you give no Account of it?

Mr. *Dupper*. No: The Man hath been in Possession of it, I believe, these threescore Years, and I believe he will live these threescore Years longer.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Laiton* may be called.

Mr. *Laiton* sworn.

Mr. *Serj. Probyn*. I desire he may be asked, whether he was not formerly a Curfitor?

Mr. *Laiton*. I was a Curfitor almost three and forty Years.

Mr. *Com. Serj.* I desire that he will inform your Lordships, whether any Money was paid, either by him, or any other?

Mr. *Serj. Pengelly*. My Lords, we beg Leave to understand your Lordships Resolution, whether it extends to allow an Examination as to the felling of any other Offices not contained in the Articles?

Mr. *Serj. Probyn*. My Lords, we shall endeavour to prove that Acknowledgments have been anciently and usually paid upon Admissions into all Offices under the Great Seal. And this is Part of this noble Lord's Defence, That it is usual for the Great Seal to take Money for the transferring of those Offices. This Witness was one of the Curfitors in the Court of Chancery; therefore I hope it is proper to give Evidence of Money given for those Offices, as being Offices under the Great Seal. Therefore, my Lords, I desire he may be ask'd, whether he hath known of any Money paid to the Great Seal upon the Surrender, or Admission of any Curfitor?

Mr. *Lutwyche*. My Lords, I submit it whether it is proper for your Lordships to let them into this Evidence. I take it, that the immediate Questions before your Lordships are only upon two sorts of Offices, one of the Clerk of the Custodies, the other the Masters in Chancery. Now whether your Lordships will let them into an Evidence of all the Offices of the Kingdom, which is very extensive, I submit to your Lordships Consideration.

Mr. *Plummer*. Your Lordships observe, that we have not gone upon the 10th Article, where we have laid that he sold several other Offices: considering the great Extensiveness of it, and that it would draw this Tryal into a great length, we have waved it; and therefore submit it to your Lordships Consideration, whether he shall make his Defence to any thing we have not yet given Evidence to.

Earl of *Macclesfield*. This would be to put a great difficulty upon me. The Charge against me being founded upon a Supposition, that the taking

taking money upon admitting Persons into Offices in the Court of Chancery is criminal; part of my Defence is, that the constant practice of my Predecessors shews the general Opinion to be otherwise; and therefore I have by my Answer insisted upon it generally, that not only for the one particular Office of the Clerk of the Custodies, or Masters in Chancery, but for all other Offices under the Great Seal, money hath been given; therefore whether the Office for which I prove the money to be given, be one of the Offices charged in the Articles, and proceeded upon, or another not charged, or charged and waved, it will be the same thing. The Argument is the same with respect to the foundation of the Accusation, if in all other Offices, of which Persons now living can give an Account, monies have been taken without Crime, and without Blame; by parity of Reason it may be taken in these: I offer this Evidence, not to shew I am not criminal with respect to the Curfitors Offices, their waving that general Article which comprises them, admits it; but to make out that Branch of the Induction, in order to infer from the whole my not being criminal in the Particulars they do proceed upon; for if it was no Crime to take money from the Curfitors, and all the rest, besides the Masters in Chancery and Clerk of the Custodies, it is no more so to take it from them: If this Objection be allowed, the Proof, which in its full Latitude would be of great Extent, and go to all my Predecessors within 50 or 60 Years, will be confined to a very narrow compass, when restrain'd to what Account can be given in only two Sorts of Offices, by Persons who saw the money paid, and happen to be still alive. Besides, for strengthening that Argument from other Instances, I have in another Part of my Answer insisted, that other Persons of great Wisdom and Honour, have likewise, without Scruple, and without Censure, disposed of other Offices for money; that this hath been constantly practised in the Disposal of all Sorts of Offices in *Westminster-Hall*, money hath been taken for them all along; this Proof I must be cut off from too, if I am to give Evidence only of what was done in the case of those Offices for which they proceed against me: I hope therefore the Gentlemen will not oppose the going on to make the Proof proposed by my Council.

Mr. Serj. *Pengelly*. My Lords, if it be put in this general manner of all other Courts, and in all other Instances, we apprehend it will be a very extraordinary Examination. A Person is charged with a particular Charge of one Fact, and he would examine to another, with which he is not charged. This is besides the Issue, and not before your Lordships. Here is a Charge by the Commons of *Great Britain*, and an Answer and Defence to that, which can go only to those particular Offices charged. Now to introduce an Evidence of this Nature, is exceeding any Rule or Instance that hath been ever heard of. If they apprehend by proposing and insisting on it in this High Court of Judicature, they shall be allowed to proceed in a method wholly new, we can't tell the Consequence of such an Allowance; and it is to no purpose for the Managers to come prepared to examine to a particular Fact stated between us, when there may be ten thousand things insisted on that are not in Issue.

Lord Viscount *Townshend*. I can't say this is within the Rule your Lordships laid down. If it is insisted upon, the Council must withdraw.

Earl of *Macclesfield*. My Lords, I don't know whether this will not go through a great Part of my Defence, which will be to shew that other Offices have been disposed of by the Master of the Rolls, the Chief Justices, and other Judges. This is in my Answer: The Commons had Notice of it; and they have joyned Issue upon it. I wonder to hear it said they have not joyned Issue, when in the Answer it is insisted upon, and they have replied thereto. This is a Thing that these Gentlemen are very well aware of; it is so general and universal a Thing, that every Body knows of it. I don't know whether it is intended to make any Distinction between this Case, and what is done in other Cases; if they do, I would be glad to hear it; if they do not, then I would beg your Lordships Determination upon it.

Mr. Serj. *Pengelly*. My Lords, we are not to declare our Opinion, whether there is any Difference, or not; the Question is in Point of Evidence.

Mr. *Soll. General*. My Lords, I don't apprehend that we have joyned Issue on every Thing that the Noble Earl hath thought fit to put in his Answer. The Commons have charged him with several Crimes: He hath answered to those Crimes: The Commons reply, that they are ready to make good their Charge. By this, Issue is joyned upon every Thing in the Charge; but not upon every foreign Thing that he hath put into his Answer. We insist that he is not to give Evidence of the Sale of any other Offices, but of those that he is particularly charged with. As to the Curfitors Office, and other Offices that he is not charged with, we say he is to give no Evidence.

Mr. *Lutmyche*. My Lords, because it is insisted upon, that whatever this Noble Lord hath said in his Answer, we have replied to; I would observe that the very Replication takes Notice of this very Thing, and was one of the Things considered of by the Commons, and therefore the Reply is, "That he hath endeavoured to evade the Enquiries into his own Crimes, by insinuating Facts not material to the matters charged." And therefore, my Lords; we insist that he may not enquire into those matters which we have not charged.

Mr. *Com. Serj.* I don't know whether I may be at Liberty to add, that I humbly apprehend, that what the Gentlemen of the House of Commons now insist upon, is contradicting your Lordships Resolution already taken.

*Then the Managers and Council were order'd to withdraw, and being afterwards called in again, and returned.*

Lord Chief Just. *King*. Mr. Serjeant *Probyn*, The Lords have resolved, that the Council for the Earl of *Macclesfield* be not permitted to give Evidence touching the Sale of the Office of Curfitors, for that no Evidence hath been given in Relation thereto by the Managers of the House of Commons.

Mr. Ser. *Probyn*. Then (if it be your Lordships Pleasure) we beg leave to call one Witness more, in Opposition to the Evidence given by Mr. *Thomas Bennet*, in Relation to a Sum of money paid by him upon the Surrender of his Office of Clerk of the Custodies; he gave your Lordships an Account that he had paid the Sum of Sixty four Pounds, (besides the Sum of One hundred and five Pounds, which he at first agreed to give the Great Seal) upon his Surrender of that Office. Now, my Lords, we shall shew your Lordships, that no part

of that Sum of Sixty four Pounds was really paid to the Great Seal, as Mr. *Bennet* seems to insinuate, but was all laid out in the Fees and Expences of passing his Patent through the several Offices that are proper upon that Occasion. And to this End we desire that Mr. *Tench* may be called.

Mr. *Tench* sworn.

Mr. Serj. *Probyn*. My Lords, we desire Mr. *Tench* may inform your Lordships, if he was employed in taking out the Patent for Mr. *Thomas Bennet*, upon his Surrender of the Clerk of the Custodies?

Mr. *Tench*. My Lords, I was employed by Mr. *Thomas Bennet* to sue out the Patent, and I paid the Fees of every Office of passing the Patent, which comes to between 60 and 70 *l*.

Mr. Serj. *Probyn*. We desire he may tell us what Officer he is?

Mr. *Tench*. I am Clerk of the Patents to the Attorney General, and Deputy Clerk of the Patents in Chancery.

Mr. *Com. Serj.* I desire he may be asked, what part of those Fees are paid to the Great Seal?

Mr. *Tench*. There is a Dividend of the money arising from the Patents, of this 1 *l*. 8 *s*. 4 *d*. and 3 *s*. went to the Great Seal.

Mr. *Com. Serj.* I desire he may be asked, whether any more came to the Great Seal out of the 64 *l*. than 1 *l*. 11 *s*. 4 *d*?

Mr. *Tench*. I don't know that there is any more of the Dividend of the Patent. The rest went amongst others for their several Fees at the several Offices.

Mr. *Com. Serj.* I won't trouble your Lordships to ask to whom the rest of the money belongs, but whether the Remainder is paid over to other Offices?

Mr. *Tench*. I don't know that any thing is paid to the Great Seal, upon passing the Patent Office, but the Dividend of 1 *l*. 11 *s*. 4 *d*.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether the Remainder is paid to other Offices?

Mr. *Tench*. Yes, to other Offices, to the Hanaper Office, the Secretary's Office, the Signet, and Privy Seal.

Mr. Serj. *Probyn*. My Lords, we shall trouble your Lordships with no further Evidence on this Article: But beg your Lordships Favour to begin our Evidence on the 5<sup>th</sup>, and other Articles.

Mr. *Sandys*. My Lords, I desire he may be asked, where he found the Warrant for passing the Patent at that Time?

Mr. *Tench*. I had the Warrant from the Secretary's Office.

Mr. *Sandys*. I desire he may be asked, if he knows how it came there, and by whose Direction, if he knows who procured it?

Mr. *Tench*. My Lords, I drew a Petition by Mr. *Bennet*'s Direction, to the Secretary of State, upon that the Petition was referred to the Attorney General, and upon his Report, there was a Warrant. I know of no other Proceedings relating to it.

Mr. *Sandys*. My Lords, I desire he may be asked, at whose Instance he drew up that Petition?

Mr. *Tench*. I drew it up at Mr. *Thomas Bennet*'s Request.

Mr. *Sandys*. To what Purpose was that Petition?

Mr. *Tench*. The Petition recited that the Patent was granted to his Brother, and that upon his Brother's surrendring, it might be granted to him.

Mr. *Sandys*. It is the last Petition we desire to be informed of, what the Purport of that was; not the Petition of Mr. *John Bennet*, when he surrendered to Mr. *Thomas Bennet*, but the Petition of Mr. *Thomas Bennet*, when he surrendered to Mr. *Hammersley*?

Mr. *Tench*. It was a Petition reciting the Grant to Mr. *Thomas Bennet*, and that he might resign to Mr. *Hammersley*'s Use, who was a Person well affected to his Majesty and the Government.

Mr. Serj. *Probyn*. My Lords, we now proceed to the other Articles, which relate to the Presents made by the Masters in Chancery to the Earl of *Macclesfield*.

Upon this the House adjourned to the next Morning Ten a Clock.

## Thursday the 13<sup>th</sup> of May, 1725. The Sixth Day.

The Lords being seated in their House, and the two Proclamations being made as on the former Days:

LORD Chief Just. *King*. Mr. Serjeant *Probyn*, you may go on with your Evidence.

Mr. Serj. *Probyn*. My Lords, we beg leave to lay before your Lordships some instances, where, upon former Admissions of Masters in Chancery, Sums of Money have from time to time been taken by the Great Seal. We desire Mr. *Meller* may be called again.

Accordingly Mr. *Meller* appeared.

Mr. Serj. *Probyn*. We desire Mr. *Meller* may be asked, whether he knows of any Sum of money paid to the Great Seal, upon the Admission of a Master in Chancery, and what Sum?

Mr. *Meller*. My Lords, I humbly apprehend, that the Subjects of *Great Britain* are not compellable in any case to give an Answer to any matter that may be to their Prejudice. I speak it with the

greatest Submission to your Lordships. For my part, I am very unwilling to do any thing that may any ways lessen the Security of the Subject, therefore I humbly hope your Lordships will not compel me to give an Answer to any Question of this Nature. I humbly submit it to your Lordships Judgment.

Earl of *Macclesfield*. My Lords, the Question he is asked is a general Question, whether he knows of any money paid to the Great Seal by any Master in Chancery upon his admission. Whether he knows, or doth not know it?

Mr. Serj. *Pengelly*. My Lords, we beg leave to acquaint the House of the Circumstances of Mr. *Meller*, from whence the Objection rises. He was formerly a Master, but before the late Act of Parliament he quitted that Office, and hath no Indemnification,

dennification, as the present Masters have by that Act. Therefore, as I apprehend, his Objection is, that he can't give an Answer to this Question, without subjecting himself to a Penalty, and accusing himself of an Offence against the Law.

Mr. *Lutmyche*. This general Question tends to make him accuse himself, and subject himself to a Penalty.

Earl of *Macclesfield*. My Lords, I would gladly know whether these Gentlemen object to this Question or not; if they object themselves to it, they have a right so to do, and to offer their Reasons, and they must be left to your Lordships Judgment. But they have no Right to instruct a Witness.

Mr. *Lutmyche*. I never endeavoured to instruct any Witness. It is very well known I never attempted any such thing; and that noble Lord knows it. I am now here, not as Counsel, but as one of the Managers for the House of Commons, and by their Command, and so have more Reason to take Notice of this Reflection. We do not instruct Witnesses, this is no such thing. It is an Objection which we have a Right to make. We have done it already, and have had your Lordships Determination upon it. It is not so very long ago, but the noble Lord may remember this very Question was directly asked of Mr. *Bennet*, and then refused; the next Day asked again by a side-wind, whether he knew any, and what money had been given for the Place? and rejected by your Lordships; and then a Question was asked, How much he knew the Place sold for? and your Lordships likewise refused that: Here now is a Question asked of a man that hath been a Master in Chancery, and not indemnified by the last Act, whether in Effect he paid any money for his Office? Your Lordships thought this induced a penalty, because you thought it necessary to pass an Act of Parliament to indemnify the present Masters; but it is well known it doth not extend to those who were Masters before; and therefore as there is a Penalty annexed to it, he ought not to answer this Question. Besides, for the sake of our Proceedings, it ought not to be answered, and we have a Right thus to interpose, that when your Lordships have refused the same thing in another man, the same is not to be insisted upon again.

Mr. *Serj. Pengelly*. My Lords, it is the Duty of the Managers to take Notice of the Behaviour of the Lord impeached. Whether he apprehends that he hath a Right to controul the Managers in this House, and whether that arises from the Seat he enjoys, your Lordships will consider the Consequences of this Behaviour. When the first Day we were told, that we were working up the Witnesses, and now that we are instructing them, whence could this Lord have this Imagination, but from his own former Practice?

Earl of *Macclesfield*. My Lords, as to that Gentleman that thought himself reflected upon, he greatly mistakes me. I did not intend to reflect upon him as going to instruct the Witness in his Evidence; I believe him as far from it as any man in *England*. I know him to be a person of too much Honour; and I had not the least Thought when I spoke it, of his instructing a Witness in that Sense. But here a Witness is making some Difficulty in answering a Question, and I thought that that Gentleman who spoke first, was stating that which made the Witness's Objection; which I apprehended did not belong to the Managers to do. That is what I meant by instructing. The Que-

stion that is asked is, whether he hath known of any money given to the Great Seal, upon an Admission of a Master in Chancery? Say they, he was a Master in Chancery himself, therefore it may include his giving money upon his being admitted: But be that so, he may know of other Persons besides himself that gave money. My Question therefore is general, whether he knows of any money given to the Great Seal on Admission of a Master in Chancery? The Question your Lordships resolved was as to Mr. *Bennet* himself, and confined to his single Office; and had I asked Mr. *Meller* what he had given on his Admission to his own Office, it had been another matter, and within your Lordships Resolution. But the Question that is now asked, includes what he knows hath been given by other Masters; therefore he may give an Answer without charging himself. If he answers that he doth not know of any money given by any other Master except himself, then it will come to the Question the managers would bring it to. In the mean time give me leave to say, that those Gentlemen, by being Managers of the House of Commons, have not a Right of treating Persons in a different manner than what they should do if they were not Managers. That that Gentleman should say, that what I spoke about instructing of Witnesses, ariseth from a Practice of my own, is Language unbecoming the Dignity of your Lordships Bar. Is this a Way of treating Mankind? Is this a fit method of carrying on a Prosecution? Is this decent speaking before so august a Judicature as this? What I said of instructing a Witness, imported no faulty way of Instruction. — (*After a short Pause*) I have a great deal of Preparation not to be disturbed at any Expressions that fall upon this Occasion. It is a faulty Way of instructing a Witness, to tell him what he shall say; but to tell him he hath a legal Objection to a Question that is asked, I know no Crime in that. My Lords, I beg Pardon for taking so much Notice of this matter; but I insist upon an Answer to this Question, whether he knows of any money given to the Great Seal, on an Admission of a Master in Chancery? He may answer affirmatively, without at all affecting himself; and I submit, whether he ought not to do it.

Mr. *Plummer*. My Lords, if the Counsel for the Noble Lord have done, I beg Leave to reply. The Noble Lord says, that this Gentleman may possibly answer, and not accuse himself. But if by the Answer he may accuse himself, it is a Reason why he should not answer. The method proposed, that he may say, he doth not know of any but himself, it is accusing himself. As for the other Point about instructing Witnesses, it is not our Witness, but his own Witness, who refuses to answer.

Mr. *Onslow*. The Managers cannot but observe the indecent Behaviour of this Lord, and his unworthy manner of treating us. What we say here, we are ready to say any where. We do not think the Lord at the Bar should be directing the Managers, as if he sat in his Place as Judge: If we do any thing unbecoming, we are subject to your Lordships Judgment. We appear not here as common Prosecutors, and are not to be treated as common Counsel by him, as he would have treated Counsel in another Place. We are here Advocates for all the Commons of *Great Britain*, to demand Justice against this Earl; and submit it to your Lordships, whether he is to treat us in this unbecoming manner. As for the Question, the very Reason he now gives for asking it, is the same

same that was given by him for examining Mr. *Bennet*, and your Lordships then over-ruled it. It is only by a side Wind asking a Question of a Witness, the Answer whereto will unavoidably charge him with a Crime: He cannot answer without charging himself. This Lord hath laid a Trap for the Witness to accuse himself. He says he may answer that he knows nothing of any money given by any Master but himself; which is directly saying that he himself hath given money. We hope therefore this Question shall not be asked; and we insist upon the Objection.

Mr. *Palmer*. In Duty to the House of Commons, I think my self obliged to take Notice of the strange Behaviour of this Lord in this Instance. According to your Lordships own Rule, tho' he sits within the Bar, yet he is not a Judge; and therefore I must beg for my self, in the Names of the Managers, and in the Names of all the Commons of *Great Britain*, that no such Language or Behaviour be again used; if it should, we cannot bear it, but must retire.

Earl of *Macclesfield*. My Lords, I desire the general Question that I have proposed may be asked; I do not know what is your Lordships Pleasure; I think I have a Right to have it answered.

Mr. *Plummer*. I object to the Lord's going on. The Lord hath answered; we have replied; and I insist upon it he hath not a Right to speak any more.

Duke of *Argyle*. I hope they will withdraw.

*Ordered to withdraw.*

*Then the Managers and Council withdrew, and being called in again, and returned:*

Lord Chief Just. *King*. Mr. Serjeant *Probyn*, the Question proposed by the Noble Earl to Mr. *Meller* was, whether he knew of any money paid to the Great Seal by any Master on his Admission; and Mr. *Meller* insisting that he had been a late Master in Chancery, and was not obliged to answer the Question, because it might tend to accuse himself; the Lords upon Debate are of Opinion, that he is not bound to answer that Question.

Mr. Serj. *Probyn*. My Lords, then we desire he may be asked, whether he knows of any Sum of money paid by any other Person, except himself, upon the Admission of any Master?

Mr. *Com. Serj.* I would not presume to ask any Question that is improper, I understand your Lordships Resolution to be, that we are not to ask the general Question of Mr. *Meller*, because it might affect himself; this Question, we think, will not; whether he knows of any Sum of money given upon the Admission of any other Master?

Mr. Serj. *Pengelly*. My Lords, we submit it, whether this Question differs at all in Consequence; tho' it be not in the same Words, yet it is to the same Effect: It is in other Words to ask the same Question over again. We hope they will not give your Lordships this Trouble.

Mr. *Lutmyche*. My Lords, the Question implies that he gave money himself.

Lord *Lechmere*. If the Council would explain themselves more particularly, name the Master, the Person who received it, or any other particular Fact; then it will appear whether that be a proper Question.

Mr. Serj. *Probyn*. My Lords, we humbly apprehend, that we are at Liberty to ask this Question in the Form proposed, otherwise we shall in a great Measure be precluded from the just Defence of the Noble Earl. We could not presume to ask these Witnesses beforehand, who were the Persons

that gave, or the particular Persons that received; but as these Persons have been in the Office, and must know the Nature of admitting the Masters in Chancery; we hope they will explain it in their Evidence, and name the particular Persons, who either gave, or received Money upon that Occasion. We are not proper to ask more particularly.

Mr. *Com. Serj.* My Lords, I shall be very loth to give any Distaste to this Honourable House, therefore I beg Leave to know, whether or no we have Liberty to ask this Question, and whether your Lordships Resolution extends to it? I humbly take it; we are at Liberty to ask the Question, and the Witness is not obliged to answer, if he apprehends that as the Question is formed he cannot answer without an Inconvenience to himself. I would not willingly ask any Question that I thought the House would think improper.

Lord *Trevor*. If the Noble Lord insists upon this Question, it is proper that he should name some Person, concerning whom he would ask; otherwise, it is indirectly to overthrow your Lordships Resolution.

Earl of *Macclesfield*. My Lords, I am very unfortunate in this Matter. I would ask him the Question in such a Manner, as should not carry any the least Imputation on him: but if I should first name one Master, and afterwards another, in so great a number of Masters, it would be tedious; I only ask in short, what he knows of any Money taken by the great Seal for, or on the Admission of other Masters? I don't ask him concerning himself, but only concerning other Masters; Whether he knows any thing of the Transactions of other Masters Admission besides his own? I hope your Lordships will think this may be asked, with this Explanation and Declaration, that it don't extend to any thing relating to himself; but only whether he knows any thing concerning any Money paid by any other Persons? and to name them particularly.

Lord Chief Just. *King*. You hear the Question.

Mr. *Meller*. Is it your Lordships Pleasure that I should answer to the Question as it is now form'd? My Lords, I don't know, or remember, that ever I had a Discourse with any Master about what he gave, or what he was to give, for any Place; except I have heard Dr. *Eddisbury* say—

Mr. *Lutmyche*. My Lords, we object to this as not being Evidence, but only hearsay.

Mr. *Meller*. Except Dr. *Eddisbury*, I don't know one indeed.

Mr. Serj. *Probyn*. My Lords, we desire that Mr. *Lovibond* may be called.

Mr. *Lovibond* called.

Mr. Serj. *Probyn*. My Lords, we hope that Mr. *Lovibond*, being one of the present Masters, and consequently within the Indemnity of the late Act of Parliament, may be examined, as to what happened in his Case: And we desire that he may be asked what Sum of Money was paid to the Great Seal, on his being admitted a Master in Chancery?

Mr. *Lovibond*. My Lords, as to that Transaction, it is many Years ago, above twelve Years ago, I will recollect what I know of it to the best of my Remembrance. My Lords, I never had any Treaty in that Affair with the Great Seal, nor with any Officer belonging to the Great Seal; nor did I employ any Body in it. But there was an Acquaintance of mine, a Master in Chancery, since deceased, who apprehending it to be for my Service, without my Knowledge transacted it.

Mr. Serj. *Probyn*. Who was it?

Mr.

Mr. *Lovibond*. Mr. *Browning*; He came to me, and told me, I have settled the whole Matter, you must be sworn in this Night, and you must send to Mr. *Cottingham* or Mr. *Appleby*, then Officers under the Great Seal, 700 *l.* in Money or Bank Bills. I did send it that Night; and was then sworn in.

Mr. *Serj. Pengelly*. My Lords, I desire he may be particular as to the Time: It is necessary he should be certain.

Mr. *Lovibond*. Mr. *Browning* said, he had settled it with the great Seal, that I should be sworn in that Night; my Lord *Harcourt* was then *Chancellor*.

Mr. *Strange*. My Lords, I desire he may be asked, Whether he was admitted upon a Death or a Surrender?

Mr. *Lovibond*. I was admitted upon a Surrender.

Mr. *Strange*. By whom?

Mr. *Lovibond*. Mr. *Pitt*.

E. of *Strafford*. Before the Witness goes, I desire to ask him how much he gave to Mr. *Pitt* upon his Surrendring?

Mr. *Lovibond*. It was 2000 *l.*

L. *Harcourt*. My Lords, If the Gentleman is not gone, I desire to ask him a Question or two.

Mr. *Lovibond* called again.

L. *Harcourt*. My Lords, I desire he may be asked, Whether he was worth so much Money as to pay 2700 *l.* of his own Money at that Time?

Mr. *Lovibond*. Yes, my Lords, and much more.

L. *Harcourt*. I desire he may be asked, Whether he paid it out of his own Money, or out of the Suitors Money?

Mr. *Lovibond*. I paid it out of my own Money.

L. *Harcourt*. I desire he may be asked, Whether Mr. *Pitt*, at the Time of his Admission, transferred and actually delivered over to him all the Money of the Suitors that then was in his Hands?

Mr. *Lovibond*. Mr. *Pitt*, to the best of my Belief, delivered over every Thing that was in his Hands to me.

Mr. *Serj. Probyn*. My Lords, We desire that Mr. *Cottingham* may be called again.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. My Lords, We desire that Mr. *Cottingham* may be asked, Whether he knows any thing of any Transaction relating to the Payment of any Sum of Money on the Admission of Mr. *Holford*.

Mr. *Cottingham*. My Lords, if I remember right, there was 800 *l.* paid.

Mr. *Serj. Probyn*. How long ago?

Mr. *Cottingham*. It is several Years ago: There was 800 *l.* or 800 Guineas given or paid on his Admission, several Years ago.

Mr. *Serj. Probyn*. To whom?

Mr. *Cottingham*. My Lords, Sir *Richard Holford* desired me to recommend his Son to the noble Lord that then had the Great Seal.

Mr. *Serj. Probyn*. Who was it?

Mr. *Cottingham*. The Lord *Harcourt*, Sir *Richard Holford* was my old Friend and Acquaintance: I accordingly did recommend him;

Mr. *Holford* came under a good Character to my Lord *Harcourt*; my Lord agreed to admit him, but he first desired to know whether he had any Estate in Possession sufficient to answer the Suitors Money? Upon my saying this to Sir *Richard Holford*, Sir *Richard* said, He had none in Possession, but agreed to settle an Estate upon his Son; and to the best of my Remembrance, it was either 800 *l.* or 800 Guineas that was given on his Admission, for the Use of my Lord *Harcourt*.

L. *Lechmere*. To whom was it paid?

Mr. *Cottingham*. I can't say whether it was paid to me, or to Mr. *Appleby*.

Dr. *Sayer*. Who carried the Proposal?

Mr. *Cottingham*. I carried the Proposal. Sir *Richard Holford*, as I told you, being my Friend and Acquaintance, desired me to do it: Accordingly I transacted the whole Matter; being an upper Secretary, it was left to me.

Mr. *Lutwyche*. My Lords, I desire to ask this Witness one Question as to this Matter. He says, That Mr. *Holford* was recommended as a Man of a good Character; I desire to know whether he hath not ever since maintained that good Character?

Mr. *Cottingham*. Yes, he hath made an admirable good Master as ever I knew; and hath executed his Office with as much Honour and Integrity as any Master. I never heard any Complaint against him in my Life.

Mr. *Lutwyche*. Can you recollect who paid the Money, Mr. *Holford*, or Sir *Richard Holford*?

Mr. *Cottingham*. Sir *Richard*, I believe: I can't recollect. He was a Young Man; I presume, Sir *Richard Holford*, his Father, paid the Money.

Mr. *Com. Serj.* I desire he may inform your Lordships, whether it was on a Death or Surrender?

Mr. *Cottingham*. As I told you before, It was on a Surrender: Upon the Surrender of Sir *Robert Legard*, If I remember right.

L. *Harcourt*. My Lords, If that Witness is not gone, and the Council for the Earl, and the Managers for the House of Commons have done with him, I desire to ask him, If he can tell whether any Account was taken of the Suitors Money by his Predecessor, and whether all the Suitors Money was delivered up by Sir *Robert Legard* to Mr. *Holford* at the Time of his Admission?

Mr. *Cottingham*. My Lords, I believe it was. But I was not privy to that, I did not transact that Matter; I have heard that an Account was made up.

E. of *Strafford*. I would not ask the same Question twice; I think no Body hath asked it already; I desire to know, If he knows of his own Knowledge, what was given to Sir *Robert Legard* for his Surrender?

Mr. *Cottingham*. I know nothing of it.

L. *Harcourt*. My Lords, If I might have your Lordships Indulgence, in order to have this Matter a little further explained, I desire Mr. *Holford* himself, or Mr. *Appleby*, or both of them may be called.

Mr. *Holford* called.

L. *Harcourt*. I desire to know of Mr. *Holford*, Whether at the Time of his Admission, when he was sworn Master, Sir *Robert Legard* transfer-

red and delivered over to him all the Effects of the Suitors?

Mr. *Holford*. He did, my Lords.

L. *Harcourt*. I desire to ask him, Whether the Money, that it was said he presented to the great Seal on his Admission, was his Father's Money, or his Money, or whether it was out of the Suitor's Money?

Mr. *Holford*. My Father paid it before any thing was delivered to me.

E. of *Strafford*. I desire to ask the Gentleman this Question, What Money he paid to Sir *Robert Legard* on his Admission to his Place?

Mr. *Holford*. My Lords, I did not give it my self; I can tell your Lordships what I believe was given, and I have some Reason to think I know the Truth; I believe it was 2000*l*.

Mr. Serj. *Probyn*. My Lords, I desire he may be asked, How long it was after his Admission before these Accompts and Effects were delivered over to him?

Mr. *Holford*. My Lords, When I came to my Lord *Harcourt* to be sworn in, my Lord *Harcourt* had an Account delivered there of what was in Sir *Robert Legard's* Hands. My Lord *Harcourt* took the Paper in his Hand, and asked me, If I was satisfied to be charged with that? I told him, Yes. I was then sworn in, and a Day or two after the Things were delivered over to me by Sir *Robert Legard*.

Mr. *John Bennet* called.

Mr. Serj. *Probyn*. I desire he may be asked, What Money was paid by him to the great Seal on his Admission?

Mr. *Bennet*. I gave Mr. *Woodford* the Secretary of the great Seal at that Time 500*l*. I don't know that it was given to the great Seal; I gave it with that Design.

Mr. Serj. *Probyn*. When was it?

Mr. *J. Bennet*. About two or three Days before I was admitted.

Mr. Serj. *Probyn*. When?

Mr. *J. Bennet*. It was in *March*, 1716.

Mr. Serj. *Probyn*. Who was Chancellor then?

Mr. *J. Bennet*. My Lord *Cowper* was Chancellor.

Mr. Serj. *Probyn*. Whether was it paid before his Admission?

Mr. *J. Bennet*. It was paid before my Admission.

Mr. Com. Serj. I desire he would inform your Lordships, Whether he came in upon a Surrender or a Death?

Mr. *J. Bennet*. It was upon a Surrender.

L. Ch. *J. King*. Upon the Surrender of whom?

Mr. *J. Bennet*. Of Mr. *Medlicot*.

L. *Bathurst*. I desire he may be asked, Whether he paid it out of his own Money?

Mr. *J. Bennet*. It was my own Money.

L. *Bathurst*. I desire he may be asked, Whether he had any Account of what was in the former Master's Hands, and when delivered over to him?

Mr. *J. Bennet*. The Effects were all deliver'd over to me in a Week's Time, except some very small Matters.

L. *Bathurst*. What was the Money that was given to your Predecessor?

Mr. *J. Bennet*. 3000*l*.

L. *Bathurst*. Was that paid out of the Suitors Money, or out of your own?

Mr. *J. Bennet*. It was paid out of my own Money.

Sir *Thomas Gery* called.

Mr. Com. Serj. My Lords, The Question that I shall propose to Sir *Thomas Gery*, is under the Apprehension that I mentioned before, that we are at Liberty within the Meaning of your Lordships Resolution to propose it, he being at Liberty to answer or not to answer, if the Question carry any Imputation upon him. I would not ask a Question that is improper: I desire that Sir *Thomas Gery* will inform your Lordships what he knows hath been paid to the great Seal, upon the Admission of a Master in Chancery?

Sir *Tho. Gery*. My Lords, I never did know, of my own Knowledge, of any Sum paid to the Hands of any Lord Chancellor whatsoever.

Mr. Serj. *Probyn*. I desire he may answer the Question, Whether he hath known any Sum of Money paid to the Use of the great Seal, or of my Lord-Keeper or Lord-Chancellor, upon the Admission of any Master?

Sir *Thomas Gery*. I can't tell how that may affect me; I refer that to your Lordships. I think I am not bound to answer.

E. of *Macclesfield*. I think he said, He doth not know of any Money paid to a Lord Chancellor. Doth he intend to include Lord-Keeper?

Sir *Thomas Gery*. Neither Lord-Keeper, nor Lord-Chancellor.

E. of *Macclesfield*. It may be, not into the Hands of a Lord-Chancellor or Lord-Keeper. I desire he may be asked, If he hath not known it paid to the Use of the Lord-Chancellor or Lord-Keeper?

Sir *Tho. Gery*. That, I hope, I shall not be obliged to answer. I submit that to your Lordships.

M. Serj. *Probyn*. If the Gentleman is not pleased to give a more particular Answer, we must submit.

L. *Harcourt*. I desire to ask this Witness one Question, which will not draw him into any Inconvenience, Whether ever he was required in any Lord-Chancellor's or Lord-Keeper's Time, to make up an Account of the Suitors Money, and whether ever he did so?

Sir *Tho. Gery*. Yes, I did it three several Times; once in my Lord's *Cowper's* Time; and when the noble Lord that asks me the Question was in that place, I did the like; and I did it again when my Lord *Cowper* was Chancellor. At all those Times I gave a particular Account of the Sums of Money in my Hands, the Time it came in, and how it was disposed of, and the distinct Securities, in distinct Columns.

E. of *Strafford*. He says twice in my Lord *Cowper's* Time: I take it, he means both the Times that my Lord *Cowper* was Chancellor?

Sir *Thomas Gery*. Yes, my Lords; and the same in my Lord *Harcourt's* Time.

L. *Harcourt*. I desire he may be asked, Whether all the rest of the Masters did so as well as himself?

Sir *Thomas Gery*. I believe they did; I have heard them all declare so.

Mr. Serj. *Probyn*. My Lords, We have now called all the living Witnesses that are willing or compell.



compellable to speak to this Article. We have a great many other Witnesses that would speak to this, as a constant Usage time out of Mind: But we apprehend it to be against your Lordships Resolution to call and examine any Witnesses but to what they can speak of their own Knowledge, and them we have produced. We shall now beg leave to proceed to prove, That the Offices in the Court of Chancery are increased in their Value beyond what they were formerly, that not only these, but all other Offices, as they have increased in Value, have increased in the Price; all Offices have risen in Value, and the Price given in this Instance, is no more than in Proportion to the Prices given for others.

Mr. *Common Serj.* We apprehend, my Lords, it is so notorious, that all Sorts of Offices have risen in their Value, that a very small Evidence will be sufficient. We have a great many Witnesses to this purpose, we will only call some few. We desire Mr. *Steele* may be called.

Mr. *Steele* sworn.

Mr. *Serj. Pengelly.* My Lords, We desire to know before they proceed, Whether they design to ask as to those Offices your Lordships gave them Direction last Night not to ask to. Your Lordships gave them Directions not to ask any Questions, but to the particular Offices mentioned in the Articles; this is a Piece of Dexterity to elude that Resolution.

Mr. *Lutwyche.* My Lords, I submit it to your Lordships, Whether this Attempt is not directly the same as that which was over-ruled Yesterday. If the Witness is to give an Account whether the Price of the Curfitor's Office, or other Offices have risen, they must then shew that they were sold; which is the very Question your Lordships determined they should not ask to.

Mr. *Serj. Probyn.* My Lords, We were then directed by your Lordships not to prove any Money was paid to the Great Seal for any other Offices, but those particularly mentioned in the Articles. We don't pretend now to ask as to the Payment of Money to the Great-Seal, but only whether Offices in General have not much advanced in their Prices?

Mr. *Serj. Pengelly.* My Lords, It is extraordinary Usage to tell us of Offices in General; there are private Offices, there are Offices in other Courts in *Westminster-Hall*. We apprehend your Lordships Determination is so strong against what is now attempted, that they would not urge it, unless they thought that the Managers had forgot every Thing that happened.

Mr. *Common Serj.* My Lords, The Question we ask is, as to Employments in General, Offices in the Law, or any other Offices; we desire to inform your Lordships in General, that the Value of all Employments, not of the Law only, hath risen.

E. of *Macclesfield.* I will inform your Lordships how the Matter is. I believe this Gentleman is not intended to be asked what Offices belonging to the Great-Seal are Worth, but what Difference there is in the Value of other Offices, to what they were heretofore; particularly how the Prices of the Seats in the Six Clerks Office are increased, that they were

once at such a Rate, and what they are now; that is the Matter, as I take it.

Mr. *Lutwyche.* My Lords, I apprehend the Direction was given to the Noble Lord, not to ask concerning the Sale of any Office but what was in the Articles, and the Managers had given Evidence to. Now to ask the Difference or Increase of the Prices of a Clerk in Chancery's Place, is, we apprehend, to ask to the very Thing that your Lordships have over-ruled already.

E. of *Macclesfield.* My Lords, this is not like the Curfitors-Office, which is in the Disposition of the Great-Seal; your Lordships Resolution was, That the Witness was not to answer as to their giving Money to the Great-Seal. The Evidence we are now upon, is an Inquiry that relates not to any Money given to the Great-Seal, but what those Persons paid to one another for an Office that doth not belong to the Great-Seal.

Mr. *Onslow.* At the End of your Lordships Resolution Yesterday, the Reason given why they ought not to be let into the Examination as to the Offices then in Question, was, because no Evidence had been given thereto by the Managers, and it was not charged nor mentioned in the Articles, altho' the Noble Lord did insist that he should be let into that Examination, because in the Preamble of his Answer, he had taken Notice of those Offices. This Case is stronger, because the Offices now desired to be Examined into, are neither in the Articles nor Answer, nor hath any Evidence been given to them; and therefore we hope he shall not be let into this Examination.

Mr. *Common Serj.* We humbly hope your Lordships will permit us to Enquire whether the Business of those Offices in the Court of Chancery is not greatly increased, and whether the Value of the Offices be not increased with it?

Mr. *Serj. Probyn.* Notwithstanding your Lordships Direction in the former Question, we submit whether we may not be permitted to ask this Question, Whether the Offices in the Court of Chancery are not increased in Value much beyond what they were Seven Years ago?

Mr. *Serj. Pengelly.* My Lords, That is the very Question that we Object to.

E. of *Macclesfield.* What I before offered was, that there had been a Usage to make Presents to the Great-Seal; I apprehend your Lordships over-ruled it as to the Curfitors-Office, because there was no need of an Excuse as to that Office, as there is no mention made of it in the Articles, nor any Proof offered against me. This is not of any Payment to the Great Seal, but goes by way of Excuse as to the Sums, to shew the Increase or Difference of the Prices of Offices in General. It is notorious that Money now carries a less Interest, and that the Price of all Offices is increased. I don't know whether the Gentlemen will deny it. If they do not, I will not trouble your Lordships any farther about it.

Mr. *Serj. Pengelly.* We have no Occasion either to Confess or Deny any Thing that is not before your Lordships in Judgment. Therefore, if they expect any Answer, we give this, That it is not before your Lordships in Judgment.

Mr. *Lutwyche*. I apprehend the Reason of your Lordships Resolution Yesterday, was, That there was no Charge in the Articles concerning those Offices; the same Reason equally holds to what they are asking now in relation to Clerks in Chancery.

Mr. *Plummer*. My Lords, I should be extreme sorry to make any Objection to any Evidence that is Material: But, if he is pleased to Examine this Gentleman how far by the Increase of Business the Value of any Office is risen, that must be of the Annual legal Value, and not according to the Liberties he left to his Masters.

Mr. Serj. *Probyn*. I desire he may be asked, Whether he doth not know that the Prices of Offices are greater now than they were formerly?

Mr. Serj. *Pengelly*. My Lords, we don't understand they have any such Permission to ask that Question. To repeat the same Thing over and over again, we apprehend they think we are asleep.

E. of *Macclesfield*. Your Lordships seem not to be of Opinion that this Question should be asked; therefore to save your Lordships time, I will wave the Question.

Mr. *Goldesbrough* sworn.

Mr. Serj. *Probyn*. We will proceed in the next Place, in Confirmation of that Part of the Answer to this Article, That two Sums of Money, mentioned to be paid to my Lord *Macclesfield* by Mr. *Kinaston* and Mr. *Benret*, were both paid back into the Court of Chancery. We desire Mr. *Goldesbrough* may be asked, Whether he knows of the two Sums of 1500 Guineas, and 1500 Guineas, that were paid by my Lord *Macclesfield* into the Court of Chancery.

Lord *Lechmere*. My Lords, I beg pardon. I think the Question that the Noble Earl hath waved, if I mistook not, was about the Rise and Increase of Value of the Offices in Chancery. Now, notwithstanding the Noble Lord hath waved, yet it may be proper for your Lordships Consideration, whether he should not have Liberty to ask it, if he thinks fit.

E. of *Strafford*. I think what the Noble Lord hath said is considerable, and it may be proper for our Judgment.

Ld. Visc. *Townshend*. I move that they may withdraw.

Ld. *Lechmere*. It may be proper to have the Question repeated again. I therefore desire that the Council for the Earl would repeat the Question again that they would have asked of Mr. *Steele*.

Mr. Serj. *Probyn*. My Lords, The Question is, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office, particularly, are increased now more than antiently they were.

Thereupon the Managers and Council withdrew, and being returned,

Ld. Ch. J. *King*. Mr. Serjeant *Probyn*, the Lords have considered the Question on which you withdrew. Their Lordships are of Opinion, That you are at Liberty to ask the Question, Whether the Price of Offices in the Court of Chancery, and in the Six Clerks Office par-

ticularly, be increased now more than heretofore they were?

Mr. *Steele*. My Lord, I came to be a Clerk in the Chancery Office in the Year 1687. I served my Clerkship in the Office, and in that Year, and for several Years afterwards, I know that waiting Clerks Places were bought at 50 Guineas, or less, and after I was out of my Clerkship, I was offered a Waiting Clerks Place in the Office for 50 Guineas. They are not sworn, nor have Power to take a Clerk; and since that Time I have known them Sold for 3, 4, and 500*l.* My Master was a sworn Clerk, and he sold his sworn Clerks Place for 230*l.* It was a Clerk at the Seat; and by the Custom of the Office, he that hath one Clerk cannot take another till the first Clerk be provided for; but I having a Proposal to go into a Seat of greater Business, that induced me to give a Note to the Gentleman that bought the Seat, that I would not be an Incumbrance on the Seat, otherwise he would not have given so much. Since that Time I have known a sworn Clerks Place Sold for 300*l.* Particularly I transacted a Sale upon a Brother-in-Law's Account, I contracted for 500*l.* and then there was a Clerk upon the Seat that had not served half his Clerkship out.

Mr. Serj. *Probyn*. What Sum of Money had they upon taking a Clerk at that Time, and what now?

Mr. *Steele*. I did treat in Order to put my Brother-in-Law Clerk to one Mr. *Atkinson*, in the Office.

Mr. Serj. *Probyn*. What time was that?

Mr. *Steele*. To the best of my Remembrance it was in 1703, or 1704, and he had 100 Guineas. Since that time, my Brother-in-Law, while he was there, had 300*l.* or 300 Guineas with a Clerk.

Mr. *Common Serj.* I desire he may Explain to your Lordships what he means by a Clerk being an Incumbrance to a Seat?

Mr. *Steele*. By the Custom of the Office, he that is put a Clerk, must be provided for before his Master can take another. The Master so taking him, cannot take another Clerk, till he is provided for by a sworn Clerks Place, or a waiting Clerks Place.

Mr. *Lutwyche*. If the Council have done, I desire to ask one Question, that is, The Gentleman says, he came into the Office in the Year 1687. I desire to know how many Clerks there were at that Time?

Mr. *Steele*. There were at that Time but 60 sworn Clerks; there was an Addition made, to the best of my remembrance, in my Lord *Jeffery's* time, Sir *John Trevor* was then Master of the Rolls, I think there was an Addition of 30.

Mr. *Lutwyche*. I desire to know whether they are not reduced from 90 to 60 again?

Mr. *Steele*. They are not at present yet reduced.

Mr. *Lutwyche*. Whether they are not intended to be reduced?

Mr. *Steele*. If any one Dies without surrendering his Office, they don't fill up the Place of that Person with another; but any one may surrender.

Mr. *Lutwyche*. How many are there now?

Mr. *Steele*. I have been told there are about 12 or 13 less than 90: They are to be re-

duced

duced from 50 till they come to the ancient Number of 60; and they are reduced as they die without surrendring.

Mr. *Lutwyche*. We don't expect you to give an exact Account; How many may there be?

Mr. *Steele*. I can't take upon me to say how many; but, as I have been informed, I believe there are about 16 or 17 above the 60 remaining: I may be mistaken, I am not certain; but there are several Gentlemen here, who can give an exact Account.

Mr. *Lutwyche*. I desire to know whether the Offices are not a great deal better, by there being fewer of them?

Mr. *Steele*. Certainly, I believe that is pretty Natural; the fewer the Offices are the better; but the Offices are not so good as they were when I came Clerk. They have reduced several Profits belonging to them since I came out of the Office, by the Act of Parliament made *For the Amendment of the Law*.

Mr. *Lutwyche*. You say they are sold for more than formerly they sold for; I desire to know whether some of those Clerks, whose Predecessors have had good Business belonging to the Office, have not made that Seat sell better?

Mr. *Steele*. Certainly it doth; if the Person surrendring had good Business, that Seat will sell for more than a Seat of less Business.

Mr. *Common Serj*. I desire that he will inform your Lordships, when it was in point of Time that these Offices sold at so low a Rate?

Mr. *Steele*. It was in the Year 1694. that the Gentleman to whom I was Clerk surrendered his Seat.

Mr. *Common Serj*. And when was it you knew 50 Guineas paid for the Place of a Waiting Clerk?

Mr. *Steele*. The 50 Guineas I speak of for a Waiting Clerk's Place, was in the Year 87, or thereabouts.

Mr. *Common Serj*. Whether was that before the Increase of the additional Number of Clerks?

Mr. *Steele*. Much about the Time that the Additional Number of Clerks was added.

Mr. *Common Serj*. I desire he would inform your Lordships, whether the Prices began to rise before any Reduction was made?

Mr. *Steele*. Yes, before the Reducing of them.

Mr. *Serj Probyn*. When was the Reduction of them made?

Mr. *Steele*. I can't tell the exact Time. There was an Order made, that they should not be filled up as they died without Surrender.

Mr. *Serj Probyn*. I desire he may be asked, Whether there was not a Difference of Price between those Seats which were full or empty of Business, or whether they were all at a Par?

Mr. *Steele*. The Price always varied, as there was much or little Business.

Mr. *Serj Probyn*. But every Seat, whether great or less, had a Rise in Proportion?

Mr. *Steele*. Yes.

Mr. *Cary*. I desire he may be asked, Whether there hath not been an Act of Parliament since the Time he mentions, which hath been Beneficial to the 60 Clerks?

Mr. *Steele*. There was an Act of Parliament, called, *An Act for the Amendment of the Law*; by which the 60 Clerks had the Term Fees instead of the Tenour Bill, which was a

considerable Profit; and to make up that to them, the Fees of the small Writs were given to them, and the Term Fees; but in my Apprehension, the Tenour Bill was a greater Advantage than those Fees that have been given in Lieu of it.

Mr. *Common Serj*. That worthy Gentleman's Question hath occasioned me to desire, That he would inform your Lordships, Whether, upon the whole of the Act, the Six Clerks Offices are better or worse?

Mr. *Steele*. In my Opinion, they were better before the Act, than they are now.

Mr. *Serj Probyn*. My Lords, we have more Witnesses to this purpose; but we apprehend that Mr. *Steele* hath spoken so fully to it, that we shall not trouble your Lordships with any others, as to this Matter. The next Witness which we shall beg leave to call, is in Relation to the two Sums of 1575*l.* that were paid into the Court of Chancery by the Noble Earl, for which we did call Mr. *Goldesbrough*.

Dr. *Sayer*. Before your Lordships enter into an Examination of this Fact, I will only beg leave to take Notice as to the Time of this Repayment: The Learned Managers were right in their Observations, That it was after the Vote for the Impeachment; but it was before the Articles were Exhibited. This is mistaken in the Answer, but I am sure the Honourable House of Commons will be so candid as to think it was a Mistake only, and that 'tis impossible it could be with any View of Deceiving the World, since both Facts were upon Record; the Earl was so very impatient to have his Answer in, that no Delay might be charged upon him, that I assure your Lordships the Answer was not settled till 3 or 4 a Clock in the Morning of that Day that it was delivered in: In such a Hurry, a Mistake of this Nature, I hope will not be taken amiss, nor be looked upon by the House as designed. My Lords, I thought it my Duty to observe this before your Lordships entred into this Examination.

Mr. *Goldesbrough* called.

Mr. *Common Serj*. There are two Sums of Money taken Notice of to be given by Mr. *Kinaston* and Mr. *Bennet* to my Lord *Macclesfield*, I desire you would inform my Lords, whether those two Sums were paid back again, and when, and in what Manner?

Mr. *Goldesbrough*. My Lords, The 23<sup>d</sup> of February last my Lord *Macclesfield* came into Court, and deposited in Bank Notes and Money to the Value of 3000 Guineas. The Lords Commissioners were pleased to direct the investing it in *South-Sea* Annuities, in the Names of Mr. *Holford* and Mr. *Lowibond*, the two Senior Masters of the Court, for the Benefit of the Suitors of the Court.

Mr. *Common Serj*. I think, my Lords, we need not ask, whether Mr. *Goldesbrough* be the proper Officer?

Lords. No, No.

Mr. *Common Serj*. I would with Submission ask another Question of Mr. *Goldesbrough*; I would beg leave to inform your Lordships what the Question is. There hath been an Examination on the Part of the Gentlemen of the House of Commons into the Nature of these Offices,

and I hope it will not be improper, Mr. *Goldesbrough* being now at Your Lordships Bar, to ask him as to the manner of the Money coming into the Masters Hands, whether it be by Compulsion, or at the Instance of the Parties.

Mr. *Senj. Pengelly*. This must appear by the Order. No Money is paid in but by Order.

Mr. *Com. Senj.* The Orders are infinite, but Mr. *Goldesbrough* being the Register, may be properly asked, what the Practice and Usage of the Court is in this Instance. It is usual to ask the Officers of the Court, what the Practice and Usage of the Court is. If we should produce 20 Orders, they might object that others are not so; and therefore I beg Mr. *Goldesbrough*, the proper Officer, may inform Your Lordships, what the Practice of the Court is.

Mr. *Goldesbrough*. Upon Decrees, when Causes are heard, the Council pray what Decree is proper: Where Estates are to be sold, they order the Money to be brought before the Master.

Mr. *Lutwyche*. My Lords, I desire to ask one Question; Mr. *Goldesbrough* is a very experienced Officer of the Court, hath been a good while in the Place, and probably may give Your Lordships some Light into this Matter. The Question I would ask, is, When he first knew the Office, whether it was usual to direct the Money to the Masters, in the manner it hath of late been directed?

Mr. *Goldesbrough*. I can't say it was.

Mr. *Lutwyche*. The next Question is, When the present Usher of the *Rolls* had given Security, whether there were not some Orders made by the late Lord *Chancellor*, as well as by the Masters of the *Rolls*, for Payment of Money to the Usher of the *Rolls*; that is, into Court?

Mr. *Goldesbrough*. Yes, there was.

Mr. *Lutwyche*. I desire him to explain the Difference between paying the Money into Court, and paying the Money to a Master. What is understood by paying it into Court?

Mr. *Goldesbrough*. Paying it into Court, is paying it to the Usher.

Mr. *Lutwyche*. I desire to know, whether there were not some Orders made, after Mr. *Trevor* the present Usher had given Security, for Payment of Money to him?

Mr. *Goldesbrough*. Yes, there were.

Mr. *Lutwyche*. I desire to know, how soon after those Orders were varied?

Mr. *Goldesbrough*. I can't remember when the Orders were varied; as to those made before Hearing, and for continuance of an Injunction, I don't know they are altered yet.

Mr. *Lutwyche*. What I ask is, Whether he had any Directions touching the varying of Orders, for the Payment of Money; any Direction, I mean, from my Lord *Macclesfield*, to vary the Order?

Mr. *Goldesbrough*. Money paid before Hearing, was paid into Court; Money paid upon the Decree, was brought before the Master. I had no Direction from my Lord *Macclesfield* to vary the Order.

Mr. *Lutwyche*. Was there any Variation or Difference in drawing up the Order, for some time after the Usher gave Security, from what it was some time before?

Mr. *Goldesbrough*. Upon interlocutory Motions, the Money was brought before the Usher, and so it hath been ever since.

Mr. *Lutwyche*. Was it always so?

Mr. *Goldesbrough*. It hath been so ever since.

Mr. *Lutwyche*. Ever since what time?

Mr. *Goldesbrough*. Ever since the time that Mr. *Trevor* gave Security.

Mr. *Lutwyche*. What I would know is, Whether the Orders and Directions at first were not in general, to pay the whole Money into Court?

Mr. *Goldesbrough*. No, my Lords.

Mr. *Lutwyche*. How was it?

Mr. *Goldesbrough*. On all Orders interlocutory before Hearing, it was paid in to the Usher. On all Orders for Money, subsequent to the Hearing, it was brought before the Master.

E. of *Macclesfield*. This Question hath been asked Mr. *Goldesbrough*, with relation to the paying of Money into Court, and being brought before a Master; I desire he would inform Your Lordships what the Difference between them is.

Mr. *Goldesbrough*. Money brought into Court is Money brought in before Hearing, and is subject to the Order of the Court, to be paid out either before the Hearing, or after, as the Nature of the Case requires. Money brought in after Hearing, is Money to be put out on Security, and is brought before the Master.

E. of *Macclesfield*. Whether when Money is ordered to be brought in to be disposed of, as upon a Purchase, or upon a Decree, to pay Debts &c. The Course of the Court in all his Time hath been to bring it into Court, or before a Master?

Mr. *Goldesbrough*. I can't say it hath been so in all my Time: Since the Revolution it hath been generally brought in before the Master before it was brought into Court.

E. of *Macclesfield*. Have the Orders made by me, since the Usher gave Security, been made in the same manner as those by my Predecessors?

Mr. *Goldesbrough*. Yes, They have been the very same.

E. of *Macclesfield*. I desire to know, whether first the Money paid into the Hands of the Usher went into another Course, that is, upon the Usher's Death, or not giving Security; and what Method was taken then?

Mr. *Goldesbrough*. I believe, after the Revolution, there was looked upon to be a Defect in the Security of the Usher, and it was upon that Consideration, that the Money was ordered before the Master.

E. of *Macclesfield*. And afterwards was there not an Alteration made of all the Money that used to be paid to the Usher? Was it not ordered to be brought before the junior Masters?

Mr. *Goldesbrough*. In my Lord *Cowper's* Time when there was a Difference between the Usher and his Deputy, my Lord *Cowper*, upon that, did order the Money to be brought, and lodged in the two junior Masters Hands. They were each to keep a Key, and the Usher another: When any Money was paid, it was paid out of the Chest, kept under those Keys; and the Money that was paid in, was paid in there.

E. of *Macclesfield*. Was not the Money that used to be paid in to the Usher's Hands, directed in to the junior Masters Hands?

Mr. *Goldesbrough*. It was so.

E. of *Macclesfield*. As to the Money appointed to be disposed of, for payment of Debts, or otherwise, how was that paid? was that put into the Chest, or into the Hands of the respective Masters, to whom it was referred?

Mr. *Goldesbrough*. I think it was put into the Chest; there was then no Difference at all.

E. of *Macclesfield*. Had no other Masters then any Money brought before them? was all brought before the junior Masters?

Mr. *Goldesbrough*. The general Order was, for the Money to be brought before the junior Masters, to be kept in a Chest there.

E. of *Macclesfield*. Mr. *Goldesbrough* mistakes the Question. I don't ask how the Money was usually brought, but had no other Master Money brought before him in my Lord *Cowper's* Time?

Mr. *Goldesbrough*. Yes, My Lords.

E. of *Macclesfield*. What Money was that? upon what Occasion?

Mr. *Goldesbrough*. The bringing the Money to the two junior Masters, was found to be inconvenient; whereupon, after that it was altered, and the Money was brought before the Masters, to whom the Reference was in Court.

E. of *Macclesfield*. Whether the Money that was paid in to the two junior Masters, was not such Money as was before ordered to be paid into Court?

Mr. *Goldesbrough*. Yes.

E. of *Macclesfield*. I desire you would recollect, whether you was not present at a Meeting of the Master of the *Rolls*, and *Usher*, and others; whether this was not under Consideration, what Money should be paid into Court, and what should be brought before the Master?

Mr. *Goldesbrough*. Yes.

E. of *Macclesfield*. Whether you was not then asked, whether Money directed after a Cause is heard, to be disposed of, was not brought before a Master?

Mr. *Goldesbrough*. Yes, I was asked that Question.

E. of *Macclesfield*. What Account did you give of the Course of the Court in that Particular?

Mr. *Goldesbrough*. I gave the same as now, That the latter Practice had been to bring it before the Master, to whom the Cause was referred.

E. of *Macclesfield*. Do you remember, whether the *Usher* was not asked, whether he had any Precedents of Money paid into his Hands, to be distributed amongst Legatees, or Creditors, and what the Answer was?

Mr. *Goldesbrough*. He said he had none.

E. of *Macclesfield*. Do you apprehend the Course of the Court to be, that Money brought in before Hearing, is to be paid in to the *Usher*, and Money after Hearing, to be brought in before the Master?

Mr. *Goldesbrough*. Yes, I do.

E. of *Strafford*. I desire he would inform Your Lordships, what the Security is, and how much, that is given by the *Usher*; and whether it is the same now, as it was before my Lord *Cowper* made that Alteration?

Mr. *Goldesbrough*. I can't say any thing as to that, I know nothing of it, it doth not lye in my Province.

Mr. *Serj. Probyn*. Your Lordships will please to remember, in the Case of Mr. *Elde*, though he paid 5250*l.* all the Money was returned, except 1850*l.* So the same as to Mr. *Thurston*, 5250*l.* that all was returned in a reasonable Time, except 2000*l.* so that to these Facts, we shall not trouble Your Lordships with any Witnesses. But now we shall beg leave to lay be-

fore Your Lordships another Evidence, that when Mr. *Thurston* was admitted into this Office, upon the Payment of 5000 Guineas, another Gentleman offered 6000*l.* Mr. *Cottingham* proved the same as to Mr. *Elde*. This we do to shew, that his Lordship was not that avaritious Person, as he hath been represented; he refused 6000*l.* and took less from another. We desire Mr *Ellis* may be called.

Mr. *Ellis* Sworn:

Mr. *Serj. Probyn*. We desire Mr. *Ellis* may be asked, what he knows of any Sum of Money that was offered for the Mastership in *Chancery*, to which Mr *Thurston* was admitted, and what that Sum was?

Mr. *Ellis*. Upon the Death of Mr. *Borret*, Mr *Richard Lucas* came to me at my Lord *Macclesfield's*, and told me, That his Brother desired to have the Place of a Master in *Chancery*, then vacant: And he said, that as I was in my Lord *Macclesfield's* Family, I might be of Service to him, in conveying Mr *Lucas's* Proposal to my Lord. He then told me, what I was to offer my Lord *Macclesfield* for that Place; he said he was so sensible of my Lord *Macclesfield's* Honour and Generosity, that he would leave it entirely to his Lordship, what he would have in Consideration of his coming in. But if my Lord *Macclesfield* did not approve of a Proposal so undetermined as that was, I was to offer 6000*l.* or 6000 Guineas; I don't remember which of those two Sums, but one of them I am certain it was. I did offer it to my Lord, who told me Mr *Lucas* had been well recommended to him, and he was satisfied with his personal Character, and with this Offer. My Lord *Macclesfield* said no more; and I could not press his Lordship to explain himself any further. I returned that Answer to Mr *Lucas*, and heard nothing further of that Matter, till my Lord *Macclesfield* had declared that Mr *Thurston* should have it.

Mr. *Com. Serj.* I desire he may be asked, whether the Gentleman that applied to him, was not his Friend and Acquaintance?

Mr. *Ellis*. Mr *Richard Lucas* was my Acquaintance; when he desired me to do this, I told him it was not proper for me to apply about Matters of such Nature; but in Friendship to him, I would speak to my Lord about it.

Mr. *Plummer*. I don't know whether the Council have done; if they have, I desire to ask this Witness what Mr. *Richard Lucas* is himself?

Mr. *Ellis*. He is a Clergyman.

Mr. *Plummer*. I desire to ask him, If Mr. *Richard Lucas* did not, at the same Time that he proposed the 6000*l.* lay some Restriction or Condition, upon which he was to pay it. Had not you such Instructions?

Mr. *Ellis*. No, I don't remember he did any.

Mr. *Plummer*. Then I desire to ask you, If he did not say, provided Mr. *Borret's* Deficiency was made good?

Mr. *Ellis*. He mentioned no such Condition to me; he did speak of Mr. *Borret's* Deficiency; I told him I had heard there would be no Deficiency there. Upon which he said, he had been assured there would be none by a Gentleman known to us both; but however that be, says he, my Brother is willing to enter into a Treaty with my Lord *Macclesfield* upon those Terms.

Mr.

Mr. Serj. Frobyn. My Lords, we shall trouble your Lordships no further upon these Articles we have been upon, the other Gentlemen will answer what is to follow.

Mr. Robins. May it please your Lordships, I am likewise by your Lordships Permission assigned of Council with the noble Earl, who has the Misfortune to lye under the Weight of so heavy a Charge, as an Impeachment of the whole Body of the Commons of *Great-Britain*, and shall beg Leave to open to your Lordships the Nature of his Defence, and the Strength of his Evidence, with regard to the *Eleventh* and *Twelfth* Articles of this Impeachment.

I am sensible, my Lords, that the Solemnity of this Prosecution, from the Weight and Number of those, who are become the Accusers of this noble Earl, and the awful Appearance and Wisdom of those who are to be his Judges, and the Name of an Impeachment in Parliament, may seem to carry an Argument of greater Crimes and greater Guilt, than are to be met with in the ordinary Courts of Justice below.

But, my Lords, with the greatest Submission, if the Solemnity of the Proceedings on this Occasion has not altered the Nature of Things, and imprinted a Guilt where there is no Guile, we humbly hope we shall be able to lay before your Lordships some few Observations and Circumstances of Evidence, that will, at least, extenuate, if not wholly abate and take out the Sting and Malignity of the several Crimes, whereof this noble Earl stands accused.

Your Lordships, without Question, will have long since observed, That the Losses and Sufferings of Widows, of Orphans, and others, who, from the Distress and Impotence of their Condition to help or defend themselves, have fled to the Court of Chancery, when this noble Earl presided there, for Sanctuary and Protection; that these have been justly made use of as the greatest Aggravations of the Crimes wherewith he is charged, and they have been displayed with the utmost Force of Eloquence, and in the most moving Strains of Commiseration and Pity.

And I believe, my Lords, every one that heard them have shared and gone along with the Honourable Managers for the House of Commons, in the Concern and Indignation they have so justly shewn towards those, who have been the Authors and Contrivers of them.

These, my Lords, are Subjects, wherein the richest Fancy may almost lose it self, and the poorest can never be at a Loss for something to offer to move and affect the Passions of Mankind.

And the learned Managers for the Honourable House of Commons, have adorned and set off their Charge against the noble Earl on this Head, with so many Beauties of Expression, and so great a Propriety and Choice of Language, to engage and win over all the Passions of Humane Nature to their Side, that 'twill be difficult, if not impossible, for Us, who may seem to have undertaken an Argument leading to disprove and reason against the Force and Truth of all these, to hope for Success, but by shewing to your Lordships, that the noble Earl entirely joins with the learned Managers in their just Resentment and Concern on this Occasion, that he is deeply affected with the Losses, the Depredations and the Havock, which has been made of the Fortunes of the Unhappy Suitors of the Court of Chancery.

That he has long been endeavouring to put a Stop to them, that at one Time he has contributed his Reason, his Judgment, and his Understanding, to find out effectual Methods for the Cure of them; at other Times has made Use of his Power, his Authority and that Majesty wherewith, as Lord Chancellor, he seems to be invested, to enforce and hasten the compleating of them.

That he has conven'd the Masters, the Registers, and the several Officers belonging to his Court, to consult, advise and assist, in finding out Means to stop the growing Evil; that he has assisted with his Purse, has advanced considerable Sums of Money of his own, and when Nothing would do, when the Mischief appeared too big for his single Endeavours to oppose, that he then at last presumed humbly to lay the Whole before his Majesty in Council, as well for his Majesty's Assistance and Direction, as to testify how much he had at Heart the finding out a Remedy for the Cure of those overgrown Diseases, this Epidemical Contagion, which was spreading through every Part of the Court where he presided, and seemed to threaten Destruction and Ruin to the whole.

These, my Lords, we humbly hope will prove the noble Earl not to have been an idle and unconcerned Spectator at the Tragedy that was acting around him; that he saw and felt the Commotions it had raised, and was fully determined to put an End to them as speedily and effectually as he could.

But when, my Lords, a Stop was put immediately to his Endeavours; when he was disarmed almost in the very Beginning of his Onset, and when the great Seal, and therewith his Power to proceed further, was taken from him, your Lordships will not impute it to him, that he was forced to sit still, and leave it to others to effect what he had, so prosperously and happily, begun.

Your Lordships, without Question, will have already observed, That these fatal Mischiefs did not spring up all at once, That they had long been growing, That the Seeds of them had lain buried and concealed for a considerable Time, and, That they hardly appeared at all, till they were grown too stubborn and obdurate, to yield to an easy Cure.

Your Lordships will likewise, no doubt, have observed, that however in the strictest way of considering Things, the Chancellor may possibly be thought to be answerable for them; yet, that they did not originally proceed from him, that he had not the immediate Custody or Ordering of the Suitors Money or Effects.

That the Masters in Chancery, who are no less than Eleven in Number, by the Constitution of the Court, and the Nature of their Office, were necessarily to be entrusted with that Part of the Business thereof.

And when Your Lordships shall likewise be pleased to observe further, That enough, and more than enough for the strongest Constitution of Body, and the greatest Abilities both of Mind and Understanding, remained still for the Chancellor's own Share, in the Dispatch of the daily and necessary Business of the Court where he presided, the innumerable Avocations, by his Attendances on Your Lordships, on His Majesty, and the Council, and other Services, which the Duty of his High Station required from him; Your Lordships, no doubt, will

will easily reflect, that he had but little leisure, suddenly, and immediately to go through so arduous, so difficult, and so tedious an Undertaking, as the stating and settling of the Masters Accounts, for no less than almost a Million of Money, which has now appeared to be in their Hands. And, your Lordships, we are persuaded, are no strangers to the many and almost insuperable Difficulties, which even at last have attended the Prosecution of that Affair, the great length of Time it has taken up, the number and variety of Meetings and Consultations with Persons of the greatest Abilities and Experience, to go to the bottom of it, and whether even yet they have been able fully to effect it, or have fix'd on such Methods of Enquiries as have laid open the whole Scene, or will certainly prevent the like Mischiefs for the time to come; these, my Lords, we humbly apprehend are Considerations that will not be thought altogether unworthy of your Lordships Notice, in determining the Guilt or Innocence of this noble Earl of the Crimes laid to his Charge.

It must indeed be admitted that they have for the present, taken away the Money, Effects, and Securities of the Suitors out of the Masters Hands, and so have prevented any loss for the time to come on their Part.

But whether, my Lords, they are even yet disposed of in such Manner as fully to Answer the Ends propos'd, whether the Ease and Convenience of the Suitors of the Court will appear to be more effectually provided for, than they were before, by the Methods that have now been taken to dispose of their Money and Securities; these, my Lords, I am afraid are Questions more easily asked, than answered.

But, my Lords, all I would be understood to mean by this, is, and I mean nothing more by it, than that the settling and adjusting of the Masters Accounts for such great Sums of Money, placed and disposed of in such variety of Hands, so difficult to be thoroughly considered or understood; and so little to be depended on if they were understood; that this, my Lords, was rather the work of Persons at full leisure, of Persons conversant in the Nature and Manner of Accounts, that 'twas the work of variety of Persons of different Capacities and Abilities, and so the taking of these Accounts lately has abundantly verified and proved them to be.

And then, my Lords, we humbly hope that the single Endeavours of a Chancellor to the same end, by being unsuccessful, will not be made Criminal, and that he will not be obliged under the pain of an Impeachment in Parliament, to do what, with the greatest Submission, has never yet been attempted, or if attempted, has met with the same ill Success with the Endeavours of the present Earl, and could never hitherto be compleatly or perfectly effected.

But, my Lords, with great Submission, if the stating and settling of these Accounts, on a just and lasting Foundation, should be admitted to be the Duty and Office of a Lord Chancellor, and that he is bound under Pain of an Impeachment to take care of them, yet as this is a Work of the greatest Moment, Judgment, and Consideration, and must unavoidably take up a very great portion of Time, and put a total Stop and Obstruction for the present to all the other Branches of his high Office, we humbly hope, my Lords, that his being cut off in the midst of his Endeavours of that kind, and thereby prevented from

further Pursuit of them, that this will be a Consideration of the greatest Weight with your Lordships in determining the Fate of this noble Earl, and that he will not be made Criminal for leaving it unfinished, when his Power of proceeding further therein, was suddenly and unexpectedly taken from him.

My Lords, your Lordships very well know that the Business, not only of the Court of Chancery, but of all the other Courts of *Westminster-Hall*, and even of your Lordships Supreme Court of Judicature, is, and must necessarily be distributed and disposed of into variety of Hands, that some are assigned to one Province, some to another, and all of them concurring to the same End, the carrying on the Business of the respective Courts to which they belong.

And, my Lords, the Officers and Ministers of each of these Courts of Justice, on their being admitted thereto, give each of them the security of an Oath, or some personal Security for the due and faithful discharge and execution of their Duty, whilst they continue in their Offices.

Now, my Lords, what can be the End of requiring and resting on these Securities, but to relieve and ease the Minds of their Superiors from the necessity of prying and examining daily into their Behaviour and Conduct, to the hindrance and neglect of their own greater and more immediate Duty?

The Officer is at the Peril of his Oath, or the Security he has given, nay, even at the Peril of the Office itself, to discharge his Duty as he ought, and justly forfeits his Office by a neglect or breach of any part of his Duty therein; and if one or two of them should have no regard to all or any of these Tyes, must the ten Righteous that are left, nay, must the Chancellor himself be punished for their Sakes?

But, my Lords, Masters in Chancery are generally, if not always, chosen from the Profession of the Law, and the manner of their Education and the nature of their Studies are justly supposed to set them above the Temptation of mean, of base, or little and unjust Actions.

Many of that Profession your Lordships will permit me to observe, do now, and have in all Ages, worthily adorn'd even the August Body of the House of Peers, and have been advanced to the highest Dignities in the State.

And then, my Lords, I humbly hope 'twill not be thought an Observation altogether improper, that when one of this liberal Education, when one brought up in the study and practice of a Profession, whose very Principles consist in the knowledge of Virtue and Honour, of the Rules of Justice and Equity, and all the Accomplishments which can adorn Life, or make him useful to his King and Country; I say, my Lords, I humbly hope 'twill not be improper to Observe, that when such a one applies for an Office in the Civil Government, which he is in any Degree qualify'd for, 'tis no wonder that he should meet with a more favourable Reception than other Persons, who perhaps may have nothing but their Estates or Fortunes to recommend them.

The very Profession of such a one is, my Lords, almost a sufficient Security and Recommendation of itself, and immediately induces a Persuasion and Belief, that they will do nothing to forfeit their Honour, their Reputation, or their Credit and Esteem, which they so justly do and ought to Regard and Value.

But when, my Lords, 'tis remembered that the additional security and sanction of an Oath is likewise required from them, when they invoke the Majesty of Heaven to Bless them as they perform their Duty, what higher, what greater or better Security can be taken from them for the due and faithful discharge of their Duty in the Office they are entering upon?

The Oaths they take upon that Occasion, your Lordships have already heard, and no doubt will have observed, that they differ little from the Oath, which even the Lord Chancellor himself takes on his being admitted to his own high Office.

And as they sit with him in Judgment on the Bench, share with him in carrying on the most important Business of that Court, which is next in Dignity to the Supreme Court of Judicature we are now before, when they are in most Cases necessary for the distributing and dealing out Justice and Equity, and fixing the rules and bounds of Property to the Suitors there. Can it, or will it, my Lords, be easily or readily imagined, that they should have no Regard to all these sacred Tyes of Duty, that they should prostitute their Honour, their Conscience, and every Thing that is dear and valuable to them, for the sake of any worldly or temporal Consideration whatsoever?

These, my Lords, we humbly apprehend are some of the Reasons, which may be offered, why no personal security has ever been required from a Master in Chancery, on his Admission into that Office, any more than from the Chancellor himself.

And if this be so, tho' there could be no need, or occasion for the Chancellors making any Declarations concerning their Ability or Substance, yet we humbly hope we shall be able to shew to your Lordships, that this Declaration, which is made one of the Articles of an Impeachment against this noble Earl, that even this too, was not without it's just Foundation of Reason and Truth.

And this, my Lords, leads me to observe a little on the Eleventh Article of this Impeachment.

[Article XI.] My Lords, the Eleventh Article contains a two-fold Charge against the Earl; First, That whilst he continued in the Office of Lord Chancellor, in order to advance and increase the illegal and corrupt Gain arising to himself from the sale and disposal of the Offices of Masters in Chancery, he did admit several Persons to those Offices, who at the time of their Admissions were of small Substance and Ability, unfit to be trusted with the great Sums of Money and Effects of the Suitors lodged in their Hands.

The Second Charge against the Earl in this Article, is, That he did publickly in open Court falsely represent the Persons by him admitted to the Offices of Masters of the Court of Chancery, as Persons of great Fortunes, and in every respect qualified for the Trust reposed in them.

These, my Lords, are the two Branches of this Article against the Earl, and I would beg leave to observe upon it in general, that 'tis not so much as charged or insinuated in any part of it, that the Earl knew or had the least Notice of any insufficiency or inability in the Masters at the Time he admitted them to take upon them that great Trust.

If that had been the Case, or could have been clearly made out, the Commons without doubt

would not have omitted so material an Aggravation of this part of their Charge against the Earl.

They have indeed proved, that the Earl did not think fit to take the Masters own Words for their Abilities and Fortunes, and therefore never ask'd them the Question.

But, my Lords, we hope we shall be able to shew to your Lordships, that the Earl took a much more proper and effectual Method, to be satisfied of the Truth of their Circumstances and Abilities, than by any Appeal he could have made to themselves; that he did not content himself with barely asking the Question for the sake of an Answer, which he ought to have had no regard to, whether true or false, but that he weighed, considered, and judged of the Account he received of them on his Enquiry from others, and determined accordingly, whether they were or were not fit to be placed in an Office of so great Trust.

That in Consequence thereof, he absolutely rejected some, though their Friends offered him a greater Present, or if it must be called so, a greater Price for their Offices than others, for want of an Estate or Fortune in Possession of their own, that might be some ways adequate to the great Charge they were going to be entrusted with.

That from the same Views of Security to the Suitors of the Court, he refused to admit others, from an Apprehension that the Sums they offered, though considerably greater than was offered by others, would too much exhaust and lessen their own Fortunes, to be able with any Degree of Ease or Credit to support themselves, or be consistent with the Safety and Security of the Suitors Money and Effects, to be entrusted with them.

These Instances, my Lords, we shall be able to produce to your Lordships; and when we have so done, we hope we shall need to be in very little Pain for the Second Part of this Charge, which the Earl by his Answer has partly admitted to be true, that is, that he believes he may upon some Occasions have declared, That he thought the then Body of Masters as good, with Respect both to their Estates and Ability for the Discharge of their Office, as had been at any Time before.

This, my Lords, the Earl owns by his Answer, That he may on some Occasions have said; and if it were true, where was the Crime of it? 'twas indeed more than he needed to have said, as no One had Authority to require him to make any Declaration at all about the Masters.

But, my Lords, if he said more than he needed to have said, and yet his saying was true; we hope, my Lords, that will never be imputed to him as criminal.

Indeed, my Lords, the Honourable Managers for the House of Commons, both in their Opening, and the Course of their Evidence, have tack'd to this Declaration a Circumstance arising from the Death of Mr. *Fellows*, one of the Masters, which happened just before this Declaration was made, from whence they would infer, and one of them was pleased to say, 'Twas a necessary Declaration to be made at this Time, to give Notice that the Office was worth buying, or to that Effect.



But, my Lords, we humbly hope, how ingenious soever the Observation may be, that it will have no Weight with your Lordships, if the Truth and Nature of the Case it self will support the Declaration that was made upon that Occasion.

But, my Lords, before I leave this Article, I would beg Leave to add one Observation more to what I have already said upon the first Part of it, concerning the Obligation on the Masters in Chancery to be faithful in the Discharge of their Duty, from the Honour of their Profession, and the Nature and Sanctity of the Oath they take on their being admitted Masters.

And, my Lords, I the rather chuse to take Notice of it, because 'tis an Argument, which the Honourable Managers for the House of Commons have themselves furnished us with.

Your Lordships were pleased to observe, That in the very Beginning of their Evidence, they took great Care and Pains to exalt and dignify the Office of Masters in Chancery as high as possible, and therefore they read to your Lordships several Commissions, and put in others to the Table, from the Time of *Edward* the VIth, down to this Time, to prove, That the Masters in Chancery were joined in Commission with the Master of the Rolls, and the Judges themselves, for the hearing and determining of Causes in Equity, in the Absence of the Chancellor.

And 'twas said by one of the learned Managers in the first Day's Opening upon that Occasion, That the Masters in Chancery were next in Power to the Chancellor himself, after the Master of the Rolls.

From which I would humbly presume to infer, That if this be so, if they are Persons of such Eminence and Worth, and so nearly related to Justice it self, on their commencing Masters, 'tis still a higher Obligation on them to be careful in the Discharge and Execution of their Office; and then, whether these Considerations, whether the Tyes of Honour, of Conscience, and of the Venerable Company they are from thenceforth joined with, and made equal to; whether these may not in a great Measure be supposed to supersede that strict Enquiry, which a Lord Chancellor would otherwise think himself obliged to make; this, my Lords, we humbly hope will not be thought an Argument altogether foreign to the present Question before your Lordships, but will, we hope, at least extenuate, if not wholly wipe off any Guilt, that for want of such Enquiry might possibly be imputed to the Earl on his Admission of Masters.

But, my Lords, there is one Observation further, which I cannot let pass on this Occasion, though 'tis not strictly to the Article I am now upon.

And that is, my Lords, what the same learned Manager observed in his Reasoning upon that Point That the Offices of Masters in Chancery being Offices of such great Trust and Dignity, that no Offices were more improper to be bought and sold than they, except those of the Judges themselves.

This, my Lords, might, and no doubt, was a very just and proper Observation to be made, in support of the Point they were then endeavouring to maintain.

But, my Lords, it falls out very unfortunately, to disparage and weaken another Part of their Articles, which, without doubt they have equally at Heart to maintain, and that is the obliging

these great Men, these Judges, these Masters in Chancery, to give Security for the Suitors Money and Effects in their Hands, as if they were not fit otherwise to be trusted with them.

They are just before made a sort of Petty Chancellors, equal in Dignity and Power to the Judges themselves, and fit to be entrusted with the Disposal of the Properties and Fortunes of all the Suitors of the Court of Chancery, and therefore their Places must not be bought or sold; but here they are reduced and abased to the low and servile Condition of a common Receiver or Rent-Gatherer, and must give Security for all the Suitors Money or Effects that shall happen to come to their Hands for fear they should run away with it.

All, my Lords, I shall presume to add further under this Head, is, That though one of the Masters has indeed frankly owned, That he was worse than Nothing when he came into his Place of a Master in Chancery, yet from another part of his Evidence, he owns, and it fully appears, that he grossly abused and imposed upon the Earl in concealing it from him, of which the Earl, when he came to have Notice, very justly complained and expressed his Surprize and Resentment, that he should pretend to come into an Office which he was not able to pay for.

And how far the same Gentleman will in time to come remember the kind and generous Return made him by the Earl, of the Fifteen Hundred Guineas, when he came to find him in Distress afterwards for want of it: This, my Lords, must be left to his own Conscience; and the Gratitude of his own Heart; as must also the like Return of Fifteen Hundred Guineas made to another of the Masters under the like Distress and Inability to bear the Want of it; These, my Lords, are Instances of the greatest Generosity, Honour and Tenderness, I had almost said Charity, in the Noble Earl, that perhaps can be produced in Private Life on the like Occasions, however, they have been disguised and disguised, by the Learning and Ingenuity of the Honourable Managers for the House of Commons.

In the mean time, my Lords, I would beg leave to observe, that the ready Paying and Producing of these Sums to the Earl, for their Places at first, their not giving him the least Notice or Intimation that it was not their own Money, and the Figure and Appearance they made in the World; these all concurring might easily mislead the noble Earl into a Persuasion and Belief, that they really were what they appeared to be; that they were well able and sufficient to bear the Expence of it. And neither of these Two, or of the other Masters have given any Sort of Evidence, that the Earl knew, or had reason to entertain the least Suspicion to the contrary: And if now, at last of all, the Deficiencies of these, and of all the other Masters placed in by the Earl shall appear to have been already made good, or to be so far secured, as to prevent any Danger of a Loss to the Suitors of the Court, from their several Offices (which we humbly hope, on the strictest Examination, will appear to be the Case) We may then humbly presume to hope, that the Earl will not be thought to be Criminal under any Part of this Article; but that Your Lordships' great Justice will acquit him wholly of it.

[Article XII.] But, my Lords, I would now humbly beg leave to offer a few Words and Observations on the Twelfth Article, which comes next to be considered of.

This

This, my Lords, charges that whilst the Earl was Chancellor, an unjust and fraudulent Method was practis'd in the Court of *Chancery*, on the Sale of Masters Places, and on the Admissions of new Masters; that the Sums agreed to be paid for the Purchase thereof, were paid out of the Suitors Money, either by way of Retainer, or by replacing the same again, in the Hands of the Selling Master, immediately after the Admission of the new one: And that by this Practice the Price and Value of these Places was greatly advanced, and Persons of small Ability and Substance were encouraged to contract for the same, which has occasioned great Deficiencies.

This Part, my Lords, shews only the Contrivances amongst the Masters themselves, how to get into those Offices; and so far the Earl seems to be but little concerned in it.

But then comes the Charge against the Earl, that though this Practice was notorious and publick, and the Earl was fully acquainted therewith, yet, for his own unjust and corrupt Profit, in the Selling of those Places, he took no Measures to prevent or reform that Abuse, either by causing Schedules to be taken of the Money and Effects of the Suitors, delivered over to the new Master, or by appointing any Person to supervise or inspect the Transfer, and Delivery thereof: But on the contrary, suffered that fraudulent Practice to continue without controul, whereby great Embezzlements have been made of the Suitors Money and Effects.

My Lords, the noble Earl, by his Answer, says, That he was totally ignorant of this Practice amongst the Masters; but admits, that he never gave any particular Directions for Delivery of the Suitors Money and Effects, by a Schedule to the succeeding Master; and says, he never heard that his Predecessors ever ordered such Schedules to be made; but says, he believes such Schedules were made, between the new Master and the old, on the general Order of Transfer, made of Course on the Admittance of the new Master.

This, my Lords, is the Earl's Answer to this Article. And as he has in general denied his Knowledge of these Practices amongst the Masters, it was certainly expected by Your Lordships, that the Honourable Managers for the *House of Commons*, would have fully proved it upon him, and thereby have falsified his Answer to this Part of the Charge.

But, my Lords, if I did not greatly mistake the Evidence to this Point, it has proved nothing more, than that the Earl knew of this Practice, at the same time that all the rest of the World did, that is, a little before *Christmas* last; when the Curtain drew up, and display'd the Masters in their true Colours.

Then it was, and not before, that the Earl was let into this Secret by the kind Assistance and Help of *Mr. Thomas Bennet*, and the Affidavits that were made by him and others on that Occasion,

But, my Lords, with great Submission, the Earl's knowing of it at that time was a little too late for him to give any Orders for preventing or redressing it for the time to come; for the great Seal was taken from him sometime before, and then all his Knowledge after could be of no use to him, but only to shew how treacherously he had been dealt with, in not being let into this useful Part of Learning, whilst it might have done him any good.

And, my Lords, if this be so, as it can be no ways Criminal in the Earl not to put a Stop to a Practice he was wholly ignorant of, and which the Masters kept private amongst themselves, We humbly hope, how ill soever the Masters may be thought to have deserved of this noble Earl, that the Earl himself will not be thought to have deserved ill of Your Lordships, in not endeavouring to prevent it; and that in Consequence thereof, Your Lordships great Justice will acquit him of this Part of the Impeachment.

And, my Lords, As to the last Part of this Charge, the not causing proper Schedules to be taken of the Suitors Money and Effects, delivered over to the succeeding Master, as a Method, which might in all probability have prevented the Practices amongst the Masters, complained of in the first Part of this Article; this, my Lords, we humbly apprehend, neither can, nor is intended, even by the Articles themselves, to affect the Earl further or otherwise, than as a Means he ought to have made use of, to put a Stop to these dangerous Contrivances, formed and set on foot amongst the Masters, to dispose of their Places to the best Advantage.

But, my Lords, If the Earl himself knew nothing of these Contrivances, if he was wholly a Stranger to, and unacquainted with the Mischiefs, 'twill surely, we hope, be no Crime in him, that he did not look out for a Cure.

But, my Lords, It may, perhaps, be worth while, just to consider of the wonderful Discovery that seems to have been made of these Schedules, and how far they would have answered the Ends proposed, admitting the Earl had known of these Practices amongst the Masters and had been better disposed than the *Commons* are pleased to think he was, for the Remediating of them.

And, my Lords, I am afraid this would have proved very far from being an infallible Method of remediating these Evils for the time to come; for, my Lords, if the Masters would but trust one another, or any Body would trust them for a very few Days, might they not have done just the same thing they did before? might they not have immediately replaced the Money again in the Hands of the Selling-Master? or have paid off a Bond or any other Security they had given on the Borrowing of the Money, as soon as ever they were admitted, and had got the Suitors Money into their Hands? And if they had so done, and this had been discovered and complained of, would it not, with great Justice, have been called instituting a trifling and fallacious Method of Security for the Suitors, which could do them no manner of Service, but tended only to amuse and deceive them; and then whether this would not have made a better Figure in an Impeachment, than what is here fixed upon, may we humbly hope, be thought deserving of Your Lordships Notice; especially, my Lords, when it might have been so easily explained and urged as no doubt 'twould have been by the learned Managers, that the very taking of these Schedules was for the sake of seeing into the Nature and Value of the Office to be sold, that he might the better know how to set his Price upon it.

But, my Lords, I shall only beg leave to add one or two very short Observations more upon this Head, and then call such Witnesses, as we have, to speak to these two Articles.

And, my Lords, the first Observation I would beg leave to mention, is, that the Earl by his Answer

wer owns that he did not, neither did he ever hear, that any of his Predecessors ordered such Schedules to be made; neither is there the least Proof on the Part of the Honourable Managers for the House of Commons, that any such Schedules ever were made, or thought of, till Mr. *Lightbourn* very happily hit upon them.

Indeed, the Earl owns by his Answer, that he believes such Schedules were usually made between the Old Master and the New, on the General Order of Transfer made of Course in the Admittance of the new Master.

But, my Lords, these are not the Schedules the Articles mean, as I apprehend, or, if they are, the Earl at least was to have one Part of them; or else they could be of no Use to him in guarding against any fraudulent Practices of the Masters. And if he had had one, what Security that could have been to the Suitors of the Court, if the Masters should have been disposed to make Use of their Money afterwards; this, my Lords, I have already endeavoured to consider of.

The next Observation, my Lords, I would beg leave to make under this head, is, That if such Schedules had been made, what Security would this have been to the Earl, that they were in all Respects true, or with any certainty to have been depended on?

Some, my Lords, even of the Masters themselves, in the Hurry they were lately obliged to give in their Accounts, discovered afterwards several Mistakes and Omissions therein; and though they were given in upon Oath, yet on a Review, and a more narrow and careful Inspection and Examination of them, 'twas found they were not altogether to be relied on; and therefore the Masters were forced to set them right in their Post-Accounts, given in at some distance of Time after; and whether any, or what other, or better Security for the Truth of those Accounts has been yet found out, I am wholly ignorant of.

My Lords, the Third, and last Observation, I would beg leave just to mention, and submit to your Lordships under this Head, is, Whether there be any, and what real Mischief in the Practice it self, so grievously complain'd of in this Article?

It is, my Lords, notorious, That in every one of the Offices of these Masters in Chancery, there is always necessarily a much greater Sum of Money lying dead in the Office, than goes to pay for their Places, either for want of Securities whereon to place the Money, or from the different Claims of Persons entitled thereto; or to satisfy the Demands of Creditors, and other Persons, as they shall from Time to Time come in and prove their Debts, and from several other Causes, which I need not here enumerate.

And then, my Lords, Whether there be any great Difference between paying for their Places out of the Suitors Money, lying dead in their Hands, or raising so much Money out of their own Estates and Fortunes, in order to let the Suitors Money lie dead; whether a Practice of this Nature, which does no Sort of Hurt to the Suitors, is of no Advantage to the Masters, and which the Earl himself was wholly a Stranger to, and which, if he had known, could not have been prevented; whether this can be heightned or improved into so heinous a Crime in the Earl, as to need or deserve the most solemn Prosecution, which we are acquainted with, a Prosecution by the Representatives of the whole Body of the

Nation; this, my Lords, we humbly hope will deserve to be thought of. In the mean time, as the Commons have chosen your Lordships to be the Judges, the Earl himself with the greatest Pleasure joins with them, and humbly appeals to your Lordships Just and Impartial Judgment.

Mr. Serj. *Probyn*. My Lords, the Evidence, which we have next to lay before your Lordships, relates to the 11th Article, by which it stands charged that several Masters admitted by the Noble Earl, were Persons of small Substance and Ability; and in that respect very unfit to be trusted with the Great Sums of Money, and other Effects belonging to the Suitors, which were lodged in their Hands by Order of the said Court; notwithstanding which the Noble Earl did publickly in open Court declare them to be Persons of great Fortunes, and in every respect qualified for the Trust so reposed in them, to the manifest Deceit and Prejudice of the Suitors of the said Court: But, my Lords, tho' the Charge of this Article be conceived in general Terms, yet I apprehend we are now only to account for the Abilities and Circumstances of such of the Masters, as they have descended into any particular Evidence against, upon that Head: Now the Masters, who have been admitted in by his Lordship, and against whom any Insinuations of this kind have been levelled, are Mr. *Kinaston*, Mr. *Bennet*, Mr. *Elde*, and Mr. *Thurston*: But I should in the first Place observe, as to Mr. *Elde* and Mr. *Thurston*, That there is not the least Pretence of any Deficiency in either of their Offices, from any Evidence that has been yet offered by the learned Managers, they stand both of them without Objection in point of Substance; as to Mr. *Kinaston*, indeed, I do own, That at the Time, when he delivered in his Accounts, there appears to have been a Deficiency in his Office; but since that Time he hath given such Security, as the Court thought fit to accept of, for answering it to the Suitors concern'd. At the time of his Admission he appears to have been a Man of Fortune; he had a good Estate in Land and a considerable sum of Money in Bank; and had a great deal of Wood upon his Estate: If he really was a Man of a considerable Fortune at that time, and if he appeared so, and came well recommended in other respects to the noble Lord, what Foundation is there left to support that part of the Charge against the noble Earl? As to Mr. *Thomas Bennet*, indeed, tho' he did make an Appearance in the World, equal to a Man of Fortune, yet he now pretends it was far from being so, tho' he had an Estate in Land; yet he has told your Lordships it was incumbered; but, with Submission to your Lordships, it doth not appear that any of these Incumbrances were made known to the noble Earl; on the contrary, he appeared to him in the same Light as in the Year 1720, when he saith he was worth 20,000*l.* and that these Incumbrances being private, it is impossible the noble Earl should then know them; we shall shew that at this time he was not only a Man of visible Substance, but of real Substance, equal to those, who are usually admitted into these Offices; and if he was equal, both in Reputation and Fortune, with those admitted by the noble Earl's Predecessors, we hope it shall not be imputed a Crime in him, to have trod in their steps in that particular: In order to make this our against Mr. *Bennet*; we shall prove that about the time when he applied to *Hiccocks*, to get back part of the 7000*l.* he then declared his Substance was so good, that if he could but have 2000*l.* he would pay the rest himself; he denied before your Lord-

ships that he said so, but we have Persons of undoubted Character to prove, that he did say so. And when that appears, we hope you will give the less Credit to Mr. Bennet's Testimony in any other particular, which concerns his Fortune; we shall likewise prove, as to Mr. Hiccocks and Mr. Rogers, that the Sums of Money, which they retained, are now submitted to be returned by them respectively to the Court, to answer any Deficiency, so far as the Estates of their Successors shall fall short in satisfying the same; so that upon the whole, the Suitors are in no possibility of suffering by any Transaction of Bennet or Kinaston. We shall beg leave to call our Witnesses, and prove the several Facts I have opened to your Lordships upon this Article.

Mr. Com. Serj. My Lords, we humbly apprehend, that in this Case the noble Earl is not responsible for the bad Circumstances of the Party; if he, upon inquiry, have received such an Account as is proper to rely upon, and to satisfy a reasonable Man, it is sufficient: The greatness of the Trusts reposed in these Masters, hath been magnified, and great it is; but your Lordships will please to consider, that it is not to be expected from the Nature of the Thing, that Persons of great or overgrown Fortunes, should take upon them those Offices. They have informed your Lordships, that 120,000*l.* hath been in one of these Gentlemens Hands. I believe no Persons of such vast Estates as 100,000 or 150,000*l.* would give themselves the trouble of executing these Offices, attended with such risque, and requiring so great attendance. I believe the Office of a Master in Chancery will never find either such buyers or sellers; all that can be expected is, that they must be Men of reasonable Fortunes, Persons of 4 or 500*l.* a Year, brought up with a liberal Education; Persons, who are of good Characters as to their Integrity and Abilities; this is all that can be reasonably expected, and we apprehend it hath appear'd to your Lordships, that these Masters, which the Evidence hath been given of, were such, and such a Representation was made of them to the noble Earl. My Lords, I must submit it upon the Evidence given in that behalf by the Gentlemen of the House of Commons in this Prosecution, that Mr. Kinaston did appear no way unfit, but a Person proper to be admitted into such an Office; no Objections are made either to Mr. Elde or Mr. Thurston. As to Mr. Thomas Bennet, it will appear that his deficiency will be made good, and that is the best proof of his Ability; and, we hope, Mr. Kinaston's will be so too: As to Mr. Thomas Bennet, he hath denied that ever he told Mr. Hiccocks, that if he would return 2000*l.* he would pay the rest: Being ask'd, whether he had declared to any Body, that he had made that offer to Mr. Hiccocks, he answered directly in the Negative, that he had not, no he was sure he had not; he was asked the Question over and over. But, if my Instructions don't fail me, we shall produce three Witnesses to shew your Lordships, that Mr. Bennet declared the same thing over and over again, and consequently it could not be a slip of his Memory.

Mr. Steele called.

Mr. Serj. Probyn. I desire he may inform your Lordships, as to what Reputation and Character Mr. Bennet was, in point of Fortune, when he was admitted Master?

Mr. Steele. Which of the Bennets?

Mr. Serj. Probyn. Mr. Thomas Bennet.

Mr. Steele. It is near two Years ago since Mr. Thomas Bennet came to be admitted a Master in Chan-

cery, he was looked upon then to be a Man of good Substance and of good Reputation; and since that he had Married a Lady of a good Fortune, he made a good Appearance in the World, and was generally esteemed to be a Man of Substance.

Mr. Serj. Probyn. Did he keep his Coach?

Mr. Steele. I have heard so; I don't know that of my own Knowledge.

Mr. Plummer. My Lords, if the Council have done, I desire to know what Character Mr. Bennet had as to his Integrity, whether he was accounted an honest Man or no?

Mr. Steele. My Lords, I never heard to the contrary in my Life; nor ever knew any thing to the contrary.

Mr. Walker Sworn.

Mr. Serj. Probyn. We desire that Mr. Walker will inform your Lordships, what he knows of any Proposal or Agreement for the Repayment of any Money by Mr. Hiccocks?

Mr. Walker. My Lords, Mr. Hiccocks, by order of the Court of Chancery, was to be examined upon Interrogatories, whether he had paid over all the Monies and Securities of the Suitors of the Court of Chancery, to his Successor Mr. Bennet? It having been alledged by Mr. Bennet, that he retained out of them 7500*l.* Mr. Hiccocks did think fit to submit to the Payment of that Money, to make so much good to the Suitors of the Court, as the Estate of Mr. Bennet should prove defective in satisfying, as appears by the Petition delivered by him, and the Answer to the Petition.

Mr. Lutwyche. We shall see that by the Petition. We desire that the Copy of the Petition may be read; they are giving an Account of written Evidence: I desire to ask you, whether you are not concerned as Clerk for Mr. Hiccocks?

Mr. Walker. I am concerned for Mr. Hiccocks as his Solicitor.

Mr. Lutwyche. Whether you had any Authority from Mr. Hiccocks to present that Petition?

Mr. Walker. I had Authority to present that Petition.

Mr. Lutwyche. When did you present the Petition?

Mr. Walker. About three or four Days ago.

Mr. Serj. Pengelly. We desire to see what the Petition is? It hath been presented since the Great Seal was in Commission: Read it.

Mr. Walker reads it.

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The humble Petition of John Hiccocks, Esq; late one of the Masters of this Court,

Sheweth,

THAT by an Order of the 23d of Feb. last, upon the Affidavit of Thomas Bennet, Esq; your Petitioner's Successor, (who swore that the Sum of 7500*l.* part of the Monies belonging to the Suitors of this Court, did remain

in

in your Petitioner's Hands, and was never paid over to him.) It was Ordered that your Petitioner should be Examined upon Interrogatories, whether all the Monies, Securities, and other Effects, belonging to the Suitors of the Court, were delivered over by your Petitioner to the said Thomas Bennet, and whether your Petitioner kept away any, and what part, by him.

That Interrogatories have been accordingly prepared, and your Petitioner is Ordered to put in his Examination, or stand Committed.

That your Petitioner, by Reason of his Indisposition, is not in a Capacity to put in his Examination.

That though your Petitioner did pay over, satisfy, and assign to the said Thomas Bennet, all the Monies, Effects, and Securities of the Suitors of the Court in your Petitioner's Hands; and the said Thomas Bennet hath given your Petitioner a Receipt in full for the same, yet, so far as the Estate of the said Thomas Bennet shall fall short to satisfy the just Demands of the Suitors of the Court; your Petitioner is willing to pay the Sum of 7500 l. into Court, Subject to the Order of the Court, so soon as your Petitioner can raise the same; and your Petitioner is willing to pay the Sum of 2000 l. part thereof within ten Days, and the residue thereof within three Months, so as the same (as between your Petitioner and the said Thomas Bennet) may not be construed to extend to ease the said Thomas Bennet's Estate from being liable in the first place to answer the Demands of the Suitors of the Court; but so as the same may abide as a Security to answer any deficiency of the said Thomas Bennet's Estate; and to the end it may appear whether there will be any deficiency or not, that the real and personal Estate of the said Thomas Bennet may be forthwith sold, and disposed of; and in the first place apply'd to answer the Demands of the Suitors of the Court; and the rather, for that your Petitioner is informed, the said Thomas Bennet hath, pursuant to some Order of this Court, by Recognizances, and other Assurances, subjected his whole Estate towards making good those Demands

Your Petitioner therefore most humbly prays your Lordships, that, upon Payment into Court of the said 500 l. on the Terms aforesaid, Subject to the further Order of the Court, all further Proceedings upon the said Order, for Compelling your Petitioner to be examined upon Interrogatories, may be stayed.

And your Petitioner, &c.

He Reads the Order, May 8th, 1725.

**U**PON Payment of 3000 l. into Court, and giving Security, such as Mr. Holford shall approve of, for Payment of the further Sum of 4500 l. also into Court, in a Month, both Sums to

be Subject to the further Order of the Court; let all Proceedings for the Compelling the Petitioner to be examined upon the Interrogatories before the Master, be stayed. Hereof give notice forthwith

J. Jekyle, C. S.

R. Raymond, C. S.

Mr. Serj. Pengelly. I would be glad to know, Whether we can rely upon this as an Authentick Order. Did he examine it?

Mr. Walker. The Original Petition and Answer are in the Register's Office, to draw up an Order.

Mr. Lutwyche. Is it a right, a true Copy?

Mr. Walker. It is.

Mr. Lutwyche. Did you examine it?

Mr. Walker. Yes, I did.

Mr. Com. Serj. If it is not wholly immaterial to examine into the Circumstances of this Gentleman, I would ask whether Mr. Hiccocks is a Person of Ability, sufficient to make good this Sum?

Mr. Walker. My Lords, I don't know the Circumstances of Mr. Hiccocks, nor his Riches. I believe he is able to do what he hath proposed. I believe he hath paid the 3000 l. in Money this Morning; he told me he would; and he hath proposed Security for the Remainder 4500 l. and I believe the Security will be approved of.

Mr. Lutwyche. If they have done, I desire he may be asked, How long ago it was since Mr. Hiccocks was ordered to be examined upon Interrogatories?

Mr. Walker. I think the Order is dated the 29th of February.

Mr. Lutwyche. And how long ago is it since this Proposal was made?

Mr. Walker. The Petition was presented the 8th of this Instant May.

Mr. Lutwyche. Was the Petition presented before his Examination? When was it answered?

Mr. Walker. It was answered the 8th of May. It was preferred a little while before. I believe, two or three Days. There was an Order, That Mr. Hiccocks should put in his Examination in four Days, or stand committed; thereupon this Petition was presented.

Mr. Lutwyche. I think it was on Payment of so much Money, and giving Security for the rest, that all Proceedings were to stay. I don't find Mr. Walker can say the Money is paid, or Security given.

Mr. Walker. Mr. Hiccocks told me the 3000 l. was paid, and I know he hath offered Security for the 4500 l.

Mr. Lutwyche. One or two Securities?

Mr. Walker. I believe only Sir John Buckworth.

Mr.

Mr. Richard Rogers sworn.

Mr. Serj. Probyn. I desire he may be asked what he knows of the Payment of any Money, or the Directing the Payment of any Money into Court by Mr. Rogers, the late Master, in Satisfaction of the Deficiency of Mr. Kinaston?

Mr. Rogers. I did, my Lords, by the Direction of Mr. Rogers, the late Master, prefer a Petition about the latter End of April last, upon the 28th, or 29th of April, to the Right Honourable the Lords Commissioners, and thereby did offer to give a Recognizance to make good to the Suitors of the Court any Sum not exceeding 6000*l.* as the Estate of Mr. Kinaston should prove Defective in Answering the Effects of the Suitors of the Court. The Petition is answered, and I believe they design to pay the Money.

Mr. Serj. Probyn. Have you the Petition?

Mr. Lutwyche. Is the Order Drawn up?

Mr. Rogers. The Petition it self I have in my Hand.

The Clerk Reads.

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The humble Petition of William Rogers, Esq; late one of the Masters of the High-Court of Chancery,

Sheweth,

**T**HAT by an Order, made by your Lordships the 20th of January last, it was Ordered that Mr. Kinaston, one of the Masters of the said Court, who succeeded your Petitioner, should in a Week deposite the Sum of 26,908*l.* 11*s.* 3*d.*  $\frac{1}{4}$  in the Bank of England (being the Balance of the Account of Money and Securities of and belonging to divers Suitors of the said Court, paid into the Hands of the said Master Kinaston, and your Petitioner) Or in Default thereof, that the said Master Kinaston should enter into a Recognizance, in the Penalty of 53,817*l.* with two or more Sureties to answer and pay the same as your Lordships should direct.

That the said Kinaston not having paid the said 26,908*l.* 11*s.* 3*d.*  $\frac{1}{4}$  into the Bank, or given Security for the same, as the said Order directed; and having before proposed towards Satisfaction of the said 26,908*l.* 11*s.* 3*d.*  $\frac{1}{4}$  to assign over a Debt of 20,850*l.* owing to him from one De la Hay, for the Benefit of the said Suitors; it was by an Order made by your Lordships the 29th of Jan last, Ordered, That the said Master Kinaston should assign over De la Hay's Debt to Mr. Holford, one other of the Master's of the said Court, for the Benefit of the said Suitors, and should give his own Recognizance for the said 26,908*l.* 11*s.* 3*d.*  $\frac{1}{4}$  in the Penalty of 53,817*l.* And upon his so doing, the Time for his performing the said former Order should be enlarged to the Wednesday following.

That by another Order made the 3d of Feb. last, your Lordships Ordered, That upon Mr. Kinaston's assigning of the said Debt, and upon his signifying his Consent to be examined upon Interrogatories for Discovery of all other his real and personal Estate, and that the same might be assigned, and conveyed to the said Master Holford in Trust for the said Suitors, the time for performing the former Order should be enlarged to the Wednesday following.

That pursuant to the said Order, the said John Kinaston assigned over the said De la Hay's Debt, but the same not being sufficient to answer the said Sum of 26,908*l.*

11*s.* 3*d.*  $\frac{1}{4}$  Nicholas Paxton, Solicitor for, and on Behalf of the Suitors of the said Court, on the 15th of Feb. last, preferred his Petition to your Lordships, setting forth the several Proceedings aforesaid; and that it appeared by Mr. Kinaston's Affidavit that 6000*l.* part of the said 26,908*l.* 11*s.* 3*d.*  $\frac{1}{4}$  was retained by your Petitioner, at the time your Petitioner surrendered his said Office to the said Mr. Kinaston; and that the same still remained in your Petitioner's Hands: It was therefore prayed that your Petitioner might forthwith pay the same for the Benefit of the said Suitors, or to such Persons, and in such manner, as your Lordships should direct.

That upon hearing the said Petitioner, upon the 23d. of Feb. last, your Lordships were pleased to Order your Petitioner should be forthwith strictly examined before Mr. Holford, one of the Masters of this Court, whether all the Monies, Securities, and Effects, belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. Kinaston, and whether he kept any, and what part thereof by him.

That in pursuance of the last Order Interrogatories have been exhibited for the examination of your Petitioner; and in Case your Petitioner should put in his Examination thereto, he doubts not, but it would appear that your Petitioner hath acted with great Justice towards the said Master Kinaston, and that Mr. Kinaston ought to answer and make good the said 6000*l.* to the Suitors of the said Court; however your Petitioner being unwilling that any part of the Deficiency in the said Master Kinaston's Office should be imputed to your Petitioner, or that the Suitors of the Court should be put to any Expence or Trouble, in making any further Enquiry touching the said 6000*l.* your Petitioner is willing (if your Lordships shall think fit) to give his own Recognizance, or a good and sufficient Mortgage, to be approved of by one of the Masters of this Court, to such Person or Persons as your Lordships shall direct, to answer and make good to the Suitors of this Court any Sum not exceeding 6000*l.* as the Estate and Effects of the said Mr. Kinaston shall fall short of satisfying the said 26,908*l.* 11*s.* 3*d.*  $\frac{1}{4}$ , which he was ordered to deposite in the Bank of England as aforesaid; or if your Lordships shall think it more for the Benefit and Security of the said Suitors, that your Petitioner should bring 6000*l.* into Court, your Petitioner is willing to bring in such Sum for the Purpose aforesaid, having a reasonable Time allowed him to raise the same.

Forasmuch therefore as it is not pretended, but that your Petitioner has paid and delivered over to Mr. Kinaston all the Money and Securities belonging to the Suitors of this Court, which were in your Petitioner's Hands at the Time when he surrendered his said Office to the said Mr. Kinaston, except the Sum of 6000*l.*

Your Petitioner humbly prays your Lordships will be pleased to make such Order in the Premises, as to your Lordships shall seem meet; and that in the mean Time all Proceedings upon the said Order of the 23d of February last, for examining your Petitioner upon Interrogatories, may be stayed.

And your Petitioner, &c.

The Clerk reads the Order. 29th of April, 1725.

Upon the Petitioner's paying the said 6000*l.* into Court, subject to the further Order of this Court, let all Proceedings upon the said Order of the 23d of February last; for examining the Petitioner upon Interrogatories be stayed. Hereof give Notice forthwith.

Jeff. Gilbert, C. S.  
R. Raymond, C. S.

There was another Petition preferred, but never answered.

Clerk

To the Right Honourable the Lords Commissioners for the Custody of the Great Seal of Great Britain.

The Humble Petition of William Rogers, Esq; late one of the Masters of this Court,

SHEWETH,

THAT Mr. Paxton, in behalf of the Suitors upon Mr. Kinaston, being 26,908 l. 11 s. 3 d. deficient in his Accounts, to answer the Suitors Monies in his Hands; having, by his Petition to your Lordships, represented (*inter alia*) That your Petitioner, upon surrendring your Petitioner's Office to him, detained, and still hath in his Hands, the Sum of 6000 l. of the said Suitors Money; your Lordships, upon hearing the said Petition, on the 23d of February last, were pleased to Order your Petitioner should be examined before Mr. Holford, one of the Masters of this Court, Whether all the Monies, Securities and Effects, belonging to the said Suitors, were delivered over by your Petitioner to the said Mr. Kinaston?

That your Petitioner, on the 29th Day of April last, preferred the annexed Petition to your Lordships; and your Lordships were, thereupon, pleased to make the Order thereunder subscribed.

That your Petitioner is informed, the said Mr. Kinaston hath, pursuant to a former Order of your Lordships, by Recognizance and Assurances, subjected his whole Estate towards making good his said Deficiency.

That your Petitioner, upon surrendring his Office, received from the said Mr. Kinaston, proper Discharges for all Monies, Securities and Effects of the said Suitors, then in your Petitioner's Hands, which your Petitioner is ready to produce and prove: And the said Mr. Kinaston from that Time, never pretended but that the Account delivered in to him, contained a full Account of all the Money, Effects and Securities of the Suitors of the Court in your Petitioner's Hands, except the Sum of 70 l. or thereabouts, which your Petitioner was always ready to pay him, provided he would have given your Petitioner an Account wherein the said Omission or Mistake consisted; and your Petitioner, upon Examination of his Vouchers, found the same to be true; but the said Mr. Kinaston hath hitherto neglected so to do, though your Petitioner hath sent to him several Times for that Purpose.

That your Petitioner, upon the Terms mentioned in the annexed Petition, is willing to pay a ready Obedience to your Lordships Order thereupon; and for that Purpose, now humbly offers, in Six Days time, to pay 2000 l. part of the said 6000 l. into Court, subject to the further Order of the Court, so far as may be necessary to make good any Deficiency to the Suitors of the Court, which Mr. Kinaston's Estate shall not be sufficient to answer.

And your Petitioner humbly prays, he may have a Month's Time to pay in the remaining 4000 l. (your Petitioner being obliged to borrow the same on his Estate) and that all Proceedings on the said Order of the 23d of February last, against your Petitioner, may, in the mean Time, be stayed: And your Petitioner further humbly prays your Lordships, That the said Order, made by your Lordships on the 29th of April last, may be so far explained, that as between the said Mr. Kinaston and your Petitioner, the same may not be construed to extend to ease the said Mr. Kinaston's Estate from being liable,

in the first Place, to answer the Demands of the Suitors of the Court; or, if all, or any Part of the said 6000 l. shall be applied for that Purpose; that your Petitioner may then stand in the Place of the Suitors of the Court, to have Satisfaction out of the Estate of the said Mr. Kinaston, for all, or so much of the said 6000 l. as shall be so applied; and that the said 6000 l. so to be deposited by your Petitioner, or any Part thereof, may not be applied towards making good the said Mr. Kinaston's Deficiency, till after Sale and Disposal of all the said Mr. Kinaston's real and personal Estate for that Purpose.

And your Petitioner shall ever pray, &c.

Mr. Serj. Pengelly. Is there any Order upon this?

Mr. Rogers. This was never answered.

Mr. Lutwyche. If they have done, I desire he may be asked, if he hath given any Notice to the Solicitor of the other Side, of the Order on the first Petition?

Mr. Rogers. I did acquaint Mr. Paxton, that I had such an Order; but I did not serve it upon him.

Mr. Com. Serj. I desire to ask you, Whether, when you told Mr. Paxton of it, he insisted upon a formal Service?

Mr. Rogers. Mr. Paxton said, Let it be done as soon as possible.

Mr. Com. Serj. What Answer did you give to Mr. Paxton, when he desired it might be done as soon as possible?

Mr. Rogers. I told him, I was raising the Money by Direction of Mr. Rogers.

Mr. Com. Serj. I ask you, If you had any Directions from Mr. Rogers, for the Payment of, or for raising the Money?

Mr. Rogers. Yes, I had. I believe it will be paid in a Day or two. I can't directly say what Day. Such a Sum is not immediately raised.

Mr. Com. Serj. I desire he may be asked, Whether there is any Reason to doubt of his Ability to raise the Money?

Mr. Rogers. I believe he is able to give a Security; but, as he lives in the Country, he may not be able at present to pay so much Money; but he is now in Town, and endeavouring to raise the Money.

Mr. Com. Serj. My Lords, we beg leave to call two or three Gentlemen, with respect to Mr. Thomas Bennet, what he hath said; and that he said he was able to pay all the rest of the Money, if Mr. Hiccocks would pay 2000 l.

Mr. Holford called.

Mr. Serj. Probyn. My Lords, we beg leave to begin with Mr. Holford, and to ask him, Whether he was not employed, or concerned as a Friend to Mr. Thomas Bennet, to go to Mr. Hiccocks, and what Proposals he was to make to Mr. Hiccocks?

Mr. Holford. Presently after the Article was delivered in by Mr. Thomas Bennet, relating to the Money he said was in the Hands of Persons of Ability and Substance, to the Judges and Gentlemen of the Bank, Mr. Bennet did send to me, to desire I would speak to Mr. Hiccocks, that if he would pay him but 2000 l. he would pay the Remainder of the Money. I did not much care to undertake it; but upon some Importunity, I did go upon the said Message; and it was this, That he desired me to tell Mr. Hiccocks, that if he would

pay him back 2000*l.* he could or would take care that the rest should be paid, and Mr. *Hiccocks* should not be troubled about the Remainder.

Mr. *Serj. Probyn*. I desire he may be asked, Whether he had any Discourse with Mr. *Thomas Bennet*, concerning what passed between him and Mr. *Hiccocks*?

Mr. *Holford*. Mr. *Hiccocks* told me —

Mr. *Lutwyche*. That is no Evidence.

Mr. *Holford*. I am only relating the Answer he returned to my Message; which was, That Mr. *Bennet* had given in that Article, and brought his Name in Question, without ever acquainting him of it; and therefore he would never have any thing to do with him. I did give him that Answer, and never troubled myself any more about it.

Mr. *Lutwyche*. I desire Mr. *Holford* would recollect the Time.

Mr. *Holford*. I believe it was the next Day after he had given in that Article.

Mr. *Lutwyche*. I think they call this Witness to prove a Contradiction in Mr. *Bennet*'s. Mr. *Holford* says, He said he was willing, he would take care the rest should be paid. I desire to know, Whether he declared he had the Money to pay, the Money in his own Hands?

Mr. *Holford*. No, my Lords, I can't say he told me so.

E. of *Macclesfield*. I desire to ask him, If Mr. *Bennet* did not expressly tell him, That he was able to pay the Money; or if Mr. *Holford* would have gone upon the Errand, without being satisfied that he was able to pay the Money?

Mr. *Holford*. Mr. *Hiccocks* was my old Acquaintance and Friend, I did not intend to deceive him; if I had not believed what Mr. *Bennet* said to be true, and that he could make good what he at that Time sent me to desire Mr. *Hiccocks* to accept, I would not have gone on that Errand to him.

Mr. *Thurston* called.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Thurston* may inform your Lordships what he hath heard Mr. *Thomas Bennet* say, in relation to Mr. *Hiccocks*; about his paying back 2000*l.*

Mr. *Thurston*. I do remember Mr. *Thomas Bennet* told me, and I think I was then sitting in the publick Office, that if *Hiccocks* (as I think his Expression was) would pay him back 2000*l.* he would make up the rest himself.

Mr. *Serj. Probyn*. I desire Mr. *Thurston* to explain himself, whether he expressed himself in that manner that Mr. *Thurston* apprehended he was able to do it?

Mr. *Thurston*. I can't swear critically to the last Words, that he would make up the rest himself; but he spoke in such Words, that I understood he meant so; that was the Sense of those Words, as I have delivered it now to your Lordships.

Mr. *Serj. Probyn*. Had you any Discourse at any other Time with Mr. *Thomas Bennet* about it?

Mr. *Thurston*. I believe I had some Discourse with Mr. *Thomas Bennet* at another Time; and I asked him, Why he would not pay in as much as he had undertaken, if Mr. *Hiccocks* had paid him 2000*l.*? The Reply he gave me was, All he had in the World would not do it.

Mr. *Serj. Probyn*. I desire he may be asked, if he had any Discourse with Mr. *Thomas Bennet* at any Time, about his Ability to pay this Money, or whether he was able to pay it?

Mr. *Thurston*. I had no Discourse with Mr.

*Thomas Bennet* directly, of his Ability to pay in this Money, when these Accompts were called for; but I do remember, at a preceding Time, he was talking of *Hiccocks*'s detaining his Money by way of Retainer; explaining the Reason, why he paid for the Place that he bought of Mr. *Hiccocks* out of the Suitors Money, that it was the most Compendious Method of doing in that Case, and prevented the Trouble of Mortgaging his Estate.

Mr. *Serj. Probyn*. Did he say any thing in case of his Death, Whether he should leave sufficient to satisfy it?

Mr. *Thurston*. He said at that Time, if he died, there would be Estate sufficient to answer it; therefore he had the less Occasion to trouble himself to raise the Money, but to pay it in the particular Manner I have mentioned.

Mr. *Plummer*. I desire to ask him, If Mr. *Bennet* explained to him in what Manner the Money was to be raised, to make good the Deficiency?

Mr. *Thurston*. He did not at all explain to me, how he was to raise it.

Mr. *Plummer*. I desire to ask you more particularly, Whether he mentioned to have insured any Money upon his Life?

Mr. *Thurston*. Not at that Time, as I remember; I have heard him at other Times talk of insuring of Money on his Life.

Mr. *Serj. Pengelly*. When was the first Time that Mr. *Bennet* told you, that if Mr. *Hiccocks* would pay him Two thousand Pounds, he would make up the rest himself?

Mr. *Thurston*. My Lords, I can't remember distinctly the Time, never having imagined I should be called upon to repeat it on this Occasion; but it must necessarily be after the Accompts were given in before the Judges. I can't exactly remember the Time, or Day, or Week.

Mr. *Elde* called again.

Mr. *Serj. Probyn*. My Lords, we desire that Mr. *Elde* may inform your Lordships what Discourse he had with Mr. *Bennet*, in relation to the Money in Mr. *Hiccocks*'s Hands?

Mr. *Elde*. Some small Time after I had given in my Accompt, I saw Mr. *Bennet*; and he came up to me and said, That it was hard that he could not have any Money from Mr. *Hiccocks*. He said, If he would pay him 2000*l.* he would, or could pay the rest. I do not remember which.

Mr. *Serj. Probyn*. Whether he thinks he might have been able to pay it, if he had thought fit?

Mr. *Elde*. I know nothing of Mr. *Bennet*'s Circumstances; I am as little acquainted with him, as with any I must necessarily have Correspondence with.

Mr. *Serj. Probyn*. My Lords, We shall not trouble your Lordships with any further Evidence on the 11th Article, in which we think we have sufficiently contradicted Mr. *Thomas Bennet*, as to the Charge he hath made on the Noble Lord. As to the 12th Article, that principally relates to that Part, That the Purchase Money was paid out of the Suitors Money; that is a Fact that lies upon the Gentlemen of the House of Commons to prove: It is impossible for Us to prove a Negative, they are to prove the Affirmative, and they have not attempted to prove it by any Witness; but by Mr. *Thomas Bennet*: Now this being a Fact that rests intirely upon Mr. *Bennet*'s Evidence, we submit, Whether your Lordships can believe any thing upon the Credit of his Testimony?

Mr. *Com.*



Mr. Com. Serj. My Lords, We humbly apprehend the Gentlemen of the House of Commons, by joining these Two Articles together, did it as if they were the same, and did depend upon one another: for unless the Matter in the 11th Article be established, what was done on the 12th, will be of no great Significancy; For if Persons of good Ability, who are responsible, and fit to answer the Money that comes to their Hands, be admitted to be Masters, it is not very material whether the Forms of transferring in like Transactions of that Nature are strictly pursued or no; because the Person, being sufficient and responsible, will answer that Money that is so detained. I choose to call them Forms; for, with Submission, if we examine them, they are Forms, and nothing else: whether they take all the Money from the preceding Master, or replace with the Successor's own Money, what is detained by the Predecessor, it comes to the self same Thing; and are only different Forms or Methods of Payment. Upon the whole, we apprehend, We have established our Answer to the 11th Article; we think the other follows of Course; and that there is no Necessity to give your Lordships any further Trouble on this Head; but that the Noble Earl will stand clear as to any Accusation on these Two Articles.

*Then all Persons concerned in the Impeachment, were directed to withdraw, and then the House adjourned to Ten o' Clock the next Morning.*

Friday, 14 May, 1725. *The Seventh Day.*

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence; as also another Proclamation, That all Persons concerned, were to take Notice, That *Thomas Earl of Macclesfield* now stood upon his Tryal; and they might come forth in order to make good the Charge.

L. Ch. J. King. Mr. Serjeant Probyn, you may go on.

Mr. Strange. My Lords, We who are Council for the Noble Earl within the Bar, beg Leave to proceed to his Defence against the 13th and 14th Articles of the Commons Charge.

My Lords, The Facts contained in these Two Articles, are laid to be done with a View of concealing a Deficiency, that had happened in the Office of Mr. *Dormer*, a Master of the Court; upon whose Failure it is charged, that there was a total Neglect, either to secure his Person or Effects, or to enter into any Inquiry into the Deficiency: And that altho' the State of this Affair was fully known to the Earl of *Macclesfield*, yet a Declaration was afterwards made in open Court, That Mr. *Dormer* was only gone into the Country to take the Air; That he would return again in a little while, and all would be well: And that in further Prosecution of this Endeavour to conceal the Deficiency in *Dormer's* Office, a precarious and trifling Composition was made with a Creditor of Mr. *Dormer's*; and this without any Notice to the Suitors of the Court.

My Lords, I shall, for my Part, confine myself at present to these Two Articles only, reserving any thing I may have to offer in general

to the Close of the Defence; but before I proceed to observe upon the Evidence brought to support the Charge contained in these Two Articles, it will be proper to take Notice to your Lordships, That the Honourable Managers for the House of Commons, have not offered one Title of Proof, as to the Declaration pretended to be made, relating to Mr. *Dormer's* being gone to take the Air, though they were pleased to enlarge upon it in their Opening; but we have the Satisfaction to know, That we are before your Lordships, who are incapable of receiving any Impressions from Facts that are barely opened, and not proved; and therefore we rest assured, that no Weight will be laid upon this Circumstance, since no Evidence has been produced in Support of this Part of the Charge.

My Lords, As to the other Matters contained in these Articles, we humbly hope to give your Lordships abundant Satisfaction in the Noble Earl's Behaviour on that Occasion; that all the proper Steps were taken to secure the Interest of the Suitors; and that, if there still remains any Deficiency, it is not to be imputed to any Neglect of the Noble Earl within the Bar.

Your Lordships were pleased to observe in the Course of the Evidence produced by the Honourable Managers for the House of Commons, That Mr. *Dormer's* Failure happened about *Christmas, 1720*. My Lords, it was about that Time that Mr. *Wilson*, who had large Effects of Mr. *Dormer's* in his Hands, stopped Payment; which unfortunately obliged Mr. *Dormer*, without the Knowledge or Suspicion of any one, to retire himself to *Holland*; and soon after, Notice was given of it to Mr. *Cottingham*, who immediately acquainted the Earl of *Macclesfield* with it.

Upon this, my Lords, no Time was lost; for the Two Senior Masters, Mr. *Hiccocks* and Mr. *Rogers*, were appointed to inquire into Mr. *Dormer's* Affairs: His Chambers were searched; the Transfer of any Stock in the publick Funds was stopp'd; and all Endeavours used to procure a full Satisfaction for the Suitors of the Court: But, my Lords, though these Methods were very proper to prevent the embezzling of Mr. *Dormer's* Effects, yet your Lordships will readily perceive, that no Steps, that could be taken whilst Mr. *Dormer* was on the other Side of the Water, could be in any Degree effectual towards the Payment of his Debts.

And therefore, my Lords, it was, that upon a Proposal of Mr. *Dormer's*, to come over and discover his Effects for the Benefit of the Suitors, in case he might be assured of his Liberty; and not be left to die in a Gaol in his old Age (as himself expresses it) the Noble Earl within the Bar, was prevailed upon to give him those Assurances; but upon Condition, That he made a full Discovery, and assigned over all he had.

Suppose, my Lords, the Proposal had not been complied with, would the Suitors have been in a better Condition than they now are in? The Person of Mr. *Dormer* was out of Reach; the Stock could not be transferred without his Presence or Consent, nor were there any Means to procure it under these Circumstances, without some Compliance on the Side of the Noble Earl. To say, My Lords (and it was only said) That Dr. *Eddisbury's* Person was secured, is, in my humble Apprehension, an Argument of no Weight in this Case, since it does not appear, that he was out of the Reach of the Court before his Fai-  
ture

lure; and, I am persuaded, the Gentlemen, who mentioned this Instance, don't desire to have it thought, That the Noble Lord, who then presided; was capable of so great a Breach of Faith, as to deprive him of his Liberty after a Promise to the contrary: It must be submitted, therefore, to your Lordships, whether the committing a Man in the Power of the Court, was a Precedent that could be followed in the Case of Mr. *Dormer*.

My Lords, To finish this Part of the Defence in not securing the Person of Mr. *Dormer*, I shall beg Leave only to observe, That though it is alledged in the Articles, and was insisted on in the Opening and Summing up, That Application was made to the Earl of *Macclesfield* for that Purpose, yet the Honourable Managers forgot to call any Witnesses to the Proof of that Particular; which must therefore rest upon the Denial in the Answer of the Noble Earl.

My Lords, It was insisted upon, That Mr. *Dormer* had not complied with his own Proposal in discovering and delivering up his whole Effects; and for that Purpose a Witness was called to inform your Lordships of a very great Discovery that has been since made of a Quantity of Hops, that belonged to Mr. *Dormer*: Your Lordships remember how very lamely they were proved to belong to Mr. *Dormer*, and how reasonable an Account was given of their being kept so long in Hopes of a better Market. My Lords, we shall not presume to entertain your Lordships with any Counter Proof of such a trifling Evidence (as a learned Manager was pleased to call it) but beg Leave to infer from thence, That it is evident a more than ordinary Care was taken in looking after Mr. *Dormer's* Effects, since, after Four Years, which have past from the Time of assigning his Estate, a few musty Hops are all that are discovered.

My Lords, We humbly hope to make it fully appear to your Lordships, That the complying with Mr. *Dormer's* Proposal was the only Means to procure any Satisfaction: Had not Mr. *Dormer* been induced to come over, his Books and Accounts would never have appeared; and had he died Abroad, as he did soon after his coming Home, I am persuaded the Deficiency would have been much greater: And if a full Discovery of his Effects was not made (which, however, I apprehend there is no Foundation to believe, after the Hops are laid out of the Case) the same will appear to be owing to his Death, which happened in a short Time after his Return.

My Lords, The several Steps that were taken towards securing the Effects of Mr. *Dormer*, must necessarily promulge his Failure in some Measure; the Chambers could not be searched; there could not be Caveats enter'd in the Books of all the publick Funds; nor could *Lockman* be caution'd against expecting any more out of the Effects of Mr. *Dormer*, without making some Noise, and giving People Notice: And, therefore, when we have made out these Facts, I humbly hope, the Noble Earl will stand acquitted of any Design to conceal the State of *Dormer's* Office, in Prejudice of the Suitors; but that, considering all the Circumstances of the Case, he took the wisest and properest Course to secure as ample a Satisfaction for the Suitors, as it was in his Power to do.

My Lords, The 14th Article, relating to the Composition with *Wilson*, will give me no Occasion to take up much of your Lordships Time. It is called a precarious and trifling Composition,

and was aggravated in the Opening, and so, of course, in the summing up, by a Matter, which they failed in the Proof of, That that *Wilson* was suffered to compound this Debt, though he paid others their whole Demand with Interest.

My Lords, The Witness, who was called to prove this, did by no means come up to what was opened: He did, indeed, say, That he was informed, That *Wilson* had paid some Persons their whole Debt; but he, at the same Time, acquainted your Lordships, That these were small Debts; and that he did not pay them out of his own Effects, but from a Supply administered by a Friend, only to give him a Credit at his setting up again; and the unfortunate End of this Man (of which I am just now informed) is an unanswerable Proof of his Inability to pay the Whole.

My Lords, As a further Argument to prove the Reasonableness of this Composition, I beg Leave to appeal to another Part of the Evidence produc'd on this Article by the Managers of the House of Commons; whereby it appeared, That Mr. *Wilson's* Books were perused by two Masters, and himself was put upon his Oath; and that he swore the Composition he then offered, was all he was able to make; which I humbly submit to your Lordships, as an Answer to what an Honourable Manager was pleased to object, when he insisted, that there ought to have been a Commission of Bankruptcy against *Wilson*, that thereby his Effects might have been discovered upon Oath.

My Lords, There were many other Creditors of Mr. *Wilson's*, besides Mr. *Dormer*, who might have applied for a Commission of Bankruptcy, if it would have been for their Advantage; but, as every-body is acquainted with the great Expence and Delay of such a Procedure, I believe they will be thought to have taken the wisest Course: Here was all the Benefit of a Commission, by the putting *Wilson* upon his Oath, and none of the Expence and Delay that attend such an Inquiry.

My Lords, Another Thing opened, and not proved, is, That at the Time of this Composition, *Poulter*, who was *Wilson's* Debtor, was worth nothing: It is true, my Lords, he was afterwards in Execution, and escaped; but if we make it appear to your Lordships, That at the Time of the Composition he was a visible Person, and not suspected, I humbly hope, whatever has happened subsequent to the Composition, will be no Ingredient in shewing it to have been a trifling and precarious one at the Time of making it.

My Lords, I beg Leave humbly to observe, That the Honourable Managers have not been pleased to instance, how the Suitors would have been in a better Condition, in case this Composition had not been made: Could they have shewn your Lordships, that if Part of the Debt had not been taken, the Whole might have been obtained, I must confess, there would have been some Reason to have called this a trifling Composition; but, since nothing of that Nature has been attempted, I must submit the whole Transaction, upon what I have already offered, to have been a Transaction most for the Advantage of the Suitors, considering the Circumstances that attended this Composition.

My Lords, An Honourable Manager, who spoke Second upon this Article, was pleased to say, That by this Composition the Suitors were tied

tied down to a certain Loss of Half their Demand. My Lords, I humbly apprehend the Consequence to be directly otherwise; and that the Suitors are not tied down at all: As they were no Parties to the Composition, they were not bound by it; nor is Mr. *Wilson*, by this Composition, in any degree discharged as to the Suitors of the Court; so that if *Wilson* be able to pay the Whole, he is still as liable to the Demands of the Suitors, as if this Composition had not been made; and if this be so, it will be to the Advantage of the Suitors, that they had no Notice, which, however, I apprehend, was, in the Nature of the Thing, impracticable.

My Lords, It was insisted upon, That the Petitions, and Orders, and Reports on this Occasion, were in an unusual and clandestine Manner; and a Certificate has been read to your Lordships to prove, That they were never filed and registred, as is usual in other Cases: But do they, my Lords, pretend to say, That this was by the Order, or with the Privity of the Earl of *Macclesfield*? The Business of a Chancellor, is to make Orders; but I never yet heard it was his Duty to see them drawn up and registred; and therefore, if there was any thing unusual in this, it is not to be imputed to the Neglect of the Noble Earl, unless it was proved to have been by his express Direction.

My Lords, It has already appeared, that this Composition, and the Proceedings upon it, did not proceed from the Noble Earl; but were proposed to him; Mr. *Edwards* did acquaint your Lordships, That it was himself, who first proposed it to the Earl, after having advised with Mr. *Hiccocks*, who put him into that Method.

This, my Lords, is the Nature of our Defence against the 13th and 14th Articles of the Commons Charge: We humbly hope the several Steps that were taken, will appear to have been for the Benefit and Advantage of the Suitors, and with no other View, than the securing them their whole Demand; that the Composition so much complained of, was given into, only as a Means towards the attaining that End, and could in no Event be prejudicial to the Suitors of the Court, as the Gentlemen of the House of Commons would represent it to your Lordships.

Mr. *Dormer Parkhurst* sworn.

Mr. *Serj. Probyn*. My Lords, we desire Mr. *Parkhurst* may be asked, What Conversation passed between him and Mr. *Dormer*, previous to his going Abroad, and upon what Occasion he was obliged to go Abroad?

Mr. *Parkhurst*. Mr. *Dormer* came to me about the latter End of *November*, 1720, at my Chambers. I had then some-body else with me; upon that Account he said nothing to me, but desired I would come next Morning early to him. I went, and when I came to him (he lived then in Chambers in *Lincoln's-Inn*) he shut the Door, and told me, he had a Thing of great Importance to communicate to me in Relation to himself; and then told me, he designed to go Abroad: He said Mr. *Wilson*, his Goldsmith, the Day before had been with him (this was on a *Sunday* Morning, and he had been with him the *Saturday* before) and had acquainted him, That the *Monday* following he should be obliged to shut

up Shop, and stop Payment: He had a great deal of Money in his Hands, and he was afraid, that as soon as it was known, that Mr. *Wilson* was unable to pay; the Solicitors, and Practicers belonging to the Court, who knew he kept Mr. *Dormer's* Cash, would immediately be alarmed; and that Application would be made thereon, to my Lord Chancellor; and he believed, that the first Thing to be done, in relation to himself, would be to confine him; and that there would be an Order for his being committed; and therefore to prevent that (for he could not live a Week without Air and Liberty) he was resolved to withdraw himself, and retire to some Place or other. Upon this, I expressed a great deal of Concern, and endeavoured to persuade him against it: I desired him to make his Circumstances known to my Lord Chancellor and the Masters: He said No; he was sure the Consequence would be his Confinement, and was come to a Determination with himself, to secure his Person; his Uneasiness, was from the Fear, that he should be confined; but he would leave every thing fairly behind him, and hereafter come over and obey any Order from my Lord Chancellor; but the first Thing he would do, he was resolved to withdraw, to secure himself from being Confined.

Mr. *Serj. Probyn*. What happened after he was gone Abroad? and what Notice was taken of it?

Mr. *Parkhurst*. In a little time after this, I understood he had put this Resolution in Execution, and had withdrawn himself. He had desired me, that I should not mention it to any Body; and gave out by his Clerk, that he was gone into the Country. I did, after this, in about three Weeks, receive a Letter from him, that he was then at *Rotterdam*; and there was a Letter inclosed, which he desired me to shew to some of the Masters. I think I shewed it to Mr. *Rogers*; afterwards, according to his Directions in the Letter to me, I carried it to Mr. *Cottingham*. It was directed to Mr. *Cottingham*, who was then Secretary to my Lord Chancellor; I carried the Letter to him, and left it with him.

Mr. *Serj. Probyn*. If you can, recollect what were the Particulars of that Letter, the Contents of it, relating to any Terms of his coming over again.

Mr. *Parkhurst*. It is a great while ago; I have but a faint Remembrance of it; but I think it was much to the same Purpose with what he communicated to me at first, after he had acquainted me with the unhappy Affair, as hath been mentioned. He said he had a great Sum of Money in Mr. *Wilson's* Hands; and when he found *Wilson* unable to pay, he was apprehensive of an immediate Confinement, which he could not possibly bear; therefore he had withdrawn himself; but that he had left his own Estate intire behind him, and every thing relating to the Suitors; and he was willing to come over to give an Account of the State of the Office, and of his own Estate; and he was willing to make over all his own Estate, to answer the Deficiency of the Office, as far as it would go, and to do every thing the Court should think fit to order him, provided he might have his Liberty both before and after: He desired he might not be confined, and he would do every Thing that the Court would order him to do, or should be desired of him, as much as if he was confined.

Mr. Serj. Probyn. We desire he may be asked, If he knew how it was, that Mr. *Wilson* came to have so much of Mr. *Dormer's* Effects in his Hands, and upon what Account?

Mr. *Parkhurst*. I did not know, till this Affair happened of *Wilson's* failing, what Money he had in his Hands belonging to Mr. *Dormer*. I used to see Mr. *Wilson* with him; I knew Mr. *Wilson* had Cash of *h s* in his Hands; but afterwards, by way of Justification of himself, for losing so much Money, I heard him say, It was an unlucky Accident, he had a considerable Sum of Money paid into his Hands, by Order of Court, and a considerable Sum, which came in upon the Land-Tax, and he did not know at that Time, what to lay it out in; the Stocks were so High and Precarious, he would not buy any; and he thought *Wilson's* Hands as safe a Place as any at that Time; he could not keep it by him in his Chambers, and he was going into the Country for three or four Weeks; and when he saw Things were settled, then he would lay it out: But when he came back to Town, he found Mr. *Wilson* in those declining Circumstances. This was after he returned from *Holland*. I knew nothing before of this, nor that he had any great Sum of Money in his Hands.

Mr. Serj. Probyn. He saith that he did propose, That he would come over and make a Discovery of, and deliver up his Effects, in case his Person was secured; now I desire he may recollect, before he did come over, if he knew of any Steps taken to secure his Effects; and whether any Thing in his Chambers was taken Care of, and by whom?

Mr. *Parkhurst*. I can give but one Instance of it, that is, Mr. *Rogers*, a Master in *Chancery*, came to me one Morning, and desired me, upon the Account of being a Relation, for I was no otherwise concerned, that I would go along with him to look into Mr. *Dormer's* Chambers, to see that there was, what Securities, or any thing of what Nature belonging to the Office. I remember we did find several Things, several Land Tax Tallies which Mr. *Rogers* gave an Account of. I don't know what the Number was.

Mr. Serj. Probyn. Who took Possession of them?

Mr. *Parkhurst*. Mr. *Rogers*, the Master in *Chancery*.

Mr. Serj. Probyn. By whose Direction did you understand that Mr. *Rogers* took this Care?

Mr. *Parkhurst*. I understood it was by the Direction of the Court. He came to me, and desired me to go along with him, to see that no Person meddled with any Thing but what belonged to the Suitors; and he took them, and locked them up in his Closet or Scrutore.

Mr. Serj. Probyn. My Lords, we have done with this Evidence.

Mr. *Plummer*. I think he says, the Reason of Mr. *Dormer's* having so much Money in the Hands of Mr. *Wilson*, was, that there was a great Sum of Money come in upon the Land-Tax: I desire to know, if Mr. *Dormer* left this Money dead in the Hands of Mr. *Wilson*, or if he had any Interest for it?

Mr. *Parkhurst*. I know nothing of that. By way of Justification, he said, It was unlucky he had so much Money paid into his Hands at that Time; Times were so precarious, he did not know how to lay it out.

Mr. Serj. Pengelly. I desire he may be asked, Whether Mr. *Wilson* did not usually keep Mr. *Dormer's* Cash, and the Cash of the Office?

Mr. *Parkhurst*. I believe he did. I know but few Instances of it.

Mr. Serj. Pengelly. Whether he never heard him declare that Mr. *Wilson* paid him Interest?

Mr. *Parkhurst*. I never heard him declare he did: He never spoke to me about it particularly.

Mr. *Lutwyche*. I desire he may be asked, Whether he can inform your Lordships, how long Mr. *Wilson* had been Banker to Mr. *Dormer*?

Mr. *Parkhurst*. I can't say exactly how long: I believe some Years.

Mr. Com. Serj. If the Gentlemen have done with this Witness, we beg leave to call another, to prove what Care was taken to stop those Effects; that were in the publick Funds.

Mr. John Elphinstone sworn.

Mr. Com. Serj. My Lords, we desire that Mr. *Elphinstone* may inform your Lordships what he knows of any Orders or Directions given, in relation to the Effects of Mr. *Dormer* that were in the Publick Funds; and by whom those Directions were given?

Mr. *Elphinstone*. My Lords, I have been to search the Books of the Bank, the *South-Sea*, and *East-India* Companies, to see what Stock *Fleetwood Dormer*, Esq; one of the Masters of the Court of *Chancery* had in the Books of those Companies, and what Orders there were for stopping Mr. *Dormer's* transferring such Stock. My Lords, I went first to the Bank, and searched a Book of that Company, called a *Leidger*, where Mr. *Dormer's* Accompt was stated by way of Debtor and Creditor. I found in that Book, a *Memorandum* written over Mr. *Dormer's* Account in red Letters, as follows, *2. No Transfer*. I likewise enquired, if there were any Orders of the Court of *Chancery*, for stopping the Transfer of such Stock? I was told by the Clerk, That he knew of none. I enquired of the Clerk at the Transfer-Office, if there was any Order of the Court of *Chancery* for transferring Mr. *Dormer's* Stock to Mr. *Edwards*, the succeeding Master; after some search, he brought me an original Order, Signed *Parker*, C. dated 11. July, 1721. I have a Copy of that Order in my Hand, whereby it appears, that all the Stock and Annuities, in the Name of Mr. *Dormer*, were ordered to be transferred to Mr. *Edwards*, on the 12th of July 1721, viz. the Day after the Date of the said Order. I found in the Transfer Book of that Company the Sum of 3393 *l.* 16 *s.* transferred by Mr. *Dormer* to Mr. *Edwards*, and Mr. *Edwards's* Acceptance of the same. This is a Copy of the original Order. I afterwards went to the *South-Sea* House; I searched the Books of that Company, and in the Book marked Letter D. N<sup>o</sup>. 6. Folio 430. where Mr. *Dormer's* Accompt is stated by way of Debtor and Creditor, I found a *Memorandum* over Mr. *Dormer's* Account, which is as follows; *Stock not to be transferred without Order from the Court of Directors (he being failed) or from the Court of Chancery*. I also searched the Transfer-Book of the said Company; and I found in Book No. 5. Page 86. that on the 12th Day of July 1721. 2251 *l.* 14 *s.* *South Sea* Stock was transferred by Mr. *Dormer* to Mr. *Edwards*, and under the Transfer I saw Mr. *Edwards's* Acceptance; Mr. *Dormer* signed the Transfer, and Mr. *Edwards* signed the Acceptance. I enquired if there were any Orders for stopping Mr. *Dormer's* Stock from being transferred.

ferred. I found no such Order, nor any Order for transferring the Stock that was transferred; and the Reason which the Clerk of that Office gave, was, That upon the unhappy Turn of the Affairs of that Company, several of the Clerks being discharged, and many Books and Papers being destroyed, lost, or mislaid; and the rest in the utmost Confusion, rendered it impossible to find any such Paper at this Distance of Time. I went likewise to the *East-India* Company; but I could not find upon those Books any Stock belonging to Mr. *Dormer*, or that he had any Interest in that Company.

Mr. *Strange*. I beg Leave to take Notice of one Thing he says, relating to the Words expressly entered in one *Leidger* Book; it stands that Mr. *Dormer* should not transfer any Stock, he being failed.

Mr. *Elphinstone*. Yes, the *Memorandum* entred in the *South Sea* *Leidger* Book; is, as follows: *Stock not to be transferred without Order from the Court of Directors (he being failed) or Court of Chancery*; the Words, *he being failed*, are in a Parenthesis, and then follow the Words, *or Court of Chancery*.

Earl of *Macclesfield*. Who was then Governor of the *Bank*?

Mr. *Elphinstone*. I think Mr. *Hanger* was.

Mr. Serj. *Probyn*. Were the Entries dated?

Mr. *Elphinstone*. There was no Date to any of the *Memorandums*; they are wrote just over Mr. *Dormer's* Account, and under a Line drawn to separate Mr. *Dormer's* Account from another Person's.

Mr. Serj. *Probyn*. Was that before the Transfer made to *Edwards*?

Mr. *Elphinstone*. There is no Date to the *Memorandum* for stopping the Transfer of Mr. *Dormer's* Stock; but it must be before the Transfer.

Mr. Serj. *Probyn*. But the Entry in the Books, was it precedent or subsequent to the Transfer?

Mr. *Elphinstone*. When I searched for the Account, I found the Account and the *Memorandum* for stopping the Transfer of the Stock, placed over it, in a Book called the *Leidger*, and when I searched for the Transfer of the Stock, I found that in the *Transfer-Book*, which is a different Book.

Mr. Serj. *Probyn*. What *Transfer-Book* was it?

Mr. *Elphinstone*. It was the *Transfer-Book* No. 5. in Page 86. where I found Mr. *Dormer's* Transfer, and Mr. *Edwards's* Acceptance; but the *Leidger* is quite a different Book. It was in the *Leidger* marked D that I found the *Memorandum* for stopping the Transfer of Mr. *Dormer's* Stock over his Account; but I could not tell what Day of the Month it was entred; there were promiscuous Dates in the Year 1720, 21, 22, 23, and 24. to several Articles of that and other Accounts, but no Date to the *Memorandum* at the Head of his Account. I took this Copy of it, which I have in my Hand.

Mr. *Lutwyche*. I desire to ask one Question, which, indeed, is to explain, what he mentioned concerning an Order, that I think, he takes to be signed by my Lord Chancellor. I desire to know the Date of it?

Mr. *Elphinstone*. It was a loose Order brought to me, dated 11 July 1721.

Mr. *Lutwyche*. Who brought it?

Mr. *Elphinstone*. It was brought to me by a Clerk that belongs to the *Transfer-Office* at the *Bank*.

Mr. *Lutwyche*. Was that Original Order left in the Book?

Mr. *Elphinstone*. No, my Lords, I saw no Book of Orders; It was a single Order brought to me.

Mr. *Lutwyche*. You say there was an Order signed *Parker C.* was there any such Order drawn up by the Register of the Court?

Mr. *Elphinstone*. I know nothing of its being drawn up by the Register. I saw *Parker C.* Signed to an Order; and I believe it was the noble Earl's Hand.

Mr. Serj. *Pengelly*. He hath a Copy of it; I believe it is proper to put it in, or that it may be read.

Mr. *Lutwyche*. Mr. *Elphinstone* may read it to your Lordships.

Mr. *Elphinstone* reads. *Martis* 11 July 1721.  
"I do order, that all the *Bank* Stock and Annuities therein subscribed, belonging to *Fleetwood Dormer*, Esq; late one of the Masters of this Court, be by him forthwith transferred to *Henry Edwards* the succeeding Master"  
*Parker C.*

To the Governor, Deputy Governor and Directors of the *Bank* of England.

Mr. Serj. *Pengelly*. We desire he may be asked whether he heard any Thing of Mr. *Dormer's* being gone to take the Air?

Mr. *Elphinstone*. No, my Lords, I never did, upon my Oath.

Mr. Serj. *Pengelly*. Whether he did not hear the Earl of *Macclesfield* make a Declaration to that Purport?

Mr. *Elphinstone*. I do not remember that the Noble Lord ever made any such Declaration.

Mr. Serj. *Pengelly*. He mentioned several Orders he found in the Books of the *Bank*, as I apprehended him; whether was there any other Order under my Lord *Macclesfield's* Hand?

Mr. *Elphinstone*. No, I saw but one Original Order, signed by the Noble Earl, of which, this is a Copy in my Hand.

Mr. *Lutwyche*. This was an Order under my Lord's Hand, a considerable Time after: I desire he may be asked, whether he hath heard of any Order directed to the Governor, Deputy Governor, &c. of the *Bank*, and sign'd by the Chancellor, and that Original Order left there?

Mr. *Elphinstone*. My Lords, I would be very cautious of saying any Thing that I do not remember; but I do remember something of a Discourse of an Order given for stopping of *Dormer's* Stock and Effects about the Time of Mr. *Dormer's* absconding, but when it was I can't tell.

Mr. *Lutwyche*. He did not understand me: My Question is, Whether or no he hath ever heard of any Order directed to the Governor, &c. of the *Bank*, and signed by the Chancellor, and that Original Order left there?

Mr. *Elphinstone*. No, my Lords, I don't say I heard of any other Order, signed by my Lord Chancellor, and directed to the Governor, &c. of the *Bank*; but I heard an Order was given by my Lord, to stop *Dormer's* Stock.

Mr. *Lutwyche*. I only ask, Whether in this, or any other instance, my Lord Chancellor made Orders to the *Bank*, to be left there?

Mr. *Elphinstone*. I don't know what Orders are made; it was out of my Province; I had nothing to do with that; my Business was quite another Thing.

Mr. Serj. *Probyn*. I would beg Leave to take Notice of one Observation, that has been made on the Evidence given in Relation to the Order of the late Lord Chancellor, as tho' it was unusual to direct any in that manner to the *Bank*; but to that I beg Leave to answer, that this was not an Order of Court; but only a particular Direction, which he, in his private Capacity, sent to that Company, out of his great Care to secure the Effects of the Suitors; and this, I apprehend, fully clears him of the Objection made to him of Neglect to do it in his judicial Capacity.

Mr. *Com. Serj.* Your Lordships cannot choose but observe, that this very Thing implies some Caution taken, that these Effects of Mr. *Dormer's* should not be transferred without the Privy of the Great Seal: This Order, we apprehend, was for that Purpose; and to make this plain, we shall shew, that Mr. *Cottingham* went from my Lord Chancellor about this Matter.

Mr. *Cottingham*.

Mr. Serj. *Probyn*. We desire Mr. *Cottingham* may be ask'd, How he came to have Notice, and from whom, of Mr. *Dormer's* withdrawing himself; and what Care was taken to secure his Effects?

Mr. *Cottingham*. Soon after *Christmas*, 1720. to the best of my Remembrance, as to the Time, Mr. *Parkhurst*, Mr. *Dormer's* Nephew, came to me, and told me, his Uncle, Mr. *Dormer*, had withdrawn himself into *Holland*; and the Reason was, upon Account of his having left Money and Effects belonging to the Suitors, in Mr. *Wilson's* Hands, and Mr. *Wilson* had been very unfortunate in the *South Sea* Year, and was likewise gone off. I acquainted the Earl of what passed. The Earl directed me to attend the two Senior Masters, Mr. *Hiccocks* and Mr. *Rogers*, and consider what was proper to be done on that Occasion: On Consideration, we agreed, that it was necessary to get Mr. *Dormer* over.

We then considered, that it was not possible to have him over, unless he was secure of his Liberty. A Proposal was made to the Earl, that in case he came over, he should have his Liberty: The Earl agreed to it. In the mean Time, to the best of my Remembrance, Orders were given for searching of his Office, and securing what Effects and Papers were there. The Masters told me, that pursuant to these Directions, they had searched his Office, and lock'd up what they found there; but his Effects there were of very little Value.

The next Step the Earl took, was, he directed Persons to go to the *Bank* and *South-Sea* House, to

stop the Transferring of any Stock or Effects in his Name.

In *April* following, when Mr. *Dormer* returned, he came late to me one Evening, and asked me, If the Letter writ by the Master, was writ by the Earl's Direction? I told him Yes. He then asked me, If the Earl had promised his Liberty? Otherwise he would be gone again.

I told him the Earl had promised him his Liberty, if he would make a full Discovery of all his Effects upon Oath; and make over all he had to the two Senior Masters, for the Benefit of the Suitors of the Court; and assist them in getting in every Thing that belonged to him.

He said, these Conditions he readily submitted to, and would attend the Masters accordingly. I spoke to Mr. *Rogers*, to know whether he would have an Order in Form to examine Mr. *Dormer* upon Interrogatories; and that, if he would, I would prepare one, and get it sign'd. He told me, It was not necessary; and that they thought it was best to get the Estate and Effects in the first Place before that should be done; fearing if Mr. *Dormer* was severely dealt with, he should run away, and an Order might be had afterwards, if necessary. I forgot to tell your Lordships one Circumstance: Some time, in the Summer following, either in *July* or *August*, I happened to dine one Day at the *Blue-Posts*, behind *Lincolns-Inn*. Mr. *Dormer* came to me with Tears in his Eyes; he cried bitterly, and said, That the Masters had stripp'd him of all he had in the World, and begg'd I would intercede with the Earl to allow him something. I desired him not to insist upon it; for his Effects, as I was inform'd, were not sufficient to pay his Debts, and he knew well, that the Earl could not give away the Effects of the Suitors; It was out of his Power.

Mr. *Plummer*. I think you say, Sir, That Mr. *Dormer* failed, by leaving his Money and Effects in Mr. *Wilson's* Hands; I desire to ask him, What he means by his Effects?

Mr. *Cottingham*. The Money and Effects belonging to the Suitors of the Court.

Mr. *Plummer*. And you told my Lord of that?

Mr. *Cottingham*. Yes, I told my Lord what Mr. *Parkhurst* had mention'd of the Money and Effects of the Suitors of the Court being left in *Wilson's* Hands.

Mr. *Com. Serj.* I desire he would inform your Lordships, whether or no, upon this Occasion and Transaction, he applied to the Masters to make up this Deficiency of Mr. *Dormer's*?

Mr. *Cottingham*. As to the Deficiency of Mr. *Dormer*, I always apprehended and understood, that the Masters would make good that Deficiency, Mr. *Lightboun* excepted, who always declared, he would do nothing towards it, unless it were put on another Foot.

Mr. Com. Serj. I desire he may be asked whether he gave any such Information to the Earl of Macclesfield?

Mr. Cottingham. I did so, I told the Earl of it; and to the best of my Remembrance Mr. Hiccocks and Mr. Rogers, my Lords, I wont be positive, but I think Mr. Hiccocks and Mr. Rogers did order me to wait upon the Earl, and let his Lordship know that the Body of the Masters had undertaken to make up the Deficiency; I do think so, I will not be positive of that, I think it was so.

Mr. Com. Serj. I desire he may inform your Lordships, if he knows how it came to pass that Mr. Dormer had Money in Mr. Wilson's Hands?

Mr. Cottingham. Mr. Parkhurst told me, and I think Mr. Dormer likewise, but of that I am not certain, that Mr. Dormer had left the Money in his Hands when he went into the Country in the long Vacation.

Mr. Onslow. I desire he may be asked what were the Words that Mr. Rogers and Mr. Hiccocks said to him when he apprehended the Masters would make good the Deficiency?

Mr. Cottingham. I think it was what I told your Lordships, that the Body of the Masters would make good the Deficiency, I do not, I cannot swear that positively.

Mr. Onslow. Did any other of the Masters tell you so?

Mr. Cottingham. Mr. Godfrey told me, I am positive of this, that Mr. Godfrey told me that the Body of the Masters would make good the Deficiency, I must except Mr. Lightboun.

I have heard Mr. Edwards say, that he would never have paid his 5000*l.* if he had not apprehended that it would have been made good.

Mr. Com. Serj. This makes it necessary for us to ask another Question, and I desire he may be asked, tho' he doth not remember the particular Words, yet whether they induced him to believe that they intended so to do?

Mr. Cottingham. It did.

Mr. Com. Serj. Whether upon this Belief he did inform the noble Earl that they would make good Mr. Dormer's Deficiency?

Mr. Cottingham. I did, I told the noble Earl so, and that his Lordship needed not to be uneasy, they would make it good, and I always apprehended, I always understood they would make it good.

Mr. Lutwyche. I desire he may be asked whether the Deficiency of Mr. Dormer was ever stated so as to know how much it was?

Mr. Cottingham. No.

Mr. Lutwyche. Did they agree to make up the Deficiency when they did not know how much it was?

Mr. Cottingham. I heard some of the Masters say at first, that it was 17000*l.* or 18000*l.* afterwards they said 20000*l.* and then 22000*l.* and of late it comes out to be 26000*l.*

Mr. Lutwyche. If I understand Mr. Cottingham right, he speaks of several Masters, I desire to know whether he means all, except Mr. Lightboun? I desire to know whether they all singly promised?

Mr. Cottingham. Singly, as I remember; Mr. Edwards can tell I was at a Meeting with them at the Tavern, I think they said singly.

Mr. Serj. Pengelly. I desire he may be asked whether this Discourse with the Masters about

paying this Deficiency was absolute or upon some particular Terms or Conditions of paying the Money?

Mr. Cottingham. Mr. Edwards told me that they would make good the Deficiency, provided they continued on the old Foot as usual.

Mr. Serj. Pengelly. That is, to have the Disposal of the Money, the Money to be in their Hands?

Mr. Cottingham. Yes.

Mr. Lutwyche. I desire to know whether you acquainted the Earl of Macclesfield with this?

Mr. Cottingham. No, this was but lately that Mr. Edwards told me that. It was, I believe, in November or December last.

Mr. Lutwyche. Did none of the other Masters acquaint you so?

Mr. Cottingham. No, I don't remember any other Master did.

Mr. Lutwyche. I desire to ask you whether you ever heard what Interest Mr. Wilson allowed to Mr. Dormer?

Mr. Cottingham. In December last, when the Accompts were before the Judges, the Earl told me that Mr. Wilson's Composition was complained of; it was said, that Mr. Wilson had paid 20*s.* in the Pound; and ordered me to talk with Mr. Wilson; and accordingly I did see him, and blamed him for imposing upon the Masters in the Composition he made with them, when he had paid other Creditors whole Demand; he denied it.

Mr. Lutwyche. That is not the Question; what Interest did Mr. Wilson allow Mr. Dormer for the Suitors Cash?

Mr. Cottingham. I am going on to that Part. Mr. Wilson said to me; why is all the Blame laid upon me? I allowed Mr. Dormer very large Interest for his Money: I could have set aside his Debt upon the Score of an usurious Contract; I was resolved I would not do it, I would shew my self to all the World to be an honest Man; I gave my Creditors all that I had, what would they have more?

Mr. Lutwyche. Whether he mention'd Ten per Cent. or no?

Mr. Cottingham. No, he did not, but he said he had given large high Interest, and the Court had had as much as his other Creditors.

Mr. Com. Serj. When was this Discourse?

Mr. Cottingham. It must have been in December last, when the Judges were inquiring into this Matter, because he told me Mr. Edwards had been with them about the Composition.

Mr. Serj. Probyn. Recollect what was said upon this Discourse, whether he said that the Court or the Masters had as much as any of his other Creditors?

Mr. Cottingham. He told me, I am an honest Man, the Masters had as much as my other Creditors, what would they have more?

Mr. Serj. Probyn. It is our Misfortune we can't produce Mr. Wilson here, we are deprived of his Evidence, which would have been very material, by his Death; we are told he has very lately shot himself.

Mr. Cottingham. He was very poor, I always looked upon him to be an honest Man; he told me at the same time, I forgot to tell your Lordships, if Mr. Poulter could be but delivered up, he should be very easy; he was sure he was in Circumstances

to pay him.

Mr. Com. Serj. My Lords, if the Gentlemen have done with this Witness, we desire to call a Witness or two in relation to the fourteenth Article to shew the Credit of *Poulter* when his Debt was assigned. We apprehend that a little Evidence will serve to clear up the Innocence of this noble Earl on this Occasion: The great Concern the noble Earl had to make up this Deficiency of Mr. *Dormer*, made him with the best of his Knowledge and Power apply thereto; a little Evidence will make it appear, that however unfortunate it was in the Consequence he did it to make the most he could for the Suitors of the Court.

Mr. *Hunt* Sworn.

Mr. Com. Serj. My Lords, we call this Witness to prove the two Judgments, the one against *Poulter*, to shew that there was a real Debt due from *Poulter* to *Wilson*; the other is a Copy of a Judgment by *Wilson* against the Marshal of the King's Bench, for the Escape of *Poulter*.

Mr. *Hunt*. My Lords, I examined these two Copies of Judgments with the Records in the Court of King's Bench. They are true Copies of the Judgments.

Mr. Com. Serj. I desire he may be asked whether he was the Attorney for Mr. *Wilson*?

Mr. *Hunt*. I was the Attorney for Mr. *Wilson* in that against *Machen*, and entred up the Judgment in the other.

Mr. Com. Serj. Is it your Lordships Pleasure that the Judgment should be read at large?

Mr. Serj. *Probyn*. Read only a Word or two of the Judgments, the Names of the Plaintiff and Defendant, the Money demanded, and the Sums recovered.

Clerk reads the Beginning and Ending.

*Memorandum quod alias, scilicet Termino Sancti Hilarii uli' praterit' coram Domino Rege ven' Willielm' Wilson versus Edwardum Poulter—Ideo considerat' est quod predict' Willielm' recuperet versus prefat' Edwardum Poulter damna sua, quæ quidem damna in toto se attingunt ad octodecim mille septingent' & sexagim' libras duodecim solid' & quinq' denar'.*

Mr. Serj. *Probyn*. The first is against *Poulter*.

Mr. *Lutwyche*. Look when the Judgment was signed.

Mr. *Hunt*. It was signed 22 Dec. 1721.

The Judgment read against *Machen*.

*Placita coram Domino Rege apud Westm' de Term' Sancti Michaelis, undecimo Georgii. Memorandum quod Willielm' Wilson—protulit—billam—vers' Richardum Machen—de placito debiti—quod reddat ei octodecim mille septingent' octogint' & un' lib. — Ideo considerat' est quod pred' Willielm' Wilson recuperet &c.*

Judgment signed 27 Nov. 1724.

Mr. Com. Serj. If your Lordships please he may be asked if he knows of any Offer made by *Poulter* for a Composition, and what Sum of Money was offered, and how Mr. *Wilson* behaved himself on that Occasion.

Mr. *Hunt*. I don't know of any Composition offered of my own Knowledge, I have heard the present Marshal of the King's Bench say there was 1000*l* offered; but I had Orders from my Client,

if any Offer was made to me, not to accept it, but to refer the Person who made it to him.

Mr. Com. Serj. As Mr. *Wilson* is dead, I desire Mr. *Hunt* may be asked whether Mr. *Wilson* gave any Reason for that Order not to compound with him?

Mr. *Hunt*. Mr. *Wilson* hath often said that it was his Opinion Mr. *Poulter* was able to pay him.

Mr. Com. Serj. We have done, my Lords, with this Witness.

Mr. Serj. *Probyn*. My Lords, we beg Leave to call a Witness to shew that at this time Mr. *Poulter* had the Reputation of being a Man of Substance, and an honest Man?

Mr. *Peter Gandy* Sworn.

Mr. Serj. *Probyn*. My Lords, I desire Mr. *Gandy* may give your Lordships an Account whether Mr. *Poulter* had not the Reputation of being a substantial Man about the year 1722 or 1723.

Mr. *Gandy*. Mr. *Poulter* always lived in good Reputation, and was reputed to be an honest Man; he lived at *Hackney*, he told me he purchased 6000*l*. South-Sea Stock, which cost him 36000*l*. and transferred it to Mr. *Knight*, and Mr. *Knight* gave him nothing for it.

Mr. Serj. *Probyn*. I desire to ask you whether he was a substantial honest Man?

Mr. *Gandy*. I believe he was, he always bore an extraordinary Character, I believe I might summon all *Exchange-Alley*, and they would say the same; he was reputed to be worth a great deal of Money and a very honest Man.

Mr. *Lutwyche*. At what time was this that he was thought a Man of Substance?

Mr. *Gandy*. When he lived at *Hackney*.

Mr. *Lutwyche*. After he was arrested?

Mr. *Gandy*. Yes.

Mr. *Lutwyche*. Will you say after he was arrested he was a substantial Man?

Mr. *Gandy*. No, my Lords, I do not say he was, but he was generally reputed to be so.

Mr. *Lutwyche*. Whether at the same time you mention that he told you the Circumstance of transferring Stock to Mr. *Knight*, that was not given as a Reason for his Deficiency.

Mr. *Gandy*. He said he had been able to pay Mr. *Wilson* every Farthing, if Mr. *Knight* had not gone away.

Mr. *Lutwyche*. That is what Mr. *Poulter* told Mr. *Gandy*.

Mr. Serj. *Pengelly*. I desire he may be asked when *Poulter* was first known to be in a failing Condition?

Mr. *Gandy*. I don't know

Mr. Serj. *Pengelly*. When was he arrested?

Mr. *Gandy*. I don't know, he told me he should have been able to have paid Mr. *Wilson*, if Mr. *Knight* had not gone away.

Mr. Serj. *Pengelly*. Did he give you that as a Reason why he could not pay Mr. *Wilson*?

Mr. *Gandy*. Mr. *Knight* not paying him, he said he could not pay Mr. *Wilson*.

Mr. Serj. *Pengelly*. Was that the Reason?

Mr. *Gandy*. Here is another Gentleman will tell you he was employed to make a Composition with Mr. *Wilson*, and he can tell you more.

Mr. *Onslow*. What was *Poulter*'s Profession?

Mr. *Gandy*. He was a Servant to Mr. *Stroud*.

Mr. *Onslow*. What is Mr. *Stroud*?

Mr. *Gandy*. Mr. *Stroud* is a Sworn Broker.

Mr.



Mr. Onslow. I desire to know what Profession this Person is of?

Mr. Gandy. I transact in *Exchange-Alley* as a Broker.

Mr. Lutwyche. Did not Mr. Poulter transact as a Broker too?

Mr. Gandy. Yes.

Dr. Sayer. We are not now upon the Point what he was really worth at that time, but what his Reputation and Character was, and therefore we desire to know what that was, whether he was not looked upon as a substantial Man?

Mr. Gandy. He bore a good Character.

Mr. Strange. What was his Character, as to his Circumstances at that time?

Mr. Gandy. His Character was then very good, and so continued till he was put in Prison.

Mr. Strange. Where is he now?

Mr. Gandy. He is at *Rotterdam*.

Mr. Scott Sworn.

Mr. Com. Serj. I desire that Mr. Scott may inform your Lordships whether he knew Mr. Poulter, and what his Character and Reputation was, as to Substance.

Mr. Scott. Mr. Poulter I had been acquainted with a great many Years, I looked upon him to be a very honest Man; and in the Year 1720 he transacted abundance of Business, and I did a great deal of Business for him, and some other Gentlemen at that time, as a Scrivener. In the Year 1720, upon the Fall of the Stocks, he came and told me he was ruined by it, and begged of me to assist him. He told me at first he had some Accompts depending with Mr. Wilson.

Mr. Serj. Pengelly, I desire he may repeat it, where he told him, and when?

Mr. Scott. About *December* 1720, before Mr. Knight went away, he said he had large Accompts with Mr. Wilson, and that he was utterly ruined, because he said he had transferred 6000*l.* South-Sea Stock to Mr. Knight, which cost him 40000*l.* or better, and if he could not get it of Mr. Knight, he must be ruined. He told me I was acquainted with several Gentlemen of Mr. Wilson's Acquaintance, and desired me to speak to him or them about this Matter.

Sometime after Mr. Wilson's Agents, Mr. Ashton, I think, and one Mr. Newton, sent to Mr. Poulter, and desired a Meeting on the Behalf of Mr. Wilson. I went on the Behalf of Mr. Poulter, and carried a Friend with me; we met at the *Crown Tavern* overagainst *St. Clement's Church*, and we told them how Mr. Poulter was served; that Mr. Knight had so much Stock of his without any manner of Consideration, as Mr. Poulter had told us; that Mr. Poulter was willing to do any thing they could expect. Some considerable time afterwards, I heard Mr. Poulter had been arrested, and he desired me, as being acquainted with Mr. Wilson, to go to Mr. Wilson and see if I could make up the Affair, he apprehended that his Bail would surrender him: Whereupon I went to Mr. Wilson, and told him, that Mr. Poulter protested to me he was worth but 3500*l.* or thereabouts, and that he would endeavour to get Friends to make it up 4000*l.* if Mr. Wilson would accept it. I was with Mr. Wilson several times about this Matter, but he would not accept it.

Mr. Serj. Pengelly. Did he give any Reason why he would not accept it?

Mr. Scott. He said he looked upon Mr. Poulter not to be an honest Man, and that he could pay more; I said, he had better take that than keep him in Prison.

Mr. Com. Serj. Notwithstanding these private Intimations of his Disability, I desire to know what was his general Character as to his Circumstances?

Mr. Scott. He was looked upon to be a very honest Man, and in good Circumstances; he hath been trusted with Thousands and Thousands of Pounds.

Mr. Serj. Pengelly, I desire he may be asked, Whether the Money, the 24000*l.* Wilson lent to him, was not lent for Stock-jobbing, for him to traffick with in the Alley?

Mr. Scott. I know nothing at all of that.

Mr. Serj. Pengelly. Whether he hath not declared so?

Mr. Scott. No, I know nothing of that; whenever I was in Company with Mr. Wilson he was always very shy, and would not speak freely.

Mr. Plummer. I desire he may be asked, Whether in *June* or *May* 1720, he looked upon Mr. Poulter to be a good Man?

Mr. Scott. Mr. Poulter, in *April* or *May* 1721, told me his Circumstances, and desired me to go to Mr. Wilson to meet those Gentlemen, and to treat with them; but every body then, except four or five Persons to whom he had made known his Circumstances, reputed him an honest and a substantial Man.

Mr. Com. Serj. I desire he may inform your Lordships, in *May* 1721, what his general Character was, or what was generally thought by other People of him, without relation to his own particular Knowledge.

Mr. Scott. He was look'd upon as a Man of Substance, and a very honest Man.

Mr. Sandys. I desire he would explain himself; Whether he was looked upon at that time by himself to be a sufficient Man, and able to answer the Demand of Mr. Wilson?

Mr. Scott. He had told me a Reason to induce me to have but an ill Opinion of his Ability, that he had transferred 6000*l.* Stock to Mr. Knight, which cost him 40000*l.* and upwards.

Mr. Serj. Pengelly. Whether Mr. Poulter at that time went on dealing in the way of Business as he did before?

Mr. Scott. No, I believe he did not at that time: I believe in 1720 his Business was done, and he thought himself worth a great deal of Money.

Dr. Sayer. Whether in the Year 1720 he was not looked upon to have got a great deal of Money, and for that Reason to have quitted his Business?

Mr. Scott. It was then taken so; he was then looked upon as a Man of great Substance: There were not above five who knew his Circumstances to be otherwise; he was generally looked upon then to be a Man of Substance.

Mr. Lutwyche. It is a very surprizing way to establish a Man's Reputation to say he was a Man of Substance when he offered a Composition, and at the same time he could not pay his Debts, he is understood to be a Man of Substance; I desire to know, Whether it was after or before you had that Meeting, and offered the Composition?

Mr. Scott. I believe it was after.

Mr. Lutwyche. Did you take him to be a Man of Substance afterwards, after you had offered a Composition for him?

Earl of Macclesfield. This Gentleman hath answered two Things very consistent, that he and three or four more, who knew Mr. Poulter's Circumstances, knew that he was not a Man of Substance then, but that all other People looked upon him to be a Man of Substance, and he tells you how he came to be so esteemed.

Mr. Scott. Yes, so it was.

Mr. Lutwyche. I desire to know again, whether after the Year 1720, he transacted Business as he used to do?

Mr. Scott. No.

Mr. Lutwyche. I desire to know again, where he lived after the Year 1720, and what Means he had to live upon, besides his Business?

Mr. Scott. He lived as a Gentleman at Hackney, had his House well furnished and full of Plate, I have been at his House several times.

Mr. Lutwyche. How long ago?

Mr. Scott. I believe a Year and a half, or two Years ago?

Dr. Sayer. I don't apprehend it is material what this Gentleman thought from the private Conversation he had with Mr. Poulter. The general Reputation is sufficient for us to justify what was done; I desire he may be asked, whether till that Conversation he himself did not look upon him to be a Man of Substance?

Mr. Scott. I looked upon him to be a Man of Substance, till he told me he was so unhappy that he could not get his Forty thousand Pounds and upwards of Mr. Knight.

Mr. Lutwyche. When was it he told you so?

Mr. Scott. I believe some time in December 1720 that he told me so first.

Mr. Lutwyche. The Composition was in 1722.

Mr. Serj. Pengelly. I desire he may be asked one general Question, Whether after the Year 1721 Mr. Poulter retained any Character of Sufficiency or Ability?

Mr. Scott. He was looked upon by every one that did not know this Affair of Mr. Knight's, to be a Man of Sufficiency in 1721.

Mr. Lutwyche. After 1721, Whether it was not generally known that Mr. Poulter was an insufficient Man?

Mr. Scott. No, I believe not.

Earl of Abingdon. If they have done, I desire to ask this Witness a Question, Whether it was generally known that Mr. Poulter had transacted for Mr. Knight?

Mr. Scott. Not as I know of, I believe not.

Mr. Serj. Probyn. My Lords, we shall trouble your Lordships with no further Evidence on this Article. So if your Lordships please, we shall now proceed to the other Articles.

Mr. Strange. With your Lordships Permission we will now go on to the next Set of Articles that were opened by the Managers for the Honourable House of Commons, which are the fifteenth, sixteenth and seventeenth Articles. And I shall now, as I did before, confine my self to these particular Articles.

The Charge, my Lords, in these three Articles consists of several Acts supposed to be done by, or by the Order of, the noble Earl within the Bar, and are laid to be all tending to the same Design

of concealing the Deficiency of Dormer's Office.

For which Purpose, my Lords, it is said the Accompts of the Masters were called for, not with any Design of examining the Accompts, but with an Intent to terrify the Masters, and oblige them to contribute towards answering the Demands that should be made upon that Office: And as an Instance of this Design, the Commons charge, That after a Contribution by nine of the Masters, the Earl did not oblige them to bring in their Accompts.

That upon occasion of another Sum of Money wanted to pay off a Suitor who had an Order for Money in Dormer's Office, the noble Earl pressed the Masters to raise it amongst themselves; and, upon their Refusal, caused his Secretary to pay it: And that notwithstanding this Notice of Dormer's Deficiency, an Order was afterwards made for Mr. Edwards to enquire, whether there was likely to be a Loss of any Money deposited with Mr. Dormer.

And as a farther Instance of this Endeavour to conceal the Deficiency, it is insisted on, that several Orders were made for the paying some Suitors the whole of their Demand, without regard to that just Proportion to which the other Suitors were entitled.

This, my Lords, is the State of the Complaint contained in these three Articles.

And as to the first part of the Complaint in calling for the Accompt, and terrifying the Masters into a Contribution, I shall beg Leave to insist upon two Facts; either of which, in my humble Apprehension, will be a sufficient Defence against the Charge

The first, my Lords, is, That the Contribution was voluntary: And the next is, That long after this Contribution the Accompts were continued to be called for, notwithstanding it is charged to have been dropp'd immediately upon the Contribution.

To prove the Contribution voluntary, I beg Leave, my Lords, in the first place to look back upon Mr. Lightboun's Evidence, where he acquainted your Lordships, that upon his asking the noble Earl, who the Proposal came from, the Earl's Answer was, That it came from some of the Masters: And he concluded his Accompt of that Conversation with informing your Lordships, that upon his declining to contribute, the Earl left him to his Liberty.

But, my Lords, not to rest it upon Mr. Lightboun's Evidence only, we shall call Mr. Cottingham, who was acquainted with the whole Transaction, and will inform your Lordships, that the Contribution was altogether voluntary, and of their own Proposal.

My Lords, the other Branch of the Article, and which indeed is the Jet of the whole, relates to the dropping the Design of looking into the Accompts upon the making of this Contribution, which we shall be able to falsify; and the Account, my Lord, we shall give of the whole Transaction is this:

In February 1720, Mr. Cottingham, by the Earl's Directions, wrote a Letter to the Masters, requiring them to make up their Accompts, and present them to the Earl, according to a Plan which he imparted to them in that Letter.

Your Lordships are pleas'd to observe, that Mr. *Dormer's* failure was at *Christmas*, and this Letter in *February* following, before Mr. *Dormer* had any leave to come over, or any Discovery had been made of the Condition of his Office.

My Lords, The use which the Honourable Managers say was to be made of this Letter, was so little understood, that some of the Masters did, pursuant thereto, make up and deliver in an Account, tho' not according to the Directions they had received; and the Affair of Mr. *Dormer* coming on, caus'd a Stop in making up these Accompts, till after the appointing a Successor, and the making the Contribution, which, I think, is already fixed to have been in or about *August 1721*.

My Lords, The Summer being then far advanced, and every Body going out of Town, the Accompts were not exacted at that time; but upon their return to *London* a new Order was sent by Mr. *Cottingham* in *November*, with fresh Directions for bringing in their Accompts.

My Lords, I must here beg leave to observe, That if the Contribution was all that was aimed at by calling for these Accompts, how comes it to pass that Mr. *Lightboun*, who never contributed, was not called upon, in a particular manner, to bring in his Account, which, I did not observe, was proved, or so much as opened by the Learned Managers.

My Lords, The true Reason why these Accompts were not brought in, was the insuperable Difficulties of such an Undertaking; of which, I am perswaded, no other Evidence need be given, than to reflect on the Proceedings that have been of late in taking these Accompts.

But, my Lords, a Learned Manager was pleas'd to say, Why did this Noble Earl keep the Office, if he was not able to do the Business of it? I hope your Lordships won't think the Noble Earl was idle all the while: Every body knows the great Variety of Business, and the continual hurry a Chancellor is in: The ordinary Business of the Court of Chancery is sufficient to engage a Man of uncommon Application: What a Fatigue then, my Lords, must it be, when the necessary Attendance upon your Lordships, and at the Council Table, are both taken into the Account? Sure I am, my Lords, it can never be said, that there was no want of Time or Leisure for taking these Accompts.

My Lords, The next Branch of the Charge is the Order for 1000 *l.* to Mrs. *Chitty*, which is said was paid by the Noble Earl's Direction, in order to conceal the Deficiency: But pray, my Lords, does not the Article and Evidence both destroy the Supposition? Could the Earl of *Macclesfield* intend to conceal the Deficiency, when he cautioned *Lockman* against marrying Mrs. *Chitty*, in prospect of any more Money to be coming out of *Dormer's* Office. "That this would be the last Payment (I give your Lordships the very Words) she was like to receive out of the Money paid into the Hands of Mr. *Dormer*, for the Residue thereof was in danger of being lost, by reason of the Deficiency in the Effects of Mr. *Dormer*." Is this, my Lords, a Concealment of the Deficiency? A Payment of 1000 *l.* of the Noble Earl's own Money, in order that the Suitor should have no suspicion of a Deficiency!

But to go further, my Lords, we shall shew, that the payment of this Money did not proceed

from any such low Motive, as, I may say, is uncharitably represented in this Article, but from a noble Mixture of Generosity and Compassion.

Mr. *Lockman*, my Lords, represented himself as an undone Man if he had not the Money: He first insinuated himself among the Noble Earl's Servants, as a Person under the utmost Distress; and the frequent Solicitations, which himself owns, are a strong Evidence of that Distress: When he had gain'd Access to the Earl, he told his Story in so moving a manner, not without Intimations of some desperate Resolution he might be forced to take if he had not the Money against the time, that, in pure Compassion to his Distress, the Noble Earl (whose Purse was always open to the Unfortunate) was prevail'd with to order him the Money. And we shall prove to your Lordships, that how little sensible soever he now is of so great a Favour, yet at that time he express'd himself in Terms of one the most highly oblig'd; and I believe when our Witnesses to this Transaction come to be examined, they will leave Mr. *Lockman* very little Credit with your Lordships, and will wipe away the most remote suspicion of affecting any Concealment by this Transaction.

My Lords, The last Branch of this Article relates to a Declaration said to be made by the Earl in the Cause of *Harper and Case*, and an Order made therein for Mr. *Edwards* to enquire if there was likely to be a Loss of any Money deposited with Mr. *Dormer*.

My Lords, The particular Occasion and manner of that Declaration and Order have been fully stated by the Evidence we have already given of the several Judgments and Proceedings that have been against Mr. *Poulter* and the Marshal, which I shall not trouble your Lordships with a repetition of, it being sufficient for my Purpose in answering it as an Instance of Concealment to observe, that the whole Transaction was after the Accompts of the Masters had been laid before the Committee of Council, when it was too late, and to no purpose to affect any Concealment.

My Lords, The last Branch of the Charge I am now upon, relates to the making Orders for paying to several Suitors their whole Demand, out of the Effects of Mr. *Dormer*, without regard to that just Proportion to which the other Suitors were intitled: And the Case of *Edisbury* was mentioned for this purpose; tho' I did not observe the Gentlemen enter'd into any Proof of what was done in that Case.

My Lords, In Proof of this Article several Orders were read: But I appeal to the Evidence of Mr. *Edwards*, whether it did not appear, upon his cross Examination, that it was but in one Cause only where the whole Money was paid out; and whether that single Instance is a sufficient Proof of this Article, I must submit to your Lordships.

But, my Lords, the true Answer is this: Both the Noble Earl and Mr. *Edwards* doubted not but that the Deficiency would be made good, and proceeded upon that Expectation; nor can a stronger Evidence be given (and I desire it may be applied to some of the other Articles) that they were under this Persuasion, than Mr. *Edwards's* making Payments without any Objection.

Especially, my Lords, when it is consider'd too, that Mr. *Lightboun*, who was so averse at first to any Contribution, has, in that Letter which

has been read to your Lordships, mentioned several of his own Schemes for making good the Deficiency.

And if there was a Prospect of making good the Deficiency (as I humbly apprehend it is plain there was) it was very proper and natural to make the Orders in the manner they are now complain'd of. The nature of ordering Money out of Court makes it impossible the Suitors should call for it all at once, but the same is order'd out by Degrees: And Mr. *Cottingham's* taking an Assignment of *Chitty's* Order, shews plainly, that it was expected Effects would in time come in to discharge that, and all other Demands.

I would not, my Lords, be understood by any thing I have offer'd, as if I intended to dispute the Rule of Equity that has been laid down by the Managers, that where several Persons have Demands out of one Common Fund that cannot answer the whole, there ought to be an Average in such Case: But what I shall beg Leave to insist upon is, That that Rule only holds place where the Quantum of what is left to answer is fix'd and certain. In this Case the Effects were daily coming in, and therefore a Declaration of an Average where there was likely to be no Deficiency, would not, in my humble Apprehension, have been advisable or proper.

I beg leave, my Lords, to close my Observations upon all the Articles relating to the Concealment of *Dormer's* Deficiency, with submitting it to your Lordships Judgment, if the whole Transaction does not speak it self to have been one continued Endeavour to secure to the Suitors their whole Demand, and to have been no more.

Mr. *Serj. Probyn*. My Lords, the Managers, when they entered upon these Articles, produced an Order made by the late Lord Chancellor, in the Year 1720, by which the Masters were obliged to bring in their Accounts, which as they charge to have been concerted with other Views, and for very different Ends than at first appear, we think it will be extremely proper for us to begin our Defence to that Part of the Charge with a Witness who is ready to shew your Lordships the real Designs the Impeached Earl had in calling for these Accompts; and his Evidence, we humbly conceive, will satisfy your Lordships that it could be for no other Purpose than that the Earl might the better know the true State and Condition of their respective Offices, in Order to find out a proper Method of redressing such Grievances as were most apprehended at that Time. My Lords, it will appear by the Course of the same Witness's Evidence, that the other Order that was made upon them afterwards in *December* following, in as strong Terms as the former, could be for no other Reason or Purpose than that his Lordship hath assigned in his Answer, that he might understand the State of the several Offices, so as to be able to apply proper Remedies to the Danger which was then dreaded. All this will appear yet more fully from the Evidence of another Witness, who is to inform your Lordships of the particular Directions the Noble Earl gave about the Manner of bringing in these Accompts, with the Names of the Causes of the respective Solicitors concerned in them, and also what the several Sums first paid in were, the Time when so paid in, and also when the same or any Part were paid out

again, together with many other Particulars which his Lordship thought necessary for his more exact Information. It will be likewise made appear to your Lordships, how the Masters were severally consulted with about this Matter, and that the Assistance of the Master of the Rolls was at length called in. But all the Masters agreeing, and particularly Mr. *Holford* (who had been in the Office for twelve Years) that it was next to impossible to bring in their Accompts, as first directed, in any reasonable Time; then it was, and not before, that the noble Earl condescended that they might bring them in a different Manner. Now, my Lords, as to the Suggestion that all this was only a Scheme, made use of to terrify the Masters into a Contribution towards *Dormer's* Sufficiency, give me leave to say it is impossible to collect the least View of that Kind from the Evidence laid before your Lordships on that Head; for the Masters who did contribute on this Occasion, have all sworn that they paid in their Money voluntarily, and without being any ways influenced by his Lordship's Threats or Persuasions; so far from that, that Mr. *Lightboun* (the only Master who refus'd concurring in this Contribution) made no other Objection at first to it, than that the Proposal did not come from his Lordship, but from the other Masters; for in that Case he declared, That, if it had come from the noble Earl himself, he might have had more Regard to it, and would have taken it into his Consideration. So that we doubt not upon the whole, but it will plainly be made appear to your Lordships, that the constant Application which the noble Earl made from time to time to the Masters for this Purpose, proceeded from no other View, than that as soon as he might be truly informed of the State of their Offices, he should apply proper Remedies to whatever Abuses he should discover; and that as this was always his real Intention, so he would have put it effectually in Execution, had he not resigned the Great Seal so soon.

Mr. *Com. Serj.* My Lords, we shall call a Witness to shew, that after the 500 *l.* apiece was paid, the Accompts were called for, it cannot then be pretended, that this calling for; the Accompts was to terrify the Masters to pay this 500 *l.* apiece.

The Time of the Payment of these five hundred Pounds was in *August*, these Accompts were called for in the Beginning of *November*.

Mr. *Cottingham* called.

Mr. *Serj. Probyn*. I desire Mr. *Cottingham* would inform your Lordships whether any Directions were given to call in those Accompts about *November*, 1721.

Mr. *Cottingham*. I did in *November*, by the Direction of the Earl, write a Letter dated the 7<sup>th</sup> *Nov.* 1721.

L. Ch. Just. *King*. Have you any Draught of that Letter?

Mr. *Cottingham*. I have a Draught, the Committee required me to leave the Letter with them.

Mr. *Lutwyche*. My Lords, we will do the noble Earl all the Justice we can; here are the Letters.

Mr. *Cottingham*. The first Letter is dated *Feb.* 14. 1720.

Mr. *Lutwyche*. Who is it directed to?

Mr. Cottingham. The Letter is directed to each Master, and this is the Letter.

SIR,

I Am commanded by my Lord Chancellor to signify to you, that you do with all convenient Speed lay before his Lordship an Accompt in several Columns.

1. Of the Name of the Cause.
2. The Solicitor or Agent.
3. The Date of the Order.
4. For what Purpose the Money was brought in.
5. How much was brought in.
6. When.
7. How much in Hand.
8. How much on Security.
9. How much paid out.

A distinct Account of the Securities.

1. Cause.
2. From whom the Security is taken.
3. What the Security is.
4. In whole Name taken.
5. For how much each Security.
6. The total of the several Securities in the same Cause.
7. In whose Hands lodged.

A distinct Accompt of Money paid out.

1. Cause.
2. By what Order, and of what Date.
3. When paid.
4. To whom.

Your very humble Servant,

14 Feb. 1720.

P. Cottingham.

SIR,

BY my Letter of the fourteenth of February last, I signify'd to you my Lord Chancellor's Pleasure; which was, that you should with all convenient Speed lay your Accompt before his Lordship; (the Method whereof was to be in several Columns subscribed at the Foot of that Letter.) I am now further to acquaint you, that his Lordship is very much surprized to find, that in all this Time no such Accompt hath been laid before him: And therefore hath commanded me to tell you, that it is expected to be delivered in, on or before the last Day of this Term. And if this is not comply'd with, you will oblige his Lordship (though very unwillingly) to think of other Measures; which I doubt not but you will avoid, by a ready Compliance with what is a second time required of you. And to the End there may be no Mistake as to the Method of your accompting, I here subscribe it again at the Foot of this Letter; and am,

Sir,

Your very humble Servant,

7 Nov. 1721.

P. Cottingham.

To the best of my Remembrance, this Letter was delivered to ten of the Masters.

Mr. Lutwyche. Did you read it to them?

Mr. Cottingham. No: I am going to give you an Account. My Lords, according to a Memorandum I kept at that Time of this Letter, it was delivered to ten of the Masters; to Mr. Rogers, Mr. Hiccocks, Mr. Fellowes, Mr. Lightboun, Mr.

Bennet, Mr. Holford, Mr. Borrett, Mr. Godfrey, Mr. Conway, and Mr. Lovibond.

Mr. Serj. Probyn. We desire that the second Letter in Nov. 1721. may be read.

Mr. Cottingham. The second Letter is dated 7 Nov. 1721. Sir, by my Letter of the fourteenth of February last, I signify'd, &c. N. 47.

Mr. Serj. Probyn. By this it appears to be after the several 500 Pounds were paid in, the last 500 Pounds was paid in in August before, which shews that these Accompts were to be delivered in for no other Reason than that the Suitors should have Satisfaction, as soon as a proper Remedy could be found.

Mr. Common Serj. I beg leave to make one Observation; here is ———

Mr. Lutwyche. If they have any more Questions to ask the Witnesses, they may, the Observing is proper afterwards.

Dr. Sayer. I only beg leave to ask this one Question, to be better informed. The Letter recites, it is written by the Command of my Lord Chancellor: I would ask whether my Lord Chancellor did give such Directions?

Mr. Cottingham. Yes, my Lords, he did.

Mr. Plummer. If they have done with the Question, I would ask Mr. Cottingham in the Words of his own Letter, whether the Earl of Macclesfield did oblige the Masters to deliver in their Accompts in Pursuance of such his said Order?

Mr. Cottingham. Of the Letter of November 1721. I have kept no Memorandum; of the first I have.

Mr. Plummer. Whether that Letter of 1721. was delivered to the Masters?

Mr. Cottingham. I believe it was.

Mr. Plummer. Then I desire to know if, the Masters did deliver in their Accompts?

Mr. Cottingham. I don't remember they did.

Mr. Plummer. I desire he may be asked, if after this time that the 500 l. was paid in Obedience to the first Letter, there was afterwards any other Demand made upon the Masters for more Money?

Mr. Cottingham. I know of no Demand made upon them, except the 500 l. apiece.

Mr. Plummer. I desire he may be ask'd if he doth not remember Mrs. Chitty's Affair, and if that was not after 1721?

Mr. Cottingham. The Business of Mrs. Chitty was but in July last.

Mr. Serj. Pengelly. I desire he may be asked, whether since no Accompt was called for after this last Letter, whether he did not understand the Reason to be, because he apprehended the Masters would make good Mr. Dormer's Deficiency?

Dr. Sayer. My Lords, I submit it, whether that Question is material as to what his Apprehension was; your Lordships are Judges only upon Evidence of Fact, and not upon his Thoughts or Apprehensions.

Mr. Serj. Pengelly. Why were not the Accompts called for afterwards?

Mr. Cottingham. I really can't tell the Reason.

Mr. Serj. Pengelly. Whether he acquainted my Lord Macclesfield that the Masters would make good the Deficiency?

Mr. Cottingham. I told your Lordships I did.

Mr. Serj.

Mr. Serj. Pengelly. Therefore I desire he may be asked, Whether after that Time he received any Orders to send to the Masters to give in their Accounts?

Mr. Cottingham. I can't speak particularly as to the Times.

Mr. Serj. Pengelly. Whether those other Measures, intimated in his Letter to be taken, were not signify'd to him by my Lord Macclesfield to be, that the Cash should be taken out of their Hands?

Mr. Cottingham. My Lord called me into his Study, and directed me to write this Letter; all he said was, he was sorry that the Masters had not brought in their Accompts as he required, and that if they did not bring them in by the last Day of the Term, he said he would take other Measures: My Lord did not say to me what those other Measures were, whether it was to make an Order in Form, and then he should expect they would yield Obedience to it; all the Earl told me was no more than to write to the Masters, that he would take other Measures, what those other Measures were I do not know, but I apprehended it to be an Order his Lordship would make for obliging them to it.

Mr. Snell. I desire he may be asked, whether he did not himself apprehend by those other Measures, the taking the Money out of the Masters Hands?

E. of Macclesfield. My Lords, I submit it whether a Question of this kind is proper; he hath been asked what those Measures were; he hath told your Lordships that he knows not, but he has said what he apprehended they were; if now any Fact occur to him that may give Reason for apprehending otherwise, let him acquaint your Lordships with it.

Mr. Cottingham. Your Lordship said you would take other Measures; what I apprehended was, your Lordship would make an Order in form if they did not comply with that Letter.

Dr. Sayer. My Lords, I beg Leave to ask one Question: Whether the Masters, after this Letter was brought to them by Mr. Cottingham, did not represent to him the Difficulty of making up their Accompts?

Mr. Cottingham. There were several Particulars mentioned in the former Letter, there was the Causes to be named, &c. Some of the Masters told me they had not kept their Accompts so as to answer all the Particulars in the Letter; others said it would take up a great deal of Time; others that the Manner required was very difficult and tedious, and that it was almost impracticable, so many Items were contained in the Letter, that they seem'd to say it could not be done.

Dr. Sayer. I desire he may be asked, whether he hath any Paper of the Method of Accompting required by the Committee, that his Majesty was pleas'd to direct to look into this Matter?

Mr. Cottingham. I have not a Copy of it here. There is an original Order, if the Masters please to produce it, I left it with Mr. Lightboun.

Mr. Com. Serj. If the Gentlemen have it, I hope they will produce it.

Mr. Cottingham. The original Order is of the third of November last, which I left signed by the Earl.

E. of Macclesfield. This will come more properly under another Article: The Gentlemen,

the Masters, will take Care to look it out that it may be ready by that Time.

Mr. Cottingham. My Lords, I have now found it; I can't say it is a true Copy, dated the third of November, 1724. signed Macclesfield, C. Let the several Masters----- Am I to read it, my Lords?

Mr. Lutwyche. What, the Order of the third of November last?

Mr. Com. Serj. This Order cannot relate to this Matter. We are now upon the second Letter in 1721. The Letter is framed in so strong Terms, that it can't be supposed but the Earl was very much in Earnest, and it can't be insinuated as if intended to make the Masters comply in the Affair of Mrs. Chitty and Lockman, because that Transaction was but in July last.

E. of Macclesfield. I desire, my Lords, to go a little back again, upon recollecting, that the Question the honourable Manager was pleas'd to ask, about his giving me an Account that the Masters would make good the Deficiency, carries an Insinuation, as if this Method were dropp'd upon it: I desire he would inform your Lordships, whether he can be sure of the exact Time, whether this was before or after November, 1721.

Mr. Cottingham. I really can't be sure of the exact Time.

E. of Macclesfield. How near was it to Mr. Dormer's going out, and Mr. Edwards's coming into his Office?

Mr. Cottingham. Mr. Edwards came in in May 1721. It was near his coming in.

E. of Macclesfield. I desire to know whether you can recollect the Time you did tell me of it? Whether it was after November 1721. or before?

Mr. Cottingham. I several Times mentioned it to your Lordship before November 1721. and I believe several Times after, but that I cannot certainly tell, nor can I be particular to a Day.

E. of Macclesfield. Did you ever hear of it before the 500 l. a-piece was paid?

Mr. Cottingham. No, my Lords, it was after they had paid the 500 l. a-piece; but, my Lords, I don't know that they agreed to make good the Deficiency, I only told my Lord I thought they intended it.

Lord Trevor. He hath proved two Letters sent by the Direction of the noble Earl. As to the first Letter he kept a Memorandum as to the Time, but no Memorandum of the second. I would ask him as to the Time, when the Masters made that Representation of the Difficulty of giving in the Accounts, whether it was before or after the second Letter, or between the first and the second Letter?

Mr. Cottingham. To both the Letters they still made a Representation of the Difficulty.

Lord Trevor. Then I desire to ask one Question more, that is, Whether after the Representation made after the second Letter they owned that they had received the second Letter?

Mr. Cottingham. I verily believe that the second Letter was deliver'd to the Masters as the other was, but I have kept no Memorandum of it; I verily believe the Masters had it; I can't tell; I took it for granted they had it; I trusted one of my Clerks with it to take a Memorandum; I enquir'd after him; he hath been gone from me, and I can't find him out: I verily believe it.

I have

I have no Reason to doubt but I gave it; the Masters know that.

Mr. *Serj. Probyn*. If Mr. *Holford* is called, he will explain it; on his cross Examination he admitted a second Letter was sent for him, and left in the publick Office: That appear'd in his cross Examination.

Mr. *Strange*. It might not be improper, this Letter is before the honourable Managers, to enquire if they had it not from some of the Masters.

Mr. *Cottingham*. No, they had it from me.

Mr. *Holford* called.

Mr. *Serj. Probyn*. I desire he may be ask'd, whether he had not any Notice of the Letter in November 1721. whereby the Masters were oblig'd to bring in their Accounts?

Mr. *Holford*. Indeed, my Lords, I do not remember that Letter.

Mr. *Serj. Probyn*. I desire he may be asked, whether he remembers a second Letter about Accompts?

Mr. *Holford*. Whether it was a Letter or a Message I cannot tell; but between the first Account in February 1720. and the last in November last, I was called upon to Accompt, and had prepared it; but this second Letter dated in November 1721. I do not remember any thing of it.

Mr. *Serj. Probyn*. How long was it after the Payment of the 500 l.

Mr. *Holford*. It was a good while after.

Mr. *Serj. Probyn*. That is all we contend for.

Mr. *Holford*. I believe not above a Year before the last.

Mr. *Serj. Pengelly*. I desire he may be asked, whether after this Letter, supposed to be in November 1721. his Account was ever demanded of him?

Mr. *Holford*. I did deliver to my Lord an Account of November 1721. and I think a Year before November last, in pursuance of either a Letter or a Message, I don't know which, my Lord required an Account; then I deliver'd an Account of Money, not of Securities in my Hands.

Mr. *Serj. Pengelly*. Whether that was an Account in pursuance to that Letter, demanding and requiring it of him?

Mr. *Holford*. Not as I know of, indeed.

Mr. *Lutwyche*. My Lords, as some mention hath been made of it, I think it may be proper to know what he can say to it, whether he ever promised to make good the Deficiency of Mr. *Dormer*?

Mr. *Holford*. I never did my Lords.

Mr. *Cottingham* called again.

Mr. *Serj. Probyn*. I desire he may inform your Lordships what he knows in relation to the Payment of the 1000 l. to *Lockman*, and what Conversation he had with Mr. *Lockman*?

Mr. *Cottingham*. About the beginning of July last, to the best of my Remembrance, Mr. *Lockman* told me, that Mrs. *Chitty* had an Order upon Mr. *Edwards* the Master, to pay her 1000 l. That she had been with the Master, but could not get the Money, and that he had spoke to my Lord *Macclesfield* about it, and the Earl had promised to speak to the Master. — And he desired

me to speak to the Earl concerning it: I promised I would, and accordingly I did; he sent me to the Master. When I came to him, I spoke to him of it; he said he had no Money; I informed the Earl of it; the Earl said he could not tell what to do. I informed Mr. *Lockman* of it; he seem'd to be under the greatest Concern, and said, if he had not the 1000 l. he was undone; he was going to marry Mrs. *Chitty*, and Mrs. *Chitty* would not marry him, unless his Debts were paid, and she had given him this 1000 l. to pay his Debts. He had compounded his Debts, and he repeated it over and over again, that if this 1000 l. was not paid, he was undone.

I have not seen a Gentleman in a greater Distress than he appear'd to be; on which I told him, if he would please to have a little Patience I would consider the Thing, and see what could be done. I did consider it; and it came into my Mind that Mr. *Lightboun* had not paid his 500 l. I acquainted the Earl with it, and said Mr. *Lightboun* had not paid his 500 l. and if he could prevail upon him to do it, I thought it would be easy to get 50 l. a-piece of the other Masters, and that would do.

By the Earl's Order, I attended Mr. *Lightboun*, and told him that the Earl expected him to pay his 500 l. but I could not get a Penny from him; so he refusing to pay the 500 l. that Proposal of the 50 l. a-piece dropt: I acquainted the Earl of this, he said he could not tell what to do. I acquainted Mr. *Lockman*, and told him I had done all that was in my Power to do; and that it was not to be done, unless he expected I should pay it out of my own Pocket, which I was sure he could not expect: When I told him that, he said, I am undone, Mrs. *Chitty* will not marry me, his Royal Highness the Prince of *Wales* will not protect me, my Creditors will throw me into a Gaol, there I must rot and starve. He made use of so many extravagant Expressions; and was under that Pain and Agony of Mind, that I apprehended he would do himself a Mischief. I could say nothing to it; I had done all for an unfortunate Gentleman that possibly I could do. Two or three Hours after this, when I was at Dinner, he came to me again, and told me the Earl wanted to speak with me immediately; he begged of me of all things in the World to go; on that I went to the Earl. The Earl was pleas'd to send for me into an inner Room, and said, that he was teased out of his Life by Mr. *Lockman*; I told him I was so too, I had no Rest Night nor Day for him; I then represented to the Earl his own Story in Substance as he had told me. The Earl said he was sorry to find Mr. *Lockman* brought to that State and Pass. I told the Earl I was afraid of the Consequence, I did not know what a despairing Man might do, he seem'd to be in the utmost Despair: Upon that the Earl ordered me to pay him the 1000 l. and said, he would pay it me again. When I saw Mr. *Lockman*, I told him I had now received Orders to pay him; I had not the Money by me, but he should have it in a little time, three or four Days would break no Squares; he said, I am satisfi'd, provided it is paid. I said I had it not by me, I must borrow it; I did so, and on the thirtieth of July I paid him the 1000 l. I think it was three or four Days after, he asked me what Reward he should give me; I told him that his Distress was so great that he should not give me

any Reward; I would not take a Penny of him, and I never had the Value of a Dish of Coffee of him; I paid him the Money, I borrow'd it for that Purpose. Says I, Mr. *Lockman*, it appears to me that you are in great Distress, I will borrow the Money. I did borrow the Money, and paid Interest for it, meerly to supply the Gentleman.

Mr. *Serj. Probyn*. I desire he may be asked if he knows of any other Sum of Money demanded by Mr. *Lockman* after this 1000 *l.* was thus agreed to be paid him?

Mr. *Cottingham*. After this Money was agreed to be paid, and, I think, the same Evening, I received this Letter from him, which any Gentleman that will may read. (*The Letter read.*) Sign'd *Lockman*. Monday Evening.

S I R,

Monday Evening.

I Am very sensible of the Favour you have already done me, in promoting what my Lord in so affable a Manner was pleased to promise me, which Kindness I shall gratefully acknowledge all my Life: But as there is so great a Necessity, I hope you will pardon me the sooner in being once more troublesome, to beg of you to remind his Lordship of letting Mrs. Chitty have the other 574 *l.* which my Lord was pleased to say we should have, and without which, Mrs. Chitty, who hath neither out of Chancery nor her Estate received any money this two Years, cannot spare me the whole 1000 *l.* As my whole Ease and Quiet depends on your kind Assistance, I must beg, Sir, once more to use your Interest to let us have it on Thursday Afternoon, between Four and Five, when Mrs. Chitty intends to wait on you for the other. I shall be very proud on all Occasions to shew with how much Gratitude and Esteem I am,

S I R,

Your most oblig'd  
humble Servant,  
*A. Lockman.*

Dated Monday Evening, no other Date. My Lords, upon the Receipt of this Letter, the very same Evening I laid it before the Earl, I told him that it appeared by this he wanted 570 *l.* more. The Earl said he was very much surpris'd at this Gentleman's sending such a Letter, he did not know what he meant by 570 *l.* more that he promised, and, in short, told me he could advance no more.

Mr. *Strange*. I desire he may be asked, whether he had any Discourse with Mr. *Lockman*, relating to this 570 *l.* after this Letter?

Mr. *Cottingham*. I had a Discourse with him some Time afterwards about the Letter.

Mr. *Serj. Probyn*. I desire to ask him, whether after this Letter Mr. *Lockman* came to know what Answer he would give him?

Mr. *Cottingham*. Mr. *Lockman* came on the Thursday following, being the thirtieth of July; Mrs. Chitty did not come: And then I told him that I had received his Letter, and had laid it before the Earl, and that the Earl understood not what he meant by it, that this was a growing upon him, and he would not pay a Penny more; I thought he had been very generous to him, and I told him I wonder'd what he meant.

Mr. *Serj. Probyn*. I beg Leave to take Notice,

and your Lordships will please to recollect, that *Lockman* swore he never made any Demand of any Money besides the 1000 *l.*

Mr. *Lutwyche*. That is to be observed when the Witness is examined throughout.

Mr. *Serj. Probyn*. I ask whether Mr. *Lockman* did petition my Lord Chancellour for this Sum of Money?

Mr. *Cottingham*. I don't remember Mr. *Lockman* petitioned. I believe not.

Mr. *Serj. Probyn*. Or Mrs. Chitty?

Mr. *Cottingham*. Yes, Mrs. Chitty did, before the Payment of this 1000 *l.* as I remember.

Mr. *Lutwyche*. Was there any Petition preferred before the Payment of the 1000 *l.* because the Money was not paid according to the Order, which I think was dated March 17, 1723.

Mr. *Cottingham*. Yes: I told you so before.

Mr. *Lutwyche*. I desire to know whether there was not a general Meeting of the Masters before my Lord Macclesfield order'd him to pay the said 1000 *l.* to Mr. *Lockman*?

Mr. *Cottingham*. Yes, there was.

Mr. *Lutwyche*. Whether it was not after the meeting of the Masters, when it was propos'd to Mr. *Lightboun* to pay his 500 *l.* and the others 50 *l.* a-piece?

Mr. *Cottingham*. Yes, I believe it was.

Mr. *Plummer*. Mr. *Cottingham* hath given a long Evidence, he hath told you on the Application for this 1000 *l.* he recollected that Mr. *Lightboun* had not paid his 500 *l.* and if he could get him to pay his 500 *l.* and the other Masters 50 *l.* a-piece, that would make up the 1000 *l.* The Question I would ask is, if Mr. *Cottingham* had then any Orders from the Earl of Macclesfield to convene the Masters?

Mr. *Cottingham*, No, I had then no Orders.

The first Order I had to convene the Masters together, was on a Monday, before Payment of the 1000 *l.* as I remember: Mr. *Edwards* was then at my Lord's House, and my Lord ordered me to speak to him to convene the Masters, and they were convened, and came to my Lord's House that Evening, as I was told, but that was after the Money was ordered to be paid.

Mr. *Lutwyche*. I desire Mr. *Cottingham* may look upon that, and tell us whether it is his Hand.

Mr. *Cottingham*. This is my Hand (*reads.*) His Lordship can do nothing in it at present.

Mr. *Lutwyche*. Do you remember any thing of this Petition being offer'd?

Mr. *Cottingham*. Yes, I do remember it; it is a Petition of Mrs. Chitty preferred to the Earl to be paid 1000 *l.* This Petition came to my Hands, the Earl said, he could do nothing in it at present, and this Order writ upon it is my Hand.

Mr. *Lutwyche*. Whose Petition is it?

Mr. *Cottingham*. The humble Petition of the Defendant Elizabeth Chitty, Mrs. Chitty's Petition.

Mr. *Lutwyche*. What is the Answer writ upon the Back.

Mr. *Cottingham*. His Lordship can do nothing in it at present.

Dr. *Sayer*. We apprehend it is of Consequence to have this Meeting cleared. I desire he may be asked, whether he knows of any meeting of the Masters, and when, and what was done there?

Mr. *Cottingham*. Yes, there was a meeting that Evening, but I was not present.



E. of *Macclesfield*. By the Questions they have asked, they have taken it for granted as if he knew what was done at that meeting of the Masters; I desire to know whether he was present or not at that meeting of the Masters?

Mr. *Cottingham*. I was not, I said so before.

E. of *Macclesfield*. Then I think he says the Day of Payment of this Money was on the thirtieth of July.

Mr. *Cottingham*. Yes.

E. of *Macclesfield*. What Day was the Masters called upon to meet?

Mr. *Cottingham*. I can't be positive, but I think it was the Monday before Payment of the 1000*l.* This meeting of the Masters was between the Order and the Payment of the Money.

Mr. *Plummer*. I believe there is a Mistake in this Matter; I desire to know of Mr. *Cottingham* whether Mr. *Edwards* was not by when he acquainted the Earl with this Demand, and proposed to him the Method of paying it by Mr. *Lightboun's* 500*l.* and the other Masters 50*l.* a-piece.

Mr. *Cottingham*. No, no.

Mr. *Plummer*. I desire it may be cleared then, and to ask him if Mr. *Edwards* was not by when he acquainted my Lord *Macclesfield* of the Demand of the 1000*l.*

Mr. *Cottingham*. No, Mr. *Edwards* was not by: When this 1000*l.* was directed to be paid, Mr. *Edwards* was in the House, but the Earl did not see him; when I spoke to Mr. *Lightboun* for the 500*l.* it was only between Mr. *Lightboun* and me, Mr. *Edwards* was in the House when my Lord spoke to me, and ordered me to Mr. *Edwards* to convene the Masters together.

Mr. *Serj. Pengelly*. I desire he may be asked whether the 1000*l.* was paid before he made the Proposal to my Lord *Macclesfield*, that Mr. *Lightboun's* 500*l.* and the other Masters 50*l.* would pay it?

Mr. *Cottingham*. The Money was paid afterwards, I have told you so before.

Mr. *Serj. Pengelly*. Before the 1000*l.* was paid, whether did not you hear that the Masters had refused to advance the further Sum of 50*l.* a-piece?

Mr. *Cottingham*. Yes, I told you so before, that Mr. *Lightboun* would not pay his 500*l.* so the other Masters did not pay their 50*l.* a-piece; this was some time before the Payment of the 1000*l.*

Mr. *Elphinstone* called.

Mr. *Strange*. My Lords, we desire Mr. *Elphinstone* to give your Lordships an Account of what he knows of the Application of Mr. *Lockman* for this 1000*l.*

Mr. *Elphinstone*. My Lords, Mr. *Lockman* and I often had Conversation together before he received the 1000*l.* upon the Account of Mrs. *Chitty*. He told me often that he had compounded his Debts with his Creditors, and if he could not receive the 1000*l.* against a certain Day, on which he had engaged to pay it, he should be ruin'd and undone; and some time after he told me, that his Creditors had been with much Difficulty brought to give him some few Days longer for Payment of the Composition, and that if he had it not then, he should be ruin'd and undone for ever; swearing by the blessed Name of God, that that Disappointment would be a Means of breaking off the Match with the Lady.

Mr. *Serj. Probyn*. Go on.

Mr. *Elphinstone*. I can't be positive as to the

Day, whether it was the same Day that he received the 1000*l.* or a Day or two before; but I then heard the noble Earl declare to him, that in Pity and Compassion to his Circumstances, and the great Difficulty he then laboured under, he the said Earl had given Directions to Mr. *Cottingham* to pay him the 1000*l.* and about two Hours after, or something more, Mr. *Lockman* came to me, and with abundance of Joy told me how much obliged he was to the noble Earl, for that he had relieved him in his Circumstances, by giving Mr. *Cottingham* orders to pay him the 1000*l.* He seemed to express this with an uncommon Pleasure, and did not at all doubt it would be agreeable to Persons of the highest Distinction and Character to know it; and that he would make them acquainted with it. My Lords, I think it was on Friday last, in a Conversation with me and others here in the Painted Chamber, he declared he would rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion; and said, damn it, it hath happen'd, thro' a silly Word or two I dropt to the Solicitor on the other Side. I asked him what it was, he said it was his telling him he had received the 1000*l.* for Mrs. *Chitty*, by the noble Earl's Direction.

Mr. *Serj. Probyn*. After this Money was paid, whether he hath had any Discourse with him, and whether it was owned by him that it was out of the Earl's own Pocket?

Mr. *Elphinstone*. Yes, many and many a Time, and with great Respect.

Mr. *Plummer*. I desire the Council for the noble Lord may explain one thing: I think the Witness said, Mr. *Lockman* said he had rather give two or three hundred Pounds than have been examined. Whether the Witness doth apprehend by what Mr. *Lockman* said, that he comes an unwilling Witness?

Mr. *Elphinstone*. No, my Lords, I did not say that Mr. *Lockman* was an unwilling Witness, but that he told me and others, he had rather have given two or three hundred Guineas or Pounds, than have been examined on this Occasion.

Mr. *Serj. Probyn*. We shall give your Lordships no further Evidence on this Article; we shall now proceed to the seventeenth Article, which charges the Earl of *Macclesfield*, that in Order to conceal the Deficiency in *Dormer's* Office, and to prevent any publick Enquiry, he did from time to time, in Violation of the Trust reposed in him, make Orders on Mr. *Edwards* for Payment of the Money belonging to several particular Suitors, which had been lodged in the Hands of Mr. *Dormer*; in Obedience to which Orders several Sums were paid, without Regard to, or Consideration of the Proportion which the rest of the Suitors were entitled to, out of the Effects of the said Mr. *Dormer*, whereby many of the said Suitors lost the Benefit of their proportionable Share, to which in Justice they were entitled.

The Crime supposed in this Charge is denied by the Earl in his Answer; he had no certain Knowledge what Mr. *Dormer's* Estate would come out to be; but he was under a full Persuasion that Effects would come in in due Time, to make full Payment; and that the only Reason why they were not paid in an Average, was because no Application was made by any of the Suitors for that Purpose.

Mr. *Com.*

*Mr. Com. Serj.* As to the seventeenth Article, your Lordships observe there was a full Persuasion both in the noble Earl and *Mr. Edwards*, that there would be sufficient to pay every one; besides I think he himself made not above one Order, not more than this one in the Case of *Chitty*; your Lordships will please to observe, from the Evidence of *Mr. Edwards*, that the noble Lord who made these Orders was firmly of an Opinion, from the Accompts he had received, that the Deficiency would be made up, so likewise *Mr. Edwards* was then under the same Persuasion: We shall rest it here, that it was no manner of Fault, under these Apprehensions, to make such an Order as that was.

*Mr. Robins.* If your Lordships please, there is in the Close of the sixteenth Article a Declaration, supposed to be made by the Earl of *Macclesfield*, then sitting in Court, I had the Honour to be in Court when the Declaration was made: As I had the Honour to be in Court; at that Time, I apprehend that what he said was——

*Mr. Plummer.* If the Gentleman speaks as Council, he stands in a proper Place, but if he comes as an Evidence, I beg he may come to the Bar and be sworn; I humbly appeal to your Lordships if it is not proper.

*Lords.* Ay, Ay.

*Dr. Sayer.* If the Gentlemen think it proper to insist upon it, the Gentleman is ready to be sworn.

*Mr. Com. Serj.* The Gentleman's Character is so unexceptionable, that we hope the Learned Gentlemen will not put this Difficulty upon him of taking an Oath in a Cause, wherein he is Council.

*Mr. Plummer.* My Lords, I insist upon it, because then I shall have the Liberty of asking some Questions which I apprehend I have not now.

*Mr. Serj. Probyn.* My Lords, we submit it upon the Evidence that hath been already given, he himself did declare then, when it came before him regularly, he would examine into it; and the first Opportunity this came before him in Judgment, he then put it into a Method, and accordingly referred it to a Master, and all proper Measures were taken.

*Mr. Com. Serj.* My Lords, we shall, with your Lordships Permission, now proceed to lay before you what we have humbly to offer in Defence of the noble Earl as to the 18th Article. The Charge therein contained is in Effect, that tho' the Earl knew, that the Masters of the Court might and did dispose of, and traffick with the Effects of the Suitors; and tho' Proposals were made for remedying of it, yet the Earl neglected to enquire into the Accompts of the Masters, permitted, and encouraged them to employ, and traffick with the Effects of the Suitors, and took no Care that those Effects should be placed out, so as to prevent such Practices of the Masters, or that they should give such Security as was proposed; and this is charged to be done with a corrupt View, and Intention of making an unlawful Gain by the Sale of those Places, and to keep up the Price of them.

The Proof of these Matters depends intirely upon the Testimony of *Mr. Lightboun*, *Mr. Holford*, and *Mr. Kynaston*, with the particular Repetition of whose Evidence, I shall not presume to trouble your Lordships, after so much Time has been already spent, but shall beg Leave to ob-

serve upon the whole, that there is not the least Evidence to support that Part of the Article, whereby the Earl is charged with permitting and encouraging the Trafficking with the Suitors Effects. So far from it, my Lords, that the quite contrary appears from the Evidence which *Mr. Lightboun* has given upon this Article. He has inform'd your Lordships, that when a Proposal was made, in order to the making good the Deficiency in *Dormer's* Office (which the Earl had confessedly so much at Heart) that each Master should out of the Suitors Effects in his Hands, place out a Sum of Money, the Interest whereof should be applied for that Purpose; the Earl would not give the least Countenance to that Practice, by coming into the Proposal; but in plain Terms declared he neither could, nor would, give any Encouragement or Direction for the Disposal of the Suitors Effects, for any other Purpose than their own Benefit.

My Lords, the Gentlemen of the House of Commons are so sensible of the Defect of their Evidence as to this Point, that they seem not to rely upon it, but are forced to fly to Implication for Assistance; and your Lordships are told that this Part of the Charge is a Consequence of the Earl's not having taken Care that the Suitors Effects were so placed out, as to put it out of the Power of the Masters to make such an Use of them; and that this Neglect amounts to a Permission and Encouragement to the Masters, to dispose of and traffick with them as they have done.

My Lords, if this Part of the Article is to be considered as a distinct separate Charge, it is so obvious, of how dangerous a Consequence it would be to admit such argumentative Evidence only as a Proof of it, that I apprehend I need not trouble your Lordships with saying any thing more to it; if it is to be looked upon as a Consequence only of some other Part of the Charge, as a Mischief arising from the Neglect of putting those Effects of the Suitors out of the Power of the Masters to make such Use of them, I am something at a Loss to know why it is made a distinct self-subsisting Charge; it may perhaps by that Means swell the Bulk of the Article, but we humbly submit it to your Lordships Consideration, whether it at all increases the Weight of it.

My Lords, the Charge in this Article is not founded upon a bare Neglect of the Earl, upon an Omission only, of doing what it is conceived he ought to have done, for the Prevention of this Misbehaviour of the Masters: that perhaps was thought too slight a Ground for an Article of an Impeachment, especially when the Neglect here complained of does not consist in the not redressing any particular Grievance, pointed out by the Complaint of any of the Suitors of the Court, but in the not making general Orders for the Reformation of the Masters. Perhaps, my Lords, it might be thought, that such a Charge would have been sufficiently answered, by alledging, as the Truth is, that the Masters have only been continued by the Earl in the same Degree of Trust and Power in which he found them, and with which they were invested long before he presided in that Court: It may be too, my Lords, it might be consider'd, how wide and dangerous a Field for Impeachments and other Prosecutions would have been opened, by making

it criminal in every one who had the Superintendency of an Office, barely to neglect, or omit, the introducing such new general Orders and Regulations, as seem'd to carry a Probability of preventing the Abuses of the under Ministers of such Office; and therefore it is, my Lords, as it may be presumed, that the Earl's Behaviour in this Respect is alledged to be fraudulent, and unjust, and with an Intention of making unlawful Gain to himself, by the Disposal of those Offices, and with a corrupt View and Intention to keep up the Price of them: So that it is not Remissness, or Negligence that the Earl stands here accused of, but Fraud and Corruption; and if this is not made out, we must humbly submit it to your Lordships Judgment, whether or no this Article does not fall to the Ground?

But what Proof, what Evidence has been offer'd for that purpose? None, my Lords, that I remember; but your Lordships are left to collect it, by way of Argument, from the Earl's not having made use of proper Expedients to prevent this ill Practice; the Masters, by that means, were more at Liberty to make a Profit out of their Offices, which for that Reason sold at higher Prices, and therefore the Earl must be guilty of this Neglect with that View; a severe (tho' not a strict) Consequence indeed! Is the Prospect of Gain, from hence, so certain, as to tempt so strongly? And are there no other Reasons apparent why the Earl should defer his Regulations in this Matter? I need not put your Lordships in mind of the great Uncertainty of a Continuance in that high (but slippery) Station: And as the Profit supposed to be in View, depends upon the Death or Alienation of the Masters, which sometimes do not happen in a long Interval of Time, when this Uncertainty is added to the other, I appeal to your Lordships, whether it can be easily imagined, that any, even the most greedy Person, allowing him only to be in his Senses, could be prevailed upon to hazard his Reputation and Quiet, upon such distant, such uncertain Hopes; especially, my Lords, if the Necessity of so harsh a Conclusion be excluded, by its appearing that there were other Matters, which might probably enough be the Reason, or Occasion of the Earl's not immediately entering upon these Regulations.

It appears, by what Mr. *Lightboun* has said, that the Earl was very willing and desirous of having these Matters regulated; and that when he first informed the Earl that he had something to offer to his Consideration in relation thereto, the Earl seem'd very glad, and mightily pleas'd with the Proposals, and gave him all due Encouragement.

It appears, my Lords, that after some time taken by Mr. *Lightboun*, to discourse the Masters upon this Head, he wrote a Letter to the Earl, containing several Proposals for the regulating the Affairs of the Masters; and your Lordships will observe the times and manner of the Earl's sending for and pressing the Masters to bring in their Accounts, which, notwithstanding the different turn that has been endeavour'd to be given to it, we humbly insist upon it, appears to have been done, in order the better to enable the Earl to judge of and regulate these Matters.

As there were Proposals for regulating the Conduct of the Masters, in respect of the Suitors, so several Grievances, which the Masters were supposed to labour under, and in which the Suitors

too were supposed to be concern'd, were represented to the Earl; and, amongst others, that of Money being order'd to be paid into the Hands of the Usher of the Court, instead of the Masters; which was represented as a thing of ill Consequence, and dangerous to the Suitors of the Court, as well as injurious to the Masters. It appears likewise, that it was thought proper, if not necessary, to take all these Matters into Consideration together, that the intended Regulation might be entire, and not by peace-meal; and Mr. *Lightboun* himself was of that Opinion, as well as Mr. *Holford*. And tho' it is alledged, that the Earl was credibly inform'd that the sufficiency of some of the Masters was much suspected, and consequently, that a more immediate regard should have been had to what concern'd the Effects in their Hands; yet when your Lordships consider how that stands upon Mr. *Lightboun's* Evidence; that it was only a general Intimation, without naming any particular Person, and that Mr. *Lightboun* declared he had no certain Ground for such suspicion; it will not, we hope, be thought a Fault not to single out that Part of the intended Regulation; especially when the same Witness informs your Lordships that it was as impracticable for the Masters to have given an adequate, that is, a proper Security, as for the great Officers of the *Exchequer*, or the Treasurers of the *South-Sea*, or other great Companies to do so. And your Lordships will be pleas'd to think it well deserves Consideration, whether it was in the Earl's Power to compel the Masters to give even such Security as they could; and if it should be said, that if they would not have complied, he might have order'd the Money out of their Hands; it will require time to consider where, in such Case, he must have placed those Effects. It would have been as extraordinary to have required Security from the Masters which came in afterwards; and so to have put them upon a Foot different from the others, when it was under Consideration how to settle the whole. But, my Lords, the Event has shewn that there was not so much occasion for so speedy a Precaution in this Matter, for the Purpose for which it was then principally intended, which was the preventing the Masters from embezzling the Securities of the Suitors in their Hands, since there is no occasion of Complaint in that respect, they having been all deliver'd up, and the Deficiencies which have happen'd have been in the Cash in their Hands, of which there was then so little apprehension or likelihood, that the preventing it was one of the things the least under Consideration. So short sighted and uncertain is human Prudence! So different the Judgments made of things in Prospect only, from what they are in Experience! I make no Question but your Lordships will have a due regard thereto, and make all equitable Allowances on that Account.

Your Lordships have been further inform'd, that, in order to settle these Matters, several Meetings were had, and, amongst the rest, one very solemn one, at which were present both the Earl and the Master of the Rolls. I need not trouble your Lordships with a Repetition of what pass'd there, it is sufficient to observe, that nothing being settled, the Earl, whose Mind was intent upon this Affair, propos'd some Expedients to facilitate Matters; particularly, that if the Masters would quit their Pretensions to a co-ordi-

nate Power of Judicature with the Master of the Rolls, that Matters might be made easy, in respect of the ordering the Payments of the Money: But this would not be complied with. And when it was found, by Experience, impracticable to bring any thing about, with the Agreement of the Parties, the Earl declared that he would take the whole Matter into his Consideration; and since he could not have the Concurrence of others, he himself would regulate these Matters as soon as he could. Upon the whole of the Evidence offer'd upon this Article, more especially from what Mr. *Lightboun* and Mr. *Holford* have said, it plainly appears, that for a considerable time past, even from the latter end of the Year 1721, there has been an Intention of regulating the Offices of the Masters of the Court of Chancery; that such Intention has been pursued, and several Steps taken, and Endeavours used, to bring it to effect; and your Lordships, I hope, perceive the many Difficulties that have interposed, and will not be at a Loss to find Reasons for the Earl's not having actually made these Regulations, very different from the distant view of an unjust Gain.

My Lords, the Business of Reformation, however desirable it may be, is, in all Instances, attended with Difficulties, and in the present Case, those Difficulties have been increased by the different and jarring Interest of the Parties concerned; which, at least, prevented their Concurrence in such Reformation, and in a great measure deprived the Earl of the Benefit of the Advice of those, who were the most able to inform him what was fit to be done.

Your Lordships are sensible how great a Portion of the Earl's time must necessarily be taken up in the dispatch of the ordinary Business of that Court, and in his Attendance upon the publick Functions of his Office; and if, under these Circumstances, he has not been able to bring his good Intentions to effect, and compleat them, before it was put out of his Power so to do, your Lordships, we hope, will think it more his Misfortune than his Fault, and that he is not to be reputed guilty of any Neglect or Omission in that respect, which can be adjudged to be Criminal. We shall not trouble your Lordships with any Evidence upon this Article, but submit it upon what has been already offer'd.

Mr. *Robins*. May it please you Lordships, The last Article which the Managers for the Honourable House of Commons have been pleased to close this solemn Prosecution withal, is the Nineteenth; wherein they have endeavour'd to represent the Earl, as designing to abuse and impose upon his Most Sacred Majesty, for the sake of skreening and protecting the Masters from a Parliamentary Enquiry, and to keep up the Price and Credit of their Offices.

But, my Lords, we humbly hope no Evidence appears to have been given that does in the least support or prove any such Designs in the Earl.

'Tis true, indeed, that when his Majesty was graciously pleased to order the Masters Accounts to be laid before a Committee of the Lords of the Council, in order to inspect the same, that the Earl, in Obedience to his Majesty's Commands, thought he could not be too zealous in giving Orders for their preparing and getting the same ready, and therefore order'd them immediately to set about it.

And when some of them objected, that 'twas impossible to have them ready by the time ex-

pected, the 10th of *November* last, especially Mr. *Holford's*, which was to be an Account of twelve Years, that the Earl however order'd them to be got ready in the best manner they could, and told them, if it should appear they wanted more time to make them perfect, that on Application it would, without doubt, be granted.

After which your Lordships have heard, that at a meeting of most of the Masters at Mr. *Edwards's*, when Mr. *Cottingham* came in, he propos'd to them, some say, three things, others two; but all of them agree in Substance, that 'twas to have their Accounts and Securities inspected, and to produce the Ballance of Cash in their Hands, if it should be required.

And as to the inspecting of their Accounts and Securities, your Lordships have been pleas'd to observe, that not one of them appear'd to make any Difficulty or Objection to it, but, on the contrary, readily consented and agreed to it.

But as to the producing their Ballance of Cash, they were something startled at that, as not knowing what was intended by it; and therefore asked Mr. *Cottingham* if they were only to produce or shew it, or if 'twas going to be taken away from them.

And though Mr. *Cottingham's* Answer was, that they were only to produce it, as he understood, yet several of them appear'd to be very jealous that 'twas going to be taken out of their Hands; and Mr. *Edwards*, one of the Masters, expressly said so, and therefore advis'd them to get it ready as soon as they could.

But your Lordships have been pleas'd to observe, that whatever they understood by it, yet not one of them said, or so much as insinuated, to Mr. *Cottingham* that they were not able to answer or make good their Ballance of Cash, only that some of them had it not all ready immediately; and Mr. *John Bennett* said it could not be expected they should keep it all by them, for fear of having their Throats cut, and that therefore they must have some reasonable Time given them to raise it in; and Mr. *Conway* expressly swears that he apprehended they all said they were able and sufficient to produce their Cash and Effects.

And, my Lords, it seems very natural and reasonable to believe that they did say so, or at least that Mr. *Cottingham* understood it so, because when some of them ask'd whether they were to produce it in *Specie*, or whether Bank Notes or Goldsmith's Notes would not do as well, he made Answer, it certainly would do as well, and therefore advis'd those that had not such Notes ready by them to provide them, and to stand by and assist one another.

Now, my Lords, with great Submission, all this seems to be a very natural, plain and artless Representation of this Meeting: And when Mr. *Cottingham* had thus acquainted the Masters what was expected from them, and had Assurances from them all, that they were ready and willing to comply with what had been propos'd,

Can there be any room to doubt but that the Noble Earl was very well pleas'd with this Account from Mr. *Cottingham*? And therefore when they met after, at the Earl's House on the 10th of *November*, no wonder he did not particularly ask them the Question, whether they were able and sufficient to pay or make good the Ballance of their Cash, for this Mr. *Cottingham* had before assur'd him

him they were, and therefore no need for the Earl to ask the Question over again.

And Mr. *Lovibond*, one of the Masters, swears expressly, not only that he himself was ready and willing to pay and produce his own Ballance, but that, from what passed at the Earl's House, he believed or thought all the rest of the Masters were so too.

Now, my Lords, if this be so, if the Noble Earl was fully satisfied that all the Masters were able to make good their Accompts, and he was just then going to lay a State of them before the Lords of the Council; is it at all to be wonder'd at, that his Lordship should give them his Advice or Opinion what Form of Words or Subscription he thought would be most proper to express their meaning by?

And as he approved of the Form made use of by Mr. *Holford* on that Occasion, was it or could it possibly be any Crime in the Earl to advise the rest to subscribe or under-write the same Form to their Accompts likewise?

And your Lordships have been pleas'd to observe, from the Evidence of all the Masters, that not one of them made any Scruple or Difficulty of it, but went into another Room, as if they were really going to under-write the very same Subscription to their Accompts.

'Tis true indeed, my Lords, some of them, when they were got by themselves, were conscious they could not come up fully to it, and therefore varied the Form, as best suited their own Circumstances.

But your Lordships have been pleas'd likewise to observe, that the Noble Earl was so far from being in any Plot with the Masters, to deceive his Majesty or the Lords of the Council, that he took their Accompts, with the Subscriptions they had under-wrote, without so much as ever looking to see if they were conformable to Mr. *Holford's* Subscription, and apprehended they really had been all the same, till upon reading them before the Lords of the Council, the variance between them appear'd.

But your Lordships have not heard of one Word of Reproof given them by the Earl afterwards, for not observing his Directions in making the Subscription he desired.

If the Earl had had any Designs of imposing on his Majesty or the Council, by getting the Masters to under-write such a particular Form of Subscription to their Accompts, would he not have been more careful before he carried in those Accompts to the Council Board, to have seen that they had exactly pursued his Orders, for fear of a Discovery?

Nay, my Lords, can it possibly be imagin'd but that when he came afterwards to find they had deceived him, and had not under-written the Subscription, they pretended, and went out of the Room seemingly on purpose to comply with;

I say, my Lords, can it possibly be imagin'd, but that if the Earl had had any Views or Designs of his own in it, but that he would have severely rebuked and reprimanded them afterwards for not observing his Directions.

But your Lordships have not heard one Word of Proof that the Earl complain'd, or ever said any thing afterwards to the Masters about it.

Now, my Lords, if this be so, can there possibly be a greater or stronger Concurrence of Circumstances to shew that the Advice or Encourage-

ment which the Earl afterwards gave the Masters to assist and supply each other with Money and Effects, and represented to them that 'twould be for their Honour and Service to appear able and sufficient; I say, my Lords, can any thing in the World be more unnatural, than to imagine, that by this the Earl meant to advise them to make a false shew and appearance?

They had before assur'd him, or given him the strongest Reasons possible to believe, that they could make a true shew and appearance. Why then should he advise them to make a false shew and appearance? What End or Purpose in the World could this serve, either for themselves or his Lordship?

This surely, my Lords, could never be the Earl's meaning; or if it was, whilst he was under a Persuasion that they were all able and sufficient to answer and make good the Ballance of their Accompts. If he meant to advise them to make a false shew and appearance, it must have been by advising them to conceal Part of their Cash and Effects, for fear the World should really take their Words, and be of Opinion that they were as able and sufficient to make good their Accompts, as they had under their Hands acknowledged themselves to be.

But, my Lords, as the Construction the other way is not only most natural, but also consistent and agreeable with all that had before pass'd on that Occasion, surely, my Lords, it must be a strange wresting and perverting of Words to understand them otherwise.

The Sum of this whole Article, my Lords, is this: The Masters were on a sudden call'd upon to bring in their Accompts of Cash and Effects, and they did so, and declared, at the same time, that they were able and willing to make good the same on a reasonable time given them for raising the Money; but being afterwards called upon for their Money sooner than they expected, and applying to the Earl for his Advice and Directions what to do in it, he advises them to assist and supply one another with Money and Effects, till their own could be gotten in; tells them it would be for their Honour and Service to appear able and sufficient, and that he would not have them let the World see, at a time when there had been so much Clamour and Noise about them, that they were not always ready, even at a Minute's Warning, to make good their Accompts.

This, my Lords, is the whole of this grievous Complaint against the Earl; and as it seems to be nothing but a Piece of good Advice in the Earl given to the Masters for their own sakes, in great Sincerity and Friendship, as the Earl expresses himself in his Answer, without any possibility of Advantage to the Earl himself, we humbly hope your Lordships will not think it worthy of a Place in this Impeachment.

Mr. *Com. Serj.* My Lords, we shall not give your Lordships much trouble on this Article, we shall only call Mr. *Holford*.

Mr. *Holford* not then appearing, Mr. *Cottingham* was called in again.

Mr. *Serj. Probyn.* My Lords, we desire that Mr. *Cottingham* may inform your Lordships of the time the Masters had the Letter which he refers to, and which he deliver'd, whereby the Accompts are directed to be brought in. We did  
8  
desire

desire Mr. *Holford* to bring it up with him: If Mr. *Holford* hath not the Letter, and it is not among the Masters, we must examine Mr. *Cottingham* about it.

Lord *Ch. Just. King*. Mr. *Holford* is come.

Mr. *Serj. Probyn*. This is the Copy of a Letter, the Original of which Mr. *Holford* hath; if he hath it not here, I hope your Lordships will give leave to read the Copy.

My Lords, I desire that Mr. *Holford* may give your Lordships an account of this Letter.

Mr. *Holford*. My Lords, I have it not; Mr. *Kynaston* did inform me just now that he believed it might be in his Custody, but he hath it not here.

Mr. *Serj. Probyn*. Your Lordships will give us leave to examine Mr. *Cottingham*.

Mr. *Cottingham*. My Lords, there was an Order made, dated the 3d of *November* last, of which my Clerk made a Copy. I can't say I examined it myself: The Order is,

Let the several Masters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the MONEY in their Hands, therein distinguishing, in several Columns,

The Names of the Parties to the Cause.

The Dates of the Orders for bringing in ———— } Money  
or  
Securities.

The Time of bringing in each Sum.

Particularly expressing the Sums transferred and paid to them at their coming into their Office in the first Place.

How the same hath been disposed.

What Sums paid out, and } } When  
to whom, ———— } } and  
What invested in Securities, } } By what Order.  
Specifying the Securities, by Dates, Numbers, &c.

Where the Securities are at present.

What Money remains in their Hands.

Where the same now is.

Nov. 3, 1724.

MACCLESFIELD, C.

Mr. *Com. Serj*. My Lords, we beg leave to observe, that this Order is very much the same with the Directions given by the Noble Lord before to bring in their Accompts; but, upon the Nature of the thing, there seems to be a very good Reason why they did not comply punctually with it.

Mr. *Plummer*. Upon this Observation, my Lords, I beg leave to ask this Witness, Whether the Masters have not given in some Account, notwithstanding the Difficulty of the method?

Mr. *Cottingham*. Yes, my Lords, they have.

Earl of *Macclesfield*. Mr. *Holford* will inform your Lordships of this.

Mr. *Holford*. I believe this is a Copy of the Order given by my Lord *Macclesfield* for bringing in our Accompts in *November* last.

Mr. *Serj. Probyn*. I desire he may be asked whether the Masters were able to make up the Accompts pursuant to the Directions given in that Order.

Mr. *Holford*. I believe it was the next Day after this was sent, that Mr. *Cottingham* did inform me of it; I had not seen it, I was then at *Westminster*, sitting in Court with my Lord *Macclesfield*; after the Court was up I went into the little Room be-

hind the Court with my Lord; and I did say, I thought it would be very tedious to do exactly as this Order directed, because it would require a transcribing of every Particular that each Master in the Court had ever paid and received for several Years, even where Causes were ended many Years ago, and that I thought it an impracticable thing. My Lord told me that must be no Objection to the bringing in of the Accompts; if we could not do as well as he wish'd, we should do it as well as we could; and desir'd them to be ready, that they might be brought in by the Time prefixed.

Mr. *Com. Serj*. I desire he may be asked whether there were any Arguments used by my Lord to recommend Dispatch in this Matter?

Mr. *Holford*. My Lord recommended it to me to be sure to have the Accompt ready by the Time; I think he said it was to be delivered in to the Council by such a Day.

Mr. *Com. Serj*. I desire he may inform your Lordships if nothing was said about making an Excuse a Pretence for delaying the Accompts.

Mr. *Holford*. My Lord did desire that they might be prepared according to those Directions, but said this must be no Excuse for not bringing in the Accompts as well as you can by the Time.

Mr. *Plummer*. When this Accompt was asked for, how long was it before it came in?

Mr. *Holford*. Three or four Days or a Week.

Mr. *Plummer*. And you gave them in complete and right, fully and amply.

Mr. *Holford*. Yes, there were some little Mistakes which were rectified afterwards, very small ones.

Mr. *Common Serj*. By Reason of this Question that hath been asked, give me Leave to trouble your Lordships with asking another, whether in the Accompt deliver'd in there was any thing more than the Ballance of the Accompt?

Mr. *Holford*. Yes, the Accompt I deliver'd in was an Accompt of every particular Cause, and of the Money and Securities in every Cause, and I did add the Solicitors Names in every Cause, as far as I knew; I believe all the others were not so.

Mr. *Com. Serj*. How were the others?

Mr. *Holford*. I believe the others were the same, only not the Solicitors Names.

Mr. *Com. Serj*. I don't mean that, but whether there was not the Ballance of each particular Accompt deliver'd in?

Mr. *Holford*. There was the Ballance of the particular Causes, and the whole summed up together.

Mr. *Serj. Probyn*. I desire he may be asked, whether it was practicable to give in their Accompts in the Method directed within the Time prescrib'd them?

Mr. *Holford*. It was not.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, whether they have not been call'd upon frequently to hasten their Accompts?

Mr. *Com. Serj*. I desire he may be asked whether they have been since called upon by the honourable Committee of the Council, to bring in their Accompts according to the said Method?

Earl of *Macclesfield*. I desire he may be asked, whether after this Accompt brought in, and the Ballance made upon every Cause, they have been since called upon to make up the Accompt according to the first Instructions or not?

Mr. *Holford*. We have not been required to pursue the former Instructions.

Mr. *Com. Serj.* If the Gentlemen of the House of Commons have done as to this Article, we have done. My Lords, we shall now beg Leave to call some Witnesses, to the establishing the Reputation of Mr. *Cottingham*; when one side have endeavoured to lessen his Credit, it will be necessary for the other Side to call Witnesses to confirm his Credit. As to the Testimony he hath given, it is very material, as it stands in Opposition to the Evidence of others; tho' it be not directly contradicted, yet it is very different from some Accompts; which your Lordships have received from some of the Masters, particularly from Mr. *Thomas Bennett*: And as for the Managers of the House of Commons, notwithstanding he was call'd a Witness by themselves, tho' they have not said in direct Terms that he is a Person not to be credited, yet calling him a *black Minister of Iniquity*, and using a great Number of such like other Expressions, seem to carry some Insinuation, as if Mr. *Cottingham* was not a Man of that Integrity as I believe all that know him will bear Testimony to. We beg Leave therefore to call a few of that Number as Witnesses to his Character and Reputation, who have known him for several Years, and have had a full Opportunity of knowing his Character and Behaviour in the several Stations he has been in.

Mr. *Goldesbrough* called.

Mr. *Serj. Probyn*. My Lords, I desire he may be asked how long he hath been acquainted with Mr. *Cottingham*?

Mr. *Goldesbrough*. I have been acquainted with Mr. *Cottingham* upwards of twenty Years.

Mr. *Serj. Probyn*. I desire he would inform your Lordships, during his Acquaintance with him, what hath been his Character?

Mr. *Goldesbrough*. All the Time he was a Solicitor, I observed him to have a good Character; he behaved himself with all Integrity and Fidelity as ever I knew any body of his Profession.

Mr. *Serj. Probyn*. You speak as to his general Character.

Mr. *Goldesbrough*. I never heard he had any Blemish on his Reputation, he always maintain'd a very fair Character.

Mr. *Serj. Probyn*. During the Time he was Secretary to the Lord Chancellor, how did he behave himself?

Mr. *Goldesbrough*. He bore a very fair Character in the Place, as fair as ever any body did that went before him.

Mr. *Price* sworn.

Mr. *Com. Serj.* We desire he may give your Lordships an Account what he knows of the Character of Mr. *Cottingham*, and how long he hath known him?

Mr. *Price*. My Lords, I have known him upwards of twenty Years; I never knew any body say any thing amiss of him, I always took him to be a very fair and honest Man, I know no Man in his Place behav'd himself better than he hath done.

Mr. *Com. Serj.* We desire to ask not only to what Mr. *Price*'s Opinion is, but to what is the Opinion of others; as to his general Character?

Mr. *Price*. I believe, if you ask his Character

of an hundred People, ninety of them will give him rather a greater Character.

Mr. *Com. Serj.* And as to the remaining ten; what Character doth he believe the remaining ten will give him?

Mr. *Price*. I believe that the remaining ten cannot justly charge him with any thing that is ill.

Mr. *Hickman* call'd and sworn.

Mr. *Serj. Probyn*. I desire Mr. *Hickman* may likewise give your Lordships an Accompt how long he hath known Mr. *Cottingham*?

Mr. *Hickman*. I have known Mr. *Cottingham* thirty Years, I believe; he had always a very good Character, he was Clerk to me for two Years, he was a diligent faithful Clerk, and hath had a very good Character ever since, and I never heard any thing to the contrary.

Mr. *Blithman* sworn.

Mr. *Serj. Probyn*. My Lords, We have a great Number to this Purpose; I desire you would inform my Lords how long you have known Mr. *Cottingham*, and what his Character is?

Mr. *Blithman*. My Lords, I have known, and been intimately acquainted with Mr. *Cottingham*, for above twenty Years; while he was a Practiser in the Court of *Chancery*, we were now and then concern'd one against another in Business, and I observ'd him to act with great Diligence for his Clients, and in a fair way of Practice in respect to his Adversaries; he had the Character of the Practisers of the Court of *Chancery* in general, for being a very honest and fair Man; after he was promoted to be Secretary to my Lord *Macclesfield*, every Practiser of the Court that had any Business must have frequent Recourse to him, and he was observ'd to discharge that Office with great Justice and Dispatch to the Suitors, with great Civility to the Practisers, and with a strict Regard to the Honour of his Master and the Court; he was content with his just Fees, without ever demanding or expecting more on Pretence of Expedition, or upon any other Accompt: In general, I took him for a very honest Man, and he was always so reputed during the Time that I knew him.

Mr. *Serj. Probyn*. My Lords, we might apply to some of the learned Managers themselves, were it proper upon this Occasion; but we hope his Character is so clearly established, by what Evidence has been already offer'd, that there is no Necessity for troubling your Lordships with any more on this Head: But we shall trouble your Lordships with one Piece of Evidence more, of a different Kind, which the noble Lord is with a great deal of Difficulty oblig'd to submit to, and that relates to the private Conduct of himself, of which many enjoy the Benefits, and all were enjoyn'd and oblig'd to keep secret; but now it is become necessary to make known, since he hath been represented in Publick as a Person full of Corruption, that hath studied nothing in the whole Conduct of his Life but the amassing great Riches to himself, in Oppression of his Majesty's Subjects; it is now become necessary, for the Vindication of his Lordship's Innocence, to shew that his Actions (which best speak the Intention) have been of a different Nature; that as his Lordship hath received great Bounties from his Majesty, to be hath been as liberal in sharing them with those

who have wanted his Relief. Multitudes of Instances might be given of this Kind, but we shall only lay some few before your Lordships, and then beg Leave to submit to your Consideration, whether it be possible to suppose, that a noble Lord, whose Heart was so charitably inclin'd to relieve the afflicted who apply'd to him, and to seek Opportunities of doing good to Strangers who were no ways known to him, could be guilty of Actions (such as his have been represented by the Managers of the House of Commons:) How can these things be reconcil'd, that a Man, truly religious, truly vertuous and charitable, should be guilty of Oppression, Injustice, Avarice and Corruption? We beg leave to lay some few Instances of this Nature before your Lordships, and then submit their Weight to your Lordships great Judgment.

Mr. Com. Serj. I beg leave to observe that in a great many Articles, the Intention being what the Managers have much relied upon, we humbly apprehend we have clear'd the noble Lord from those Intentions he is charg'd with, by what we have already offer'd to your Lordships; but if any Doubt should still remain, when it shall appear that he was a constant Benefactor to the Oppressed and Afflicted, that a constant Spirit of Benevolence hath reigned in the Breast of this noble Lord towards Mankind, you will think it impossible for a Man to be so contradictory to himself, that at the same Time as he was doing all the Good he could in Private, he should be guilty of Avarice, Corruption and Oppression in the most publick manner. These Qualities are so inconsistent, that they could not reign in the same Breast at one and the same Time, for that Reason we shall beg leave to mention a few of the great many Instances we might produce on this Head, and first we desire that Mr. Oaker may be called.

Mr. Oaker sworn.

Mr. Serj. Probyn. My Lords, I desire that Mr. Oaker may give your Lordships an Accompt how long he hath been employ'd under the noble Earl within the Bar?

Mr. Oaker. I serv'd his Lordship all the Time that his Lordship had the Great Seal.

Mr. Serj. Probyn. I desire he may give a general Accompt during all the Time that he serv'd his Lordship, how far he hath been privy to any charitable Actions he hath done?

Mr. Oaker. My Lords, I have the Names of some few in my Hand, I can only tell the Names and Sums of such as accidentally came in my Way, for his Lordship always did those Actions privately, and with his own Hands if it could conveniently be. When I first came to serve his Lordship, having heard his Lordship's Character of being very bountiful to almost every body that came in his Way, I therefore endeavour'd to inform myself more particularly from such Persons as I apprehended apply'd to him for any Assistance of that Nature. The first that I remember was one Mr. Brown, who had been Author of several Practical Books in the Law; his Lordship was pleas'd for some Years before I acted under him, to pay for him 24 s. a Month for his Board and Subsistence, besides Cloaths and Pocket-money; the Person that us'd to pay it being absent in my time, I paid it for near seven Years, till Christmas last, when he died.

Mr. Serj. Probyn. At the time he died, how old was he?

Mr. Oaker. He said he was on Bartholomew Day last aged 102. As I have been inform'd, my Lord sent a Surgeon and an Apothecary to attend him, and paid them, and the Expence of his Funeral; and the whole that came within my Knowledge was about 120 l. Afterwards there were two Clergymen recommended to his Lordship for a Living that was in his Disposal, my Lord could not soon determine which to give it to; one of them was a poor Curate in Surrey at Thames Ditton: This poor Man complain'd, that he could not attend longer in Town, nor had Money to carry him home; my Lord gave him a Guinea, and told him he might go home, he need not stay, but should be sent to when he had determin'd what to do for him. A little while after, he came to Town again, and said that it being reported, that his Lordship would give him a Living, he was turn'd out of his Curacy, and being an Inmate, was order'd by the Officers of the Parish to quit the Parish, but that he had not Money to remove his Family; and my Lord being told of that, sent for him, and gave him a Sum of Money in a Paper; I asked the Clergyman what it was he gave him, and he said twenty Guineas: He had soon after a Living given him by my Lord in Kent, and then as he was removing his Family to his Living, they were here in Town by the Way taken ill of the Measles; upon which the poor Gentleman wanting Money to proceed on his Journey, came again to my Lord, and his Lordship gave him twenty Guineas more, as he told me; and I believe his Lordship hath given him several Times since, but I don't know the Particulars, neither had I known any of those I have mention'd, had not the poor Clergyman himself told me of them.

Mr. Com. Serj. What is his Name, and where is his Living?

Mr. Oaker. His Name was *Vigurs*, and his Living is near *Sittingbourne* in *Kent*. There was one Man, a converted Jew, I believe he is here himself, he hath had of my Lord seventy or eighty Pounds. There is one *Thwaites*, a Quaker, who hath attended the Houses of Parliament long, and is very well known, hath had a pretty large Sum of Money, besides other Assistance; sixty Pounds I paid him at once by my Lord's Order. There is one Mr. *Wickam*, a Gentleman in the Navy, a half-pay Officer; he had out-run that, and was in the *Marshalsea* Prison, and could not make up his matters; a Friend of his was personally acquainted with me, and said my Lord had some Knowledge of this Officer, and desir'd me to acquaint him with his Case, which I did, and his Lordship said he had no Acquaintance with him, but had known his Father, and for his sake would clear him; and it being said he was in for about thirty Pounds, his Lordship said if it came to forty Guineas he would pay it, so that it set him out of Distress, and cleared him of all Debts; the Gentleman did make up his Affairs, and my Lord paid the Money, and besides gave him a whole Suit of Cloaths, double Shoes and Stockings, and Wigs, and new Sword and Belt, fit to appear in the World again, which came to something above forty Pounds in the whole. Another poor Clergyman my Lord gave a Living to, and he was very lame, and came to Town to go into the cold Bath; he happened to be arrest-



ed for an old Demand of 36 l. His Wife came to my Lord, who gave her Money for present Subsistence, and order'd me to take Care that the whole Affair should be made up, and the whole Debt was clear'd and discharg'd, and all the Costs and Charges paid out of his Lordship's Pocket. There are abundance of other small Sums I might mention of the same Kind, but it would be endless to trouble your Lordships with them. Then there is another matter which I mention to your Lordships, not so much for the Value as for the manner of doing it; a poor Gentleman residing at the *Bath* had a Place given him, as he said, in *Ireland*, but had not Money to carry him over, and therefore only begg'd 40 s. to carry him over to *Ireland*; my Lord order'd me to remit him five Guineas which he receiv'd, but afterwards he wrote Word that he and his Family was ill at the Time, and therefore had expended the Money, and wanted the same Supply again; my Lord then order'd me to remit him ten Guineas more, which I did. Here is at your Lordships Bar one Mr. *Saunders*, a Clergyman, who hath sundry Times received of his Lordship's Favours whilst a Youth, and upon the Foundation in the *Charter-House*; and when he went from thence to the University, his Lordship gave him forty Guineas, and afterwards when he was near going into Orders remitted him sixty Pounds to clear all matters in the University, which I sent to Dr. *Bentley* by his Lordship's Order. I don't mention several other Particulars, but they are very numerous, both what passed through my Hands, as well as others of his Lordship's Servants, hardly a Week passed without some Instance of this Kind.

Mr. *Com. Serj.* As you was under the Great Seal, you can inform my Lords, when Clergymen were admitted to their Livings, whether his Lordship has not frequently order'd their Fees to be remitted them?

Mr. *Oaker.* My Lord frequently gave Orders to remit the Fees of his own Officers, and at other Times his Lordship paid the Fees of the Patent Officers and Stamps out of his own Pocket; and hath given the Clergymen Money besides, to pay their Journey to their Livings, and otherwise to sustain them, and to buy Books.

Mr. *Com. Serj.* Do you remember Mr. *Higgs*?

Mr. *Oaker.* Mr. *Higgs* was greatly indebted, and in Prison; his Lordship discharg'd him, and paid such Debts as were insisted upon, to the Value of about ninety Pounds: He is there to give your Lordships a particular Account.

Dr. *Sayer.* As a great deal depends upon the manner of doing these things, I would ask him as to the manner in which they were done, whether in an ostentatious manner, or how?

Mr. *Oaker.* My Lord did these generous Actions meerly as they fell in his Way, and without mentioning them, or letting them be seen or known, as far as I could ever perceive; so that where I did not apply to his Lordship my self for such People as came to me, I never knew it but by Accident; and in Cases where I was privy, my Lord generally gave me more than was asked, his method being, as far as might be, to set Persons entirely free, and to do them a full Service.

Mr. *Hunt*, a Clergyman, sworn.

Mr. *Serj. Probyn.* My Lords, we desire that Mr. *Hunt* would recollect and give your Lordships

an Account of what charitable Acts he hath known done by the Earl of *Macclesfield*?

Mr. *Hunt.* I have known my Lord to be a very generous and noble Patron: I can speak from several Instances, relating not only to my self, but to several other Gentlemen of the University of *Oxford*. The first time I had the Honour of being known to his Lordship, was about *Whitsontide* 1722, upon the recommendation of one Mr. *Thornbury*, Vicar of *Thame* in *Oxfordshire*. The Noble Lord asked Mr. *Thornbury* what Persons he knew in the University that were inclinable to be studious: Mr. *Thornbury* was so kind as to mention me as one: Upon which, his Lordship sent for me to dine with him the Day after; I carried him some of the private Exercises that I had done in the University, which his Lordship read over, and was so kind as to approve. His Lordship kept me with him several Days, and desired to have more Conversation with me, and he dismiss'd me with a generous Present of twenty Guineas, telling me he should be glad to see me when he came to *Shirburn*, and that he design'd to make me a Present now and then till he could do something else for me. About *Christmas* after was the next time I waited on my Lord: I carried him again some of my University Exercises, which his Lordship perused, and was so favourable as not to dislike them. His Lordship dismiss'd me at that time, with another generous Present of twenty Guineas, and further Assurances of future Favours. About this time I had received a Letter from Mr. *Gagnier*, Deputy Professor of *Arabick* in the University of *Oxford*; wherein he complained to me, that he had been ill used by some Persons in the University, for having writ a Poem in Praise of her Royal Highness. This I related to his Lordship: His Lordship express'd a great deal of Concern for his Misfortune, pity'd his Case, and sent him by me a Present of twenty Guineas. The third time I had the Honour to wait upon his Lordship was about *Michaelmas* 1723, when I received likewise a Present of twenty Guineas: I should have also mention'd that I received other smaller Presents from his Lordship, five Guineas at one time, and one Guinea at another. The last time I had the Honour of waiting on his Lordship and receiving his Bounty, was about *Easter* 1724, when his Lordship made me the usual generous Present of twenty Guineas, and was so kind as to send by me thirty Guineas more, viz. fifteen to Mr. *Hutchinson*, and fifteen to Mr. *Greenway*; so that within the space of two Years I receiv'd of his Lordship's Bounty, for the use of my self and the Gentlemen of my Acquaintance, one hundred and thirty six Guineas, upon no other Account, and for no Consideration whatever, but to encourage us in our Studies, and support us in the University.

Dr. *Sayer.* I would know whether the thirty Guineas were look'd upon as a single Bounty, or was it to be an annual Charity?

Mr. *Hunt.* I believe so, they told me they had received it as such before; we all looked upon our several Benefactions as to be continued.

Mr. *Smithys*, a Clergyman, sworn.

Mr. *Serj. Probyn.* I desire he may give an Account of what he knows of my Lord *Macclesfield's* Charities.

Mr. *Smithys.* My Lords, in the Year 1721 there became vacant the Place of a Master of an Hospital

Hospital in the Town of *Colchester*, in the Disposal of my Lord Chancellor, to which Mastership, King *James* the First had annex'd the Cure of Souls of a Parish adjoining, and which Parish had no other Provision for a Minister.

The former Master had taken no Notice of the Parish, nor had any Care been taken Time out of Mind (as I have been informed by the Inhabitants of the Parish) of either burying their dead, or baptizing their Infants. My Lord Chancellor being (as I have been told) informed of this, sent to me to know if I would accept of the Master's Place. I would not mistake, my Lord's Chaplin sent me word, if I would accept of the Place, and let him know my Christian Name, his Lordship would send me the Grant of it. I did so, and then my Lord was pleas'd to enquire into the Nature of the Thing. I informed his Lordship that no Care was taken of the Parish at all, tho' I apprehended the Master of the Hospital ought to take Care of it. My Lord then was pleas'd to give me the Grant of the Hospital, and oblig'd me to a particular Care of the Parish; and at the same time desired me to let him know what Condition the Church was in. I informed him that it was utterly unfit for divine Service; none had been performed in it (as I had been inform'd) Time out of Mind; and the Parishioners were in such a Condition of Poverty, that they were not capable of making it fit for divine Worship.

My Lord then was pleas'd to order me to acquaint him how much would put the Church in Repair. Upon this I thought proper to apply to Workmen for their Advice; and by their Advice I inform'd his Lordship thirty Pounds would do it. My Lord order'd me to set the Workmen at work, and he would pay their Bills. Before the Church was finish'd, through my Unskilfulness, and the Cunning of Workmen (as I then thought) this thirty Pounds would not do. I acquainted his Lordship with it, and he desired to know how much more would do. The Workmen told me ten Pounds. My Lord order'd the Workmen to proceed, and they shou'd be paid the other ten Pounds; but by the Falling of a Wall, and other Accidents, this Money was not still enough. I was ashamed to betray my own Ignorance, in suffering my self to be so impos'd upon by the Workmen (as I imagin'd his Lordship would think;) I determin'd to pay the rest of the Money my self; but being encourag'd by *Dr. Sayer*, I did inform his Lordship of the Condition we were in. I then receiv'd an unlimited Commission; to let the Workmen finish the Work, and send up their Bills when they had done, which they did, and my Lord immediately paid the Money, which amount'd to  $52l. 6s. 11\frac{1}{2}$ .

*Dr. Sayer*. I desire he may be ask'd what sort of Parish this is, and what kind of People the Inhabitants of it are?

*Mr. Smithys*. It is a poor Parish, but not numerous; there is not one in the Parish that is call'd Master; nor one, I believe, able to contribute a Shilling towards a Work of this kind, without hurting himself or his Family.

*Dr. Sayer*. I desire he may be ask'd whether the Earl has any Relation to it, or any Estate thereabouts?

*Mr. Smithys*. He hath no Relation to the Town, nor Seat near it, nor any particular Concern, that I know of, for any Man belonging to it.

*Mr. Plummer*. If my Lord *Macclesfield* thinks it decent to give this Evidence, we do not think fit to oppose it.

*Dr. Sayer*. The Charities laid out by my Lord *Macclesfield*, have been to fit out Clergymen for Parishes, and to provide Churches for Parishes.

*Mr. John Meyer* sworn.

*Mr. Serj. Probyn*. I desire this Witness to inform your Lordships whether he was not formerly a Jew.

*Mr. Meyer*. I was a Jew formerly.

*Mr. Serj. Probyn*. I desire he would give your Lordships an Account of his Conversion, and what Circumstances of Life he was then in, and how he was relieved?

*Mr. Meyer*. I was, by several Misfortunes, and by the Hardship of my Relations, reduced to great Extremities, after I was converted from Judaism.

*Mr. Serj. Probyn*. After you were converted, what Charities have you received? Have you received any Collection made for you by any Person?

*Mr. Meyer*. I did apply my self to my Lord *Macclesfield* for Charity, by the Recommendation of several worthy Clergymen: Upon which Recommendation, his Lordship was pleas'd to bestow upon me a Charity of fifty Guineas. I was set up in a Way of Living in the Parish of *St. Katherines* near the *Tower*; then the Fire happen'd there, and I was burnt out, after which I had a dangerous Fit of Sicknes.

His Lordship got an Account of the same, and sent me a second Relief of twenty Guineas. The same Time that his Lordship gave me fifty Guineas, he sent twenty Guineas to the Reverend *Mr. Shute*, who was Treasurer to the Society for propagating the Gospel in Foreign Parts.

*Mr. Edward Sanders* sworn.

*Mr. Serj. Probyn*. I desire he may give an Account of what he hath received of my Lord *Macclesfield's* Bounty?

*Mr. Sanders*. My Lords, in the Year 1713. the Duke of *Somerset*, through the Intercession of the Earl of *Macclesfield*, put me into the Charter-House, where I was educated eight Years and an half; all which Time his Lordship furnish'd me with Books; and at my leaving of the School, he gave me forty Guineas for the better prosecuting my Studies at *Cambridge*: In a Year and an half after this, he gave me sixty Pounds. My Lords, this was not all; for when I acquainted his Lordship at my going into Orders, that I ow'd some Money at *Cambridge*, his Lordship was pleas'd to give me forty Guineas more, towards the discharging of my Debts.

*Mr. Thornbury* Clergyman sworn.

*Mr. Serj. Probyn*. My Lords, I desire he may inform your Lordships what he knows of his Lordship's Charity?

*Mr. Thornbury*. My Lords, what I have to inform your Lordships of is this; that in the Year 1721. about the latter End of *July*, some Application having been before made to my Lord Chancellor by my Father, I had the Honour to be sent for by his Lordship to *London*. When I came to Town, as it was my only Business, so I made it my earliest Care to wait upon his Lordship, who was pleas'd to receive me with the greatest Kindness

and Condescension, telling me he had some Livings at that time in his Disposal, one of which he intended for me; his Lordship likewise offered, if I had a Mind to see the Livings, he would be at the Expence of my Journey, and that I should have my Choice when I was come back; but I answered, I would refer that to his Lordship's Pleasure. In a few Days after, he ordered his Secretary of the Presentations to prepare a Presentation of me to a Vicarage in *Somersetshire*, called *Ninehead*. When the Presentation was sealed, and I had received Instructions to go and wait upon his Lordship for it, he was graciously pleased not only to give me the Presentation; but also discharged the whole Fees, and likewise made me a Present of 100 Guineas to buy me Books withal.

Mr. *Tho. Withers*, Mr. *Henshaw* called, who not immediately appearing,

Mr. *Serj. Probyn*. My Lords, I am told here is a Reverend Prelate, who will willingly stand up in his Place, and give your Lordships an Account of what he knows of some of my Lord *Macclesfield's* Charity.

The Lord Bishop of *Oxford* stands up.

Mr. *Serj. Probyn*. I desire your Lordship would give an Account of what you know of this Matter?

Bishop of *Oxford*. My Lords, the Question put to me is concerning my Lord *Macclesfield's* Benefactions and Encouragement to Learning in the University of *Oxford*. I am a good Witness of it; for my Lord some time since desired me to recommend a Number of young Men to him, whom I thought proper Objects of his Favour, and like to make a considerable Progress in Law, Physick, Divinity, or any other Branch of Learning. He said he was willing to bestow a considerable annual Stipend on them, for no other end but to enable them to buy Books, and encourage them to follow their Studies; and this without any Regard to Party, but merely for the promoting of Learning in the University. I recommended several Persons to him, and enquired into the Characters of some who were recommended by others, and have no Reason to doubt but that every one that was thought deserving had a considerable Allowance. I can't charge my Memory with particular Sums, but believe his Lordship said he was willing in the whole, to expend this Way four or five hundred Pounds every Year. This is the Sum of what I know; if your Lordships desire to be informed of any thing more particularly, I am ready to give an Answer to the best of my Knowledge.

Mr. *Com. Serj.* My Lords, we have now gone through our Evidence, and I shall beg your Lordships Indulgence for the making some short Observations upon what has been offered in Defence of the noble Earl, now at your Lordships Bar; and as this Proceeding has already been drawn out to a very great Length, I am sensible it will become me, to use as much Brevity as may be. I shall, however, before I proceed, beg leave to trespass upon your Lordships Patience so far as to say, that if in the Course of this Proceeding, any thing should have slipped from us who are of Council for the Earl, which might not be so exactly suitable to the very great Respect

and Deference, which is due from every one to this august Assembly, I hope your Lordships will, in your great Goodness, impute it only to the Inadvertency, which the Variety of Incidents and Hurry attending Proceedings of this Nature, may reasonably be supposed to occasion, and as such excuse it.

We hope, my Lords, that what has been humbly offered to your Consideration, in behalf of this noble Earl, has made him appear a Person very different from what he has been represented to be, by the Gentlemen of the House of Commons; and I am apt to persuade my self, that if they had been as well informed before hand, of what he had to say in his Vindication, as they were of what they had to object to his Conduct, your Lordships would have been spared the great Trouble occasioned by this long Prosecution.

It is, my Lords, the peculiar Happiness of our Constitution, to have in the different Parts of it, all the Requisites necessary and proper for the Preservation of the Peace and Welfare of those who have the good Fortune to live under it. In those, whose Part it is, like Centinels, to watch for and guard the Liberties and Safety of the People; who are the grand Inquisitors, to search into, and expose every Thing that has even the Appearance of being hurtful or dangerous to the Liberties or Properties of those they represent; Vigour, Warmth, Zeal, I had almost said some Degree of Passion, seem proper Qualifications; whilst Calmness, Moderation, and Patience, not altogether without Tenderness and Mercy, are the proper Characteristicks of those, who by the Constitution are to determine and judge. And, my Lords, I may venture to say, that, to the Glory of our Nation, all these Qualities have been exercised, and every Part of our Constitution hath exerted itself, upon Occasion of this Proceeding: His Majesty's great Condescension, in readily laying this Matter before his Parliament; the Zeal and Vigour of the House of Commons, in examining into it; the great Abilities and Industry which the learned Gentlemen, who have had the Honour of Managing this Prosecution, have shewn, (they'll pardon me, I hope, for saying, I could have wished it had been attended with something less Harshness and Severity;) and your Lordships great Goodness and Patience, hitherto so conspicuous, and of the Continuance of which there is not the least Reason to doubt, are so many illustrious Proofs of it.

Give me Leave, my Lords, to proceed further, and mention the Part which the noble Earl at the Bar hath had in this Affair, his Readiness, when after his Endeavours for that Purpose, he found the thorough Reformation of the Court of Chancery a Work too difficult for him singly to effect, in laying the Affair before his Majesty in Council; the seasonable and proper Orders he afterwards issued out upon that Occasion; and his Zeal in pressing to have them immediately comply'd with; leave him still, we hope, some Share of the Reputation and Merit of what has been, or is likely to be done towards the Reformation of that Court. Nor will your Lordships be at a Loss, to what Cause to ascribe this Behaviour of the Earl, notwithstanding the Representations which have been made of him; when you shall consider the steady Affection and Zeal for our Constitution, which on all Occasions

have so remarkably appeared in him. Your Lordships, no doubt, remember those Times and Conjunctions, which it was thought required not only good Wishes and Affection, but Vigour likewise and Courage, to support and preserve to us the Continuance of our Constitution. Then it was, and for that End, that this noble Lord so eminently exerted all those great Abilities he was Master of; and that with such Success, as gained him the Approbation of his Majesty, who thought his Services so signal, as to justify his Munificence towards him, and his Goodness in raising him to so great Honour. And can it easily be thought, my Lords, that one so qualify'd, so affectioned, so distinguished, should enter into a wild Design of Deceiving both King and Parliament? Or that he should enter into it, and carry it on in so poor and indiscreet a Manner, as is suggested in the Charge against him? in a Manner so void of Thought and Contrivance, that it relishes more of Madness than any thing else. Suppose he could be thought capable of attempting to conceal Matters that were so notorious to every body, and that by a Means, which from the very Nature of it, must in some short Time have betrayed the Contrivance; yet surely, my Lords, his Fears and Apprehensions would have restrained him from communicating himself in a Matter of so high Concern, without Distinction, to so many Persons as were then supposed to be present; that he should publicly give such Orders as would certainly expose him to the Resentment of his Majesty, and both Houses of Parliament, in Hopes that such a Secret would be kept by so many People as are supposed to be concerned in it; surely, my Lords, is a Charge of so extraordinary a Nature, as will require better Proof than what arises from uncertain Expressions, in Discourse with a Number of People at the same Time, and they in so great a Hurry and Confusion, that there was very great Room for Misapprehensions, and where it was easy for one to mistake what was said to another, as if spoke to himself: And from hence it proceeded, as I presume, that the Account given of that Transaction, by the Gentlemen concerned in it, is so various and uncertain, that we humbly hope your Lordships will not think it reasonable to be rely'd on, as a Proof of such a Charge.

My Lords, the Foundation of this whole Complaint against the Earl is his Acceptance of Presents or Gratuities, upon the Disposal of Places; or as the Gentlemen of the House of Commons are pleas'd to style it, the Selling of Places, principally those of the Masters of the Court of Chancery. We have admitted the Facts, but without admitting those Circumstances which accompany it, as it stands charged in the several Articles for that Purpose; and we hope we have satisfy'd your Lordships, that it was no Ways illegal to act as the Earl hath done upon those Occasions. To support our Reasoning upon that Head, we propos'd to shew to your Lordships, what the Sense and Opinion of diverse great and learned Men had been in respect to the Law in that Point, from their own Practice and Behaviour: And we hope that the Evidence which hath been offer'd for that Purpose, hath plainly made it out, that the Earl hath the constant Usage of his Predecessors in that Office, as well as of other great Persons in other Stations, to

countenance what he hath done upon such Occasions, and that without any Marks of Parliamentary Resentment. If this noble Lord stood in need of an Excuse for having taken Presents, how effectual would this be for that Purpose? For sure, my Lords, if it were allowed that he had erred in this Matter, yet after such great Examples, your Lordships would think it an Error only, and not an Offence which deserv'd a heavy Censure.

The rest of the Articles have so near a Relation to the Charge of taking of Money, being only Aggravations of that Matter, under the several Circumstances therein contained, that I humbly apprehend, they do in a great Measure depend upon, and will stand or fall together with it. And as the Evidence which has been given in relation to them, and the Observations made thereon, have been so full, and are yet so fresh in your Lordships Memories, I will avoid troubling your Lordships with a needless Repetition of any thing upon those Heads.

My Lords, the Source of all the Evils here complain'd of in the Earl, is supposed to be Avarice: Every Thing is ascribed to an immoderate Thirst after Gain, an irregular Desire of amassing Wealth. And great Endeavours have been used to persuade your Lordships, that the Earl was so wholly tainted, so thoroughly possessed with this Vice, that he had nothing in View but to gratify it; and every single Action of his had a Tendency that Way. But sure, my Lords, the Evidence just now laid before your Lordships, shews a Spirit and Temper of Mind far different from that, and totally inconsistent with it. And none, I hope, will object against our having entered into a Proof of that Nature; there are some Occasions, and surely this is one, that will justify the most modest Man in publishing his own good Deeds; and upon which even charitable Acts, as first intended, as they ought to be bury'd in Silence and known to none but the great Rewarder of them, may be withdrawn from their Privacy, and disclosed to publick View.

My Lords, the Instances which we have produced are not of pompous Charities; we should then, no doubt, have been told that Vanity and Ostentation had the greatest Share in them: Had they been a few Instances only which were laid before your Lordships, though far exceeding in Value those which have now appeared; it would perhaps have been said, that those were Starts and Fits of Charity: But your Lordships will observe that these have flow'd in a continual Stream, and can be owing to nothing but a constant habitual Benevolence towards Mankind, a regular and continual Inclination to do Good. And can such a Temper and Disposition of Mind be consistent with insatiable Avarice, base Corruption, and merciless Cruelty, in spoiling and oppressing Widows, Orphans, and Lunatics, and such too, who were under his Guardianship and Protection?

My Lords, we hope it will be thought impossible for such opposite Sentiments to reign in the same Breast, at the same Time; and that at least, where any thing may appear doubtful in the Earl's Words or Actions, not only the received Notion of our Law, of presuming always in Favour of Innocence, but this Benignity of Temper in the Earl will determine your Lordships to confi-

der it in the most favourable Light, and never to intend any thing harsh, which will admit of a milder Construction.

The Cries and Tears of Widows and Orphans have been artfully introduced, to raise your Lordships Compassion and Indignation upon this Occasion. It is no Wonder, my Lords, that Women and Children should be frighten'd at the first Appearance of the Deficiency in the Suitors Effects, which was represented in so terrible a View; but we hope, my Lords, the Terror is sunk with the Deficiencies, and that in a great Measure these Cries are hushed, and Tears dry'd up, now it already appears (as we hope it evidently does) that no very considerable Loss is likely to happen to the Suitors, and that the Prospect of its being lessened still improves.

Under these Circumstances should your Lordships think (which we humbly hope there is no Ground to suppose) that the Earl has fallen into any Mistakes; yet when his Majesty, your Lordships, and the Commons, have extended their Clemency to those Masters, who have been the acknowledged, the immediate Instruments and Actors of the Evils complained of, and of whatever may be prejudicial to the Suitors; and the Legislature hath interposed, to preserve them in the Enjoyment of their Offices; we hope the Earl would not be the only Object, on which your Lordships Goodness did not shine. We rather hope your Lordships will consider his Misfortunes; and when you look upon the high Eminency from whence he is fallen, and view him at your Lordship's Bar, scourged with the severest Stripes the Tongue can inflict (and what can be more cutting?) a Punishment, from which he had some Reason to expect that his Relation to your illustrious Body might have protected him: That these Circumstances will raise those generous Sentiments of Tenderness, which always dwell in noble Breasts: A Tenderness, no ways inconsistent with your Lordships Justice, to which the Earl cheerfully submits himself; and that in Imitation of the unerring Judge of all, whose Vicegerents you are on this Occasion, your Lordships will in Judgment remember Mercy.

Mr. *Onslow*. I would not interrupt the Gentleman that spoke last before he had ended; but I must now, before this Gentleman goes on, inform your Lordships that an Incident hath happen'd, that the Managers think they are obliged to take Notice of. The Right Reverend Prelate is not by the Managers in the least suspected as to his Veracity, and the Truth of what he says; but in judicial Proceedings, especially in a criminal Case, as this is, the Managers think Witnesses of all Sorts are to be examined upon Oath; not, as I have said, that they have any Doubt of the Reverend Prelate's Veracity; but for the sake of the Precedent, and to prevent ill Consequences, the Managers think his Lordship must, as all other Persons do, give his Testimony upon Oath: Your Lordships have Precedents in the Case of my Lord *Strafford* and others. The Witnesses, if Members of your Lordships House, are to be sworn at the Table, and give their Evidence in their Place.

Mr. *Serj. Pengelly*. My Lords, if it is insisted upon, that what the Reverend Prelate says should be taken as Evidence; we humbly apprehend, according to the Rule of Evidence, he is to give

his Evidence upon Oath. And this being so material an Incident, and the Prosecution having proceeded so far, we humbly beg leave to put your Lordships in mind, that it is insisted upon in Point of Testimony, that the Reverend Prelate would be pleased to be sworn.

Lord *Lechmere*. No doubt but the Reverend Prelate ought to be sworn. It was not taken Notice of. If the Prelate be called upon as a Witness, his Evidence must be upon Oath.

Bishop of *Oxford*. My Lords, I should be very sorry to give any Offence to your Lordships; if the honourable Managers insist upon it that I take my Oath, and your Lordships direct me to do, I am as willing to give my Evidence upon Oath, as without it. I submit it to your Lordships, whether you will look upon the Journals, to see how the Precedents stand.

Lord *Lechmere*. If it be insisted upon to look into the Journals, the Parties must withdraw.

Thereupon it was waved, and the Bishop sworn.

Bishop of *Oxford*. My Lords, for the Advancement and Encouragement of Learning in the University of *Oxford*, I remember my Lord *Macclesfield* some time since, told me he was willing to allow considerable Salaries to Persons that were studious and sober; and that this should be done for the Advancement of any Sort of Learning in general, without restraining it to any particular Science or Faculty, and without any Relation to Party, provided the Persons were worthy: And I desire Leave to own to your Lordships, that otherwise I would not have had any Concern in it. I did, my Lords, recommend several Persons, whom I thought proper Objects of his Lordship's Bounty; and at his Lordship's Request, enquired the Characters of others, who had been before recommended to him. I have Reason to believe that several of these succeeded in his Lordship's Favour, and received bountifully from him. I dare not, at this Distance of Time, charge my Memory with particular Sums, but believe that the noble Lord assured me, he was willing, in the whole, to lay out this way, four or five hundred Pounds a Year. This, as near as I can remember, is the Substance of what I said before.

Mr. *Robins*. My Lords, I shall presume to take up very little of your Lordships Time, in observing on what has pass'd at this solemn Assembly of the two Houses of Parliament.

The Occasion of it has been to examine into the Conduct and Behaviour of a Member of your own august Body, during the Time he had the Honour to serve his most sacred Majesty in the high Office of Lord Chancellor.

And the Commons have faithfully discharged their Part, by omitting no one Circumstance or Ingredient, that could possibly serve to heighten and aggravate the Crimes they have thought fit to lay to his Charge.

But whether after all, the Mistakes, the Inadvertencies, the Example of others, and the Frailties even of human Nature itself, are not the whole, the Sum total of all this solemn and pompous Tryal, will I believe with many remain for ever the Question.

'Twould not perhaps be for the Service of this noble Earl to say, that every Step he took, every Advance he made, for the Benefit and Relief of

the Suitors of the Court where he presided, was the best that could possibly have been invented; 'twill, we hope, be sufficient to say, that he sincerely thought them the best: And if better have been since found out, which have prov'd more effectual to the same end, it only proves him not to have been infallible, which surely is no Crime.

And if the Actions of his private Life, his Justice, his Piety, his Charity, and his Compassion for others, may be allowed to cast any Light or Reflection on his publick Conduct and Behaviour, I believe, my Lords, I may presume to affirm that those who are acquainted with his Innocence in the one, will never be brought to think him criminal in the other.

My Lords, I am afraid many are the Abuses, the Corruptions and the Evils which have sprung up in our Courts of Justice, even to the Disparagement and Discredit of Justice itself. And Complaints of this kind have been made in almost all Ages, though at the same time they have been justly plac'd to the Account of some of the lowest, and most inferior Officers and Ministers, which are necessarily and unavoidably made use of in the Dispensation and Distribution of Justice.

And if an effectual Method of Cure could be found out for these; if those who are to give the last Hand to the Completion of Justice were pure, the Streams would then run clear and undisturbed to the end.

But, till that is done, till Means are applied for the purging and clearing these Channels, thro' which Justice must be conveyed, 'tis no wonder that the Fountains themselves look as it were muddy, and polluted by Reflection.

But, my Lords, how desirable soever these Ends may be, they are only the Work of the Legislature; a Chancellor, or a Judge, may sit by and lament, but they cannot help them.

They are only to be effected by that Power, which has a sort of Omnipotence; and when they are effected, I believe none will rejoice and congratulate themselves more, than the many learned, great, and upright Men, which preside in our several Courts of Justice.

In the mean time, my Lords, as the Sentence which is pray'd against this noble Earl, will be of little Avail to stop the Mischief; as 'twill in some sort be a Punishment of the Innocent, and letting the Guilty escape: We are too well acquainted with your Lordships just and righteous Proceedings, to be in any Pain for this noble Earl.

Let selling of Places, taking of Presents, or any other the known and usual Profits attending great Preferment, be for ever abolish'd by a plain and explicit Law. And I believe I may presume to say, that no Complaints of this kind will ever be made more; that *Westminster-Hall* will never again be named in an Impeachment, and that your Lordships will have no Trouble of this kind for the future.

But this, my Lords, I am sure I may venture to say, and I will say no more; that if it had been the Fortune of this noble Earl to have liv'd in such happy Days, his Name would never have been transmitted to Posterity in an Impeachment.

Mr. *Strange*. My Lords, we are now come to the Close of the Defence, wherein to avoid Confusion, I have hitherto confined my self to the particular Part which it was my Duty to open;

your Lordships will therefore permit me to take Leave of this august Assembly with some few short Observations both upon the Charge and the Defence.

Your Lordships did for four Days successively sit to hear this noble Earl arraign'd as the most corrupt, oppressive, and avaritious Person upon Earth: It was done too, my Lords, in a Manner, from which I should have thought the Relation he bears to your Lordships would have been a sufficient Protection; and without which the honourable Managers might very well have discharged their Duty to the House of Commons, in laying the Case before your Lordships.

But, my Lords, whatever Resentment this Treatment of one of your own Body might raise in your Lordships, I must for my own Part confess, that I heard it all with Pleasure; as it was an open Acknowledgment, that all honest Art and legal Liberty were necessary in aggravating the Charge, and possessing your Lordships with that Opinion of the noble Earl, that the Gentlemen of the House of Commons desire you would entertain.

My Lords, the Charge in one general View consists of an Accusation against the noble Earl, either for doing what his Predecessors did before him, or for not doing what it is not pretended they ever did: A singular Misfortune to this noble Person, that the following such great Examples should in every Instance be imputed to him as a Crime.

As to the accepting Presents for Offices, my Lords, we have fully proved to your Lordships, that the same was done by the Predecessors of the noble Earl within the Bar; and we must humbly insist, that if the Statute of *Edward VI.* be taken as laying a Restraint upon that Practice, yet having put the Case, and said what should be the Consequence, your Lordships cannot go out of that Statute to punish the noble Earl.

My Lords, it is the Misery (I may say the Slavery) under which other Nations groan, that the Punishment for Crimes is arbitrary and variable, and that he who commits the smallest Offence may be put to undergo the most rigorous Punishment; but God be thanked, my Lords, *he hath not dealt so with this Nation*; but that *this People hath Knowledge of the Laws*; Crimes here are stated, and so, my Lords, are their Punishments; and give me Leave, my Lords, to say, that this is one of the main Channels through which our Ancestors have deliver'd down to us that Liberty, which is the Glory of this, and the Envy of all other Nations.

My Lords, the Act under your present Consideration puts the Case of accepting Money for an Office, and says, the Consequence shall be the Loss of Nomination: There are no Words that declare Offices were not saleable by Law, or that they shall not be saleable for the future, upon which to found a Prosecution by Indictment or Impeachment; though if such Words were in this Act, I should still humbly insist, that as well upon an Impeachment as upon an Indictment, the Statute, and that only, must be the Guide in ascertaining the Punishment.

My Lords, the Articles have bestowed many Epithets upon this Action; such as illegally, corruptly, extorsively, &c. But your Lordships will not find them in this Act of Parliament.

And as to its being an Offence at Common Law, give me leave, my Lords, only to put you in Mind of three Proviso's in this Act, which speak the contrary in the strongest Terms. The first is the Clause which confirms all Bargains then made, and which were to take Effect at a future Day. The next is a Declaration to what Offices the Act shall not extend, some whereof are of a publick Nature, as Keeper of a Forest, Manor, &c. And the third is that which takes Notice, that by Law the Judges might dispose of Offices, and therefore leaves them to the full Liberty they had before the Act.

And if in this Impeachment we stand clear as to the Selling of Offices, then no Acts or Omissions towards raising the Price (if any such had been proved) will make the Earl criminal, which is the whole of the Charge.

My Lords, your Lordships were told in a very moving Manner, that the noble Earl was pursued hither by the united Cries of Widows and Orphans—— But we have heard none: No Instance has been given of any one Preference in Judgment, of one Penny taken during the whole Course of his administering Justice to these Kingdoms, or of any one voluntary Complaint that has been made against the Earl; and yet, my Lords, he has been represented as if his Crimes were full blown, as if he had divested himself of Humanity, and taken Pleasure in the Misery and Distress of his Fellow Subjects; as one, whose only Motive of Action was inordinate Gain, and wicked Lucre; and as one overtaken by the Commons, triumphing in the Luxury of unpunish'd Crimes. You have been told too, my Lords, that *in him* Oppression usurped the Seat of Justice; that *by him* the Beauty of Justice was deformed, and *through his Means* Justice stood afar off, and Equity could not enter.—How little Ground, my Lords, there was for these Complaints, may, I think, be fairly inferred from the Defect of Evidence in this Particular, since after the strictest Scrutiny, both into his publick and private Life, your Lordships have not had one Witness appear at your Bar against him.

But, my Lords, since the Cries of Widows and Orphans were so much mentioned by the honorable Managers; we, who are Council for the noble Earl, thought it our Duty to shew your Lordships, that those Cries were not *against* him as an Oppressor, but *to* him as a Reliever. And how little soever this noble Earl thought of having an Account of these Matters brought to your Lordships Bar, yet surely, my Lords, this is now a Circumstance, under which it is lawful *for the left Hand to know what the right Hand doth*. And these Acts of Charity and Generosity, which were ~~not~~ treasured up for your Lordships Bar, but for a greater, are however proper to appear in this Place, in Vindication of the noble Earl against a Charge of Covetousness and Corruption.

And now, my Lords, give me leave to add, That tho' the private manner in which these Charities were performed, has made it necessary for us to enter into a particular Account, and an Account that takes in some of them only; yet the noble Earl has a Merit to plead, of which I am sure there is no Occasion to call a Witness. Your Lordships all remember the Time when he presi-

ded in the Queen's Bench, and saw (unmoved) the Tide of Preferment rolling towards a distant Shore. The true Interest of his Country in the present Royal Family was then his steady Pursuit, and his Merit consisted in advancing it to the utmost. And his Majesty, who was best able to judge of the Greatness of his Services, thought they deserved a Reward proportion'd to the most exalted Merit, and therefore added him to your Lordships Body.

E. of Macclesfield. My Lords, I beg Leave that I may have the Liberty to lay before your Lordships some Observations on the several Parts of the Evidence given on both Sides.

Your Lordships will easily imagine, that a Charge of this Nature must have affected me very much, and the great Fatigue I have undergone hath not allow'd me the Liberty to consider every Part so as to make the proper Reflections fit to lay before your Lordships.

I hope your Lordships will give me a little Time to recollect my Thoughts; that I may speak in such a Manner as is fitting to your Lordships. I desire your Lordships will give me leave to make my Observations on *Monday* next.

*Then the Managers and the Council withdrew; And the House adjourned to Monday Morning next, the seventeenth Day of May.*

Monday the seventeenth of May, 1725.

The Eighth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence, as also the other Proclamation, that all Persons concerned were to take Notice, that *Thomas Earl of Macclesfield* now stood upon his Tryal; and they might come forth in Order to make good the Charge.

Lord Ch. Just. King. Mr. Serj. Probyn, you may proceed.

Mr. Ser. Probyn. My Lords, I am humbly to ask your Lordships Pardon for some Omissions we have made in the Evidence we were instructed to lay before your Lordships in Behalf of the noble Lord impeached the last Day we had the Honour to attend your Lordships upon this Occasion; we had some Witnesses to offer more than were examined at that Time, and we hope your Lordships Indulgence will continue to hear them now; they are but very few, but yet such as we apprehend are extremely material to the noble Lord's Defence. The last Evidence we laid before your Lordships related to several Charities given by the noble Earl, in order to shew that he was not of that avaritious Temper as hath been represented in Support of this Prosecution; and that the constant habitual Course of his Life and Actions hath been directly contrary to any Disposition of this Kind; but we apprehend it would still have greatly added to the Weight of this Evidence, had it at the same Time appeared to your Lordships what the Funds were out of which these Charities arose; that the real Estate which this

noble Lord hath purchased, does not amount to more than 3000 *l.* a Year, and that his personal Estate scarce exceeds 2000 *l.* When we have shewn this, it must satisfy your Lordships, that the noble Earl hath been much more charitable, than according to his Circumstances he could afford. There is another Thing I beg leave to take Notice of, to obviate an Objection I am apprehensive we shall hear of from the other Side; and that is, that these Charities were not given by the noble Lord out of his own Pocket, in regard there is a Sum of Money called Box-Money, which is laid out and distributed in private Charities by the Chancellor every Year. But to explain any Suggestion of this Kind, we shall shew that this Box-Money, though anciently us'd to be considerable, yet of late Years it hath not amounted to more than 172 *l.* a Year: And as there hath been always particular Objects of Charity recommended to this Bounty, so this Money hath been apply'd by his Lordship in the same manner it usually was apply'd by his Predecessors; and that no Part of this Money ever went in any of those several Charities, we have already given your Lordships an Account of.

Mr. *Serj. Pengelly.* My Lords, we beg Leave, on the Behalf of the Managers, to offer to your Lordships Consideration, some Reasons why they ought not to be permitted at this Time to go into the Evidence offered, after the Indulgence of many Days, and Defence made on the Articles, and the Evidence summ'd up by the Council for the Lord impeach'd; and a Day is only given to hear the Lord himself at his own Desire, to sum up or defend himself against the Charge against him; they ought not now to be allow'd to enter into a new Defence, or to give new Evidence. It is a new Method of Practice, after the Conclusion of the Council upon the whole Evidence, to say they have more Evidence to some of the Facts. My Lords, I don't know any thing of that Nature ever allow'd, especially after the Examination closed, and an Adjournment for a Day or two. Besides, as to that Part of the new Evidence which the Council have open'd, relating to the particular Estate and Circumstances of this Earl, how can the Managers be provided to give an Answer to it? There is nothing in the Articles leading thereto; they do not charge him with having a great and large Estate, though that hath been formerly a proper Article in an Impeachment. But it is not made one in this Case; the Charge of the Commons is confined to particular Sums received. If the Managers had gone into the Enquiry of any other Sum, at least without particular Notice to him, I believe it would have been objected against by the impeached Earl. Therefore to go into this sort of Evidence, where there is no Charge by the Commons, is putting the Commons to answer what is not in Question, which if they do, must lengthen out the Tryal unnecessarily. If the Circumstances of his Estate be material, there must then be a further Time given to contradict their Proof, which possibly may be done as to his real Estate: But as to his personal Estate, how is it possible for any Man to give an Account of that? Doth not this lye in his own Knowledge entirely? No Body can open his Chests or Cabinets at Home: So that it is

impossible we should know any more of it than what serves his Purposes. Therefore, my Lords, we submit it, whether they shall be permitted to go into this Sort of Evidence, or whether your Lordships will enter into any farther Examination.

Mr. *Lutwyche.* My Lords, We think it is of great Consequence to your Lordships, when an Evidence hath been so full, and with so great Patience heard to every particular Article; when that Evidence hath been summ'd up, and enforced by Council, and every Particular of the Articles animadverted upon; we think there is no Precedent in any Court of Justice, where new Witnesses have, in such a Case, been permitted to be examined. Witnesses here have been produced; there hath been an Interruption of two or three Days for the noble Lord, at his own Desire, to make his Observations on the Evidence; to offer now to produce Witnesses that they had omitted to produce before, is perfectly new and unusual. I suppose they had these Witnesses in their Briefs; and if they had thought fit, they might have called them. I know of no Instance of the like in any Court of Justice; if the Gentlemen of the other Side will tell us the Precedent, they may. I think it is of dangerous Consequence, not only in this Case, but in all other Proceedings in Courts of Justice. If your Lordships think fit to let them into one or two Witnesses, I don't know why your Lordships, with equal Reason, may not let them go over another Course of Evidence.

My Lords, as to the other Matter about this noble Lord's Estate, that is not a Matter insisted upon by any Evidence that we have given; and I submit it whether it is proper or any Way conducive in this Case, to any Thing that is material for your Lordships Judgment in this Matter, for this Reason, because if it was material, it is impossible for us to know the Truth of it. We have no Right to examine this noble Lord upon Interrogatories as to his Estate, especially as to his personal Estate; a Man may in these Days have the Opportunity of being worth 100,000 *l.* and People not know where it lies; as to his real Estate it might be known if it was material, but we submit it whether it is incumbent upon us to inquire at this Time of Day into the noble Lord's Estate.

It is impossible in the Nature of the Thing that your Lordships should have that satisfactory Account, or that we should have such Notice of it as is proper to make any Defence of it to us material; but we submit it that it is not material at all, and therefore we hope your Lordships will keep to the Rule kept in all Cases in all other Courts of Justice where People have made their full Defence, or else there would be no End of Things.

Mr. *Plummer.* My Lords, we did not lay to the Charge of this Earl that he was possessed of a great Estate, we have only laid to his Charge what he hath unjustly possessed, we have only charged him with Matters of Fact, which we think we have made out, and therefore hope your Lordships will oblige him to answer to that, and to that only, and not go to another Thing we have not charged.

Mr. *Serj. Probyn.* My Lords, we apprehend it is



is frequently practis'd, that where Council have omitted material Evidence, even after Summing up, the constant Indulgence of the Courts below lets them go into Evidence to supply that Omission.

We take it to be our own Fault. We had in our Instructions, and it is in your Lordships Breast, whether we shall not supply that Omission, we shall not run into a long Evidence, our Witnesses are but two or three.

Dr. Sayer. My Lords, I beg leave to think, that as we point out a particular Fact, distinct from any we have examin'd to before, there can be no apprehension of any Danger at all; and if, as the Gentlemen have inform'd your Lordships, it is what is usual in Courts below, that such Omissions have been always permitted to be supply'd, your Lordships sure will act with equal Equity in this Case. What we undertake to prove is the Circumstance of his Estate; and though the Gentlemen of the House of Commons did not make it a Matter of Charge in their Articles, yet in his Answer the Noble Earl takes Notice of it, and it will shew that the Earl had not his Heart so intent upon Gain, when it shall appear that his Fortune is so much less than the World might have imagin'd it to be, and when at the same time we shew his Generosity, and that by means thereof his Estate was much lessen'd and check'd.

I would take Notice of the other Matter, with regard to the Evidence of the Charity: It is only to explain and prevent a Mistake, lest it should be imagin'd that these several Instances of Charity were out of the Box-Money, or Fund for Charity in the Court of Chancery. But, I believe, we need not trouble your Lordships with this, for that the Noble Earl is so well satisfy'd with the Integrity and Honour of the learned Managers of the House of Commons, that he is under no apprehension to have that turn'd upon him. The principal Matter is relating to his Estate.

As we have in great Measure left it to the Earl himself to sum up the several Evidences, and have done but little ourselves, the Objection of the Evidence being clos'd and summ'd up is not so strong as in other Cases; we submit it, whether your Lordships will not indulge us so far as to produce a Witness or two to this Matter.

Mr. Com. Serj. My Lords, we do not ask this as a Matter of Right, but as a Matter of Indulgence. I own the Rule that the Gentlemen of the House of Commons have laid down is a general Rule for the Government of Evidence.

We can't controvert that, but I believe it will not be controverted on the other side, that such a piece of Indulgence was hardly ever deny'd, and we hope your Lordships will not deny it upon this Occasion.

Earl of Macclesfield. My Lords, I don't apprehend that this is a thing so very extraordinary, or so dangerous, as hath been represented. It would be extremely severe if, in a Cause of so great Length, and so much Fatigue, I should have Witnesses ready to give your Lordships an Account of some Facts material for my Defence; and my Council happening not to call them, although they were attending, and there should be a certain Form that should exclude me from having the Benefit of their Evidence; I don't know what this is founded upon, I never heard of such a Form or Rule.

There is no Instance that where Council hath been summing up the Evidence, and, before the other Side have replied, an Omission hath been discover'd, that that Omission hath not been allow'd to be supply'd. And,

I appeal to my Lords the Judges, Whether they have ever known this piece of Indulgence denied upon any Tryal whatsoever in the Courts below. My Lords, with great submission, the Evidence is not yet finish'd; I am sorry I must yet give your Lordships the Trouble of observing a good many things that have been hitherto omitted: This is a Matter the Council had Directions about, the Witnesses were attending, but they were omitted to be call'd for; I hope your Lordships will not, for such a Mistake, exclude me the Benefit of their Testimony: Had it been calling fresh Evidence to any Matter that hath been examined to before, there might possibly be some Grounds for an Objection of this kind; but I mean only to call one or two Witnesses to fresh Matter, that hath not been enquired into before. There hath yet been no Witness examined as to the Box-Money, or my real or personal Estate; and yet those two Things are material, and it may greatly turn to my Prejudice if I have not the Liberty of producing this Evidence in relation to them.

It hath been represented that I have an Estate vastly more considerable than in Truth I have; and this Matter of the Box-Money, as I have been inform'd, gave Birth to a Report abroad, as if what I gave for Charity was out of that Fund.

As to this latter, I dare trust the Candour of these Gentlemen, that they do not believe it; and if they do not insist that what I gave was out of the Box-Money, it will be needless for me to prove that it was not. But as to the other Matter, I hope I shall not be precluded from having those Witnesses examin'd, because it was before omitted; wherefore I humbly beg your Lordships Directions thereupon, whether I shall be at Liberty to lay their Evidence before your Lordships or not.

Mr. Onslow. I would beg leave to set your Lordships right as to that of the Box-Money. The Noble Lord insinuates as if something of that had been mention'd by the Managers; nothing hath been mention'd of it, either by the Evidence or by the Managers.

Earl of Macclesfield. No, I beg leave to explain myself; I did not say the Managers had insisted upon it, but only said it is a Matter that I have heard without Doors; but I believe I may rely upon their Candour that they will not make it an Objection now, in case they oppose my giving Evidence to the contrary.

Mr. Lutwyche. My Lords, I am a little surpris'd, why the Noble Lord mentions this of the Box-Money, when not one single Word hath been said of it, either by the Evidence or by the Managers: Why then should this Noble Lord himself mention it? And why should he call Evidence to a thing that hath no manner of relation to any thing that hath been said? If his Lordship will please to give us leave to reply; if we then say any thing of it, he may then give an Answer to it; but it is improper now to be giving an Answer to an Objection that was never made, and to which the Evidence hath not said one Word.

*Lord Steward.* If the Noble Lord thinks this a Point to be insisted on, it is then necessary for all to withdraw.

*Order'd to withdraw, which was done; and being afterwards called in again,*

*Lord Chief Justice King.* Mr. *Serj. Probyn*, it is the Opinion of their Lordships, that the Evidence offer'd by the Earl of *Macclesfield*, with respect to the further Account of his Charity, be not now admitted; and they are likewise further of Opinion, that the Earl of *Macclesfield* be not now permitted to give Evidence of the Value of his Estate, either real or personal.

*Earl of Macclesfield.* My Lords, your Lordships were pleas'd to indulge me to this Day to lay before your Lordships what I had to say in my Defence, against the Charge brought against me by the Commons, and against the Proof supporting that Charge, which your Lordships with so much Patience heard. From the Time your Lordships were pleas'd to allow me this Liberty till now, I have apply'd my self with the utmost Diligence to prepare my self for my Defence.

To this End it hath been necessary to look over the Notes, taken of the Evidence given on both sides, and likewise of what was said by those Gentlemen who are Managers for the House of Commons. I find it very necessary to lay before your Lordships many Observations on the Evidence, which depend upon an exact comparing of them together. It being a matter that hath taken up so much Time, and there being such a Distance between the Evidence given on the one side and the other, I have been employ'd wholly from the last Time till now in the Consideration of it; and I can say with Truth, I have not slept five Hours these two Nights, and yet I have not been able to get through it, and I am not now prepared to lay before your Lordships what I have humbly to offer for my Defence; there are many Things exceeding material to be submitted, and I beg therefore, that your Lordships will indulge me a farther Time, so that I may be able to do it in such a manner, as may set the Evidence and Observations upon it in such a light as your Lordships may pass a proper Judgment. I don't do this out of Delay; I believe your Lordships will easily imagine I should be glad to have this matter over, whatsoever the Event may be, for I am quite spent, and my Strength and Spirits wasted with the Fatigue I have already undergone. My Lords, I have been so far from any Delay in the Course of this Prosecution, that when I put in my Answer, as your Lordships were inform'd by one of the Gentlemen of my Council, that tho' it was not finish'd till between three and four a-Clock in the Morning, yet I chose to get it ingross'd, and put in the same Day, rather than there should be the least Appearance of any Delay on my Part; and I do not know whether by endeavouring so very much to dispatch this Work, I have not render'd my self unfit and unable to go on with it: Human Nature can hardly bear what I have gone through.

At my Years, if I should undertake to do it by to-morrow, I am afraid I should sink under the Weight of such a Task, and not be able to come before your Lordships prepared as I ought to be; therefore I hope your Lordships will be pleas'd to

allow me till the Day after; the Fatigue I have already undergone has been very great, and I hope your Lordships will allow me such a Time as you will think competent; the Work I have to do will take up a great many Hours; there hath been Variety of Evidence, I hope your Lordships will indulge me till *Wednesday*; it is of very great moment to me, and I am sure I should be unwilling to mispend your Lordships Time, and delay this Matter unnecessarily: It really gives me the greatest Uneasiness to find my self in that Condition, that I cannot think of being able to do it sooner; I was before afraid that I should not be able to do it by this Day, but yet resolv'd to do all that was possible for me, and therefore declin'd asking then for any longer Time.

I hope your Lordships will indulge me; if your Lordships knew the Fatigue I have undergone, and the Effect it hath had upon my Health, I am sure in Humanity you would make no Difficulty of granting me farther Time to prepare my self in a proper manner, in a Case that is of so great moment to me; and I hope the Gentlemen of the House of Commons will not be against it; if they should overpress this matter, I don't know but the Fatigue of it may bear so hard upon my Life, as to save your Lordships the Trouble of passing any Judgment upon this Occasion.

*Mr. Serj. Pengelly.* My Lords, we don't apprehend the Lord properly applies to us in this Instance.

*All Parties were directed to withdraw, which being done*

*The House adjourn'd till Wednesday Morning Ten a-Clock, the 19th of May, 1725.*

Wednesday, May 19. 1725.

*The Ninth Day.*

THE Lords being seated in their House, the Serjeant at Arms made the two usual Proclamations, as on the former Days.

*L. Ch. Just. King.* Mr. *Serjeant Probyn*, if you please to proceed.

*E. of Macclesfield.* My Lords, I am first to return my most humble Thanks to your Lordships, for the Time you have been pleas'd to indulge me with, for recollecting my Thoughts, and looking over the Evidence that has been offer'd on either side, during the Course of this tedious Proceeding; that I might be able to put those Observations I have made upon it in such a light, as became one who was to speak in a Case of so great Importance, at your Lordships Bar.

My Lords, I have been under some Misfortunes in this Prosecution; your Lordships must, no Doubt, have observ'd the Disappointments I have met with, in Questions I asked of some Persons, who appear'd as Witnesses in the Course of this Tryal, which it was impossible I could have had any Inducement to propose, but from my own Knowledge of the Answers that should have been return'd. My Council, thro' the great Hurry that usually attends Proceedings of this Nature, happen'd

happen'd not to be instructed in some Particulars, that were extreamly proper to have been laid before your Lordships upon this Occasion: Besides that, the Variety of the Facts, continu'd to be given in Evidence from one Day to another, has in this particular Case been carried on to such an unusual length, that they have not been able in the End to make themselves so perfect Masters of the Evidence, as the Importance of the Case requir'd.

I should trouble your Lordships with an Apology for my own Inability to supply this at present, both from the extream Fatigue I have undergone during the whole Course of this Prosecution, as because that my last Illness has broke my Memory to a great Degree. But whatever Difficulties I have labour'd under, when I consider your Lordships are my Judges, I cannot doubt but your Candour and Goodness will have a due Regard to them, and make Allowance for the Want of Order or Accuracy in any thing I have to lay before you; and therefore, rather than ask any more Time of your Lordships for preparing my self, I will endeavour to go on now as well as I can.

My Lords, the Charge brought against me is very heavy, as laid in the Articles, and highly exaggerated by the Gentlemen that are appointed Managers by the House of Commons.

That which I think is charg'd as the Foundation of the whole is,

My entertaining wicked and corrupt Purposes, to raise and procure to myself excessive and exorbitant Gain and Profit.

This it is that hath made me extorsively and illegally take Money, upon the Admittance of Matters, and Disposal of other Offices.

And the being set upon the Gain arising from the Masters Places, with the Desire to advance it, or keep it up, is represented to be the Source of all the rest of the Things complain'd of, which seem to me to be charg'd only as Contrivances for that Purpose.

This is such Corruption of Heart, and carries with it such a Malignity, that it makes every Action and every Omission criminal: Every rash Word, every Neglect or Imprudence, nay Things perfectly innocent in their own Nature, or perhaps commendable, are so infected by it, as to deserve the severest Censure and Punishment.

Whether I wait in Expectation of the Application of the Suitors, with Respect to *Dormer's* Deficiency, or of my self endeavour to get it made good, or even pay my own Money towards it, it is all one, so wicked a Heart corrupts all.

And the Violation of my Oath as Lord Chancellor, and of the great Trust in me repos'd, contrary to the Duty of my Office, is made the Aggravation of almost every Article.

I shall endeavour to shew your Lordships, that the several things charg'd upon me are either not true, or not criminal; or if your Lordships shall judge otherwise of them than I do, yet that they were the Effects, not of Wickedness but of Mistake; and if I have ever done any thing for the Service of my Country, of the Constitution, of his Majesty, and of the Royal Family, and the present Establishment, and for the Administration of publick Justice, it might not be unsuitable to

the unparallell'd Goodness of this Reign, for your Lordships to have Compassion upon the Errors, Mistakes and Weaknesses of the faithful steady Servant of a Prince, whose Mercy has been so often extended, in so great a Degree, to the highest Crimes of his bitter Enemies.

Before I enter upon my particular Defence, I beg leave to take Notice of something that has been said with Relation to the Answer which I have put in to these Articles of Impeachment, as containing a Plea of a Pardon at the same Time that I insist upon my Innocence; and it's not being a full Answer to all the particular Charges in the Articles. As to the first, my insisting on his Majesty's most gracious, general and free Pardon for all things before the twenty fourth of July 1721.

My Lords, I hope, and am my self of Opinion, that I have not done any thing that is criminal, or needs a Pardon.

But when so many Gentlemen of Learning and great Parts, undertake to make out, that That is a Crime which I thought and still think not so; should I opiniatre to that Degree, and be so confident that your Lordships will be of my Opinion, as to refuse the Benefit of a Pardon, which his Majesty has so graciously granted to all his Subjects?

When little Imprudences, and so many Omissions, and even idle Words, loose Talk, and unguarded Expressions, are laid to my Charge as Crimes, and made the subject Matter of an Impeachment; and some of them charg'd without mention of any Time, or the Name of the Cause in which it is pretended they were spoke, or any other Circumstances by which I might be enabled, either my self to recollect or to make Enquiry of others, in order to prepare for my Defence; it had been Folly in me not to have taken Advantage of the Pardon.

And as for the Reflexion intended, to expose the Absurdity of pleading Innocence and a Pardon to the same Offence; what is more consistent than to say, I ought not to be punish'd, because the Fact charg'd is no Offence, or if it be one it is pardon'd? But had the Gentleman who made it been pleas'd to have read the last Act of Grace carefully through, he would have found that it expressly provides, that the Pardon shall support the Plea of Innocence, and upon *Not guilty* pleaded, the Act may be given in Evidence to prove the Person not guilty. And, in the Notion of our Law, it wipes away whatever Guilt there was, and leaves the Person innocent, that is, as a very great Lawyer and a very wise Man expresses it, *it takes away not only poenam but reatum, the Guilt as well as the Punishment.*

As to the Reflexion made upon my Answer in another respect, as if it were not full and direct, and that in Chancery, the Court where I had presided, it would be held an insufficient Answer. Probably it might be so; but that is, because that a Plaintiff there has a right to require a Discovery of all such Facts as are material for his Advantage, upon the Oath of the Defendant. And therefore the Answer is not only the Parties own Defence, but it is to supply the Plaintiff with Evidence, who therefore may except to it as insufficient, so far as it is short of answering to, and gi-

ving an Account of all, of every minute Circumstance that he charges.

But do they imagine that to be the Case in a criminal Prosecution? or that the Defendant there is obliged to furnish Evidence, or to confess any thing that may tend to affect or charge himself? No, my Lords; the Answer there is only for the Defence of the Person accused: And not guilty is a full Answer.

And, my Lords, I insist upon it, I have given a full Answer to all the Articles at the end of my Answer, where I have pleaded the general Issue, and in express Words said, that *I am not guilty of all or any the Matters contained in the Articles, or any of them, in manner and form as they are therein charged against me*; which is of it self a direct and full Answer, without more.

And tho' I have set forth other Facts, it is only where I have thought some things might be farther explain'd. But there is no need to make any Proof of a Word in my Answer, if the Charge in the Articles is not supported by the Evidence given against me.

And I still hope your Lordships will be of Opinion, that tho' some of the Matters mention'd in the Articles are proved, and indeed some are expressly admitted by me, and others never disputed; yet that none of them is admitted or proved in *such manner as it is charged in the Articles*.

Having said thus much, I proceed to consider what has been offer'd in *Proof* against me.

My Lords, The Preamble of the Articles is intended for an Aggravation of my Crimes, by shewing what Oath I had taken, which I had violated; and what Favours I had receiv'd from his Majesty, and was not satisfy'd with them.

As to the last, give me leave to say, that I can never express the Sense of my Heart for his Majesty's Favours and Bounties, and that it ought to be a high Aggravation if I have abused them.

I pretend to no Merit, but that of a Heart full of Duty and Zeal for his Service; but his Royal Grace and Goodness has exceeded, not only my poor Services, but even my Desires and Wishes.

And whatever becomes of me, in whatever State of Life I am, my Gratitude and Duty shall never abate.

As to the Violation of my Oath, no such Crime is made out against me.

The Oath of Office taken by the Chancellor when he enters upon that Office, has no relation to what is laid to my Charge: I have set it forth *verbatim* in my Answer, and no Argument has been attempted to be drawn from it.

But it was said the other Day, that I had taken an Oath upon the Statute of the twelfth of *Richard II.* which I had forgot, both in my Answer and in my Conduct.

As to my Answer, I beg leave to observe, that the Answer is suited to the Charge. I am not charged in the Articles to have ever taken any Oath upon that Statute, nor is the Oath suppos'd to be taken on the third of *November* at all mention'd.

The Words of the Preamble, which is the only Part of the Articles that mentions my taking any Oath, are these:

“ And whereas *Thomas Earl of Macclesfield*, in or about the Month of *May*, in the Year of

“ our Lord 1718, by the Grace and Favour of his Most Excellent Majesty, was constituted and appointed Lord Chancellor of *Great Britain*, and did thereupon take the usual Oath for the due Execution of that High Office, whereby he did swear well and truly to serve our Sovereign Lord the King and his People, poor and rich, after the Laws and Usages of the Realm, and such other Oaths as have been accustomed; and the said Earl continu'd in this great Office, &c.

Where the other Oaths accustomed, as well as that particularly described, are confined to what I did thereupon take, that is, upon my being made Chancellor in *May* 1718. At least to my poor Understanding it appear'd so. Nor did I at all imagine, that it referred to what was done the third of *November* after, which was but the same as had been done the third of *November* before.

And accordingly my Answer is confined to the same Time that I was sworn Lord Chancellor before his Majesty in Council, the fourteenth of *May* 1718. when I took the Oath of Office set forth in the Answer; and at the same time took the Oath of Allegiance and Supremacy. And there is no Pretence that I took any Oath upon the Statute of *Richard II.* at that Time.

The Words of the Answer are.

“ That in the beginning of *May*, in the Year 1718. he the said Earl was, by his Majesty's great Grace and Favour, appointed Lord Chancellor of *Great Britain*, and was sworn before his Majesty in Council the fourteenth Day of that Month; when the following Oath, being the usual Oath of Lord Chancellor, was administred to him, *viz.* you shall swear, &c. And the said Earl, at the same Time, took the Oath of Allegiance and Supremacy, but no Oath of Office besides that above set forth.

My Answer therefore plainly relates to what was charged, and my taking no Notice of any Oath upon this Statute, ought not to be imputed to Forgetfulness, but to its not being charged. It is not charged, and therefore not answer'd to.

But it is now insisted upon, and great Stress laid upon it, that at the naming of Sheriffs, which is done in the Exchequer upon the third of *November* every Year, I took an Oath upon the Statute of 12 *Richard II.* which extends to the Disposal of the Office of Masters in Chancery.

To judge of the Truth of this new Charge, your Lordships will be pleased to consider what it is that is yearly done the third of *November*, upon that Occasion of naming of Sheriffs.

The Managers were not pleased to open what pass'd every Year upon the Nomination of Sheriffs, which had been proper before they called the Witness to prove it; if they had, it might have saved me the Trouble of asking any Questions.

But the Examination, and the Testimony of a Witness that spoke indistinctly and low, tended, as I thought, to have the Statute enter'd in the old Book of the Exchequer in obsolete French, and so ill read as hardly to be understood, to pass for the Form of an Oath then administer'd

administer'd upon the Statute which had been just before read in English to your Lordships at the Table; and so it might be taken to be an Oath conceived in the Words of the Statute, extending to all Nominations of Officers, and to all Times, and not confined to that Occasion.

I did therefore ask some Questions, not to quibble away an Oath, as one of the Managers was pleased to express it, but to have the Matter laid before your Lordships in it's true Light, and which came out to be thus.

The Lords of the Privy-Council and the Judges, being assembled for naming Sheriffs for the following Year, at the Time and Place appointed for that Purpose, the Act of Parliament of 12 Richard II. is read, directing several Persons to be sworn, concerning their naming of Sheriffs, and of some other Officers specify'd in the Act, and with general Words extending to more; then an Officer gives a Bible to every one of the Privy-Counsellors and Judges present, who all, one after another, kiss it; but nothing is said to them by the Officer or any one else, nor are any Words spoken by them.

I know it has been much doubted how this could be called Swearing, or taking an Oath.

But that is not at all what I insist upon.

There being something sacred in the Ceremony, I agree the Action should be consider'd as a solemn Undertaking in Nature of an Oath, to observe that Statute in the Business we were then entering upon; and so it is an Engagement to proceed then to name Sheriffs according to the Direction in that Statute.

And accordingly this is repeated every Year upon the like Occasion, though the Persons are the same, and has been so by me for seven Years together before I was Chancellour, and for as many since.

But to extend this farther than that Occasion, is, I humbly insist upon it, going beyond what the Action then done imports.

The Statute plainly relates to Nominations or Elections, where Numbers of Persons are called together to name Officers; the very reading the Statute shews it, and when I come to speak of the Construction of that Act of Parliament, it will be yet more plain.

And when it provides, "That the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King's House, Chamberlain of the King, Clerk of the Rolls, Justices of the one Bench and of the other, Barons of the Exchequer, and all others, *who shall be called* to ordain, name, or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King shall be firmly sworn, &c." I take it to mean that they shall be sworn when they are so called together, and met. And the Practice is accordingly.

There are some old Statutes that lay, that the Chancellor with the Council shall appoint Justices of the Peace, the Treasurer with some others shall name Customers, &c. But the Usage at this Time is, (and it has been so for some Hundreds of Years) that the Naming of Justices of the Peace, is in Fact in the Chancellour only; of Customers and Comptrollers, in the Treasurer; and many of the Persons named in the Statute

meddle not with naming any of the Officers comprized within either the particular or general Words.

If therefore, my Lords, the Bishops were desired to draw up a Form of an Oath to be taken upon this Statute by all the Persons attending on the third of November for the Naming of Sheriffs, I presume they would confine the Oath to the particular Occasion.

I submit to their Consideration, whether they would draw it up so, that every one present should swear that he would observe this Statute, or not go contrary to this Statute, in the Nomination of Officers which he has not any Right or Power to name, nor is ever called to name. Whether they would frame such an Oath, whereby the Judges should swear that they would not name Justices of the Peace, Escheators, Customers, or Comptrollers, for Gift or Brocage, Favour or Affection, when they cannot name them at all, either by Provision of Law or by Usage.

I apprehend this would be an improper, if not a vain Oath.

And a constructive taking of an Oath, which is all that can be insisted upon here, ought not to be carried farther than would be proper to express in Words at length.

And therefore, as all the Persons assisting there certainly take the same Oath, and many of them have nothing to do with the Choice, or naming of any of the other Officers in the Act besides Sheriffs; and as this Action yearly repeated on this particular Occasion, shews it to be intended to relate only to Sheriffs; I have always thought that it went no farther than to oblige me, that in the Affair, which we were then entering upon, I should act according to that Statute.

And I am persuaded, that in this Case, I have the universal Concurrence of the Judgments of others. For I do not believe that ever any Person that assisted on that Occasion, had the least Apprehension of his then taking an Oath, which related to any thing but that particular Occasion.

But if they all did take an Oath, so extensive as to reach to the Disposal of all other Employments, (which is the Sense wherein I believe the Managers would have the Words of the Act to be understood,) God knows in what Guilt many of them have involved themselves.

It is a Part of the Statute, and Part of that to which the Persons called to name Officers are directed to be sworn, *That none who sues by himself, or by any other, in private, or openly, to be in any manner of Office, shall be put into the same Office, or any other.*

Will these Gentlemen urge that every Lord Treasurer, Lord Commissioner of the Treasury, or other Lords in great Employments, that give Places, or name Persons for Places to the King, and have once attended at the naming of Sheriffs, have been guilty of a Violation of this Oath, in every Instance, where they have named any Person to any Office, who, by himself, or his Friends, ever asked for the Place given, or for any other?

I can-

I cannot imagine that they will attempt to carry it so far. But if they do, I will yet presume, that your Lordships will not, by such a new Construction, condemn so many Persons that are innocent, or thought themselves so.

Hence I think my self not to have taken any Oath upon the Statute of 12 Ric. 2. which any way extends to Masters in Chancery; and I hope your Lordships will think so too.

What is the particular Meaning of this Act, and what Arguments may be drawn from the Provision therein, I shall not trouble your Lordships with at present, but shall reserve the Consideration of it for another place. But as to the Charge of violating an Oath founded upon it, let the Observations I have made, from the Frame of the Act and the Nature of the Action at present suffice.

The subject matter of the first Articles, as they stand in order, and which I believe has given rise to this Prosecution, is the taking Money for the Places of Masters in Chancery; long practised without Blame, though made my great Crime.

What has been urged from the Nature of the Office, the Oath which the Masters take, and the Commissions granted to them, together with the Master of the Rolls and the Judges to hear Causes in the Absence of the Chancellor, will not have any Weight in the Question, whether it be criminal to take Money on admitting them.

I beg leave to say, that the Office anciently was quite different from what it is now, so that it is in a manner forgot what it originally was. One Branch of thier Office anciently, and then reckoned of Importance, was the framing Writs, which are now made out by the Cursitors; and that which is their greatest Business now, there appear no Footsteps of being done by them, or any others anciently.

Their Business now is chiefly preparatory to the Determination of the Court of Chancery upon References made to them by the Court, in order to their stating Things to the Satisfaction of the Parties; or reducing the Dispute to some few Heads, in which they differ, for the easier Determination of the Court.

And that which they are most generally employed in thus, is matter of Accompts.

Very frequently the Parties, after having had the Items examined and proved, agree before the Master the whole Accompt, and almost always the greatest part of it. And if the Parties are dissatisfied, they are at Liberty, by Objections in Writing which are called Exceptions, to state to the Court the distinct Items which they dispute, by which means the Court is eased of the Consideration of all the rest of the Items of the Accompt. And the Master makes no judicial Determination; but when he makes his Report has only done the Drudgery of an Accomptant, compared Vouchers, heard Objections, convinced the Parties, as

far as he could, and then stated the whole Accompt so as he thinks is right; which at last has its Force, not from him but from the Court, which confirms it if not disputed, or examines the disputed Points if desired.

Upon References to them whether Answers are sufficient, they are to compare the Words of the Answer with the Words of the Bill, and state whether they find them full: And if the Parties do not acquiesce in the Master's Opinion, the Court takes the Trouble to make the Comparison.

They are likewise Cashiers, not of the Court but of the Suitors, and always at their Prayer.

And the Parties have this Advantage in having the Masters for their Cashiers, that they have a ready Method to compel Payment by Order of the Court, and a Commitment of the Person or Sequestration, (that is seising all their Estates and Effects,) or both, upon such Order, in a short and cheap way; whereas against other Cashiers they must be put to the Charge and Delay of a tedious Suit, if the Money be not paid.

And other Officers, whose Places are allowed to be sold, do the same Things, make Reports to State Facts on References, are Cashiers of the Money brought in, and tax Costs, which is another thing the Masters do.

As to the Oath; it is the old Oath, before the Office was so greatly changed; what Advice to be given to the King it refers to, will be hard I believe to explain, and has not been attempted; but if the Writs requiring their Attendance here were looked into, possibly it may be thought, that anciently they attended your Lordships in a manner different from what they now do, and have done from before the time of our Memory.

And as to the Commission to hear Causes in Absence of the Chancellor, that makes no more Variation in the Nature of their Office, than it doth in the Office of Clerk of Assize, (expressly allowed in the Statute of Edw. 6. to be disposed for Money) that the Clerk of Assize is constantly joined with the Judges in the Commissions of *Oyer* and *Terminer* and Goal Delivery, for the Tryal of Criminals, even for capital Crimes.

To proceed therefore to the Points of the Charge.

It is founded singly, upon the *taking Money* for admitting the Masters into the Office; and the *manner* of taking it extorsively, without reference to any want of Qualification in the Party admitted; and therefore cannot be maintained, unless the taking Money be in all such Cases criminal, or that the manner of taking or extorting it in these Cases make it so.

Therefore I will first speak to the general Question, whether taking Money upon Occasion of putting in a Master, is in all Cases criminal in itself, or by the Common Law, or made so by any Statute which subjects it to any Judgment or Punishment,

ment, which can be prayed in this Prosecution; as I have expressed it in my Answer.

And that which I humbly insist upon as to the first, that is, whether it can be said to be wicked or criminal in it self or from the Reason and Nature of the Thing, is this:

An Office may be considered in two Respects; First, with Respect to the Duty; that is, the Concern of the Publick; that the Person be duly qualified to discharge his Office well. Secondly, with respect to the Profit and Advantage; and that is merely private, and concerns the Officer only. And whilst he discharges his Duty well, without Extortion or other Misbehaviour, the Publick is little concerned in it, whether the Profit be more or less. As in those Offices, which are very numerous and of great Consequence, that may be executed by Deputy; provided the Deputy behave himself well, the Publick has never concerned it self what his Salary or Allowance from his Principal is, whether it be greater or less.

And as the Person who is put into a very beneficial Office, such as one of these, for his Life, has not any antecedent Right to the Office, and therefore not to the Profits arising thereby; and he that prefers him is not bound to give it him; therefore when he puts him into it, he in effect grants him all the Profits of the Office for his Life: And if the Officer make him a Present for it, either unexpected, by way of Thanks after he is put in; or expected, which he had told him of before; or give it at the Time, or before that he is admitted; I see not any Immorality either in the Giver or Taker. It is Money given for Profits to be received during Life.

The Publick is concerned only in the Goodness of the Officer, not how advantageous to him the Grant of the Office is, nor in the Inducement which he that appointed him had to put him in; whether Friendship, Acquaintance, Relation, Importunity, great Recommendation, or a Present.

I agree, that a Person taking a Present and putting in an unfit Person, when he knew him to be so, or had just Ground to believe him so, is criminal: Not because he has taken a Present, but because he has prejudiced the Publick knowingly: It may be an Aggravation, that he had taken Money; but the Crime is, the Wrong done to the Publick in the Person advanced. It had been the same Crime, had he done it for the sake of Kindred, or Friendship, or for Recommendation, or any other Reason.

But if a Person very well qualified be placed in an Office, and the Publick has all the Advantage from him that it can have from an Officer in that Post, and so I who placed him, have well discharged my Duty to the Publick; is it material how well I loved him, how nearly he is related, who it was that persuaded me to prefer him, or what he gave me on that Account, whether before, or after he was put in? Will any of these Circumstances make me criminal in an Action by which I served the Publick well? If the Publick have all the Benefit it can have; where is the Immorality? where is the Crime, if I have an Advantage too? Especially if Usage has in some sort annexed that Advantage to my Office, which is taken from his?

*Obj.* I know it may be objected with great Appearance of Reason, that this Practice is dangerous,

it leads to Inconveniencies; it is a Temptation to him that disposes of Places to make ill Officers, and a Temptation to the Officers to extort Money and abuse the Subjects, in order to get up their Money again.

*Ans.* But is it therefore a Crime, where the Temptation is resisted, and a very good Officer is put in, and he behaves himself perfectly well?

The Point of the Charge now under Consideration rests singly on this, that I took Money for admitting Mr. *Francis Elde* (for instance); and tho' taking Money is a dangerous Practice, and may be a Temptation to let in an ill Man, is it therefore a Crime to put in *Francis Elde*, who is not alleged to be an ill Man or any way unfit, and is really an excellent Master?

This Argument concludes, only that the allowing it to be generally practised is inconvenient, and may in the Deliberations of the Legislature be properly used to prove it fit to be restrained by a Law: But is not of force, in a Court of Justice, to prove it to be a Crime in every instance, because it may occasion a Crime in some.

Farther as to the Matter of Temptation to put in one unfit:

The Liberty of preferring Relations to Offices is a Temptation to put in Persons unfit; and without doubt has often prevailed. Supposing therefore it might be proper matter of Deliberation in the Legislature, how far a Restraint should be put upon it; yet in the mean time, is advancing a Relation to an Office which he is fit for a Crime, because in other Instances it has occasioned a Crime, or may do so, or is a Temptation to it? And would it be a sufficient Charge of a high Crime against me, to say that I *illegally* and *corruptly* put into such an Office *A. B.* my Son or my Brother? I apprehend not.

Till a Restraint is laid, the Thing may be innocently done.

If a Restraint be laid, the Law will operate upon it, so far as the Restraint extends; but farther than that, and the Consequences declared to ensue thereupon, it will remain as before.

Considering this therefore in it self, and upon the Reason of the Thing, where is the force of the Argument? You took 5000 *l.* for putting in Mr. *Elde*, or Mr. *Thurston*, a very fit Person and an excellent Master, and therefore you are criminal, because some body else at another Time may put in another Master not fit, upon his giving a Present.

If this then be not criminal in it self, how do they prove it to be so by the Common Law?

The only Case they have instanced as any Authority for that Purpose, is that of *Stockwith* and *North* in *Moor's* Reports.

But here give me leave to say, that it was proper and just for the learned Managers to produce, in making out their Charge, all their Arguments on this head of the Illegality of this Practice, that there might be a proper Opportunity of weighing them, and giving them a satisfactory Answer (if it could be done) at this Time of my Defence, and I presume they have done so. But if they should think fit to reserve any fresh Argument for their Reply, which we shall apprehend may want an Answer, your Lordships will in that Case, give me leave to insist upon a Right of taking proper Notice of it afterwards, and not let them reap any

Benefit by lying by in such an unpresidented manner, and expecting your Lordships Judgment, without hearing the other Side upon it.

The only Case, I say, which they have instanced in, is the Case of *Stockwith* and *North* in *Moor's* Reports 781; I have looked upon the Case as it is in that Book, and it appears to be thus:

“ *North* was fined in the Star-Chamber, for that he being Sheriff of *Nottingham* in the 43<sup>d</sup> Year of *Queen Elizabeth*, took Money for the Goalership and Bailiwick for that Year; he gave them first to his Servants who sold them, but he himself received the Money. And this was adjudged to be letting to Farm of his County, contrary to the Statute of 4 *Hen. IV. cap. 5.* Yet there note, that the Statute itself gives a Penalty certain and pecuniary, and is *malum prohibitum; non in se.* But the Court took it, that in as much as Corruption follows upon the Covetousness of Officers, and they are forced thereto by the Prices which they give for Things which ought not to be sold; that this putting to Farm and selling of Offices is *malum in se*, and finable”.

It appears here, that this was a Prosecution upon the Statute of 4 *Hen. IV.* for the Point adjudged was, that this was contrary to that Statute, and therefore whether what was done, was against the Common Law, or *malum in se*, or not, was not at all in Judgment before the Court.

And the mention of that is introduced as spoke to remove a Doubt, how *North* came to be fined, when a particular Penalty is (as it is there said) given by the Act of Parliament.

But that is a gross Mistake in the Reporter, the Act of Parliament is very short, I desire it may be read.

It was read as follows.

“ *Stat. 4 Hen. 4. cap. 5.* Every Sheriff shall abide in proper Person in his Bailiwick for the Time that he shall be such Officer, and that he shall not let the Bailiwick to farm to any Man, for the Time he occupieth such Office; and that the said Sheriff be sworn from time to time to do the same in especial, amongst other Articles comprized in the Oath of Sheriff.”

Your Lordships observe, that there is in this Act only a *prohibitory Clause* against the disposal of such Bailiwick, but no pecuniary or other particular Penalty of any kind, inflicted by that Statute: So that it could not be a question whether a Fine was proper, as that Reporter supposes.

The Exactness of the Report therefore is not to be rely'd upon, and what other Mistakes may be in it, I know not. Indeed it is a posthumous Work, uncorrect Notes taken for his own use, and not intended to be published.

But however, taking it for Truth, that some of the Judges did speak to the effect in that Report: It is a common Observation, that when Judges are proceeding in the Case of a plain and express Law, Words used by them that tend to discountenance and farther expose the Crime then censured, are of no great Authority.

The very same thing is done in Lord Chief Justice *Coke's* 12<sup>th</sup> Report, with respect to turning arable Land into Pasture; against which there was then an Act of Parliament in being; and farther to discountenance it, it is there said to be *malum in se.*

And in many Places, Usury is said to be *malum in se*, and with greater Colour; and yet I believe a Prosecution for it, would scarce be thought maintainable, farther than the Act of Parliament will justify it.

But as to this particular Matter of a Sheriff letting his Bailiwick to farm, before it was specially restrained by Acts of Parliament for that Purpose, there are many Footsteps of its being an ancient and allowed Practice.

The *Stat. de attinctis Rast. Sheriffs 5.* containing several Provisions about Sheriffs, directs, that that Statute shall extend as well to those which were Sheriffs and other Ministers, that let to lease their Bailiwicks as to Sheriffs and other Ministers which hold their Bailiwicks, themselves.”

Where the Sheriffs holding their Bailiwicks themselves, or letting them to Lease, which is letting them to Farm, is spoken of as perfectly indifferent.

Nor is the Expression supposed to be used in *Moor*, pretended to be built on any precedent Authority or Fact, but is barely the Reasoning of whoever he was that used it, from the Temptation to which Officers that pay Money are exposed; and how just it is, I submit upon what I have laid before your Lordships on that Subject. Tho' the Danger from that Temptation is much greater in the Case of Bailiffs and Sheriffs that have only ignorant People to deal with in remote Parts in the Country, where it is difficult and chargeable to obtain Redress, than in the Case of Masters in Chancery, that act under the View almost of a Court of Justice, and where Persons wronged have an easy Opportunity every Day to obtain Redress.

So that this loose Expression mentioned by *Moor*, (coupled too with a gross Mistake) not at all to the Point of Judgment, is of very little force to prove the Case to which it is applyed to be against the Common Law, and of less to prove the present Case to be so.

What then is there farther offered? Do they shew that by the Common Custom of *England*, which is properly the Common Law of *England*, the taking Money for Offices, has been from time to time punished, or condemned as criminal?

No, it is admitted on the one hand, that there is not one instance of its having been punished or condemned as criminal, at the Common Law:

And on the other hand, it is notorious, that in fact the greatest Offices have anciently been sold even by the Kings: And that not in a clandestine Manner, but so that the Price and what it was paid for, have been entred upon Record.

The Instances have some of them been mentioned.

*Richard* the Son of *Alured* in the 5<sup>th</sup> of King *Stephen*, was to pay fifteen Marks that he might sit with *Ralph Basset* for the Pleas of the King, which *Ralph Basset* was then Justicier.

And *Walter de Grey* in the seventh of King *John* gave the King 5000 Marks to have the King's Chancery for his Life, and the Bishop of *Norwich* ingages for the Payment.

I have the Copies of both the Records here in my Hand, if there be any doubt of them.

Nor



Nor are our Histories quite silent. In *Hollinshed*, in the fifth Year of *Richard* the First (who was one of the intermediate Kings between the two Kings I have named) it appears what was done, almost with the Sanction of Parliament, certainly with their Notice, and not with their Dislike.

“ The King (says the Historian) called a Parliament at *Nottingham*, and the first day of their Session *Gerard de Camville* was discharged of the Office of Sheriff of *Lincoln*, and dispossessed both of the Castle and County. And so was likewise *Hugh Bardolf* of the County and Castle of *York*, and of the Castle of *Scarborough*, and of the Custody and Keeping of the County of *Westmoreland*. The which Offices (as he goes on) being now in the King’s Hands, he set them on Sale to him which would give most. Hereof it came to pass, that where the Lord Chancellor offered to give fifteen hundred Marks before hand for the Counties of *York*, *Lincoln* and *Northampton*, and one hundred Marks of increase of Rent for every of the same Counties; *Geffery* Archbishop of *York* offered to the King three thousand Marks aforehand only for the County of *York*, and one thousand Marks yearly of Increase, and so had the same committed to his Regiment.

And in the Case of *Magdalen College*, in the fifteenth of King *James* I. reported in *Roll’s* Reports 157, Sir *Henry Hobart* then Attorney General, and soon after Lord Chief Justice of the Common Pleas, argues from it, as a Principle not to be contested, That if any one procure an Office to himself for 1000 *l.* of the Gift of the King, the Office is not lost by the Statute of 5 & 6 *Ed. 6.* which shews the thing not wicked, not *malum in se*, or against the Common Law, for the Prerogative cannot extend to what is so.

My Lords,

Whoever makes the Grant, or receives the Money, the King or a Subject, the Temptation under which the Officer who paid it lyes to reimburse himself, is the same. And if the Strength of that Temptation make the thing criminal, it will make it so in all Instances.

It has been taken notice of by those Gentlemen who are of Council for me, that the Provisoes in the very Statute of 5 & 6 *Ed. 6.* prove, that this is not against the common Law, or criminal in itself, at the same time that it puts a particular Restraint upon the Practice of buying and selling Offices, or Deputations to Offices.

Give me leave to add some Observations upon the Provisoes in that Statute.

Se<sup>c</sup>t. IV. contains a Proviso, that this Act shall not extend to any Office whereof any Person is seized of any Estate of Inheritance.

Suppose a Man that has an Office of Inheritance takes Money from a Person whom he appoints as his Deputy;

Is not that Deputy as lyable to be tempted to reimburse himself by Extortion or Corruption, as if his Principal had but an Estate for Life?

Can a Deputy’s Behaviour turn upon the Title of his Principal? So that 1000 *l.* (for instance) paid by him, will certainly make him corrupt, if his Principal holds his Office for Life, but will not make him guilty of the least Misbehaviour, if

his Principal have the Inheritance of the Office?

This Proviso is therefore plainly founded only upon the Regard the Law-makers had to the *Property* and *Interest* of such Owner of an Office, which they would not prejudice, and therefore he is left at full Liberty to sell the Office itself, or a Deputation to it.

But if to take Money from a Person who is to have or execute an Office, were unlawful by the Common Law, or wicked in itself; it is impossible that the Owner of the Office could have a *Right to that wicked or unlawful Gain*; nor could the Law-makers have any regard to it.

And since here they are careful not to take it from him, they allow it. They in effect make a formal *Declaration* that it is *lawful*, and that the Provision made by that Act is not so necessary, as that it should in any degree interfere with his private Property in that Instance.

Farther,

Se<sup>c</sup>t. III. makes void all Agreements, Bonds and Promises for Money, for any Office or Deputation. But Se<sup>c</sup>t. VI. provides; that the Act shall not extend to Agreements, Bonds, &c. made or concluded before the first of *March* then next.

This supposes it the Practice at that Time, not only to give and take Money for Offices, but to make formal Contracts for that Purpose, which the Courts of Justice were to compel the Performance of.

Does it condemn them as criminal in themselves, by reason of the Danger?

No: on the contrary it does not esteem the Danger so great, as that to avoid it the Property arising upon these Contracts should be taken away, or at all impeached: but leaves a Remedy in a Court of Justice to enforce the Performance of a Contract, which must necessarily cause a publick Mischief, if that were true that it is unlawful in itself, and that its Unlawfulness arises from the Mischiefs consequent upon paying Money on that Occasion.

Had the Makers of that Law been of the Opinion which these Gentlemen seem to be of, and thought such Traffick a Wickedness, it had been impossible for them not to have put a Stop to it, and absolutely disannulled all Securities and Cautions for the Performace.

I do not suppose the Form of Expression used in this Proviso will be criticised upon; or that it will be urged that the Words of this Proviso only import, that those Bonds are left *in such Force as they would have been, if the Act had not been made*, and does not make them good.

That would be a poor Subterfuge. The Proviso makes them not good, ’tis true. Why? Because it plainly supposes them to be good before; but that Se<sup>c</sup>t. III. would make them void, if this Proviso did not prevent it; and this Proviso is on purpose to prevent it, and for nothing else.

And would the Makers of a Law, would these Gentlemen in making a Law, insert a Proviso that Agreements should continue of such Force as they were before, if they thought them of no Force before? Nay if they thought them not only void, but mischievous?

The saving a Right of Action upon such Bonds, and making a Proviso in Favour of them gives them such Countenance, that those that had any such would certainly insist upon them, and the Persons

Persons that were bound would be discouraged from disputing with them what the Legislature did not think fit to deprive them of, and would therefore pay without standing a Suit.

There is yet one Proviso more in this Act, material to the present Purpose.

Sect. VII. provides, that this Act shall not extend or be prejudicial to the Lords Chief Justices or Judges of Assize ——— “but that they may do in every behalf touching any Office to be given or granted by them, as they might have done before the making of this Act; any thing above mentioned to the contrary thereof in any wise notwithstanding.

This plainly implies, that at that time, and before, it was the Practice for the two Chief Justices and Judges of Assize to take Money for the Offices in their Courts, else nothing in this Act could extend to what they usually did, or be of any Prejudice to them.

And it shews too, that the Law-makers did not dislike the Practice.

I beg leave to submit to your Lordships, whether this doth not amount to a Declaration of the Law, that the taking Money for Offices, whatever Danger there may be from it in some Cases, does not necessarily in all Cases, cause bad Officers to be made; nor the paying it make the Officer extort: For the Nature of Things changes not with the Titles of Persons. An Officer that pays Money to a Lord Chief Justice, will be under the same Temptation to get it up again, as he that pays to a Lord Chancellor.

As to the Wording and Form of Expression of this Proviso, I take it to be very clear, that the Words [as they might have done before the making of this Act] are declaratory; that they might before the making of this Act take Money for Offices; and because in the Case of those Officers the Danger was not so great, it is still saved and preserved to them.

If it be said that nothing is saved to them but the doing what they might have done before, and that they could not before lawfully take Money for Offices; I beg leave to answer, that if that be so, the Clause is perfectly frivolous. A strong Prejudice against the Exposition that makes it so in all Cases, but much more so here.

For as the Judges are always Attendants in this House, and this Clause greatly concerns them; it is highly probable that it was drawn up and proposed by themselves.

And if taking Money for Offices were then esteemed criminal; if the Notion is right which is now contended for, that taking Money for Offices was against Law, was Corruption; and that this Law was then passing to lay farther particular Restraints upon it; Is it possible that the Judges could presume to ask not to have a Difficulty or Discouragement laid upon their being guilty of Corruption, or their doing a thing unlawful?

Or is it possible that the Lords and Commons should consent to it?

Or if the Judges would ask it, would they not have made it effectual? Would they, by proposing the Proviso, in effect, own a corrupt Practice, and their Resolution to continue it, ask Provision for it, and be indulged; and yet not ask what would effectually justify them in it?

I hope therefore that what is charged against

me is not condemned by the Common Law or Usage of this Kingdom. If it be, it properly lay on them to make it out; but they have shewn nothing to prove it; not one Instance of its being punished at Common Law, or blamed; not one Citation out of the old Books of the Common Law, precedent to the Acts of Parliament made relating to Things of that Kind. On the contrary, I have shewn it practised in the highest Instances, without Blame or Censure: And that several Clauses in the Statute of E. 6. were plainly founded upon a Supposition of this Practice being allowed by the Common Law, and continue the Allowance of it, in some Instances, to this Day.

This is what I had humbly to lay before your Lordships, with respect to the Common Law. And I shall now consider it as it stands upon the Acts of Parliament.

And as to Acts of Parliament relating to this Matter, they have suggested only two, the Statute 12 Ric. 2. cap. 2. and the Statute 5 & 6 Ed. 6. cap. 16.

As to the Statute of 12 Ric. 2. The Provision of this Statute is to bind those who make or name Officers in the Cases to which it extends, under an Oath to observe the Directions of that Statute in their so doing. And I hope I have already fully answered the Pretence of my having taken an Oath upon this Statute, which extends to any of the Officers in the Court of Chancery, I shall now consider that Statute, and what may be urged from it, a little more particularly. And,

1. As I have already mentioned, I take the Statute of 12 Ric. 2. to relate only to such Nominations as are in nature of Elections; that is, such where the Nomination is in several Persons.

In those Cases it is common with us to have such Oaths administered, but not in others. We find them in Colleges, and other Bodies of Men.

The great Use and main Intent of such an Oath in those Cases is, to prevent Combinations, Strife, and Brigues, where the several Persons concerned will naturally have several Views. And the Animosities and Contentions arising thence among so great Officers as this Statute takes Care of, might greatly affect the publick Peace.

The Things which cause most Contentions on such Occasions, are Money, Affection, (by reason of Kindred or Friendship) and great Solicitations.

Accordingly this Act extends to all three, and takes Care to forbid the last (Solicitation) wholly; and the being influenced by either of the former.

The Persons called to name, or make Justices of the Peace, Sheriffs, or any other Officer or Minister of the King, are to be sworn, that they neither name nor make them for any manner of Gift or Brocade, Favour or Affection; nor any that pursues by himself, or any other, privately or openly to be in any manner of Office, be put in that same Office, or any other; but that they make all such Officers and Ministers of the most good and lawful, and the most sufficient to their Knowledge and their Conscience.

My Lords, in the next place,

2. The Words of the Statute plainly import as much; that the Nomination there meant, is what is made by several Persons when they are called together.

“ It is accorded and assented, that the Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King’s House, Chamberlain of the King, Clerk of the Rolls, Justices of the one Bench and of the other, Barons of the Exchequer, and all others who shall be called to name or make Justices of the Peace, Sheriffs, Escheators, Customers, Comptrollers, or any other Officer or Minister of the King, shall be firmly sworn that they neither name nor make Justices of Peace, Sheriff, Escheator, Customers, Comptroller, or any other Minister of the King, &c. for Gift or Brokage, Favour or Affection, &c.

I own, that there seems some Difficulty as to this, because I do not know of any Law, at that time, that any of these Officers, except Sheriffs, were named by an Assembly of several Persons.

But though there were no Law requiring it, there might be an Usage to do it, by some Direction from the Crown for better Information.

And what is now done in relation to Sheriffs, turns in some part upon such Usage continued down to this Time, without any Law, that I could ever hear of, for to support it, as to *all* the Persons who now meet to name them.

For by a Statute of 9 Ed. 2. called the Statute of Sheriffs, printed in *Rast.* Tit. Sheriffs 2. “ Sheriffs are to be assigned by the Chancellor, Treasurer, Barons of the Exchequer, and by the Justices.

By 14 Ed. 3. cap. 7. *Rast.* 12.

“ *Sheriffs shall be ordained by the Chancellor, Treasurer and Chief Baron of the Exchequer, taking to them the Chief Justices of the one Bench and of the other, if they be present: And in the Absence of the Chancellor, by the Treasurer, the Barons of the Exchequer and the Justices. And that shall be done yearly on the Morrow of All Souls (that is the third of November) in the Exchequer.*

This is the Statute that fixes the Time and Place now observed.

But as to the Persons, though the Justices of both Benches are in the first Act, yet none of them, but the Chief Justices are in the last. And the Lord Privy Seal, Lord Steward, Lord Chamberlain, and the Clerk of the Rolls, and other Lords of the Council, are in neither. And yet by constant Usage, all these attend at the naming of Sheriffs; and, as they see occasion, give their Advice and Assistance, and all take the Oath.

And by like Usage, which we cannot now account for, there was probably some such Practice with respect to other Offices.

For it is to make the Statute absurd, which provides that such and such, and all others that shall be called to name Justices of the Peace, Sheriffs, Escheators, &c. shall be sworn to name these Officers without Favour or Affection, if neither they nor any others were called to name any of these Officers.

3. This is the stronger, because constant Practice, the best Expositor, has thus expounded this Statute.

If the Intention of this Statute were, that all the Particulars first named, that is, Chancellor, Treasurer, Keeper of the Privy Seal, Steward of the King’s House, Chamberlain of the King, &c. were to be separately sworn, as to the respective Officers under each of them severally;

Then this must have been made part of their Oath of Office, or administered at the same time

with it, though in a distinct Oath.

But that has never been done, nor has it ever been administered to a single Person at that or any other Time. Which is the strongest Argument possible that it is not what was then meant, or ever understood to be meant, by that Statute. But on the contrary, in the single Instance where several are called together to name Officers, that is in the case of Sheriffs, the swearing of them, to observe this Statute on that Occasion, is never omitted to this Day.

Give me leave to observe one thing more, that a Chancellor, a Treasurer may possibly be seven Years in his Office; I believe Treasurers have in fact been all or the greatest part of their Time without ever taking this Oath, which is never taken, unless they happen to assist at the naming of Sheriffs, which there is no Law requiring the other great Officers to attend at, and which is now become little more than a matter of Form, the List settled in that Assembly being every Year departed from in many Counties.

And if this that I have thus offered be the whole Meaning of the Statute; then at this Day, as the Usage now is, it has nothing to operate upon but the Nomination of Sheriffs, and therefore extends to no other Cases, and consequently not to any of the Officers in the Court of Chancery.

But may it not be said, that though the Oath required by this Statute extend not to the present Case, yet will not this Provision amount to a Declaration of the Sense of the Law-makers, that the Things thus provided against are such as should not be done, and consequently that the doing of them after such Statute will be against Law?

To state this distinctly, would take up more Time than is proper upon this Occasion.

But this I beg leave to say, and it will be as well applicable to the Statute of E. 6. as to this, and perhaps more directly.

Acts of Parliament that contain political Provisions for making Regulations, or for avoiding Things not wicked, but which may be inconvenient, have not always this Consequence, that Actions done contrary to what they designed in the very Cases then in view will be criminal, and much less in Cases not in view.

Our Law is sparing, in making the doing a thing a Crime, which may be rectified and redressed another way.

There are several Acts of Parliament to restrain Ecclesiastical Persons from making long Leases, to prevent the Inconveniencies such Leases may bring upon their Successors; those Acts declare such Leases void, which therefore are against the Intent of those Laws; but it was never thought that the making or accepting such Leases was criminal.

The Sense of the Law-makers is to have no Consequence, but what necessary follows from the Provision by them made.

What they intended was, that the Successor, if he pleased, might set them aside; which would have this Effect, that none would take such Leases, or they would do it on Terms advantageous to the Successor, or with a Resolution of being so good Tenants, as that the Successor would not take Advantage of it: So that either the Lease would be vacated, or the Inconvenience would be prevented without, which fully answers

the End of the Act. And this is very applicable to the Statute of *Ed. 6.*

In this Act of *Ric. 2.* the Inconvenience provided against is only in Elections or Nominations by Numbers; the Provision is by taking an Oath.

If such Oath be taken and broke, that is a Crime; for that is the necessary Consequence of the Provision made, Violation of an Oath being undoubtedly criminal. But where no Oath is taken, much more where none is required, I do not see how doing the thing can be a Crime; merely because in some Cases it is in this manner provided against, and would be criminal if in doing it an Oath had been violated.

One thing intended to be entirely prevented in Cases within this Statute is Solicitation, or desiring a Place.

But has it ever been construed, in consequence of this Provision, that if I put a Person into an Office, who ever asked that or any other, I should be a Criminal, though I never took this Oath?

Then the Consequence will be, that the asking a Place, or the modest offering a Man's self for it, (which would be suing or pursuing for it in the Words of the Act), will lay him under a perpetual Disability of having that Place, or any other.

Nay, since asking a Place is what the Statute has made a Provision to prevent; whoever asks a Place, does a thing intended to be prohibited by the Statute, and is therefore criminal.

Was this ever the Construction of this Act?

Nay, every one that assists in what was thus intended to be prevented will be criminal, and so will every one that asks for another: at his Request.

My Lords, at this rate the Statute will be very extensive.

I would beg leave to mention one Case more, and hope the Gentlemen of the House of Commons will not take it amiss, or look upon it as any Disrespect to them.

By the Statute *1 Hen. 5. cap. 1.* "It is enacted, That Knights of Shires be not chosen unless they be resident within the Shire where they shall be chosen, the Day of the Date of the Writ of Summons. And that the Citizens and Burgeses of the Cities and Boroughs be chosen Men, Citizens and Burgeses, resident, dwelling and free in the same Cities and Boroughs, and no other in any wise.

The Statute *23 H. 6. cap. 15.* recites this last part of that Statute, and enacts, that it be *duly kept in all Points.*

And this is the Statute upon which Actions used to be brought, in our time, for false Returns of Members to Parliament.

This is in direct Words a Prohibition of any Persons being chosen that is not *resiant*: But since the natural Effect of this Provision would be, that (the subject Matter thereof being the Case of a legal Authority conferred by the Choice) Persons chosen, not being so qualified, might in consequence of this Law be rejected.

If this political Provision be not complied with, is there another Consequence to follow, instead of redressing it this way, and the Parties concerned to be therefore made criminal?

Is it criminal in those who chuse for their

Representatives in Parliament, Persons not only not *resiant*, but whom they never saw?

Is it criminal in those unqualified Persons, to presume to take their Places in the House?

Is it criminal in the other Members, knowing such to be amongst them, not to turn them out *ex officio*, even though no Complaint be made from without Doors?

I think not.

Yet I apprehend that will be the Consequence, if Laws of that Nature are thus to be explained, and every Action is to be judged criminal, which any Act of Parliament has made any sort of Provision to prevent.

As to the Statute of *5 & 6 Ed. 6. cap. 16.*

Although it has made Provision against the Sale or Disposal of Offices for Money, yet nothing can be inferred from thence in Support of this Prosecution.

But that your Lordships may take a better View of that Law, permit me to lay before you a few Observations.

The Preamble sets forth the End for which this Restraint was laid.

"For the avoiding of Corruption which may hereafter happen to be in the Officers and Ministers in those Courts, and Places, and Rooms, wherein there is requisite to be had the true Administration of Justice, or Services of Trust:

"And to the Intent that Persons worthy and meet to be advanced to the Place where Justice is to be administred, or any Service of Trust executed, should hereafter be preferred to the same, and no other.

Here is Mention made of Corruption, but it is that which may happen in the Officers appointed, it calls not the taking Money upon the appointing them Corruption.

It in effect says, what I have before said.

That giving and taking Money is a Temptation to those who dispose Offices, to put in sometimes unfit Persons, to those who buy to extort and be corrupt: And consequently that if this Practice continue, there will be Instances, in which this Temptation will so far be yielded to, that Persons not worthy will sometimes be preferred, and those Persons will some of them venture upon being guilty of Corruption.

But to avoid all the Corruption which may happen in those Instances, and to the intent that this Temptation may in no case prevent, but that worthy Persons be advanced, and no other in any Instance, the Statute is made.

The main End whereof is answered, if worthy Persons be advanced, and they be not corrupt, but behave themselves well.

What then is the particular Provision made by this Statute? Not making way for an arbitrary Punishment, by declaring it to be Corruption, or criminal, or against the Provision of any former Law, to give or take Money for an Office.

Not declaring that it shall be criminal for the future.

Not even enacting, that no Person shall take or give Money for an Office: which might make the Contravention of this Law, a Crime for the future.

For it is remarkable, that this Statute has not so much as any prohibitory Words in it.

But the whole Provision is barely putting the Case by way of Supposition, "if a Person do take Money," &c. and

and declaring the *Consequence*, which *Consequence* is, that the *Person taking the Money*, if it were for an Office, shall lose the *Nomination to that Office*; if for a *Deputation*, he shall lose his Interest in the Office: And the *Person paying* shall be adjudged a *disabled Person* to have, occupy, or enjoy the Office or Deputation. That is, as appears afterwards, he is *disabled, so far as concerns himself*, his right to have it, and to continue the taking of the Profits: But not so far as the *Publick has benefit* by him: For by a *Proviso* for that Purpose, all *Acts done by him are valid*.

The Effect of which is, that the Officer who comes in for Money holds that Office *precariously*, which would otherwise have been for *Life*, and is wholly at *Mercy*, if he gives the least *Occasion of Complaint* against him; and since he that put him in has lost the *Nomination*, there accrues to the King a Right to fill the Place with a better Man in case he thinks fit.

And therefore I will not controvert, but that the Right or Power of *Nomination* to an Office may, by a *Prosecution* grounded upon this Statute, be taken from the Person who enjoyed it, and vested in the Crown.

But as there is no *such Power of Nomination* to these Offices now in me; but I have lost it with the Office of *Chancellor*, and therein have suffered a much greater Loss than that of these *Nominations* only; No *Judgment can be given against me upon this Act*, and therefore neither can there be founded upon it any *Prosecution* against me; for that is but a Method of praying and obtaining a proper *Judgment*.

And to adjudge, that upon the Case which has happen'd, (supposing it to be within the Words and Meaning of this Statute) any *Punishment* shall be inflicted, or any *Consequence* follow, beyond the *Loss of the Nomination*, is (with great Submission) to go quite out of this Statute.

Thus I have endeavoured to make out what I first propos'd, that the receiving a Present upon these Occasions is not criminal in it self, or by the Common Law, and that there is not any Act of Parliament whatsoever by which the same is made Criminal, or subject to any Punishment or Judgment which can be pray'd in this Prosecution.

My Lords,

All this Reasoning is greatly fortified by Usage, by my Predecessors; which Usage is expressly proved before your Lordships by all the Masters, who could not refuse giving Testimony; that is, all the present Masters admitted by my Predecessors, who are indemnified by the Act of this Session for that Purpose: And, I think, is proved too by the former Masters now living, who declined giving an Answer to the Question, when asked, what they gave or knew given; making this their Excuse, that by our Law no Man is bound to accuse himself, and that to own they had given Money would expose them to the Penalties of this Act. For whatever might be the Consequence of owning they gave Money; there was no Danger in saying they gave none. And they might have given an Answer in the Negative safely, but that the Truth and their Oath would not allow them to do it.

And this Refusal of theirs to answer, was not a Contrivance of mine, they were supported in their Objection by the Gentlemen that are Managers, who were pleas'd to give their Assistance to defend

them from answering the Question.

And might I have been allowed to have given Evidence of what has been from time to time declared, by Parties concerned, who are now dead, it would have been proved much farther.

But I apprehend the Thing is notorious; altho' some Proofs have been offer'd for Form-sake, yet it was equally well known before, known to all the World.

Give me leave likewise to argue farther upon this whole Matter from what I said once already, that it is admitted that there is not one Instance, that such taking Money has been punished either at Common Law or upon Act of Parliament; that this, according to the Rules of our Law, is one of the strongest Arguments that it is not punishable. For it is not to be presumed, but that it has been often done; the Statute of *Edw. VI.* takes notice of the Practice, not only of doing it, but of entering into formal Contracts and Bonds for that Purpose.

*Littleton*, our most celebrated Lawyer, upon a Question, whether an Action would lye upon a certain Act of Parliament, rests upon it as a decisive Argument in favour of the Negative, that it was never seen or heard that any Action was brought upon that Statute; alledging, that if any Action might have been brought for this Matter, it must be taken; that at some time or other it would have been put in practice. And the Lord Chief Justice *Coke*, in his Commentary upon *Littleton*, observes, that as Usage is a good Interpreter of Laws, so Non-Usage, where there is no Example, is a great Intendment (as he calls it) that the Law will not bear it. Not that an Act of Parliament (as he goes on) can by non-user lose its Force; but that it may thereby be expounded, or declared how the Act is to be understood.

This is what I have to submit to your Lordships, that the taking Money for Offices is not criminal, which, I apprehend, is the whole Charge in the Articles, except the *Manner of taking it* varies the Consideration, which I shall take Notice of afterwards.

There is not the least Pretence, that Money was given for putting in Persons unqualified, the supposed Crime is singly the taking Money.

And as to what has been said by way of comparing it to the Case where any judicial Order or Determination is made for a Bribe; give me leave, with great Submission, to insist upon it, that there is not the least Parity at all betwixt that and the present Case: For in Matters of Judgment, if the Party have a Right to what he sues for, he ought not to be put to buy his own; and much less, if he has not a Right, should he be at Liberty to purchase of the Judge, that which is the Right of another.

But this here is not matter of Justice, but matter of Favour and pure Bounty; whether I put in this Man or that Man into a Place in my Disposal, depended wholly upon my own Choice and Pleasure; so that the Cases are not at all alike.

A Bribe strikes at the Root of the equal Administration of Justice; it is a professed Byass, and can mean nothing but to destroy Indifferency, and to render the Judgment partial.

It is therefore disallowed in all Nations, and in all Ages; and is expressly forbid by the Law of God. And had the Gentleman who touch'd upon the Text which condemns Gifts, been pleas'd to

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cite it at large, it would have appeared to relate to Bribes given in Cases of Judgment, *Deut. xv. 18. 19.*

“ Judges and Officers shalt thou make thee in all thy gates ——— And they shall judge the People with just Judgment. Thou shalt not wrest Judgment, thou shalt not respect Persons, neither take a Gift. For a Gift doth blind the Eyes of the wise.

As to the manner of taking Money in the several Articles V, VI, VII, VIII, the Case stands thus.

V. There are in all, eight Articles relating to this Matter; but they have proceeded only upon four: The first of which is the fifth Article, and relates to the Money taken on Mr. *Kinaston's* Admittance.

Upon their own Evidence it appears, that Mr. *Kinaston* was well recommended by Mr. *Bayly*, a Person of a very good Character; that the first and only Message brought to me, with relation to his Admittance and the Money to be paid, was this; that he desired to be admitted on the Surrender of Mr. *Rogers*, and would make a Complement of 1500 Guineas, or, if I did not think that enough, I should please myself; and my Answer was, I was pleased with the 1500 Guineas, and he was admitted.

It has been endeavoured to make what was then done odious; by representing, that Mr. *Kinaston* first offered 1000 *l.* but Mr. *Cottingham* would not propose it; that he was work'd up by Mr. *Cottingham's* telling him that he had bought a good Office; that Mr. *Rogers* had told him he usually made 1700 *l.* and sometimes 2000 *l. per Annum* of it, and that he understood the Profits arose out of the ordinary Profits of the Office, and the Use of the Suitors Money together.

As to the Offer of 1000 *l.* Mr. *Cottingham*, a Witness produced by themselves, denies it. And Mr. *Bayly*, their other Witness, who first broke the Affair to Mr. *Cottingham*, and at his Return from him, told Mr. *Kinaston* that Mr. *Cottingham* said 1500 Guineas would be expected, swears, that Mr. *Kinaston* immediately submitted to what Mr. *Cottingham* had so mentioned, only he said he thought it had been but 1500 *l.* And this was before Mr. *Kinaston* saw Mr. *Cottingham*.

So that Mr. *Kinaston's* Oath is directly contradicted by the Oath of Mr. *Cottingham*, one of their own Witnesses; and is highly improbable from what Mr. *Bayly* another of their own Witnesses swears.

And as to what Mr. *Cottingham* said about the goodness of the Office, he swears it was after the 1500 Guineas were agreed to be paid. And indeed upon that depended not so much what he was to present to me, as what he was to pay to Mr. *Rogers*, which had been agreed upon before Mr. *Cottingham* was spoken to.

So that here is nothing but my accepting a Sum of 1500 Guineas, which was proposed to me as a voluntary Offer, when I was at the same time told I might have more, if I would insist upon it; without one aggravating Circumstance, with relation to the Person admitted, or what I did.

VI. The next of these Articles is the sixth, which concerns Mr. *Thomas Bennet*, and the Money given me by him, on account of his being admitted Master upon Mr. *Hiccocks's* Surrender.

And the whole of the Fact, so far as I was con-

cerned in it or knew of it, was but this. That Mr. *Cottingham* informed me of a voluntary Offer made by Mr. *Bennet* of 1500 Guineas, which I accepted. I believe he thought himself not ill used, and I being then extremely ill, he pressed to be admitted, for fear (as Mr. *Cottingham* swears he thought) of falling into worse Hands. On *Thursday*, and in the Nights before and after, I remember I lost near 50 Ounces of Blood, in about 24 Hours. And that Night Dr. *Mead* told Mr. *Cottingham*, that if the Distemper had not a Turn very soon, I could not live 24 Hours. On *Friday* Mr. *Cottingham* says, the Doctor told him the Distemper had a Turn: On *Saturday* Morning Mr. *Bennet*, after great importunity, was admitted while I was in Bed, but Company kept out of the Room as much as could be.

This is what they have proved by Mr. *Cottingham*.

Mr. *Bennet*, who mentions nothing at all of me of his own Knowledge, but of the Kindness with which I spoke to him, and told him that he was admitted by a dying Chancellor, is their other Witness, who is to shew invidious Circumstances. And very solicitous he seems to be to do it.

He takes care to say, that he was ordered to come alone, and bring no body with him; as if it were the better to keep secret the Payment of the Money, tho' he knew my great Weakness was the Reason.

He affects to say, the Bank-Notes were taken out in feigned Names, and that it was not thought proper to use my Name or his. Tho' upon another Article, when he is examined again, it comes out, that the feigned Name was that of his Clerk, whom he sent to take out the Notes, and it was merely *Bennet's* own doing.

He says, he offered 1000 *l.* to *Cottingham* at first, and tells a long Dialogue they had about it, but *Cottingham* himself upon his Oath denies it all.

So that here, at last, nothing is proved that passed with me, but the 1500 Guineas being offered to me and accepted.

And give me leave to observe, that the two Sums in these two Articles, were certainly not paid out of the Suitors Money. For whatever other Objection may be made against taking the Present before Admission, it has this Effect, to shew that it came not out of the Money of the Suitors.

And yet there being a Pretence (without stating the Circumstance of Time, which I have just taken notice of) that they were paid out of that Money, and that the Suitors were in danger of being Sufferers; I brought the Money into Chancery, to be subject to the Orders of the Court.

The two other Articles, the seventh and eighth, were upon Admissions to Places vacant by Death.

VII. The seventh Article concerns the Case of Mr. *Elde*; and the Fact, as they have themselves proved, is thus:

Upon the Death of Mr. *Fellows*, the former Master, 5000 Guineas is offered and given to me by Mr. *Elde*; 6000 *l.* is offered by another.

It is admitted, that *Thomas Bennet* about three Quarters of a Year before, upon coming into his Place gave his Predecessor, who surrendered to him seven thousand five hundred Pounds, and to the

the Great Seal 1576*l.* in all 9075*l.*; and that Mr. *Kinaston*, two years before him, gave his Predecessor 6000*l.* and to the Great Seal 1575*l.* in all 7575*l.*

And Mr. *Elde*, a Man of unblemished Character, of a good Estate, and not one Objection to his Fitness, is admitted, though he pays so very much short of what others had paid, and less than was at the same time offered.

And of this that he paid, 3400*l.* was returned to him, and only 1850*l.* retained.

I will not trouble your Lordships in relation to what my private Intentions were in that Transaction, if they were capable of being proved, I believe your Lordships would not dislike them.

Some little Reflection has been made upon the Money being brought in a Basket, as if it were for Privacy, and even to conceal it from Mr. *Cottingham*.

Whereas it plainly appears, to have been without any Design, and only Mr. *Elde*'s making use of a Convenience he accidentally had in his Chambers.

But if there had been an Intention to conceal it from Mr. *Cottingham*; why was he the Hand to convey any thing? why was he the Person to bring up the Basket? Mr. *Cottingham* knew 6000*l.* had been offered by another, and might rather guess this to be more than less.

And had Mr. *Elde* not been himself examined (which at that time it was not expected he would be) and Mr. *Cottingham* proved, that Mr. *Elde* had told him he would give 5000*l.* for the Place; that another offered 6000*l.*; that he had told me of it; that Mr. *Elde* after delivered him a Basket, which by its weight he believed to have Money in it; that he brought it to me; and that Mr. *Elde* was that day, or very soon after, admitted: According to the Candour of construing my Actions, this would have been said to be a convincing Proof, that there was 6000*l.* in the Basket, or more: it being impossible for the *avaricious temper of the Earl of Macclesfield*, for his *Impotency of Mind*; his *constitutional Weakness in matter of Money* not to take the greater Sum.

VIII. The 8th Article concerns the Case of Mr. *Thurston*.

There, upon Mr. *Borrett*'s death 6000*l.* was offered me by another worthy Gentleman, but Mr. *Thurston* was admitted.

He says he gave upon that Occasion 5000 Guineas, but that all above 2000*l.* was returned.

My Lords, Since what passed relating to that matter is not capable of proof, I will not trouble you with the particulars of it, which might be material.

Mr. *Thurston* is likewise a Person unexceptionable, Mr. Baron *Gilbert*, now one of the Lords Commissioners for the Custody of the Great Seal, gave me an extraordinary Character of him, and that determined me in his favour.

But there is no Objection to him neither, and therefore there needs no proof.

This is the State of the Fact upon these two Articles.

This is so far from *Extortion*; the Money is voluntarily offered.

So far from *Avarice*; the greater Sum is refused, and a less taken. And even the greatest part of that returned, 3400*l.* in the one case, and 3250*l.* in the other.

And the Persons such, that were I to go through *Westminster-hall*, I cannot easily pick out two better Men.

Upon the whole, all that can be pretended to be in my hands now, upon these four Articles concerning Mr. *Kinaston*, Mr. *Tho. Bennett*, Mr. *Elde*, and Mr. *Thurston*, which are all the Managers have proceeded upon relating to Money received from the Masters, is but 3850*l.*; that is 1850*l.* from Mr. *Elde*, and 2000*l.* from Mr. *Thurston*; the rest having been all returned.

And as to that which was given back to Mr. *Thurston*; he has sworn, that he was sent for several times, in order to have part of his Money returned, and received it before the first Seal after *Michaelmas*, near a Month before any Order by the Lords of the Council, to call for the Accounts, and while every thing was in the same State as when he paid it, and from his Evidence, it cannot be judged to be any thing but the effect of Generosity.

Mr. *Elde*'s was not returned till after the Accounts were begun to be taken; he continuing a long time in the Country; but when he came to Town, he had it.

IX. The 9th Article relates to 100 Guineas given me by Mr. *Tho. Bennet*, upon his disposing of his Office of Clerk of the Custodies or Lunaticks to Mr. *Hammersley*.

The Evidence is quite contrary to the Charge, as it is laid in the Articles, and amounts but to this, That *Bennet* having agreed to dispose of his Office to another, sent me a Present voluntarily of 100 Guineas upon that occasion, and tho' I, at that time, knew that more had been given in the like case, I was contented with that, and accepted it.

This is within the same reason, as the Case of the Masters; it has been practised by my Predecessors, as a Right of their Office, upon Dispositions of this Office, and others of the like nature.

Besides the proof of what had been paid to the Great Seal, upon another disposition of this Office; it has been proved, that another of my Predecessors, the late Lord *Cowper*, declared his Opinion, that he thought it his right to have a Present: And he having then passed a Grant of this very Office, without having had a Present, upon the Party's having pretended and assured him that it had not been usual to give any for that Office; he expressed great dissatisfaction, and declared that he thought he had been imposed on, that he saw no reason why that Office should not pay as well as others of the like nature. Which implies both the Fact of receiving Gratuities, or Presents upon Transfers of such Offices, and his claiming a Right to receive them.

As to the discourse Mr. *Bennet* pretends to have had with Mr. *Cottingham*, Mr. *Cottingham* denies it; and as they both are produced by the Managers to this point, this is a clashing between their own Witnesses; and that cannot be said to be proved by them, which is affirmed by one of their Witnesses, and positively denied by the other.

And if there had been any such Discourse, it is not brought home to affect me; for there is no pretence that I knew any thing of it.

But as to the whole Fact, wherein they differ, I think from the Character that has been given of Mr. *Cottingham*, and what has appeared of Mr. *Bennet*, it will be no question at all, which of them two should be believed.

X. As to the 10th Article, there is no Evidence given.

XI. The next Article is the 11th. And the Substance of it is, *That in order to advance and increase the illegal and corrupt Gain arising to myself from the Sale and Disposal of the Offices of the Masters of the Court of Chancery, in violation of the Trust reposed in me for the Care and Protection of the Suitors, I did admit several Persons to the said Offices of Masters, who at the time of their Admissions were of small Substance and Ability, very unfit to be trusted with the great Sums of Money and other Effects of the Suitors lodged in their Hands.*

The Masters are not by this Article charged with the want of any other Qualification whatsoever, but that of Estate; nor is there the least Proof, or Pretence, that they were not in all other respects, Men of Abilities equal to the Duty to be discharged by them, honest, and unexceptionable in point of Reputation; but the single Objection to them is, that they were Persons of a small Substance.

The Proof offer'd upon this Article is this:

They have produced 3 Orders made in the Court of Chancery in the Months of *January* and *February* last, whereby it appear'd that *Mr. Conway*, *Mr. Kinaston*, and *Mr. Tho. Bennet* had not at that time brought in all the Money that appeared to be then in their Hands belonging to the Suitors of the Court. This is their whole Proof.

But I am intirely at a loss to know, how this can be stretched to prove, what Ability they were of at the times of their respective Admissions, or indeed that they are not of ability now to pay their whole Ballances, merely because on such a particular Day they had not paid their respective Ballances into Court.

Nor is there the least Proof that I had any reason to suspect their Ability, when I admitted them.

*Mr. Conway* had an Estate of between 5 and 6 hundred Pounds *per Annum*.

*Mr. Kinaston* was represented to me as a Man of Substance: Now, that he comes under another Article, to swear it down, he owns that he has an Estate of 4 or 5 hundred Pounds a Year, with Timber upon it worth 2500 *l.*; and had likewise, at that time, in Money in the Funds, to the value of two or three thousand Pounds.

*Tho. Bennet* was esteemed a Man of a very good Estate and Substance. He is the Person to swear himself now worth nothing. And, to do it effectually, he sticks not at owning, that he has mortgaged part of his Estate for more than it is worth. Yet there is upon your Lordship's Table, the Particular given in by him to the Court of Chancery, wherein his Estate, besides that which he says he purchased since he was Master, appears to be about 500 *l. per ann.* and he owns he had, when he was admitted, a Place for Life of 250 *l. per ann.* which he after disposed of. He says he was worth 20000 *l.* and had been sufficient still, but for the Losses in 1720, which he owns were not known to me, nor generally suspected.

But, my Lords, these two Gentlemen are making their Circumstances mean, in order to get back the Money they paid for their Offices; which they could not do by their own Oaths, directly for their own Uses: and therefore they have thought fit to keep back so much of the Money of the Suitors, when called upon to bring it in, that so the Suitors may complain to the Court of Chancery, and then their Oaths may be made use for the Suitors to found a Demand upon, against their Predecessors.

And it is pretty remarkable, that their Deficiencies are neither more nor less than the Sums they at first paid to their Predecessors and to me, upon their being admitted to their respective Offices. In this therefore I apprehend your Lordships will think their Oaths are of very little value. It is hardly to be imagined, that they should have been so long in their Offices, and have just saved nothing, nor wasted; and that they are not a single Farthing either richer or poorer.

But whatever your Lordships Opinion, with respect to that, may be; I own, I cannot but think, that there is something very extraordinary in the Attempt; that these two Men have agreed with two Masters, that were in possession of two good Offices for Life, to give one of them 6000 *l.* the other 7500 *l.* for their Places; and now, that they are got into possession, would have the Money back, and continue in the Places too: That is, in short, they are tricking those Masters out of their Places, under pretence of buying them.

But whatever their Behaviour or their Estates may now be, they appeared to me Persons of Reputation, and Fortune, when they were admitted. And I do not observe, that the Article hath so much as suggested, that I knew any thing to the contrary.

One of the Managers wondered that I should let in Persons of no Fortune; and he solves it only by this, that they would give better Prices.

That had been something, if the Price had been given to me; but leaves it incredible, that I should let in any, that I had the least Suspicion had no Fortune; for the old Masters to receive 6000 *l.* and 7500 *l.* at the same time that they represent me acting upon the view of burying the Masters, and having the whole Price myself.

Where I was to have the whole Price, and the Temptation was greater, there is no pretence I took in Men of no Fortune. And is it possible to think I would do it, where the Masters were to have the Price, and I so small a Proportion?

Great Strefs has been laid on comparing the Sums in the Masters hands, with their Estates; in order to shew their Unfitness to be trusted with those Sums.

How that Proportion is to be adjusted, I own, I am a little at a loss. Here is a Master, that has an Office that brings in a considerable Profit, and is worth 5000 *l.* which cannot be run away with: He has a handsome visible Estate of 4 or 5 hundred Pounds a Year; and a good Reputation. How much Money may he be properly trusted with? I do not mean as a Borrower, who may be presumed in some want, of one sort, or other, because he borrows; but as a Casheer for the Suitors? There are very few Bankers that have such a Fortune to set up with. And I do not see that any of those Bankers, that is a Man of good Reputation, and good Credit (tho' perhaps he has not a good Fortune of his own) is thought the worse of by those who deal with him, because he is trusted with very great Sums, far more than he is worth. The more he is intrusted with, the more are his Gains, and the safer all think themselves that have Money in his hands.

There is in the Close of this Article another Charge, that I did publicly in open Court falsely represent the Masters admitted by me, as Persons of great Fortunes, and in every respect qualify'd for the Trust reposed in them, to the manifest Deceit and Injury of the Suitors.



My Lords, as to that, I think nothing can more plainly shew, than this Article, and what has been said upon it, the forced Constructions put upon what I do.

Mr. Waller proves, that in July 1723, I declar'd in Court, that *the Masters were Persons of as good Fortunes and Abilities as any Set of Masters had ever been before them.* Which is spoke of the whole Body of Masters, and not of those only who were admitted by me. He says he was *astonish'd at it.* But he has given no Reason why. If he knew any thing, that any of them were not such as I described them; a little Candour would have made him believe, that I was not rightly apprized of their Characters; and a little Concern for the Honour of the Court, wherein he was a Practiser, would have made him set me right.

But, my Lords, is there any Reason assigned, why I should think otherwise than I spoke?

Mr. Lightboun is examin'd, to prove, that he told me, some of them were suspicious. But he does not say any such thing. All he says is, that he took notice to me of Mr. Dormer's Misfortune, and told me, he knew not how soon the like Misfortune might happen to others. Which might be, though they were all sufficient; if the Person, with whom they should deposit Effects, upon going into the Country, should fail.

But his Expression is a little remarkable; that he cannot say he told me any of the Masters particularly were suspicious, "*For he did not know how far he might be liable to an Action.*" An Action! what! for one Master informing the Chancellor, of the Circumstances of other Masters, in order to have proper Care taken! could he fear it? Who was to be the Witness? What must be the ground of the Action, if he told nothing but what was true?

But I think, he said he had not any particular Grounds for his Suspicion; and he says, *I was unwilling to believe it of any of them.* Why? because (as he says I told him) *I had had very good Characters of them, and therefore I hoped they were all good Men.*

It was not very kind, in that Gentleman, to call it an *Unwillingness* to believe, there was Ground to suspect them: When I assigned some Reasons, why I should not suspect them; and he gave me none, why I should.

So that here appears not any Reason, why I should believe otherwise than what Mr. Waller heard me say.

But to what end should I say it, if I did not believe it? Or how were the Suitors injured, or deceived by my saying so? Mr. Waller was not deceived; was any body else deceived? Or could any one be injured? But they have discover'd a reason, why I said it. They say that Mr. Fellowes was just dead, and there was a Master's Place then vacant: And that fact they have proved. But can any thing be more strained, than their Inference from it? Did I design, by saying these Masters were Men of Fortunes and Ability, to raise the Price of that Vacancy? or to tempt Beggars to come in, that cared not what Price they gave? Does not what was then done, clear me of all Suspicion of that kind? Mr. Elde was the Person then admitted, a Gentleman of a very good Estate, of very good Character in *Westminster-Hall*, and 750*l.* more offer'd by another, that was no Beggar neither, refused. And after that, Mr. Thurston was admitted, preferably to one that offer'd 6000*l.* Is it possible, that I should give better Proof that I had not that avaricious View in it, that is suggested?

It was observ'd by one of the Gentlemen, that open'd the Evidence, that this was upon a *remarkable occasion*, when the Master of the Rolls had made an Order upon one of the Masters, to make a Suitor some Compensation out of his own Money in the Master's hands, and I set it aside. And Mr. Waller began to tell something of the Merits of the Case. But a very learned and a very judicious Gentleman, one of the Managers, was pleas'd to say, They did not dispute the Justice of my Order; nor is there any Charge of such Injustice in the Articles.

XII. The next Article is the 12th, which sets forth

" That whilst the said Thomas Earl of Macclesfield executed the Office of Lord Chancellor, an unjust and fraudulent Method was practis'd in the Court of Chancery upon the Sale of Offices of Masters of the said Court, and upon the Admission of new Masters, that the Prices or Sums of Money agreed to be paid for the Purchase of the said Offices, and for the Admission thereinto, were satisfy'd and paid out of the Monies and Effects of the Suitors of the Court deposited in the Hands of the respective Masters, surrendering their Offices, or dying; either by way of retenir of the Purchase in the hands of the Master resigning, or of replacing the Money disburs'd for such Purchase or Admission by the succeeding Master, out of the Money and Effects of the Suitors coming into his hands; by which Practice the Price and Value given upon the Sale of the said Offices, and Admissions thereinto, during the Time aforesaid, were greatly advanced, and several Persons of small Ability and Substance were encouraged to contract for the said Offices, upon a Prospect of the easy Method of paying for the Purchase of the same, by means whereof great Deficiencies have incurred in the Offices of several Masters of the said Court, admitted by the said Thomas Earl of Macclesfield, which they have not been able to answer and make good; and although the said Practice was notorious and publick, and the said Earl was well inform'd thereof, and fully acquainted therewith, yet the said Thomas Earl of Macclesfield, in order to increase his own unjust and corrupt Profit in the selling the said Offices and the Admissions thereto (which in consequence of this evil Practice was rais'd and receiv'd by him out of the Effects of the Suitors, for whom he was intrusted) did not at any time, whilst he continu'd in his Office of Lord Chancellor, use or take any Measures to reform the said Abuse, or to prevent the same; either by causing proper Schedules to be taken of the Money and Effects of the Suitors deliver'd over and transferr'd, or by appointing any Person in his behalf, to inspect or supervise the Transfers or Deliveries thereof, or in any other manner. But on the contrary, the said Thomas Earl of Macclesfield, unjustly, corruptly, and contrary to the Duty of his said Office of Lord Chancellor (to whom the Superintendency of the said Masters and of their Accounts did appertain) did suffer the said fraudulent Practice to proceed and be exercised without any Controul or Check, whereby great Embezlements have been made of the Suitors Money and Effects, to their great Loss, in the Offices of several of the Masters of the said Court, who have not been able to answer and pay their respective

“pective Ballances owing upon their Accounts, in  
 “breach of the Trust reposed in him for the pre-  
 “servation of the Estates and Effects of the Sui-  
 “tors, to the dishonour and discredit of the said  
 “Court, and to the great injury and defrauding of  
 “the said Suitors in a Court of Equity, established  
 “for their Relief and Protection.”

My Lords, In support of this Article, two of the Masters, Mr. *Kinaston* and Mr. *Tho. Bennet*, have sworn, that their Predecessors stopt the price of the Places out of the Suitors Money, which was to be delivered over to them: and that they gave the greater Price for their Places, because they found this an easier way of purchasing them. Indeed I must confess, that according to the manner of proceeding of these two Gentlemen, it will come out to be an exceeding easy way, which they have discovered: since, if they can prevail in their present Attempt, they will have paid no price at all for them; they are to have their Money back again, and not be in the least impoverished by the Transaction. But is there any proof, that I was (as the Article charges) well informed of it? Or that I knew any thing of it at all? Not in the least, but only upon the Oath of Mr. *Tho. Bennet*, who swears that in a Conversation with me about a Treaty between him and Mr. *Hiccocks*, I took notice of an Article in his Account, delivered in to the Lords of the Council, wherein he mentioned 9075 *l.* of his Cash to be in the hands of Persons of Ability, meaning as he after explained it, in the hands of Mr. *Hiccocks* his Predecessor and my self; and said, I was sorry for it, because it was discovering the method of paying for their Places out of the Court Money, which I had taken care constantly to deny.

This (supposing my meaning to be what he would have) is surprizing. He says that at the beginning of this discourse I was so cautious, that I would not speak to him about returning the Money I had had, because probably he might be examined about that Conversation in another place. And yet he pretends that in the same Conversation I told him this. But does even he pretend, that I ever knew this, which I had taken care to deny? And was this a time to tell him of it, when he says, I expected he might probably be examined about his Conversation with me?

But I believe your Lordships will not give him the least credit, in this or any thing else that affects me. I beg leave to remind your Lordships that I asked him whether he did not then tell me, that, if Mr. *Hiccocks* would give him 2000 *l.* he would pay the rest of the Money (which was to shew that he was worth at the least all but that 2000 *l.*) He denied it. My Lords, I then told your Lordships I could not disprove him in that, for I cannot be a Witness for my self. Therefore I asked him to another thing, wherein, if he did not tell the Truth, I might be able to falsify him; I asked him, if he had not said so to some body else? He positively said, No. He said there was such a report, but he denied the thing. At last he did own that he had said, that if Mr. *Hiccocks* would repay 2000 *l.* he would stand it, or run the hazard, but never told any body he would pay the rest; he was not able. But Mr. *Holford* swears, that *Tho. Bennet* sent a Message by him to Mr. *Hiccocks*, that if Mr. *Hiccocks* would repay 2000 *l.* he would discharge the Article in the Account, and take care to pay the rest, and he believed that Mr. *Bennet* was able to pay it, or he would not have carried the Message. And

another Gentleman swears, that he said he would make it up, and a third that he could or would pay it. So that he stands contradicted in this particular, which I apprehend is material, by three Witnesses.

As to the Method of Payment mentioned in the Article, it is stated to be, that the *Price of the Office was satisfy'd out of the Effects of the Suitors, either by way of Retainer of the Purchase Money in the hands of the Master surrendering, or of replacing the Money disbursed for such Purchase by the succeeding Master, out of the Money and Effects of the Suitors coming to his hands*: and the Methods suggested for preventing this, are, *causing proper Schedules to be taken of the Money and Effects deliver'd over, or appointing Persons to inspect or supervise the Deliveries*; but I took not these Measures, nor any others.

My Lords, the Method of *paying by Retainer* could only be upon *Surrenders*. And why should I there assist to raise the Price? why assist to get a higher Price for one, whom I was to have no more to do with, only to have a poorer Man come in, that might bring Disgrace upon the Court and upon me?

As for the other Method, the *replacing the Money paid*, that is, as I understand it, borrowing the Money to make payment, and then when the Effects are transferred, discharging the Debt out of them: How was that to be hindered? not by *Schedules*, and seeing the *Effects deliver'd over*. The *Delivery of the Effects* is necessary to put that Method in practice, and is far from hindring it.

But is this delivery over of the Effects so very material? Mr. *Meller* did not deliver over the Effects to Mr. *Boriet* of some time: had they been still in his hands, had it been the worse for the Suitors? Whatever a Master does not deliver over, he continues responsible for, and the Suitors have the same Security for them, as they had before. *Hiccocks* and *Rogers* did not deliver over the Effects, but stopt Part for Payment; the consequence is, that they are compelled to bring them in. Had *Schedules* been made, and the Effects deliver'd over, and so *Kinaston* and *Bennet* been forced to pursue the other Method, the Suitors had not had either *Hiccocks* or *Rogers* at Stake.

Indeed I never apprehended it necessary for me to see the Orders for Transfers obeyed, any more than any other Orders of the Court. It is the Interest of the new Master to call for the Effects, and of the old one to have a regular Discharge, which I do not see how he can have, without an Inventory of the Particulars, and a Receipt upon it; which is what I understand to be a Schedule, tho' it be never filed; tho' I apprehend the word Schedule is taken in a different Sense in the Report to the Council. And this I did believe the Interest of the Parties had made them do. Nor has it yet been shewn, that it was my Duty to look after these Transfers. By what Law, by what established Practice, where does it appear, that a Chancellor is bound to see such Schedules made, and the Effects transferred? If it be his Duty, without doubt there is some Method, by which it may appear he has discharged it, in cases where he has done so. But is there ever any Entry made of it? Are the Schedules filed with any Attestations, that the Effects were actually delivered over in presence of Persons appointed by the Lord Chancellor? The Effects in Mr. *Holford's* Case were deliver'd over, I think, the day of his admittance, in Mr. *Lovibond's* in about a Week, in Mr. *Bennet's* in a short time; whether in presence of Inspectors,

appointed for that purpose, or nor, has not appeared. Yet, my Lords, the Question is not now, Whether it be wiser and better to have Schedules prepared and filed, and for a Lord Chancellor to give Orders to see it done: But whether it be his *Duty* so that it is a *Crime* not to see it done? If the Suitors desire to have Schedules filed, in order to be the better able to know how much the new Master is charged with: it is their part to search and make Application; and upon such Application, it is the Chancellor's part to make proper Orders; which they again are to take care to draw up, to enter, to prosecute, and see executed. And as to my Desire, and Intention, to increase my own unjust Gain; which is to give the Tincture of Guilt to this, and make it criminal: can it be conceived, that I, who take not advantage of a higher Price, when I may have it; should, in order to raise the Price, refuse to check a Practice which the Masters are supposed to make use of, to the prejudice of the Suitors, and only for their own Gain?

## XIII, XIV, XV, XVI, XVII.

The 13, 14, 15, 16, and 17th Articles all relate to *Dormer's* Affair; and contain several supposed Stratagems to conceal his Deficiency: all founded upon the same View, and to prevent the Gain upon Sale of Offices from being lessen'd. Without that View to Gain, I do not see any thing in these Articles, that is criminal. And therefore, if in your Lordships Judgment, I shall stand acquitted of that, upon a full examination how my Heart stood affected in that Particular, I think all must fall to the ground.

XIII. As to the 13th Article particularly; It sets forth *That from an Apprehension that a publick Discovery of Dormer's Deficiency might lessen the unjust Gain I propos'd to make to myself by selling and disposing the Offices of Masters, I neglected and declined either to secure his Person or Estate, or to make a proper Inquiry into the Deficiency; but endeavoured by many indirect Practices to conceal from the Suitors the true State and Condition of his Office, as well with respect to his Effects, as to his Debt to the Suitors.* And the latter part of the Article says, *That upon Motion made in the Court of Chancery (after I knew Dormer was absconded) to have the Effects of some of the Suitors transferred to another Master for better securing them, I, to delude the Suitors into a Belief that the Effects were safe, and thereby prevent a publick Inquiry, there said, That the Parties need not be in haste, that Dormer was only gone to take the Air in the Country, that he would return in a little time, and all would be well.*

As to this latter part, they have not so much as examined a Witness to prove it. So that what Evidence has been offer'd upon this Article, amounts in truth to no more, than a Proof of *Dormer's* being deficient. But as to any Endeavour of mine to conceal the State of that Affair; or any refusal, or neglect to do my Duty; there is no Proof.

It appears, that he went off in *November* 1720, that his Clerk and his Servants by his Order, gave out, that he was only gone into the Country for a while. But he was gone into *Holland* for fear of a Gaol. I knew nothing of it till after *Christmas*, and then all the Steps were taken that were thought most likely to get as much as possible for the Suitors. His Chambers were searched by some of the Masters, and Directions were given to stop the

transferring his Effects in the publick Funds. And it was carried on so far, that he was stripp'd of all, and with Tears begged, that Application should be made to me, for some Allowance out of it for his Subsistence; which *Mr. Cottingham* refused, because the Estate fell short, and he knew I could not order him the Money of other People. And it is not now pretended, that any thing was not discovered by him, but only a parcel of Hops; and that plainly was not concealed fraudulently; for he made no advantage of it; the Hops are unfold to this day.

But the Charge of concealing *Dormer's* Affair being the Foundation of so many Articles, give me leave here to say something of it, tho' they have made no Proofs of it, or of the other Facts in this Article.

My Lords, He going away in *November*, and never appearing more in Court; or in his Office, but another put into his place in *May*; it is impossible his failing was, or could be, kept a Secret. Must not all the Suitors, who had Money in his hands, know that he was gone? For my own part, I never imagined, it was a Secret. And as they, and their Agents, could not but know what was doing; had they not been satisfied, that the Court was taking the best measures to make up the Deficiency; would they not have made Application for some Relief? I did believe the Masters would make it good, *Mr. Cottingham* swears he told me so from them: He indeed does not now rightly remember the time, and answered not at first very readily whether it were before, or after *November* 1721, when the second Letter about the Accounts was wrote. But, of necessity, it must be before; because *Mr. Edwards* says, *Mr. Cottingham* told him it would be made up, just about the time of his being made Master; which was in *May* 1721; and it is not pretended, there ever was any Thought, that it should be made up any other way, but by the Masters. *Mr. Edwards* says too, some of the Masters told him it would be made up; He does not remember by whom they said it should be made up; but I think he says, he thought; I believe the thing speaks, it could be by no body else but the Masters. And even *Mr. Lightboun's* Letter in 1722 takes notice of it as a thing always under deliberation, how the Masters should make it up; and that he differed from the rest only in the Manner, and in insisting that at the same time care should be taken, that the like Accident might not happen again, and they be expos'd to another Contribution. If I was too credulous in believing this, sure it is no Crime. And I am apt to think, your Lordships will be of Opinion, that the Suitors believed the same, or those, whose Money lay so that it might probably continue some Years, would have applied to have an Account taken, and that their Proportion should be reserved. But nothing of that kind was done by them. Afterwards there breaks out a Dispute between the Masters and the Master of the Rolls, thereupon *Mr. Lightboun* informs your Lordships, that many Orders were made in prejudice of the Masters in other Branches of their Office; the Language of the Court varied (as he expresses it) in Orders; and the Money put into another Channel; whereby they lost, not only any Advantage that might be made of the Money, but many Fees and Perquisites, that arose thereupon, and in the other Branches of their Office. Had not this happen'd, or should it be cured, I am persuaded that *Dormer's* Deficiency would all be made good. Contrary Measures may prevent it.

There was some little Reflexion made upon that part of the Evidence, which related to the Message I first sent to the Bank; and also for that the Order, which was afterwards sent, and a Copy of it read, was never enter'd with the Register.

But your Lordships have had an Account that the Effect of my Message to the Bank (tho' there was no formal Order made) was, that a Memorandum was entered in their Books, that no Transfer should be made without Leave from the Court of Directors, or Court of Chancery; which had the desired effect. But it is true I made no formal Order, because I did not apprehend, that I had Authority to hinder them from permitting him to transfer, by an Order of Court to be entered in a Cause, wherein they were no Parties. And that which was sent after, was only to deliver them from the Restraint, they, it seems, look'd upon themselves to be under, by that Message; and to answer the Entry in their Book.

And as to its not being enter'd; I must likewise observe, that even the Directions sent in November last to the Masters by Advice of the Committee of Council, for preparing and bringing in their Accounts were never entered: and yet the Gentlemen will not imagine, that that could be with a design to have it kept a Secret; but the true and only reason of it was, that those Forms are not necessary, but in adversary Suits, or unless there be occasion to enforce the execution of such Orders by the Process of the Court.

But they charge and argue, altho' they have proved nothing, that I have neglected my Duty.

My Lords, It is proved that I did a great deal more than they have proved to be my Duty. And what did I omit?

*Obj.* I did not (say they) secure his Person.

*Resp.* My Lords, was that a Crime? He was in Holland out of my reach. When he came into England, it was to deliver up all he had to the Suitors, and on promise of Liberty.

But if I had, would that have been of use to the Suitors?

*Obj.* I issued no Sequestration to seize his Estate.

*Resp.* The Estate was got without one, which is much better. The most usual Allowance upon a Sequestration is 6 s. 8 d. a day to every one of the Sequestrators that are employed to put it in execution, which would soon have eat up great part of the Estate. And I do not know that the Sequestrators would have found out the poor parcel of Hops, which is all that was not got then; and it was not imbezled, but has been brought in now without the help of a Sequestration.

*Obj.* I did not examine him upon Interrogatories.

*Resp.* I order'd Cottingham to propose to the Masters, whether they would have one; and they thought he would make a fair Discovery without, and were afraid lest that appearance of Distrust and Hardship might drive him away again, but if they should find it requisite, they would apply. No Application was ever made to me to have it, nor does there any fraudulent Concealment appear, nor any thing diverted from the Satisfaction of the Suitors. And if he made a fair and honest Discovery of all, what imports it, whether he were sworn, or not sworn to it?

But I would beg leave to ask, Why should I neglect what was proper?

The Reason they assign is, That if I had done these things, it would have made a Noise and brought the Matter out.

My Lords, what could make a greater Noise, than that a Master in Chancery absconded, and no Money was received or paid, nor Business done in his Office from November to May, and then another put in his Place?

One of the Gentlemen expresses his Astonishment, how it could enter into my Heart, that this could always be concealed, or that so ghastly a Wound could ever heal of itself, without the application of proper Remedies.

My Lords, it is yet more astonishing, that it should enter into my Heart to endeavour to conceal it for those Reasons which he supposes I had in View. And I should have thought, the Arguments that raised his Wonder at my having done so, strong Arguments that I never did it; And indeed it is impossible I should endeavour or hope to conceal that, which I knew was so notorious and publicly known. Nor was I without Endeavours towards healing the Wound: Some of those Endeavours are attempted now to be made part of my Crime.

XIV. The 14th Article suggests, "That the said Fleetwood Dormer having towards Satisfaction of the Suitors of the said Court, assigned to Henry Edwards, Esq; (who succeeded him in his Office of Master of the said Court of Chancery) a Debt of 24046 l. 4 s. or some other great Sum due from William Wilson, a Banker, to the said Fleetwood Dormer, to the intent that the Money received on the Account thereof, should be applyed and disposed of, as the said Court of Chancery should Order and Direct, the said Thomas Earl of Macclesfield, whilst he continu'd Lord-Chancellor of Great-Britain, for the unlawful Purposes aforesaid, with Regard to the Interest of the Suitors, by Colour of his Office, did, in an Unwarrantable, Clandestine, and Unusual Manner, Authorize, Direct, and Establish, a precarious and trifling Composition with the said William Wilson, upon the Terms of the said William Wilson's paying the Sum of 1463 l. 2 s. 1 d. and assigning 10000 l. part of a Debt of 22060 l. 12 s. 5 d. pretended to be due to the said William Wilson from Edward Poulter, or to that Effect, in discharge of the said Debt: and to that End, upon the Report of John Hiccocks, Esq; then one of the Masters of the said Court, without any Attendance ordered or had thereupon, and without Notice to the said Suitors, did by a private Order not made in open Court, order the said Henry Edwards to accept of the said Composition, in full Discharge of the said Debt, which said Edward Poulter was a Person insolvent, and has since absconded for Debt, and none, or a very small part of the said 10000 l. has been, or is ever likely to be received."

This Article your Lordships observe relates singly to the Composition with Wilson, which is charged to be authorized by me to the unlawful Purposes aforesaid, that is, to conceal Dormer's Deficiency, and keep up the Prices of the Offices.

Suppose this Transaction had been publick, nay, suppose Wilson had been openly sued for this Debt; would that have fallen the Price of Offices, or discovered Dormer's Deficiency? If his absconding and assigning his Place to Mr. Edwards, did not discover it; would the Proof of his assigning this Debt to Mr. Edwards have discovered it? What End then could the Privacy of this Transaction serve?

But

But tho' it does not answer the Purpose, that is charged. Yet it is insisted upon to be *prejudicial to the Suitors*, and giving up a great Part of the Money due to them from *Wilson*, and done in a *Clandestine Manner*, and without their Knowledge.

What Proof then is there, that this Composition was prejudicial to the Suitors? A small one it is indeed, but for a desperate Debt; and what Proof is there that they could have had a better; or that it had been better to have had none?

It is said, that *Wilson* paid to some of his Creditors their whole Debts.

It is true, that was said, but it has not been proved. If it had been proved, and the Circumstances shewn, probably it would have appeared, that he had a particular View in paying those their whole Debts, and it might be more beneficial to him to do so, and keep them his Friends; than if he had paid them only a part, as he did to his other Creditors.

And as small as the Sum is, my Lords, give me leave to say, it had never been got in for the Benefit of the Suitors, if this Composition had not been made. So that 2463 *l.* has been got for the Creditors, tho' no more should be recovered from *Poulter*, than the 1000 *l.* already got from him; where nothing had else been had, for what appears.

*Obj.* But *Poulter* was insufficient, and the Debt assigned from him worth nothing.

*Resp.* As to *Poulter's* Circumstances at that time: Some Persons have been called, who have proved ('tis true) that he was insufficient at that time, and could not pay more than three or four thousand Pounds; but the same Witnesses give an Account, that his ill Circumstances were then known but to four or five Persons of his Acquaintance, and that by all other People, who had any Knowledge of him at that time, he was looked upon to be very sufficient; he had left off his Business upon having raised an Estate; he was of good Reputation; he lived at *Hackney* in a House making a good Appearance, with good Furniture, and a great quantity of Plate, till the last, till the time of his being put in Prison, which was not till last Year, that he surrendered himself in discharge of his Bail.

But suppose he was not sufficient, how does that affect me? I was not obliged to concern myself with it, and left the Composition to the Management of the Masters; they made it: *Wilson* had sworn an Affidavit in Writing of his Circumstances, and that this was as much as he could pay to the Suitors; *Mr. Hiccocks*, a Gentleman of very good Reputation, was the Master, he being then Senior Master, to whom I referred the Consideration of it, according to the Course of the Court; he was upon his Oath in what he acted therein, and made his Report, that he was of Opinion this Composition would be for the Advantage of those to whom the Money was to be paid. And upon that I grounded the Order.

*Obj.* But the Suitors had no Notice to dispute it.

*Resp.* The Consequence of that is only, that *Mr. Edwards* being their Trustee, and *Wilson* knowing it, whatever could be done between them would not bind the Suitors, if it were any way de-

trimental to them: Therefore they have the Benefit of all that has been got in upon it, and yet have still a right to enquire into the true Circumstances of *Mr. Wilson*, and to recover, in proportion with his other Creditors, any Effects he shall appear to have unfairly concealed.

Upon the whole of this Matter, could the Master, or I, have any indirect End to serve, by allowing *Wilson* to compound at an under rate? It is not pretended I knew him, or could intend him a Favour. Why then should I designedly lessen *Dormer's* Fund, which was before deficient, and which I was endeavouring to make up?

*Obj.* But it is said, that this was by my Direction.

*Resp.* Suppose it were; they have not proved any thing to induce a Suspicion that it was not perfectly innocent, nay beneficial to the Suitors, or probable to be so.

But the Proof is only, that *Mr. Edwards* spoke to me about it, and asked me, if he might compound it of himself; I thought not: But *Mr. Hiccocks* having afterwards informed him, that it was usual to do things of that kind upon a Report grounded on the Party's Oath, and an Order founded thereon; he proposed that Method, and I thought it might be so done. And he did it.

But whether this was prudent, or imprudent; where is the Crime? This tended nothing to conceal *Dormer's* Affairs: He was known to be broke; and *Wilson's* Debt was esteemed desperate. There was no other View, nor could be, but to get somewhat towards *Dormer's* Deficiency, and no body is at all hurt by it.

*Obj.* But this was unusual.

*Resp.* In what?

*Obj.* No day was appointed to hear Council upon it.

*Resp.* My Lords, There was no occasion for Council; there was nothing for Council to be heard to; there was nothing for them to argue. The Order is in direct pursuance of the Report.

Indeed, upon carelessly reading the Article, one would imagine the Charge to be, that this was an Order made upon *Mr. Edwards*, without giving him Notice, or hearing Council for him. And that would be very unusual and unjust; if it were not that it is ordered upon his own Petition, and at his own Request.

Your Lordships will likewise observe, that this was the 3d of *August*, after the Seals were over; and if I must have appointed it to come on, upon a publick day (not to have it concealed) it must have waited till *October*; And by that time *Wilson*, and his Effects, might probably have been gone, and the Opportunity of getting any thing lost.

As to some few new Observations made upon reading these Proceedings, I see not how they tend to prove any Crime in me.

*Obj.* They are not filed.

*Resp.* That is not my Affair. And if they are never filed, they will affect no body, and cannot possibly do harm.

*Obj.*

*Obj.* Some Lines or Words appeared razed out, which import that Mr. *Edwards* should be indemnified.

*Resp.* If he acted fairly in this matter, he would be indemnified, tho' those Words were out; And if he did not, they ought not to be in.

In short, here is not the least Evidence, but that this Composition was made with a View to get as much as could be for the Suitors, out of a desperate Debt; there is no body hurt by it; and if it be not of advantage to the Suitors, they may avoid it.

XV, XVI. The 15, 16, and 17th Articles were opened together; but one Gentleman spoke more particularly to the 17th, as being of a different nature from the others; and therefore I will speak to it separately.

The principal Subjects of the 15th and 16th Articles, are 4500 *l.* raised by the Masters, and 1000 *l.* by myself, towards *Dormer's* Deficiency.

In the last Article I spoke to, the Crime was, the lessening *Dormer's* Effects by a trifling Composition; in these, increasing them 5500 *l.* is a Crime.

At first sight, one would think this commendable, but by I know not what Fatality, every thing grows criminal by my having any concern in it. My Intention infects all. It is said that I intended by it to carry on my corrupt Purposes, that is, as one of the Gentlemen explained it, to conceal *Dormer's* Deficiency.

But all that appears upon the Proofs offered relating to my Intentions is, that here was a strong Desire to make good *Dormer's* Deficiency; And that way of concealing it is surely not blameable.

But then as to the 4500 *l.*; it is said, that I induced the Masters to pay it by Colour of my Authority.

How is this proved?

Mr. *Conway* produces, and proves, the Receipt he had given him by Mr. *Edwards*, for 500 *l.* voluntarily contributed by him towards Mr. *Dormer's* Deficiency: and says, that he had promised it in February, and paid it accordingly in August.

Mr. *Edwards* says, that in 1721 he received 500 *l.* apiece, from all the Masters, but Mr. *Lightboun*.

Mr. *Lightboun* says, that when Mr. *Cottingham* spoke to him of it in February 1720, he told him, all the other Masters had agreed to it; but Mr. *Lightboun* refused it: That I never spoke to him of it till January 1722, which was near two Years after; that then, I was so far from making use of my Authority, that when he asked me, whether it was my Proposal, or the Masters; upon its being said, it came from the two Senior Masters, he took occasion to speak more freely against it; and tho' I used some Arguments with him, yet he says I left him to his own Inclinations.

My Lords, these are their Proofs. But they are to be helpt out by some Constructions.

*Obj.* It is said, that the Letter which I caused to be sent in February 1720 to require them to give in their Accounts, was in order to terrify them to

come into a Composition: for it is said, when that had its Effect, and the Mony was paid, they were not obliged to bring in their Accounts.

*Resp.* This then, I suppose, is that Colour of Authority by which (according to the Charge in this Article) I induced them to contribute.

But in the first place I beseech your Lordships to consider, whether it can be thought, that any of the Masters would pay 500 *l.* rather than let me know what was in his hands? which was all the Consequence of my having an Account. If it can not; why should it be, without the least Proof, imagined, that I should expect it?

In the second place I must beg leave to observe, that the Masters best know, what effect that Letter had upon them, and what was the Motive of their advancing that Mony; but none of them have sworn, that they were in the least induced to pay the Mony by the fear of that Letter, or by the apprehension of being forced to give in their Accounts if they did not comply. Nor do the Circumstances shew it. For Mr. *Conway* came in but in that February, and had but little Mony in his hands, and a very short Account to make. Mr. *Kynaston* and Mr. *Tho. Bennet*, who are now deficient, were not then Masters. Mr. *Holford* had got an Account ready, yet he paid. Mr. *Lightboun* gave in no Account, and yet he did not pay.

So that upon a View of the Evidence, here is a good Action done, very beneficial to the Suitors; and no indirect Practice to bring it about.

And therefore the Charge not being proved, I am according to my general Plea, not guilty of the Matters contained in this Article, or any of them, in manner and form as they are therein charged against me. And there is no occasion to make out, what I have stated in my Answer, to have made this matter more clear, in case they had given occasion, by having produced Evidence to maintain their Charge.

However I have shewn a second Letter, written by my Order, in November following, requiring those Accounts with more earnestness. Mr. *Cottingham* produces the Draught of it, and tho' he will not swear positively that he deliver'd or sent it; because he does not find any memorandum of it: he verily believes he did, and has not the least ground to suspect the contrary.

Your Lordships will observe, how very particular the Account was directed to be.

The first Letter was wrote the 14 of February 1720, Your Lordships will give me leave to read the Copy kept of it.

[Reads.] " 14 February 1720.

" I am commanded by my Lord to signify to you, that you do, with all convenient speed, lay before his Lordship an Account in several Columns.

" 1. Of the Cause.

" 2. Solicitour, or Agent.

" 3. The Date of the Order.

" 4. For what Purpose the Mony was brought in.

" 5. How much was brought in.

" 6. When.

- “ 7. How much in hand.
- “ 8. How much on Securities.
- “ 9. How much paid out.

*A distinct Account of Securities.*

- “ 1. Cause.
- “ 2. From whom the Security is taken.
- “ 3. What the Security is.
- “ 4. In whose Name taken.
- “ 5. For how much each Security.
- “ 6. The total of the several Securities.
- “ 7. In whose hands lodged.

*A distinct Account of Money paid out.*

- “ 1. Cause.
- “ 2. By what Order, of what date.
- “ 3. When paid.
- “ 4. To whom.

The second Letter is dated the 7 November 1721. And is in these words :

[Reads.]

“ By my Letter of the 14 of February last, I signified to you my Lord Chancellor's pleasure, which was that you should with all convenient speed lay your Account before his Lordship, the Method whereof was to be in several Columns subscribed at the foot of that Letter. I am now farther to acquaint you, that his Lordship is very much surprized to find that in all this time no such Account hath been laid before him; and therefore hath commanded me to tell you, that it is expected to be delivered on or before the last Day of this Term; and if this is not complied with, you will oblige his Lordship (tho' very unwillingly) to think of other Measures, which I doubt not but you will avoid by a ready compliance with what is a second time required of you. And to the end there may be no mistake as to the Method of your accounting, I have subscribed it again at the foot of this Letter.”

And Mr. Cottingham explains what he apprehends was meant by that Passage of *other Measures*, that I would make an Order in form, that is, an Order of Court to be entered with the Register. He tells your Lordships what Representations they made of the Difficulties of drawing up such Accounts: And I did not afterwards insist upon them. And your Lordships will be pleased to observe, that the Letter sent by me, in Form of an Order, in November last, by Advice of the Lords of the Council, was for an Account much in the same manner. The words are these :

[Reads.]

“ Dated 3 November 1724.

“ Let the several Masters of the High Court of Chancery forthwith prepare and deliver to me a perfect Account of the Money in their Hands, therein distinguishing in several Columns  
“ The Names of the Parties to the Cause.

“ The Dates of the Orders for } } Money or  
bringing in } } Securities.

“ The Time of bringing in each Sum.  
“ Particularly expressing the Sums transferred and paid to them at their  
“ coming into their Office, in the first  
“ Place.

“ How the same hath been disposed,

“ What Sums paid out, and to } } when and  
“ whom, } } by what  
“ What invested in Securities, } } Order.

“ Specifying the Securities by Dates, Numbers, &c.

“ Where the Securities are at present,  
“ What Money remains in their Hands,  
“ Where the same now is.

Mr. Holford tells your Lordships, that another Account was carried in by my Order instead of one so particular; for that an Account drawn up in that manner, would have taken up several Months: And in February 1721 or 1722 it must have taken up many more; because there were then Masters, who had been much longer in their Offices, than Mr. Holford the now Senior Master had, in November last, been in his. And those Accounts must have gone through their whole Time. And, if your Lordships will be pleas'd to look upon the Report on the Table, it will appear that the Judges and Directors reported, that no regular Accounts could be taken, unless they were brought down from the Beginning of the time, that each Master had been in his Office; and yet the Lords never insisted on any such Accounts afterwards (tho' I had made an Order for them by their Advice) nor the Lords Commissioners since; which what is it, but falling into the same Sentiments that I had done before? The requiring the Dates of the Orders on which Money was paid, and the Solicitors Names (which I found not one of the Masters was able to give me) was intended by me, that I might be able to make some Examination into the Truth of the Accounts, that should be given in: And for want of that, your Lordships know, what Methods the Lords Commissioners have been forced to take; to have the Accounts of the several Masters printed and publish'd, and dispersed throughout England at a publick Expence; that People may come in voluntarily to make a Surcharge. And yet it is well known, that the preparing the present Accounts, short as they are, containing only the Balances of Securities and Cash, which the Masters owned to be then in their Hands in each Cause, so took up their Times, that the Business of the Court before them stood still for some time, and their Attendance in Court was dispensed with. No Wonder then if I did not insist on these Accounts, which were to be attended with so troublesome, so tedious, and so fatiguing an Enquiry.

These are some Facts, that I have not indeed examined to; but with Submission I do not stand in need of them: If I did, they are notorious; and I believe the Managers, some of them at least, know them, and will not deny them; and the Masters, being your Lordships Attendants, may be asked to them, by any of your Lordships, who shall

think there needs any farther Satisfaction to be given concerning them.

*Obj.* But why then did I not content myself with the shorter Accounts, and take them at least, such as were deliver'd into the Committee of Council?

*Resp.* As to those Accounts; I shall beg leave to say something upon them under the 18th Article, which, I flatter myself, will give your Lordships intire Satisfaction on that Head.

Upon the 16th Article I take the Liberty to say as to the 1000*l.* paid on Mrs. Chitty's Account; I never expected that an Act of Humanity to Mr. Lochman should be made a Crime.

The supposed Crime, I think, consists in this, That it was in farther Prosecution of my unjust and corrupt Purposes, that is, Keeping up my gain in selling Places, by concealing Dormer's Deficiency.

How is this proved?

Mr. Lochman tells of his applying to me, and my saying to him at first, that it should be paid; but telling him after, that there were not sufficient of Dormer's Effects left; that the Masters were in great Apprehensions of losing the Profits of their Places, and were not willing to advance any Money; that he told me of a Composition he had made, that the Time was near; that then I said, I would order Cottingham to pay the Money; but told him, that if Mrs. Chitty had nothing else, he might by marrying her make himself worse; for there would be no more Money paid her thence. And he swears that he did not look upon that Sum to be paid out of Compassion, but only as it was due. He says, it was about a fortnight before the 1000*l.* was paid, that I told him no more would be paid. Upon some Questions put to him by me, he said, he asked for another 1000*l.* on account of Mrs. Chitty's Children: But that after I had told him, no more than the first mention'd 1000*l.* would be paid, which was a fortnight before it was paid, he asked it no more; and deny'd that he apply'd for the Payment of 500*l.* or 574*l.* after I had promis'd the 1000*l.*

My Lords, all this, supposing it true, does not prove that I paid this Money to conceal Dormer's Deficiency; for he says I told him before, that Dormer's Effects were all gone; and at the Time when I made the Promise of that Money, I told him no more of her Money would be paid.

And is it rightly collected from this Action, without farther Proof, that my Intention in paying this Money, was to conceal the very thing, which I at the same Time expressly published?

But, my Lords, it is fully proved on my Part by Mr. Cottingham and Mr. Elphinstone, that this 1000*l.* was advanced out of a generous Compassion, and not out of any by-end: That his Application was founded on this, that he was to marry Mrs. Chitty, and was to have this 1000*l.* to pay a Composition for his Debts; that I had sent him word of the Deficiency, and that he could not have the Money; so the great Secret was out: But that he afterwards appear'd in the utmost Distress and Agony, in Danger of laying violent Hands on himself, and desperate: This Distress moved me; I told him, I would order the Money to be paid out of Compassion to him; he afterwards spoke of it with the utmost Acknowledgment: I told him this, and gave the Order accordingly on Monday, and it was paid the Thursday following, which was the 30th of July;

and as to Mr. Lochman's Testimony, who denied that he apply'd for a farther Sum; it has been proved, under his own Hand, that he apply'd for 574*l.* for Mrs. Chitty, on Pretence she could not otherwise spare him the whole 1000*l.*, and this after the time was appointed for Mrs. Chitty to receive the 1000*l.*

Here the Earl of Macclesfield informing the Lords, that he found himself so far spent, as not to be able to proceed at present, the House adjourned during Pleasure, and after some time the House being resumed, the Earl of Macclesfield went on.

My Lords, when your Lordships were pleased to allow me to retire, I was just upon Mrs. Chitty's 1000*l.*, and had spoke of that Part of the Transaction that related to Mr. Lochman. And as to the next, which is the Charge of endeavouring to persuade the Masters to advance that 1000*l.*, and using the Arguments in the Article mention'd for that Purpose:

Upon the Evidence it does appear, that there was a Meeting of the Masters at my House in the latter end of July last; and some such Arguments used as in the Articles, but not (as is charged) to have a present Purpose of paying the 1000*l.* answered, but to have Dormer's Deficiency all made good, by small annual Payments out of each Office. A View, which I hope your Lordships will think very innocent and commendable, whether likely to be successful or not. And this was so much the Intent of my desiring the Masters to come together, that tho' that 1000*l.* was the immediate Occasion, that discover'd the Effects to be then all gone, and so might naturally be mentioned, and I doubt not but it was, I do not yet remember that I persuaded the Masters to pay it; Nor does Mr. Lovibond remember it; and Mr. Holford's Expression was (if I took him right) only, that he apprehended it was mentioned as if the Masters should contribute to make up that 1000*l.* However, my Lords that was not the End which I aimed at and mentioned; and upon the whole Evidence all agree, that the Discourse about the 1000*l.* was soon over, and ended with my saying, That I would take, or had taken, Care of it. Mr. Lightboun says, he is not sure which of the two Expressions I made use of. And even Mr. Tho. Bennet says, that when I had said so, nothing was afterwards said of that, but of Dormer's Deficiency; and then came in the Discourse of the Parliament. Mr. Holford represents it, that after some Discourse of the 1000*l.*, I spoke of Dormer's Deficiency; and particularly of the Mischief, which was what Mr. Edwards had a little before said, that some had had all, and others none (which would not at all be cured by Payment of this 1000*l.*) and that then I mentioned, that that might make great Clamour, and possibly occasion a Parliamentary Enquiry: Where if it were resolved that buying those Places was against the Statute of Ed. 6. it might affect me in the Disposal of the Places, and the Masters in the Enjoyment of their Places: He says several things were propos'd, but nothing agreed on. One Proposal was, whether if the Masters were continued on the same Foot they had been, it would not be worth their while to contribute?

The Masters have not had so good Memories in this Case as I hoped. But Mr. Lovibond does swear,



swear, that all or the greatest Part did then agree, that if their Offices were establish'd, as they had been for forty Years, they would make an annual Contribution towards *Dormer's* Deficiency. And he heard no body say otherwise, only he himself (he says) did not agree to it.

So that it appears upon the whole, that what I said was not with Intent to supply a present Purpose, as is charged; for I had declared to them, I had taken care of that, or would take care of it. And if I could, by setting such an Example, or by any Arguments I could use, induce them to contribute by Payments, as they could be spared out of the Profits of their Offices, to make good the whole Deficiency, or if not all, yet to make good the Proportion of those who had had no part of *Dormer's* Effects, I see no harm; and I am sure there was no Fraud in it. It is to conceal it and prevent Clamour or Inquiry about it, only by paying it; which would leave no Room or Occasion for Clamour or Inquiry; or if they could not pay the Whole, by paying the Proportion which any one could be intitled to.

And this Proposal, to have it paid by Annual Payments out of the several Offices, did not tend to raise the Price of them, but on the contrary by laying a Burden upon them, would greatly diminish their Value.

Whether the Design I had, or the Arguments I used, were prudent, or discreet, or proper, I submit to your Lordships Judgment; but the Arguments were not used for the Purposes in the Article, but for the Benefit of the Suitors of the Court.

But to give this some appearance of a Crime, they are forced to attribute it to criminal Views and Designs, of which they have made no Proof, nor shewn any Probability, scarce Possibility, that they were the Principles of this Action.

I might farther observe, that the paying the 1000*l.* and leaving the 500*l.* (which in the very same Order is directed to be paid to the Plaintiff) unpaid, and the 574*l.* demanded by *Mr. Lochman*, unpaid; would not at all hinder the Deficiency from breaking out.

As to the Expression charged in the End of the Article, to be used by me, I agree, I used one very near it; but with other Expressions along with it (which the Witness in effect owns) that shew, I could not possibly have any ill Design in it; nor could any Inconvenience ensue upon it. No Question had till that time been laid before the Court relating to *Dormer's* Deficiency: *Chitty's* was only an Application for Favour, for a Sum then particularly wanted, because there were at that time no Effects, and was paid by me out of Compassion; there was no Question of Right about it to be decided, as was here, when the Dispute was, who was to bear the Loss, if any, and could be determined only upon Circumstances. I at the same time was so far from endeavouring to have it believed, that there was no Deficiency in *Dormer's* Office, or that I knew not of it, that I declared a great deal, which I knew about that matter.

As to what they object, that the Order is drawn up in such a manner as implies (as they say) my being wholly ignorant of the matter, by directing an Enquiry whether there was likely to be any Deficiency or not:

Give me leave to say, that if I had known more

of it; if I had known to a Farthing what *Dormer's* Deficiency would be; I could not as a Judge found an Order upon my own private Knowledge, but must make it in the same manner as if I had known nothing at all; and accordingly that Order is worded in the same manner, as it must have been, if I had never heard of *Dormer's* Failure before.

Besides, it had been then talked, that *Wilson* had not dealt fairly in his Composition; and if so, and if he were worth it, the Suitors might recover near 22,000*l.* more against him. A matter extremely proper for the Master to enquire into.

XVII. As to the 17th Article, which relates to Orders for payment of Monies deposited with *Dormer*; which *Mr. Edwards* (as is charged) was directed by me to pay, without regard to that Proportion, which ought to have been observed in a defective Fund.

They have read four Orders made by me, and no more, three of them in one Cause; and only one of them directs the whole Money to be paid out. I said in my Answer, that I did not know that I had made any other Order than that of *Chitty*; but believed the Court might have made others: which gave occasion, it seems, to some of the Gentlemen to wonder at the Distinction between me and the Court. My meaning was, that such Orders might have been made by the Court in my absence, for ought appeared; that is, by the Master of the Rolls and Judges, with others in Commission for hearing of Causes:

But as to what was done by me; the proper Answer to this Article, the true one, and I hope a satisfactory one, is, that I acted so as I thought would be most for the good and benefit of the Suitors. I fully believed all along, that the Whole would be made good, to which I contributed all I could; and I acted accordingly. If I was mistaken, I hope it is no Crime.

XVIII. As to the 18th Article, three Neglects are charged upon me in this Article.

1. Not taking proper care of the Securities lodged with the Masters.
2. Not taking Security for the Cash.
3. Not taking the Masters Accounts.

There is another thing expressed, which is permitting and encouraging the Masters to traffick with the Suitors Money and Effects. But that I apprehend means only, that the not taking due care to hinder them, is permitting and encouraging them. So that it does not make a distinct Branch of the Article; but is only a supposed Consequence of the rest.

As to the Securities and Cash, what I am charged to have omitted doing, was never done before by my Predecessors, nor desired then of me by the Suitors. And, therefore I suppose, there is a particular Reason assigned why it should have been done by me, tho' not before; and that is *Mr. Dormer's*

mer's Failure, which is charged to have been chiefly occasion'd by his taking upon himself *unduely to dispose and employ* the Money and Effects of the Suitors in his hands. And this the Article charges that I knew.

My Lords, as to this particular Reason : To add a new Duty to my Office from it, and to lay me under an Obligation to do that, which my Predecessors were not obliged to; it ought to be clearly made out that the Fact is true, that this was the Cause of *Dormer's* Failure; that I knew it to be so; and that thereby it became my Duty, unasked by the Parties interested, to make the new Provision expected. But there is no Proof that *Dormer* did unduely dispose of or employ the Money and Effects of the Suitors in his hands; much less is it proved, that I ever knew it, or had the least reason to suspect it; but the contrary.

The Account Mr. *Parkhurst* gave of what passed at the time of *Dormer's* going off, was this (which was represented to me, and never shew'd to be false) That Mr. *Dormer*, who was his Uncle, informed him, that having happened to receive a greater Sum than ordinary out of the Exchequer, and going into the Country in the Long Vacat on 1720, he knew not where to leave it safer than with Mr. *Wilson*, an eminent Banker; and he left it with him to the value of 24,000 *l*; that upon his return to Town, he found Mr. *Wilson* stop payment; and that therefore he would withdraw himself, for fear of a Gaol; that accordingly he went into *Holland*, and wrote a Letter from *Rotterdam* to Mr. *Parkhurst*, with one inclosed, to be shewn to the Masters, and sent to me or Mr. *Cottingham*; he gave some account of the Letter, that it set forth the Case to the effect above; and the Draught thereof is in the hands of the Managers, which they might produce, if they thought proper. This I took to be the true State of the Case; and never heard any thing to the contrary (except Mr. *Lightboun's* Guesses, founded on no Fact, but on the greatness of the Sum, which this accounts for another way) till *December* last, when I was told, that *Wilson* pretended, he borrowed it of Mr. *Dormer* at an high Interest; but as this appears to be spoke in excuse of himself, an After-thought at four Years distance is little to be regarded, and however, if it were true, ought not to affect me, to whom it was never disclosed. But according to this that I have stated above, which was certainly the truth of the Case, or however what appeared to me; *Dormer's* Failure was not occasioned by his undue disposing of or employing the Money and Effects; but it was a *Misfortune* owing to the Year 1720, and Circumstances peculiar to that Time; so not likely to happen again. On Dr. *Eddisbury's* Failure there appeared no Accident, but his own ill Conduct: Yet no Change was made by the Lord Chancellor, as to the Effects, or Cash, or giving Security.

But it was urged, that tho' this had not been desired of me by the Suitors, it had been proposed to me by the Masters themselves:

And three of the Masters were called to prove this. But only two of them pretend to have spoke

to me about it, Mr. *Lightboun* and Mr. *Kinaston*. Mr. *Holford* the 3d says, He never was once with me about it, only he liked some things which Mr. *Lightboun* told him he proposed.

Mr. *Lightboun's* whole Evidence, taken all together, clearly proves what I set forth in my Answer; that I had in view three things. 1. The making good *Dormer's* Deficiency. 2. Settling the Masters in their just Rights. 3. Securing the Suitors from future Accidents. The 1st was the Principal, and always uppermost with me. The 2d was plainly necessary, in order to that. The 3d for securing the Suitors from future Accidents of that kind, I was likewise very desirous of; but, I own, at that time, while I thought the Masters then in being Persons of Ability and Substance, and he gave me no reason to think otherwise, I apprehended there was no need of any extraordinary Expedition in it.

As to making good the Deficiency; It appears, that at the time of Mr. *Lightboun's* Proposal, the Masters were all willing to contribute; only Mr. *Lightboun* stood out; and his Reason, which in his Examination to the 16th Article he says, he upon one Occasion mentioned to me as sufficient, was, that it would be a Precedent for his paying other Debts of other Masters. And upon his Examination to this Article, he says, that he told me in discourse on that Subject, that as *Dormer's* Accident had happened, the like might again; and so often, that it could not be supported; and afterwards, that if any thing could be done to make good *Dormer's* Deficiency, and put things upon a secure Bottom, he would be as ready to contribute as any body. He then gives an account of the Proposals he made, which he says, I desired him to reduce into Writing for my Consideration, which he did; the Copy of it was produced and read, and I have the Letter it self here in my hand; and there only, I apprehend, is to be found the Proposal which is to affect me, and not that which he now from his Memory mentions to be the Proposal, but differs from the Writing in several things; which not being in the Letter, if he had mentioned them cursorily in that Discourse, I must have looked upon them as what upon farther Consideration he did not think proper.

My Lords, The occasion of the Proposal was my speaking to him about contributing to *Dormer's* Deficiency; and both that and the Proposal it self shew, that it was really no more, than laying before me the Terms upon which he would contribute.

In those Terms, the principal thing insisted upon by him was, that the Money should be continued to be brought before the Masters; which, I apprehend, had then been a little broken in upon: which is expressed in these Words, shewing the Improbability, that a Fact objected should happen, "if (as his words are) the Money be directed as usual to be brought before the Masters, both by your Lordship and the Master of the Rolls; without which the Masters cannot think themselves much interested in the Event of Mr. *Dormer's* Affair."

The other thing he insisted upon was, that he should be secure from being exposed to the like Inconvenience, by failure of another Master; and therefore what he proposes in relation to securing the Effects, is not a thing proposed to be done of itself, separately, but in company with the other Regulations.

That part that relates to the Rights of the Masters, was afterwards pressed farther, as it was apprehended they were more broken in upon; and produced the Representation of the Masters, which Mr. *Lightboun* the other day mentioned to your Lordships.

And this likewise explains several parts of his Evidence: It explains what he says, that he pressed me so often to do some thing, and thought that to be *Irresolution*, which was indeed my *Caution* to proceed upon sure Grounds, in doing a thing, which, if not perfectly well founded, might have the Appearance of being contrived on purpose to advance, or keep up the Profits of the Offices of the Masters. It explains his Apprehension, that if I did not do it, it would not be done by my Successor, unless the Seal should come into the Hands of a noble Lord, whom he named. It shews, that what he pressed, was not so much for the Masters to give Security, or to make up *Dormer's* Deficiency, and retrieve the Honour of the Court, as to have Orders made, for the Benefit of the Masters; which I thought ought to go together.

For it wanted no Resolution in me, or in any other Chancellor, to make Orders upon the Masters, to secure the Effects of the Suitors in their Hands; had that been the thing pressed, and especially if, as is pretended, they themselves desired it. But it might require Resolution to support the Masters against the Claims of an honourable Person, with whom they then had a Dispute.

This View of this Matter will make your Lordships consider it in a different light from what the Managers have endeavoured to set it in; and that my Slowness did not proceed from my concern for the keeping up of the Masters Offices, but from my Caution not to be too precipitate in advancing them.

And had I taken the Measures desired, and made Orders to prevent the Master of the Rolls from directing, in his Decrees, the Money to be brought before the Usher, and from referring Irregularities to the six Clerks; and to settle in their favour the other Matters in dispute (tho' I will do them the Justice to declare, that I do so far, as I have seen of it, think the Masters in the right therein) yet I am apprehensive, that at first sight it would have been matter of Complaint against me, as a contrivance to advance the Offices of the Masters; and that the Schemes proposed by Mr. *Lightboun* for giving the Security he represents as sufficient, would not have been thought a Ballance to it.

Having said this, give me leave to weigh the Proposals.

And first, his Proposals for providing for *Dormer's* Deficiency.

The way of doing it, which he proposes, is this: Having stated, in the first page of the Letter, what he takes to have been the occasion of "this great Deficiency, he goes on, "which I hope may be provided for, and the Credit of the Court retrieved and supported by every

"Master advancing 2000 *l*, or such other Sum, as shall be agreed on, out of the Cash of the Court in his Hands; which being placed out at Interest, the yearly Income thereof, together with the Produce of Mr. *Dormer's* Estate, will answer the Demands that may be expected on his Successor, and will in due time make good the Debt upon the Office."

But as to this, I thought it both impracticable and insufficient; and I told him, and he very fairly owns it in his Evidence, that I could not make an Order of that kind; because it would indeed be ordering one Man's Money to be put out at Interest, to pay another's Debt.

His next Proposal relates to the *Securities*, lodged in the Hands of the Masters, which he thought of the greatest Consequence; because, as he now says, he told me that *Dormer's* Accident came by trafficking with *Securities*; which he inferred from a Supposition that there was not then so much Cash in his Hands. This Fact is contrary to the Representation made as above to me, and the Supposition, with respect to the quantity of Cash, is obviated by his having just received a great Sum out of the Exchequer. And your Lordships have heard from the Report to the Lords of the Committee of Council, that the Masters have brought in all their *Securities*; so that what Mr. *Lightboun* thought the greatest Danger, has proved to be none at all.

However, to prevent that, which he thought the greatest danger, he proposes the taking all Government *Securities* for the future, in the Names of two or more Masters; his Words are in page the 2d. "Having before observed from whence this great Deficiency arose, I submit it to your Lordship, whether the taking all Government *Securities* for the future, in the Name of two or more Masters, may not prevent the like Misfortune hereafter." He says now, that he proposed them to be taken in the Names of some Masters, and of a third Person; but that is not mentioned in the Letter, nor does Mr. *Holford* mention it in his Evidence.

As to this Proposal, he has now sworn, as the Truth is, that I started a Difficulty upon that Head, by objecting that this would not answer all Cases, particularly with respect to the *East India* and *South-Sea* Bonds, by reason that they are payable to the Bearer. And his Answer was, That there was no necessity of taking those *Securities*; such might be taken as are transferrable in the Books of the Companies.

On consulting others upon this, I found, that as to *East-India* and *South-Sea* Bonds, wholly to disallow the taking those *Securities* would be hard. Many People choose them, because there is little variation in the Price, only sometimes a few Shillings higher or lower; whereas in *Annuities*, and much more in other Stock, the fall of the Price, by the time the Money was to be paid out, might eat up the Interest and more. That there would be a difficulty to dispose of those at that time in the Hands of the Masters; probably the Owners would not consent; it had been their Choice, that had determined the laying out of the Money upon those Bonds; that to send them to the Market all together would occasion a fall of the Price, and a great loss, which would raise a Clamour, and give great Dissatisfaction.

I thought these several things had great Weight, and deserved most serious Consideration. I then thought of locking up these Bonds in Chests, with two Locks, one to be kept by the Master, to whom they belonged, and the other by the next Master after him, and to take the other Securities in the Name of two Masters.

But I was told by Persons of great weight, that that was but two Masters instead of one, and would not be satisfactory: And should I join more of them, it would occasion more trouble, and possibly more charge; but they were still Masters.

At last I resolved to take the Securities (other than the Bonds) in the Names of two Masters, and a third Person to be named by the Parties. But still I stuck at the Bonds, and was never set right in that, till it was too late. But I have now learned, which neither I, nor Mr. *Lightboun*, as your Lordships may observe by his Evidence, had skill enough to know, that they might be indorsed to two Masters and a third Person, and so the Property be fixed in them. Which, had I afterwards continued Chancellor, I was determined to have put in Practice.

As to the Cash, how that might be made secure, his whole Proposal is contained in these Words in the second Page: "The Deposit to be put out at Interest, to raise a Fund for the Payment of Mr. *Dormer's* Debt, together with our Office, would in a great Measure be a Security for the Cash, with which we should then only be intrusted." By the Deposit he means that of 2000 *l*, or such other Sum, as should be agreed upon, as I before read to your Lordships.

This is the Nature of his Proposal, with relation to the Security for the Cash; which I apprehend must appear to be neither practicable, as I observed before, nor satisfactory. And had I built upon this, and made a Regulation accordingly, I was very apprehensive those that were before dissatisfied, would call it trifling.

He then takes notice of the Money being lodged with the Masters very effectually, tho' it is by way of answer to an Objection, that every Master may not always have such a Sum in his Hand; to which he answers: "I will venture to say, it's scarce possible that can happen, if the Money be directed as usual by your Lordship and the Master of the Rolls;" and then he adds (to shew the Strefs laid upon this) "without which the Masters cannot think themselves much interested in the Event of Mr. *Dormer's* Affair." And says in the 3d Page: "If I have the happiness to have offered any thing thought practicable by your Lordship, when I have the Honour to be admitted to wait upon you, I hope to satisfy your Lordship, that I shall with Pleasure contribute, as becomes me, to facilitate any Undertaking of this kind."

I think this proves what I said in the beginning; and I submit it to your Lordships, whether I am criminal in not complying with these Proposals.

My Lords, I have told your Lordships several thoughts I had about the Securities. Give me leave to mention something of my thoughts, with relation to the Cash.

I thought to take a small Security would only shew that I was convinced that a Secu-

rity was necessary, and yet trifled in it; and those, that were willing to find fault, would say, it was done only to amuse the Suitors and lull them into a false Security.

And till I could adjust the matter of the Securities lodged with them, particularly the *East-India* and *South-Sea* Bonds, no Security, that it would be practicable for the Masters to give, would bear any Proportion to what was in their hands, when it should be 50, 60, or 80 thousand Pounds.

But if I could contrive to make all the Securities safe, and reduce the Cash into a narrower Compass, by making Orders for putting out the Money of course, whenever, through neglect of the Parties, or otherwise, it should happen to lie beyond such a time; then a Security might be given by the Masters to answer it.

But, as I told your Lordships, the *East-India* and *South-Sea* Bonds were too hard for me, till the matter was before the Committee of Council; and had the Masters behaved themselves, as I expected they would in the matter of their Accounts, I then intended to have laid my thoughts before the Council, and to have had their Authority and Sanction for putting them in Practice.

The other Proposal supposed to be made to me, is spoke to by Mr. *Kinaston*, and him only. And though he says all, or most of the Masters, agreed to it, and thereupon he waited upon me about it; I do not find that any of the rest know any thing of it. I observed, that neither Mr. *Lightboun*, nor Mr. *Holford*, both produced to this Article, are examined to this great matter, upon which the Masters are said to be agreed: Nor is any other Master called to it, tho' his Account of it is so very imperfect, and stands in need of being explained, as well as supported. As to the Securities, it reaches not all; the Bonds are left under the same difficulty as before: And as to the Cash, he mentions no Sum or Value in which the Security was to be given.

But, my Lords, upon the whole, both from what Mr. *Kinaston* and Mr. *Lightboun* say, it is plain they were consulting their own Interest, to keep the Office free from Incumbrances: and their Interest and mine (if I could have any in view) was the same: So that if it was their Proposal, what should hinder me from agreeing to it, but that I thought it insufficient?

The third thing charged in this Article, is, That I did not take the Masters Accounts, that is, Accounts of what Effects of the Suitors they had in their hands.

My Lords, It is true, this was proved to be done by my Lord *Cowper* at his entrance into his Office, both the first and second time; it was done by another noble Lord, as has been proved at your Lordships Bar, once, and I believe it was done by that Lord oftener.

My Lords, Had I taken their Accounts too, I doubt in me it would not have had the same approbation, as it had in those noble Lords. In my case it would have been asked, What care I had taken to be sure that the Accounts delivered me by the Masters were true? whether I had seen the Securities and Cash? and

what

what Satisfaction I had, that they were able to make them good? I should, perhaps, have been told, that without that, the bare taking of an Account was of no use. And those Enquiries were of such a Nature, that if they were to be pursued effectually and with exactness, I own I had not strength to go through them.

Nor did I think the taking Accounts from the Masters necessary, because I do still take the Liberty to say, I was fully persuaded, all the Masters were good and honest Men; and if they were not, I do not see it would be of any use to take such Accounts. For I would be glad to know, whether if I had taken an Account yearly from every Master, he would have been one half-penny richer or poorer, or at all more able to pay the Suitors?

*Obj.* It is said indeed, that all these were wilful Omissions; and for fear the Price of Places should be sunk.

*Resp.* But of that there is not the least Proof. And the Circumstances of the Case above set forth, I hope, give a much more natural account of it. And the Difficulty what to do in such a case cannot be expressed by any words I can make use of so strongly as by what has passed, since I order'd the Money and Effects to be locked up, and lodged at the Bank, which were intended (and so the Order of the 17 December expresses it) to continue there only till the Affair could be more maturely considered, and a proper Provision made for the Security of the Suitors. Five Months are now elapsed, and nothing has been yet done: Tho' the Suitors suffer vast Inconvenience. For, in order to get any Money from thence, there must be a Master and a Six-Clerk and two Directors, and a Certificate from the Register, which occasions so great an Expence, that, in the case of small Sums, People do not think it worth their while to go for them to the Bank, but choose to be without their Interest rather than come at it through so many Difficulties. And if the Lords Commissioners, three of them, such great Men, have found this Matter too difficult to settle to their Satisfaction; is it a Crime in me, that I was not able to discover a Method for making things easy and secure?

This Article is closed with the great Deficiencies that have happened with regard to the Effects of the Suitors.

But, my Lords, give me leave to say, if that Deficiency have not happened by any fault of mine; if those Misfortunes, which have befallen some of the Masters, be not owing to any Crime in me; no part of all that is charged in this Article, ought in Justice to lie at my door. As I have observed before, the great danger, which was at first apprehended, and so often talked of by Mr. Lightboun, related only to the Securities, which the Masters had in their hands; but that which hapned related to the Money only. And tho' this Accident fell out, whilst I had the Great Seal, yet it might as well have happened in my Predecessor's time, since nothing that I have done has given the least occasion to it.

But is there at last, any Deficiency made out to be in these Masters, by which the Suitors are to be Sufferers?

Mr. Thompson has been called as a Witness to prove these Deficiencies; but he has only shewn an Estimate of *Borret's* Deficiency, and that some of the present Masters had not paid in their Ballances at such a time; and how much the further Sums they were to pay amounted to.

But have the Suitors therefore lost the Money? No, my Lords, that does not appear; but on the contrary,

Mr. Conway, one of them, and whom they have themselves produced as a Witness, has sworn, that he has assigned an Estate sufficient to pay all his Deficiency.

One of the Managers was pleased to own that he meant by Deficiencies, the Money not yet paid in, nay the Money not paid in at the time of making the Orders read; and did admit, that since those Orders, there had been Satisfaction or Security for the most part.

But, my Lords, it is the Loss of the Suitors, that alone can give ground to complain.

The Order concerning Mr. *Tho. Bennet* mentions his Deficiency to be only 7500*l* and 1575*l* represented by him to be in the hands of his Predecessor and me.

The latter Sum of 1575*l* is brought into Court. And we have shewn that Mr. *Hiccocks*, his Predecessor, has petitioned, that he may pay in the 7500*l* which is the whole Deficiency. And here appears a considerable Estate, of I think 750*l* per ann. of Mr. *Bennet's* besides.

Mr. *Kinaston's* Deficiency is represented to have been before *Christmas* 26,908*l* 11*s* 3*d*  $\frac{3}{4}$ ; arising all, but what he said was in my hands, and the hands of Mr. *Rogers*, his Predecessor, only hence, that his Casheer was dead intestate, and Administration disputed; and so he could not come at the Money.

There is paid in by me - - -	1575 <i>l</i>
There is offered to be paid	}
by Mr. <i>Rogers</i> , and will	
be paid - - - - -	6000
A Debt from Mr. <i>Delahay</i> ,	}
which he swears a just	
one, is assigned - - - -	20,850
	28,425
In all	28,425
And the Deficiency being	}
computed at - - - - -	
	26,908 11 3 $\frac{3}{4}$
	1516

This exceeds it in the Sum of 1516

And he has an Estate of between 4 and 5 hundred Pounds a Year, and Timber of the Value of 2500*l* to make good any part that may not be got from *Delahay's* Estate, tho' his Effects

fects are in one of the Reports mentioned to have been then found to be in *London* alone above 20,000*l.* And I have heard that the Lords Commissioners have ordered them to be brought into Chancery, and that 16 or 18 thousand Pounds are actually brought in.

What is said to be Mr. *Borret's* Deficiency, is the foot of an Account, which the Report that represents it, and Mr. *Thompson* in his Evidence, say could not be properly taken.

And when fully examined into, there may come out to be no loss there neither. Mr. *Godfrey* swears Mr. *Borret* to have been in good Circumstances when admitted; to have an Estate; to have sold an Office for, I think, 5000*l.* upon the occasion of his coming in Master; to have lived with small Expence, his Wife's Father maintaining his Family. And, as he enjoyed the Office four Years, there can be no great Deficiency, and probably will be none at all.

But, my Lords, it is extremely hard upon me, if by their producing an uncertain Estimate, I am to be obliged to state the Accounts of one, who is dead, whose Administrator is Solicitor against me, without their searching into his Papers and Affairs, and giving a perfect Account how they stand. It is exceeding hard, give me leave to say, that your Lordships should be judging upon me as Criminal, from Facts of this kind, to which I am an intire Stranger, when there is nothing like proof, that there will be a farthing Deficiency at last, but only that the Money is not yet come in.

I beg leave to observe one thing more, That the Masters, that are now called the deficient Masters, are not one of them in Custody; though it is made an Article against me, that I did not commit Mr. *Dormer*, who was in *Holland*. Therefore, since they are at Liberty, it must be taken for granted, that the Lords Commissioners had good Reason not to commit them; and yet their Deficiency, which is not a Crime in them, sufficient to justify the committing them; is to be made a Crime in me, sufficient to support a Charge of High Crimes and Misdemeanors. Your Lordships see how far this ought to affect me; and I submit, upon what I have said, whether it can support the Charge in this Article.

XIX. As to the 19th Article, which relates to what was done about taking the Accounts: It charges,

“ That whereas his most sacred Majesty, out of his Fatherly Goodness to his People, did in or about the Month of *November* last, direct an Enquiry to be made into the Accounts of the Masters of the said Court of Chancery, to the Intent that proper Methods might be taken for the Security of the Suitors of the said Court; the said *Thomas* Earl of *Macclesfield*, being then Lord Chancellor of *Great Britain*, and one of his Majesty's most Honourable Privy Council, in order to obstruct the same, and to prevent a Parliamentary Enquiry into the State and Condition of the Offices of the said Masters, in Breach of the several great Trusts reposed in him, did give Advice

“ and Encouragement to the said Masters to assist and supply each other with Money and Effects, and did represent to the said Masters, that it would be for their Honour and Service, to appear able and sufficient; and that if they made a bold Stand now, it might prevent a Parliamentary Enquiry, or to that Effect; and did persuade several of them to make false Representations of their Circumstances to his Majesty, by adding a Subscription to their respective Accounts deliver'd to the said Earl, to be laid before his Majesty, to the Effect following (*viz.*) That they were able to answer the Money and Securities in their Hands, and were willing to pay the same to such Persons as were entitled thereunto, although the said Earl knew, or had good Reason to believe, that several of the Masters were not then able to answer the Ballance of their Accounts, nor are they yet able to satisfy or make good the same; and when the said Masters were afterwards required to produce the Cash and Effects of the Suitors in their Hands, some of the Masters, according to such Advice and Encouragement given by the said Earl, did supply others of them with Cash and Effects, to make a false Shew and Appearance of their Ability and Readiness to answer the Ballance of their Accounts.

My Lords, the two things, which are made the Heads of the Charge in this Article, relate to the Subscriptions of some of the Masters written under their Accounts; that they were able to make good the Ballances; and their afterwards producing Cash, to make a false Shew and Appearance of their Ability. As to the first; I take it, that the material Part of the Charge is, that I persuaded them to make false Representations of their Circumstances by a Subscription, which I knew, or had good reason to believe, was false.

As there is not the least Proof offered that I knew or had reason to believe the Subscription false, this Charge I think intirely falls to the Ground.

Upon the Proof attempted to be made, I think it appears, that when Mr. *Holford* brought in his Account pursuant to my Order, he (without my knowing any thing of it) had wrote a Subscription at the End of it, to this Effect, “ I have all these Securities standing in my Name, as in this Account is specify'd, and will procure Certificates from the proper Offices, that I have and had them before this Account, if your Lordship require it, and as to the Money, I am ready to give your Lordship Satisfaction to a Demonstration, that I have it in my Power to answer it to every Person, that shall appear to be intitled to it, and who can give me a legal Discharge.”

They say, I read it, and spoke of it with Approbation.

There were only Part of the Masters ready with their Accounts; and Mr. *Jovibond* was the next, that delivered me his, and he had wrote to the same Effect in Substance; only as to the Cash, he wrote that he was ready to give Security.

My Lords, Every body knows that he was able to answer it; and he swears he had it ready, and was able to have paid it the next Day; and he appears to have lent 10,000 l. to a Brother Master on that Occasion. I was therefore surprized to see him make use of an Expression, which looked as if he were not able to pay the Money. And upon that it was, that he says, I recommended to him to make use of the same Expression, as had already been used by Mr. *Holford*; and so accordingly he did.

*Thomas Bennet* had subscribed, before he came, thus, "I have all the Securities standing in my Name as in the within Account are specified, as also the Tallies, Orders, and Bonds in my Custody;" but had said nothing of the Money: He swears, that I said, I wished all would make use of the same Form as Mr. *Holford* had done: And that it would be for their Honour and Service to appear able and sufficient. He says, that Mr. *Lightboun*, as I remember, asked what was the Meaning of bringing it before the Committee? and that I said, it would be a Means to prevent a Parliamentary Enquiry; that I did not ask him whether he was able, but directed him to write; I suppose he means by the general Direction; for I do not apprehend he says, that I spoke it to him in particular: And it is not pretended, that he made the least Scruple of signing it as true, or expressed any Backwardness in it; and he in Effect owns he did not. But he informs your Lordships how extremely tender he was, not to write any thing but what was strictly true; and that therefore, in his Subscription, he took Care to leave out the Words *to a Demonstration*, which are in Mr. *Holford's*. And Mr. *Holford's* Subscription running, "And as to the Money, I am ready to give your Lordship Satisfaction TO A DEMONSTRATION that I have it in my Power to answer it to every Person that shall appear to be intitled to it, &c." Mr. *Bennet* could not come quite up to this; but he subscribes, "And as to the Money, I am ready to give your Lordship Satisfaction, that I am able to answer it to every Person that is intitled thereto." This therefore, that he has subscribed, is, I suppose, if he is to be credited, exactly true: And if so, I have not persuaded him to make a false Subscription.

Mr. *Kinaston* says, it was recommended to them by me to make such a Subscription as Mr. *Holford's*; that I said, it would look well to the Council, and prevent farther Enquiry or Parliamentary Enquiry, or some other Enquiry, he knows not which; so he comply'd. But, my Lords, his Subscription is not what I recommended. Mr. *Holford* only undertakes to shew he had it in his Power to answer the Money, &c. that is, that he either had the Money, or Effects, which being disposed of, would raise it. But Mr. *Kinaston* goes farther, he says, I am ready to pay it to the Persons intitled.

Mr. *Lightboun* heard nothing spoken of the Subscription; he went away to finish his Accounts, which were not compleat.

Mr. *John Bennet* was not there; but at his coming, being told what I had said to the others, he, without Scruple, subscribed, without my speaking to him.

Mr. *Edwards* says he was able to pay it.

Mr. *Lovibond* was called last; but I before gave an Account what he said.

So that of the six Masters who made Subscriptions, I spoke only to five.

Three of them have proved themselves able; and I believe no body doubts it.

Mr. *Thomas Bennet* made no Objection, or Difficulty, and has been curious not to let his exceed the Truth.

Mr. *Kinaston*, has voluntarily gone beyond what I desired. And I make no Question but he thought himself able to answer it, though I doubt his being ready.

But is there the least Evidence offered, that I knew Mr. *Kinaston* and Mr. *Thomas Bennet* were not able, or had Reason to believe or suspect it? No, on the contrary, Mr. *Lovibond*, their own Witness, who is one of the Masters, and conversant among them, told your Lordships upon his Oath, that by their Conversation he believed they were able to make good their Accounts.

In the mean time, your Lordships observe, that these deficient Masters had all their Securities ready, and voluntarily subscribed so to their Accounts, without my speaking to them. In which Point Mr. *Lightboun*, under the last Article, thought there was the most Danger.

As to the Words, *That it would be for their Honour or Service to appear able and sufficient*;

I will not be positive as to the Words, whether it were *to appear able, &c.* or *to make appear that they were able, &c.* In a fair Construction, the Sense of the first is the same as the latter.

When Mr. *Holford* subscribes, *That he is able to pay to every Person, who shall appear to be intitled*; or, if I should say, *Mr. Thomas Bennet appears not so fair or able a Man, as I formerly thought him*; does it import only a false Shew?

As for what is said of *preventing a Parliamentary Enquiry*,

Mr. *Thomas Bennet* represents it to be spoke in Answer to the Question, *What was the Meaning of bringing it before the Committee?* And says, my Answer was, *That it would prevent a Parliamentary Enquiry.*

If I said it, the Reason is obvious, and the Thing innocent.

It is notorious, that the last Summer there was a great Clamour against Masters in Chancery, which was heightened by some Disputes they caused in the Court of Chancery; that it was generally believed, that it would come into Parliament; and I am persuaded it would have come into Parliament something sooner, if the Committee of Council had not taken this Matter into Consideration.

I am likewise persuaded, that had the Masters all been able to make good the Money in their Hands, and proved that they were so; and that they had behaved themselves well; and that the Lords of the Committee, after finding their Accounts Right, had proceeded to advise proper Regulations, the Matter would never have come into Parliament with Respect to them, whatever it might as to me.

And as to them, I believe, they were not desirous to have the Matter in Parliament, because of the vast Trouble it must give them, had there been nothing else in it. And it was natural for me to think, that nothing would more tend to

make them easy, in complying with what the Committee should think fit, than by letting them know, that if it gave them Trouble in one respect, it would ease them more in another.

And so far I thought it for the King's Service, and my Duty, to hasten the Accounts before the Council, and to use all Means I could to have things carried on with Speed and Effect; that such Members of Parliament, as had their Eyes on this Affair, might plainly see that proper Measures were effectually carrying on by the Lords; so that there would be no Occasion to take up this Affair in Parliament, or for the Legislature to interpose.

But as to my own Share, I freely own I had not the least Apprehension of what has since befallen me.

I was so far from obstructing the taking these Accounts, that Mr. *Holford* has informed your Lordships, that when the first Order was such, as would require a very long Time to be complied with, I pressed them not to make use of that as an Excuse for Delay, but to bring in an Account of their present Ballances, and to let the Lords know the Reason, and then to ask Time for more perfect Accounts, if such should be required; which were not.

As to their making a *false Shew* of Cash pursuant to my Advice and Encouragement,

They have not offered a Word of Proof of any Thing said or done by me, or by my Order, concerning any Part of that whole Affair; if they had, I am sure, whatever had appeared to be done by me, would at the same Time have appeared not capable of the Construction in the Article.

But instead of that they have given a confused uncertain Account of something, that passed between Mr. *Cottingham* and the Masters; but never called Mr. *Cottingham* to bring it Home to me, nor any way shewn that I knew any thing of it, either before or after. Nor do I really understand it at last. I do not apprehend that Mr. *Cottingham* advised them to furnish one another with Money, but upon good Security; nor did they do it. Nor do I see, what harm it is, if a Master, having Occasion for Money, borrows it of another Master, upon good Security.

The only Person that they seem to fix any Fraud upon, is Mr. *Conway*; and, which appears very odd, only by his own Evidence; and yet he seems to justify himself too.

But if not; there is no Proof, nor Ground of Suspicion, that I was any way privy to it, or assisting in it, or that I had any the least Share whatsoever in it:

And therefore I am not Guilty.

XX, XXI. On the 20th and 21st nothing has been offered.

My Lords, I have now gone through all the several Articles, that have been *endeavour'd to be supported* against me; and I think I may say as I did in the Beginning, that except those relating to the Disposal of Places, which are of another Kind and another Consideration, all the rest must, to be made criminal, turn upon that Aggravation in the Articles, from my *inordinate, wicked, and corrupt Designs of procuring to myself excessive and exorbitant Gains and Profits by divers unjust and oppressive Practices after mentioned.*

It is such a *corrupt Heart* only can change Actions, that in themselves are innocent, and

some of them perhaps commendable, into so many Crimes.

And yet it is very extraordinary, and scarce possible to be conceived, but that if there had been such a corrupt Heart, it must have broke out upon some other Occasion of my Life. Not one instance of my whole Life has been yet produced to shew it.

Several of those under me have been examined; several Officers immediately attendant on me, that received considerable Profits and Salaries, to the amount of Three or Four Thousand Pounds *per Annum*, and more; If I had set my Heart upon Gain, a certain Profit might have been there yearly made, amongst those whom I had wholly at Mercy, and in private. But there has no Appearance been found of any thing of that Kind: And is it not more likely that I should have laid hold of a certain Profit, than be laying Schemes for Advantages upon the uncertain Contingency of the Sales of Masters Offices?

The Value of such an Expectation is a mere Trifle; and with Respect to the Probability of its happening, it was exceeding uncertain whether I should have an Opportunity of putting in one single Matter.

Three Masters have happened to dye in my Time; and two of those in less than the Space of a Year: But I think not one in nine Years before.

My Lord *Cowper* admitted but one in the last Time of his being Chancellor, which was four Years; and that was upon a Surrender.

There are 24 Cursitors; only one has dyed in my Time: 30 Commissioners of Bankrupts; only one dyed in above six Years.

Surrenders of the Offices of Masters are rarely till after 16 or 17 Years, sometimes 30 or 40 Years Enjoyment.

My Life was very uncertain: The Office of Chancellor much more so.

Little therefore was to be hoped from the Profit to be made by Masters Places.

My Lords, in the next Place, I apprehend, that it appears I did not take the Advantage I might have taken.

When the Time came for me to reap the Fruit of all my Contrivances, all those Schemes and Stratagems, the Work of above three Years, (a great Space in the Time of a Chancellor) see, whether there be the least Mark or Symptom of this impotent Desire, of Gain!

What I did, proves, beyond all Contradiction, that I never had any such Views, as these they lay to my Charge.

I took not the Advantage I might have done; I took a less Sum, when a greater was offered; and Part of the Money was returned again to Mr. *Elde* and Mr. *Thurston*. And when Mr. *Thurston's* Money was returned, only for being more than it was expected to be, every thing was in the same State as when it was paid.

And possibly your Lordships will think, from some other Evidence given, that amassing a great Estate was never my View; and that rapacious and base Ways of getting Money are not consistent with my Way of laying it out.

As this is a full Answer to the Charge of my Desire of Gain; and the whole *Malignity* of all I am charged with arises from that supposed Principle of my Actions; without this, though there should have been Imprudence, Indolence, too

great



great Confidence, perhaps Credulity, Irresolution, or any other Defect or Weakness, there has been nothing wicked.

And, if your Lordships are satisfied of this one Thing, I apprehend the Sting of this Impeachment is taken out.

My Lords, Having thus gone through all my Observations, it may possibly be expected I should close them with offering something in General. But I think it properer to forbear.

I am not conscious to my self, that it is necessary in this Case to apply to the Passions; which is a common Artifice to assist a weak Defence. If I have done any publick or private Good (of which last some Specimen has been laid before your Lordships) it will, I am confident, have its full Weight.

I submit my whole Life and Conduct to your Lordships Judgment; and rely entirely upon your Justice for my Acquittal.

Mr. Plummer. My Lords, I am not going to make any Observations upon this Speech; neither did I interrupt the Lord in making it. But one thing I am to say for Form Sake: We produced to your Lordships a Copy of a Letter writ from Mr. Lightboun to my Lord, he hath now read the Original Letter; I desire that the Original may be delivered into Court, that we may have the Perusal of it.

E. of Macclesfield. I believe the Gentleman is perfectly in the Right of it. It is here.

The House adjourned to Friday Morning next, at Ten a-Clock.

Friday May 21, 1725. The Tenth Day.

THE Lords being seated in their House, the Serjeant at Arms made Proclamation for Silence: As also the other Proclamation, That all Persons concerned were to take Notice, that Thomas Earl of Macclesfield now stood upon his Tryal, and they might come forth in order to make good the Charge.

Ld. Ch. Jus. King. Gentlemen of the House of Commons you may proceed.

Mr. Serj. Pengelly. My Lords, The Part assign'd to me in this Impeachment against the Earl of Macclesfield, is to reply to his Defence upon the Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, and Twelfth Articles.

Before I enter into the particular Examination of the Objections made against the Charge of the Commons contained in these Articles, and of the Matters alledged, either in Justification, or Excuse of the Lord Impeached; I shall take the Liberty of observing,

That your Lordships are now exercising a Power of Judicature, reserved in the original Frame of the English Constitution, for the Punishment of Offences of a publick Nature; which may affect the Nation; as well in Instances, where the Inferior Courts have no Power to punish the Crimes committed by the ordinary Rules of Justice; as in Cases within the Jurisdiction of the Courts of Westminster-Hall, where the Person offending is, by his Degree, raised above the Apprehension of Danger, from a Prosecution carried on in the more usual Course of Justice; and whose exalted Station requires the united Accusation of all the Commons of Great-Britain, by their Representatives in Parliament.

This High Jurisdiction may be exercised for the Preservation of the Rights of the Lords and Commons, against the Attempts of Powerful Evil Ministers, who depend upon the Favour of the Crown;

Or, it may be put in Execution for the Ease and Relief of a good Prince, whose Honour has been betray'd by a corrupt Servant; and yet, whose Clemency makes him unwilling to punish; so that it becomes necessary for his faithful Commons to take into their Care the prosecuting such an Offender.

Former Reigns have supply'd your Journals with many Examples of the first Kind.

The present Reign produces an Instance of the latter Sort, wherein the Commons bring before your Lordships in Judgment a Peer offending, with the greatest Ingratitude, against a most just, and most merciful Sovereign.

For, The King's Royal Munificence bestowed upon this Earl, in the most abundant Measure, could not exempt the Inferior Officers from his Exactions, nor protect the Suitors and their Properties in the King's own Court of Chancery.

The general Crime charged upon the Earl, in Five of these Articles, is *Extortion by Colour of his Authority as Lord Chancellor.*

The Offence alledged in the other two Articles, is *gross and wilful Negligence in his Office, to the great Damage and Loss of the Suitors of the Court, but to his own private Gain and Advantage.*

The particular Exactions are his taking One Hundred and Five Pounds from Mr. Thomas Bennet, for accepting the Resignation of the Office of Clerk of the Custodies in the Court of Chancery, in order to obtain a New Grant to Mr. Hugh Hamersley, and procuring the same to pass the Great Seal accordingly.

His exacting Fifteen Hundred Guineas from Mr. Kinaston, for the admitting him to be a Master of the Court of Chancery, upon the Resignation of Mr. Rogers.

His exacting the like Sum of Fifteen Hundred Guineas from Mr. Thomas Bennet, for the admitting him to be a Master of the same Court, upon the Surrender of Mr. Hiccocks.

His exacting the Sum of Five Thousand Guineas from Mr. Eldé, for the admitting him to be Master of the same Court, upon the Death of Mr. Fellowes.

His exacting the like Sum of Five Thousand Guineas from Mr. Thurston, for the admitting him to be a Master of the same Court, upon the Death of Mr. Borret.

The last Article relating to Mr. Thurston is charged with this Aggravation, *That the former Master was Dead Insolvent, greatly indebted to the Suitors of the Court; and that the Earl did not secure a just Satisfaction to the Suitors.*

And the Exaction of the One Hundred, and Five Pounds from Mr. Thomas Bennet, is alledged to be done when the Earl was one of the Lords Justices.

These Misdemeanors, as well as all the other Offences, of which the Earl is now accused, were committed by him whilst he executed the Office of Lord Chancellor.

From whence the Earl and his Council take Occasion to make a Triumph upon the supposed Justice and Regularity of his Administration and Conduct; when he presided in the Court of King's Bench; because the Commons have not produced any Misbehaviour in the Execution of

of that Office wherewith to furnish out an Article against him.

This may be an Instance of the Lenity of the Commons, but it is no Proof of the Earl's Innocence; who best knowing his own Behaviour, declines to abide the Examination of his Actions during the six Years of his Continuance in the Office of Lord Chancellor;

But flies to a Sanctuary for Indemnity and Discharge; which shews, that the Earl esteem'd himself more secure under Shelter, than upon a Justification of his Conduct.

And the Success of the Commons, in the very strong and full Evidence, which they have laid before your Lordships in Maintenance of those Articles, upon which they have proceeded, leaves very little Reason to imagine that they would have fail'd in their Proof, if they had extended their Inquiry into his former Life, or had enter'd into the rest of the Articles.

And after the strict and long Examination of Witnesses, which has entertain'd your Lordships for so many Days, I may venture to say, that the Consistency and Uniformity of the Proof given in Support of the Accusation of the Commons, upon so many different Heads, are sufficient to convince all the World of the Necessity, which there was, for the Honour of the King, and the Welfare and Satisfaction of the Nation, to carry on the present Prosecution;

And I hope, have already fully satisfied your Lordships of the Truth and Justice of the Commons Impeachment.

But as there have been several Objections made on the Behalf of the Earl impeach'd, as well to the Foundation of the Charge it self, and to the Event and Consequence of it, as to the Sufficiency of the Evidence of the Facts alledged; it will be necessary for me to give an Answer to these Objections, and to maintain the Charge in these Respects; which I shall proceed to do by shewing, that *the Impeachment is well founded, and that the Facts in the Articles before stated have been plainly and fully prov'd.*

The Earl himself began with insisting, That his General Oath of Office has no Relation to the Offences charg'd; and that no Inference can be made to his Prejudice from the Tenor of that Oath.

But the Earl's Remembrance, or Explanation of his Oath, is very defective; he has set it out at large in his Answer, and thereby he swears, that *He will well and truly serve the King and his People in the Office of Chancellor, and do Right after the Laws and Usages of this Realm;* which comprehends the Observation of every thing, which is Part of the Duty of, or incident to his Office,

And the avoiding of every illegal and unjust Action in the Execution of it.

And the Omission of any Part of his Duty, or the Commission of any Offence against the Duty of his Office, is a Breach of this Oath of Office, altho' the Particulars are not enumerated in the Oath; and the contrary Opinion will open a Door to the Commission of all Manner of Injustice and Rapine by Civil Officers.

The Earl likewise relies upon it, That the whole Charge turns upon his wicked and corrupt Intent and Views alledg'd in the Introduction, which (as he says) have not been made appear;

But these will be apparent from the Proof of the several Facts charg'd; which, if they are un-

lawful and unwarrantable, and do tend to the raising Money by corrupt and extorsive Measures, will manifest that Intent, and prove it as strongly as if he had declared his Designs in open Court; for such Acts cannot be done with a good and honest Intention.

The main Objection against the Articles is, That there is no Matter of a Criminal Nature contained in the Money Articles; or if there is a Crime, yet that there is no Punishment annexed or incident to it, which your Lordships can now inflict upon the Earl, after he is removed from his Office.

In answer to which I shall insist, That,

The Earl's selling these Offices, or disposing of them for Money taken by him before the Admission of the succeeding Officers in the Manner alledged and prov'd, is an Offence at the Common Law, and punishable by Fine and Imprisonment, upon Indictment or Information; as well, where the Money was taken for an Admission upon a Resignation, as upon a Death.

To make out this, it must be consider'd, That

The King having the executive Power, or the Administration of Ordinary Justice, lodged in Him, is in Consequence obliged to provide and appoint capable and sufficient Officers, necessary for the due Execution of Justice, in his several Courts, for the Benefit of His Subjects; His Coronation Oath proves this.

And accordingly the Crown has always paid the Salaries or Fees of the Lord Chancellor, and other principal Officers of Justice, and also of many inferior Ministers, out of the Royal Revenue; and other subordinate Ministers were maintain'd by the chief Officer, to the End that the Subject should not be expos'd to Exaction or Oppression, under Pretence of any Demand of Fees or Reward by the Ministers of publick Justice for the Execution of their Offices; which is the Source of all that Corruption, which at any Time springs up in the Courts of Justice.

The Antient Law of England was, that none having any Office concerning the Administration of Justice, should take any Fee or Reward of any Subject for the doing of his Office, to the End he might be free and at Liberty to do Justice.

And several Charters of former Kings, and Statutes declaratory of the Common Law in that Respect, have been made to enforce the due Observation thereof, as,

*Stat. Westm. I. 3 Ed. I. c. 26. 20 Ed. III. c. 1.*

My Lord Coke, 3 *Inst.* 146. says, the *Co. 2. Inst.* 74, 176, 209, 20 *Ed. III. c. 1.* is 210.

only a Commandment of the King; and that there is no Record of any such Act in any Parliament Roll, and yet necessary to be printed, because the 4th Chapter of this Parliament refers to the Pains contained in it.

Yet, if it be only the King's Charter, it is a Declaration of the Common Law at that Time; but it is printed in Old *Rassal's* Edition of *Statutes*, Fol. (89) and in all the rest of the printed *Statutes*.

Co. 3. Inst. 224, 225. 20 Ed. III. cap. 6. and more particularly the Act  
Co. 3. Inst. 146, cap. 68. of 11 H. IV. Rot. Parl. Num. 28. by which it is e-  
of Bribery, Extortion, &c. enacted,

**I**tem, *Que null Chancellor, Tresorer, Gar-  
dein de Prive Seal, Counsellor du Roy, \* se-  
remementz a Conseil du Roy, ne null autre Officer,  
Judge, ne Ministre du Roy, pènant Fees ou Gages  
de Roy, par leur ditz Offices. ou Services preigne  
en null Menere en Temps avenir ascun Manere de  
Done ou Brocage de nully pour leur ditz Offices et  
Services, a faire sur Peyn de respondre à Roy  
de la Treble de ceo qe issi preignent, et de satis-  
fier la Partie et punys al Voluntas de Roy, et soit  
dischargez de son Office, Service, et Conseil pur  
toutz jours, &c.*

\* N. B. The Printed Books have mistaken this Word

This Statute is enter'd on the Parliament  
Roll of that Year, amongst the Records in the  
Tower; it is not indeed enter'd on the Sta-  
tute Roll: But the Parliament Roll is the Ori-  
ginal, and is the Warrant for the Statute Roll,  
and is therefore of greater Authority.  
In the Margin of the Roll is enter'd thus,  
*viz.*

*Respectuatur per Dominum Principem & Consilium.*

For which Reason my Lord Coke says it was  
never printed in the Book of Statutes, of which  
he highly complains; and therefore has recited  
it at large, and caused it to be printed in his  
3d. Inst. Fol. 146. c. 68. of Bribery, Extortion, &c.  
and c. 101. of Judgements and Executions, Fol.  
224, 225. which is one of the first Books,  
relating to the Crown Law, read by the Stu-  
dents of the Law, and was thus published by  
that great Man to impress an early Abhorrence  
of every thing which may tend to Exaction and  
Extortion; and must have often come under  
the Consideration of the impeach'd Lord.

These Statutes have indeed been opened,  
and alter'd by subsequent Statutes, as to sever-  
al inferior Officers; and some small Fees have  
been antiently allow'd, and permitted in par-  
ticular Cases; but it  
Co. 2. Inst. 74, 209, 210. has been observ'd,  
that from such indul-  
gences many Oppressions of the People have en-  
sued.

But the Common Law, and the several Acts  
of Parliament before mention'd, do not only  
still remain in Force, with respect to the Lord  
Chancellor, but have been confirm'd and in-  
forced by other Statutes.

And the Great Charter of our Liberties,  
*Magna Charta*, c. 29. Co. 2. Inst. 55, 56. does  
imply this,

*Nulli vendemus Justitiam aut Rectum;*

which according to my Lord Coke's Comment,  
*Is spoken in the Person of the King, who in Law  
is present in his own Courts of Justice, and re-  
peating these Words, which (says He) extend to  
the End, which is Justice, and to the Mean, where-  
by Justice may be attained, which is the Law;*

**I**tem, That no Chancellor (this High Officer is  
mention'd in the first Place by Name)  
Treasurer, Keeper of the Privy Seal, Counsellor of  
the King, \* sworn of the King's Council, nor no o-  
ther Officer, Judge, nor Minister of the King, receiv-  
ing Fees or Wages of the King for their said Offices  
or Services, take in no Manner in Time to come, any  
Manner of Gift or Brocage of any Person for doing  
their said Offices and Services, upon Pain to answer  
to the King the Treble of what they so take, and  
to satisfy the Party, and to be punish'd at the  
King's Pleasure, and shall be discharg'd from his Of-  
fice, Service, and Council for ever, &c.

or, as it must be understood, the Administra-  
tion of the Law by the Officers of Justice;  
unless it can be supposed, that the Statute pro-  
vides against the lesser Evil, but allows the  
greater Mischief; that it prohibits the Sale of  
a particular Decree or Order, which may be  
right and just in it self;

But leaves the King's superior Officer at Li-  
berty to sell the whole Body of the Suitors  
of the Court in the Gross, to the Exaction  
and Oppression of the under Officers, in the  
Fees which they shall demand against Law and  
Right.

So that if the Earl impeach'd had exempli-  
fied this Rule of my Lord Coke in the Court  
of Chancery, where he immediately represent-  
ed the King's Royal Person; and once in a  
Term sitting in Court between his Masters,  
who paid for their Places out of the Suitor's  
Effects, had repeated to the Suitors this glori-  
ous Declaration,

*Nulli Vendemus Justitiam;*

He must have made a very inconsistent Fi-  
gure, in the Opinion of the meanest Capacity.

It will then be plain, That as to such Of-  
fices, which are in the immediate Gift and  
Disposal of the Crown, they cannot in their  
own Nature be saleable, or disposed of for  
Money; because the King himself cannot be  
supposed to suffer them to be put to Sale.

And the Ministers of the Crown, who  
have no immediate Right in the Office;  
and are only to execute and confirm the  
King's Pleasure in the Disposal of the Of-  
fice, cannot sell that which is not their own;

Nor ought, or can they lawfully take any  
Fee, or Reward, for accepting Resignations, or  
making new Grants, or Admissions into Pla-  
ces, or for conferring inferior Offices, with  
which they are intrusted by Virtue of their  
own Office; which would be the taking Mo-  
ney, for the doing of their Office, contrary  
to the Law, and the before mentioned Statute.

But there is another very good Act of Par-  
liament, which has been read at your Lord-  
ship's Table, and proves this Practice of selling  
such Offices, to be an Offence at the Com-  
mon Law, *viz.* the

12 Rich. II. c. 2.  
 Co. 1. Inst. 134. a. Intituled, None shall  
 Co. 3. Inst. 145. 147, 148. obtain Offices by Suit  
 or for Reward.

Item, It is accorded, that the Chancellor (by  
 exprefs Name) Treasurer, Keeper of the Privy  
 Seal, Steward of the King's House, the King's Cham-  
 berlain, Clerk of the Rolls; the Justices of the one  
 Bench, and of the other; Barons of the Exchequer,  
 and all other that shall be called to ordain, name,  
 or make Justices of the Peace, Sheriffs, Escheators,  
 Customers, Comptrollers, or any other Officer or Mi-  
 nister of the King, shall be firmly sworn, That they  
 shall not ordain, name, or make any such Officers,  
 nor other Officer or Minister of the King for any  
 Gift or Brocage, Favour or Affection.

The Act proceeds farther in a different Form  
 of Expression, and to another Matter;

Nor, that none which pursueth by him, or any  
 other, privily or openly, to be in any manner of  
 Office, shall be put in the same Office, or any other;  
 But that they make all such Officers and Ministers  
 of the best and most lawful Men.

The Earl apprehended the Strefs of this Sta-  
 tute, and how much it pressed upon him; and  
 therefore has endeavour'd to distinguish him-  
 self, not only out of the Oath, but out of the  
 intire Act, by objecting, that this Statute, and  
 the Oath therein directed, only extend to such  
 Nominations as are made in the Nature of  
 Elections, by an Assembly of all these great  
 Officers and Ministers, when they are called  
 together for that End; which Word (together)  
 is of his own inserting, to serve his Purpose;  
 as in the Case of Sheriffs, and not to their  
 single and separate Nomination of Officers, in  
 Right of their respective Offices, by themselves.

This is the Earl's own Objection, and not  
 of his Council, and will (if allow'd) expound  
 away the whole Act, in all the exprefs In-  
 stances mentioned in the Statute, save one;

For there is but one Officer named in the  
 Act, who is nominated thus in an Assembly  
 or publick Meeting; which is Sheriff; and all  
 the rest are ordain'd, and made by the great  
 Officers separately, in their own Right; as  
 Justices of Peace by the Chancellor; and Eschea-  
 tors, Customers, and Comptrollers by the Lord  
 Treasurer.

And the rest of the Words of the Act, viz.  
 Or any other Officer or Minister of the King,  
 will be totally expunged by this nice Interpre-  
 tation.

But the Words plainly mean, that every one  
 of these Officers, who by virtue of his Office  
 shall be call'd (not call'd together) by Com-  
 mand of the Crown, or in Execution of his  
 Office, to name or make any inferior Officer,  
 shall be sworn; for they never are all call'd  
 together, unless on the Nomination of Sheriffs.

The Earl, for more Security, and for the sake  
 of better Company, objects farther; That the  
 Argument from this Act and the Oath will go  
 too far; for then they are sworn not to pre-  
 fer any who make Suit or Application for any Office.

But that is no Part of the Oath; and they  
 are only sworn so far as the Statute extends it,  
 which is to the former Part; and this Clause in  
 the Conclusion of the Act is only directory,  
 and introduces a new Instruction to the great  
 Officers, but does not carry on the Purport of  
 the Oath; for the Words are, It is Accorded,

that the Chancellor &c. (in the Affirmative) shall  
 be sworn, that they shall not name, &c. and the  
 Sentence which follows is a new Clause, be-  
 ginning with a Negative, viz. Nor, that none  
 which pursueth, &c. shall be put into any Office,  
 &c. and refers to the Person applying; and not  
 to the Officer appointing.

So that this latter Part of the Statute ought  
 to be observ'd; but the Officer is not required  
 to be sworn to the Observation of it.

This Statute takes it for granted, that the  
 contrary Practice of naming subordinate Offi-  
 cers for Gift or Brocage was unlawful before  
 at the Common Law; since it does not create  
 or enact it to be an Offence, but provides an  
 additional Constraint or Obligation upon the  
 superior Officer by an Oath, not to commit  
 the Offence; and it still remains an Offence at  
 the Common Law, and don't depend on that  
 Statute, but is a great Offence, altho' the Oath  
 be not taken.

This Statute contains the most extensive and  
 general Words, and mentions Officers of many  
 Sorts, and different Degrees, as well high, as  
 low, relating to the Peace, publick Justice, and  
 the Revenue; and that no Officer, of any Kind  
 whatsoever, in the King's Service, nam'd or  
 ordain'd by the great Officers of State, might  
 escape or be omitted, the Act concludes the  
 Description with these Words; Or any other  
 Officer or Minister of the King;

And therein manifestly comprehends both  
 these Offices of Clerk of the Custodies, and of  
 Masters in Chancery.

For this Statute refers to Officers who are  
 only nam'd or recommended to the King by  
 the Chancellor, &c. and yet are constituted by  
 the King's Letters Patents, as Justices of the  
 Peace, and Sheriffs, whereby the usurped Fee for  
 Recommendation is declared illegal; and also  
 to other Officers, who are immediately consti-  
 tuted and appointed by the chief Officers, by  
 Authority deriv'd from the King, and by vir-  
 tue of the Trust in them reposed for the King's  
 Honour and Service, and for the Benefit of his  
 People, as Escheators and others; and thereby the  
 other pretended Fee for Nomination is con-  
 demned.

Sheriffs and Escheators named in the Act, are  
 Officers relating to the Administration and Exe-  
 cution of Justice; and Escheators more especially,  
 to Inquisitions touching Idiots and Lunaticks,  
 and the Commissions and Proceedings thereon;  
 which is the chief Part of the Trust and Of-  
 fice granted by the Letters Patents to Mr.  
 Hamersley, as Clerk of the Custodies, and which was  
 resigned by Mr. Thomas Bennet; and it will ap-  
 pear by the Patent it self, that this Office in the  
 Court of Chancery, has a very near Relation  
 to the Office of Escheator; and the Grant very  
 fully describes the Nature and Antiquity of this  
 Office.

And as to the Nature and Antiquity of the  
 Offices of Masters in Chancery, they appear fully  
 from the Oath taken by every Master upon his  
 Admission, which is of the same Import and  
 Effect, in many things, with the Oath taken  
 by the Lord Chancellor himself, viz.

To serve the King and his People, and to coun-  
 sel the things that toucheth the King; to prevent  
 the Disinheritance of the King, or Fraud to his Peo-  
 ple; and not to disclose the Counsel which he shall  
 give

give touching the King; and to redress Damage or Fraud in the keeping the Great Seal, and to advise the Chancellor thereof, &c.

And also from the ancient Commissions produced and read, giving the Masters Authority, by the Name and Description of *Masters of the Court*, to hear Causes, and make Decrees (in like Manner as the Judges Assistants) in the Absence of the Chancellor; and to punish Contempts, and to do other like Acts of Jurisdiction; and likewise from the actual Exercise of their Offices in making Reports, and Taxation of Costs, and the Manner thereof prov'd by some of the Masters (and not contradicted) as that a *Subpœna* issues immediately upon the Master's Taxation of Costs, without any Order or Confirmation of the Lord Chancellor; that their Reports in other Instances are turn'd into Decrees of Court, if not alter'd upon Exceptions, and from many Authorities in the Law Books.

By all which it is evident, that the Offices of *Masters in Chancery* are judicial Offices, or Offices which partake of a judicial Authority and Nature; and do touch and concern the Administration and Execution of Justice in that Court; and that the *Masters* are associated for that Purpose to the Lord Chancellor, as alledged in the Articles.

But upon this Occasion it will be proper to recite more particularly the Authority of the Statute of

*A. 13. Edri. 1. call'd Westm. 2. cap. 24. Et quotiescunque de cætero evenerit in Cancellaria, quod in uno casu reperitur breve, & in consimili casu cadente sub eodem jure, & simili indigente Remedio non reperitur; concordent Clerici de Cancellaria in brevi faciundo, vel atterminent querentes in proximum Parliamentum, &c. & de consensu jurisperitorum fiat breve, ne contingat de cætero quod curia Domini Regis deficiat conquerentibus in Justitia perquirenda.*

*Co. 2. Inst. 405, 407.* Those here called *Clerici*, were at this Time, and before, call'd *Magistri Cancellariæ*, and were associated to the Lord Chancellor; of whom *Fleta* saith,

*Cui associantur Clerici honesti & circumspecti, Domino Regi Furati, qui in legibus & consuetudinibus Anglicanis notitiam habeant plenioram, quorum Officium sit supplicationes & querelas conquerentium Audire & Examinare, & eis super qualitatibus Injuriarum ostensarum debitum Remedium exhibere per breviam Regis.*

The granting and issuing the Writ, or first Process, upon the Prayer of the Plaintiff, or Party prosecuting, is the first judicial Act of the Court, upon the Commencement of a Suit.

And this proves strongly, that the King by his Royal Office, confirm'd by this Act of Parliament, did at his own Expence, and not at the Charge of the Suitor, provide these *Clerks* or *Masters*, to the End, that no Subject who had a Right, should be without a Remedy in the King's Courts;

*Ne curia Domini Regis deficiat conquerentibus in Justitia perquirenda.*

And the Nomination of these *Masters* is only intrusted with the Lord Chancellor, as representing the King, and for the Relief of the Subject.

*13. Edri. 1. Stat. Westm. 2. cap. 24, 50. Co. 2. Inst. 407, 486. Co. 1. Inst. 54. b. John Webb's Case 8 Co. 48, 49. Co. 3. Inst. 82.*

So that it is a Breach of his Trust in the Lord Chancellor, to confer any of these Offices for Gift or Brocade, or to name and appoint unfit and insufficient Persons; since it is the Duty of his High Office to provide a Supply of proper Officers to carry on the due Execution of Justice in that Court.

But it is said, hat it Thas not been constantly used to put all the *Masters* into Commission, and that in the Commission 9. Oct. 4. Ed. VI. four of the *Masters* only were in Commission; and when they are in Commission, that they have no Authority to act without the Presence of the *Master of the Rolls*, or one of the *Judges*; and therefore these Commissions did not give them a judicial Authority.

These Commissions, as well as the Office of a *Master*, subsisting so antiently, shew, that *They* were to be taken Notice of, and comprehended within the Statutes made to prevent the Sale of *Offices of Justice*; and of late Times they have all been put into the Commission, as appears by the late Commissions granted to the present *Masters*, since the Earl had the Custody of the Great Seal, and produced at the Table; and (without entering into the Dispute between the *Master of the Rolls*, and the *Masters in Chancery*, touching Jurisdiction, wherein the Earl, in his Defence, has declared, he thought the *Masters* were in the Right) the *Judges* themselves in these Commissions are only authorized to hear Causes, and make Decrees, with the Presence and Concurrence of *two Masters*; so that the Authority under this Commission is not less of a judicial Nature, from the Number of Persons necessary to make a Court; no more than it can be argued from the same Reason, that the *Judges* in that Commission are not *judicial Officers*, because they cannot make a Decree without *two Masters*.

And altho' the Commission is not properly incident to the Office of *Master*, as annexed thereto; yet as it has always attended upon, and accompanied the *Office*, it proves, that the *Masters* from the first issuing these Commissions, have been always invested with a general judicial Power, if they had not enjoy'd such Authority before.

But it is not necessary to rely intirely upon that Point; for if these *Offices* were only *Ministerial*, yet they concern the Administration and Execution of Justice in the Court of Chancery, and, as such, are under the Regulation of the like Offices at the Common Law, and are fully within the Description of the Statutes of 12 Ric. II. and 5 and 6 Ed. VI. And this,

According to the Earl's Opinion, when he endeavour'd to terrify the *Masters* to contribute to *Master Dormer's* Deficiency.

And as the Earl impeach'd, in Right of his Office of Lord Chancellor, was only intrusted with the Nomination of the *Masters*, for the Service of the King, and for the common Benefit of all the King's Subjects; these Offices are no more saleable, or to be disposed of for Money, than if they had remain'd in the immediate Gift of the Crown, by Grant under the Great Seal.

It was objected, that *Masters in Chancery* are not expressly mentioned in the Act of 12 Ric. II. and that the Statute is a Penal Law, and ought to be construed strictly, and ought not to be extended by Equity to these *Officers*.

But the constant Rule of Exposition of Statutes of this Nature contradicts that Assertion; for,

Statutes made for the Furtherance and Advancement of Justice, for the Suppression of Extortion and Oppression, which (*says the Book*) are horrible and odious Crimes, shall have a benign and favourable Interpretation.

*Beawfage's Case*, 10 Co. 101, 102. *Twine's Case*, 3 Co. 82. *Gooch's Case*, 5 Co. 60. *Booth's Case*, 5 Co. 77. *Powtler's Case*, 11 Co. 34.

And upon this Occasion permit me to repeat the Words of that Great Man, the Lord Coke:

*Extortion is no other than Robbery, but is more odious; for Robbery is open, and has al-*

*ways the Appearance of Vice; but Extortion puts on the Visage of Truth, and is more difficult to be try'd and discern'd, and is for the most Part accompanied with the damnable Vice of Perjury in the breaking*

Co. 3. Inst. 149.

*that Oath which the Officer took when he was admitted to his Office;*

Which proves the Import and Effect of the general and usual Words in an Oath of Office.

And here I can't help taking Notice of the Attempt of the Earl Impeach'd, by his own cross Examination of Mr. Eyres, the Officer of the Exchequer, and the Questions proposed by himself relating to the Manner of his being sworn pursuant to the Statute of 12 Ric. II. viz. The Earl ask'd him,

What was it that you did read? Did I say any thing? Or what did I do? Or to that Effect;

The Officer answers, *I read over the Statute out of the Exchequer Book in Old French; and after I had read it, I carried the Bible to the Lord Chancellor, &c. who, at the Conclusion, kiss'd the Book, but he said or repeated nothing. But this has been the antient Form, which I have observ'd for forty Years, and I believe has been always used.*

In this Instance, your Lordships saw an Endeavour of the late Supreme Officer of Justice to explain away, or turn to Ridicule, the strictest and most solemn Tie and Obligation upon his Conscience and Honour, imposed by Authority of Parliament for the preventing Corruption; whereby the Earl did then (tho' since upon the Observation made by the World of such his Behaviour, he has a little recollected) shew, that his calling God to Witness to his Promise for the Observation of an Act of Parliament made against that Vice, deserv'd to be as little consider'd by him, and to have as little Influence upon his Mind,

As Oaths taken by Traders at a certain Place, for their better Accommodation in carrying on a prohibited or fraudulent Traffick.

This is a full Explanation of his Reserve in an equivocal Answer, where he says, *That when he took the usual Oath of Office, he at the same Time took the Oaths of Allegiance and Supremacy, but no Oath of Office besides that above set forth.*

Altho' he could not but understand the Meaning of the Introduction to the Articles, alledging, *That he did take such other Oaths as have been accustomed;* and could not but remember his repeated Observations of the Ceremony, at least, which he had annually practis'd under this Statute.

But the Earl's Council have made it necessary to enter farther into this Transaction, by their

insisting, that here was no *Formal Oath* prescrib'd or taken, no Entry or Registry kept of it; and that the reading over the Statute is meerly an Admonition or Exhortation by the Officer to the whole Assembly.

And the Earl has insisted, That it is not an *Oath of Office*, because an *Oath of Office* (as he express'd it) is taken once for all, but this is repeated Annually; and if it is an *Oath of Office*, yet it is not particularly charged in the Articles, nor refer'd to in any Manner, because the Articles suppose it to be taken *at the Time of his coming into the Office*, which was in May 1718. and this Oath, at the soonest, could not be taken by him till the November following.

To this I answer, That the Manner of administering this *Oath* is in the most solemn and significant Form possible; for the repeating an *Oath* briefly to observe the Statute in all things, or containing a short Abstract of the Substance of it, would not be near so explicate and directory, as the reading over aloud, by a proper Officer of the Court of Exchequer, the *Act of Parliament* it self, the *Chancellor* at the End *Kissing the Bible*; an Exhortation, which ought to make the deepest Impression upon the Conscience of a righteous Magistrate, when confirm'd by the Sanction of a Promissory Oath.

And to say, that it is no *Oath of Office*, because he repeated it Annually, is to contradict the *Act* it self, which enjoins him to take it *as Chancellor*, and in the actual Execution of his Office; and the Repetition of it Annually, upon this great Occasion of nominating Sheriffs, demonstrates the Opinion of our Ancestors of the Importance and Consequence of the Observation of it, for the Service of the King, and the Benefit of His Subjects; because there can be no other Time more memorable, or more likely to engage Attention to it, than in so publick an Assembly proceeding to appoint the *Sheriffs* of the several Counties of the Kingdom, upon whose Power, Fidelity, and Justice in the Execution of their Offices, not only the Properties, Liberties and Lives of the Subjects of this Kingdom so much depend, but even the Security of His Majesty's Person in any Time of Danger; and the very Being of the *House of Commons*, upon the just and fair Returns which ought to be made by *Sheriffs*, upon the Election of *Members* to serve in *Parliament*.

Can this Statute then be treated and called obsolete, which is thus publickly proclaim'd every Year, to enforce the more exact Observation of it?

And to say, That the Articles are confin'd to such *Oaths of Office*, as were taken by him on his first Appointment, is an equivocal Interpretation peculiar to the *Answer*; for the Articles refer generally to all such *Oaths* which have been accustomed to be taken by the Lord Chancellor by reason of his Office. And this *Oath* ought to have been taken by him upon his first Appointment, if the Usage of administering it at this Annual Season had not been an Excuse for his postponing it to that Time; and from that Usage it has follow'd, that this *Oath* is not taken by any of the Officers at any other Time; but it was the Earl's Duty to observe this good and wholesome Law, as well before his taking this *Oath*, as afterwards.

And the Earl could not have forgotten this his solemn Engagement without Design; it was for his Interest not to mention it; and he might flatter himself, that the Managers would not have taken notice of it.

And as to the Difference in the Form of administering *this Oath* from the common Method, it is not material; for the usual Form is not essential to the Oath itself, it being sufficient that there is a calling *Almighty God* to be a Witness of the Truth of the Earl's Promise, by his touching the *Holy Scripture*.

But whether the Oath be constantly or usually taken in Practice, or not, it will not alter the Law; and the Crime of selling these Offices for *Gift* and *Brokage* still remains, notwithstanding the Neglect of this additional Obligation to refrain from the Commission of it.

The Objections made by the Earl and his Council upon this Head, have occasioned this Digression.

The next Part of the Earl's Defence is a direct Justification of the Fact of which he is accused; and, not contented to leave it to his Council (for whose Excuse it might have been said, that they were willing to try every thing) the Earl himself has insisted upon it, that his taking these Sums of Money is lawful; because, as Lord Chancellor, he had a *Right of Recommendation* of Mr. Hamersly, as an Officer appointed by Patent under the Great Seal, and also the *Right of Nomination and Admission* of the *Masters*, solely in himself; and a Man may dispose of and dispense his own Favour upon what Terms he pleases; and Officers may give Money for their Places, and yet be good Officers, as it is suggested.

But some Instances of a very extraordinary Nature were cited out of the

*Madox's Hist. of the Excheq. 43. 743. He says it may seem strange, and excuses it.*

*History of the Exchequer*, to prove that *Chancellors*, *Judges*, and other Officers of Trust, had purchased their Places of King Stephen and King John; viz. That Richard

Fitz Alured gave King Stephen fifteen Marks to bear Pleas; and Walter de Gray gave King John five thousand Pounds to have the King's Chancery for Life; and other Officers there named. Mr. Madox, the Collector and Publisher of this *History of the Exchequer*, 43, 44, mentioning these Instances, says, *That in the Time of King Stephen, Geoffrey the Chancellor fined in three thousand and six Pounds and a Mark for the King's Seal. This I understand to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal.* But at the same time Mr. Madox the Publisher makes this honest Reflection upon his Precedents:

*Which Precedent, says he, may justly seem strange to us at this Day; but it seemeth that in those times things of the like kind with this were sometimes done.* Which Observation the Council, or the Earl himself, were not pleased to repeat.

And some Instances were cited out of the Roman Law, where Part of the Revenue of the Emperors did arise out of Perquisites of this Kind; from whence it was inferr'd, that the taking these Sums for Sale of Offices, was not against Natural Justice.

But these are of no Authority in this Kingdom, when they are repugnant to the Law of the Land, and have never been receiv'd; and the *Common Law of England* must be the Rule of Justice in this Case.

And Mr. Dupper, the Earl's late *Under Secretary* of the *Bankrupts*, was produced, to prove by his Opinion and Observation, that no Office whatsoever passing by Grant under the Great Seal ought to be surrender'd or granted without an Acknowledgment (as he call'd it) to the Chancellor or Keeper; and that he had formerly communicated these his Thoughts to the Earl and his Secretary Mr. Cottingham.

And your Lordships, upon Recollection of the Evidence, will find the Use and Improvement they were pleased to make of this Advice, in the Case of Mr. Thomas Bennet's Surrender.

But in Answer thereto, it appeared upon the Evidence in regard to Mr. Hamersly's Office of *Clerk of the Custodies*, that there being no Salary annexed to the Place, it did belong to the *Secretary of State* to recommend or to obtain the Sign Manual; so that the Earl's Desire of Gain in this Instance carry'd him beyond the Limits of his own Office, where he had no Right of Recommendation, to raise the poor low Sum of *One hundred and five Pounds*, at the Time when he was *One of the Regents*; and thus he join'd his Share of the *Royal Authority* to his Power of *Lord Chancellor*, in order to get and secure to his own private Use so considerable a Sum as *One hundred and five Pounds* from an exhausted Master! a strong Evidence of his corrupt Intent and Views.

This single Exaction overturns the whole Fabric of Merit, supposed to be raised by the few scatter'd Instances of Charity, which he has been pleased to divulge in Evidence.

But if the Authorities cited for the Earl to this Purpose prove any thing, they prove too much; that the Offices of the *Judges* in the *Supream Courts of Justice* were lawfully to be bought and sold at the Common Law, before the Act 5 Ed. 6. which is an Opinion that the Earl himself, in his Answer, did not think convenient to disclose or insist upon; and it is going a long way back for an Example to prove the Lawfulness of an Action, which he could not find without the Assistance of an Antiquary.

He might have brought more recent Instances from Countries, where unlimited Power does prevail, and where Justice itself, and the Places in which it is to be dispensed, are not to be attained without a Bribe.

But it seems as if the Lord impeached had an early Inclination to look out for a Precedent, to give him a Countenance in such like Practices; yet he found none publish'd to the World, except in the Reigns of two Princes, whose arbitrary Behaviour produced that memorable Law, the *Great Charter of our Liberties*, first pass'd in the Form of a Charter ann' 17 Joha<sup>n</sup>, and confirm'd ann' 9 Hen<sup>3</sup>. wherein it was at that time found necessary to declare by a Law, *Nulli vendemus Justitiam aut Rectum.* *Magna Charta, cap. 29. Co. 2. Inst. 55.*

From which Declaration of the Crown it necessarily follows, that the Administration and Execution of Distributive Justice to a free People, are not to be esteem'd the Property or Estate of a Great Officer, to be raised or increased by his Sale of the subordinate Offices of Justice; but are the great Prerogatives of an *English Prince*, to be exercised freely for the Safety and Ease of the Subject, without introducing Expence and Charge upon the People in their Application for Justice and Right.

And when a Doctrine of this dangerous and destructive Nature to the Rights and Liberties of

the whole Nation, as it exposes their only Security to Sale for Money, is thus avowedly and openly justified and insisted upon at your Lordships Bar, by a Peer of your House, who has born the high Office of *Lord Chancellor of Great Britain* in the first Reign under the Act of Settlement of the Crown: Your Lordships will take the best Measures to render the Subjects secure in their Expectation of Justice, by a suitable and publick Mark of your Detestation of so licentious an Opinion; and thereby convince the Nation, that even the meer Suggestion of such a corrupt Principle is an undeserv'd Reproach, and highly injurious to his Majesty's Administration.

Yet if it should be supposed by way of Argument (which has not been proved, and therefore cannot be admitted) that the Sale of these Offices has been of late tolerated, for the greater Increase of the Perquisites of the first Officer of the Crown in the principal Court of Justice; yet the Earl's raising and receiving these exorbitant Sums above double to any Instance before his own Time, which he has made appear, upon a Pretence that the Business of the Court of Chancery was very much advanc'd during his Residence there, will be as criminal, as if he had put the Offices to Auction, when no Sum or Fee had ever been taken or heard of.

And in his Method of Practice there can be no Distinction between a Present and a Price; for he made the *most* always of his Share or Claim in the Office. When he was only to admit upon a Surrender, he took *fifteen Hundred Guineas* for his Good Will and Approbation merely; and when he admitted upon a Death, he took *five thousand Guineas* at the least, altho' the Office was greatly in Debt; as in *Borret's Case*, where the Suitors will lose upwards of *twelve thousand Pounds* of their Effects, by the lowest Computation.

As for the small antient Fees which have been paid to the Great Seal for Time immemorial, upon the sealing every Patent, these are out of the present Question; and where Usage beyond Time of Memory has allow'd the Receipt of these little Sums, it will be presum'd (if there was Occasion for it) that some Act of Parliament had pass'd to make it lawful.

And when it is said, that a good Officer may give Money for his Place, and may resist the Temptation of Extortion; it is what the Law of *England* would not trust to human Frailty; and if all the Actions and Behaviour of the best of the *Masters*, with respect to their Fees, their Manner of Proceeding upon References, and their disposing and trafficking with the Money of the Suitors, were to be enquired into more particularly, there can be no doubt, from what has appeared in Evidence upon this Tryal, but that the Temptation and Inclination to Profit, towards reimbursing themselves the Money advanced to the *Earl*, and the preceding *Master*, have overcome their most steady Resolutions to Virtue and Self-denial.

As to the citing particular Cases, wherein the Sale of Offices Judicial, or of the like sort with those in Question, have been determin'd to be illegal at Common Law, I apprehend it is not necessary; for that the Reason of the Common Law, and the Purport of the several Statutes mention'd, do fully and sufficiently maintain the Validity of the Articles in that respect.

And the Managers might more properly call

upon the Earl and his Council for Authorities or Judgments to the contrary.

But Matters of a corrupt Nature are always privately transacted, and no Witnesses, or at most very rarely, are to be produced besides the Parties concern'd.

And if the Earl will produce any Instance in the Books, where such a Transaction has been mention'd, I may engage to shew him at the same time, that it has been holden illegal.

The Authority already cited by a Learned Manager is express:

Stockwith *cont'* North, *Moore*  
781. North was fined in the Star-Chamber, for that he being Sheriff of the County of Nottingham did take Money for the Goalership and the Bailiwick for his Year; and at first he gave them to his Servants, who sold them, but himself received the Money; and this was adjudged to be a letting to Farm of his County, contrary to the Statute of 4 Hen. 4. cap. 5. Yet there note, says the Reporter, that the Statute itself gives a Penalty certain and pecuniary, and it is *malum prohibitum*, non in se. But the Court held, that in as much as great Corruption ensues from the Greediness of the Officers, and they are enforced thereto by the Prices which they give for Things which ought not to be sold, that this setting of Offices to Farm and Sale, is *malum in se*, and finable.

But the Earl objected, that this Opinion is extrajudicial; and the Court were mistaken in one part, when they say, that the Statute 4 Hen' 4. did inflict a Penalty; whereas it did not, but only prohibited the letting to Farm the Bailiwick, which was lawful before, and therefore properly finable, as a Breach of the Act.

In Answer to which, it is plain upon Perusal of the Book, that that Part relating to the Act 4 H. 4. imposing a Penalty, is only the Note of the Council, or Reporter, who took that particular Offence to be only *malum prohibitum*; and whether the Court did impose that Fine by Force of the Statute, or as warranted by the Common Law, it will not weaken the Authority; because the Court expressly declare it to be their Opinion, that the selling of the Office of Goaler was *malum in se*, and finable; which shew'd the Judgment of the Court on that part of the Question; so that there is no Mistake to be imputed to the Court.

And my Lord Coke, in his 3 *Inst.* fol. 146. cap. 68. of *Bribery and Extortion*, and fol. 224 & 225. cap. 101. of *Judgments and Execution*, describes these Crimes as *Offences at the Common Law*, and puts his Examples accordingly, which may be there consulted.

So in the Case of *Smith and Mall*, 2 *Rolls*, Rep. 263. and *Linley's Case*, *Hutton*. 70. where it is holden, That if any Judge or Officer takes more than the usual Fees, he is punishable by Indictment at the Common Law. Which necessarily implies, that they are punishable at the Common Law, for taking Money where no Fee at all is due.

The strict Definition of Extortion is, *When any Person Colore Officij extorquet Feodum non debitum, plusquam debitum, aut antequam debitum.* *Hutton*. 52, 53. *Co.* 3. *Inst.* 149, 150. *Beawfage's Case*, 10 *Co.* 101, 102. *Dive and Maningham*, *Plowden*, 68. a. *Co.* 1. *Inst.* 368. b. *Sir John Bingley's Case*, *Poph.* 149. *Rex & Gover*, 1 *Sid.* 91.

But largely, *Extortion is taken for any Oppression by extort Power, or by Colour or Pretence of Right.* *Co.* 1. *Inst.* 368. b.

But it is urged by the Earl and his Council, that it appears from the Statute 5 & 6 E. 6. that the



the buying or selling of these Offices was lawful at the Common Law, and is not prohibited by the Statute 12 *Rich. II.* and that the Statute of *E. VI.* neither declares nor creates any Crime, but only imposes a special and particular Penalty, by Loss of the Office or Disability, and therefore the Earl having been dismiss'd the Great Seal, there can be no Punishment inflicted upon him.

It is agreed by them, that the Statute 5 and 6 *E. VI.* includes both these Offices, of *Clerk of the Custodies*, as an Office of Clerkship in a Court of Record; and of the *Masters in Chancery*, as Offices touching the Administration and Execution of Justice, in point of Description.

And upon reading the Act it is evident, that this Statute in the *Preamble*, and throughout the whole Act, treats this way of dealing, as a *Corruption*, and illegal in its Nature, and expressly calls it so.

The *Preamble* says, *For the avoiding of Corruption, which may happen hereafter to be in the Officers and Ministers in those Courts and Places, wherein there is Requisite to be had the true Administration of Justice or Services of Trust.*

And this Statute carries the Punishment farther, but does not take away the Punishment of it as a Misdemeanor at the Common Law, by Fine or Imprisonment upon Indictment.

And there is not any *Proviso* in the Act which mentions or exempts the *Court of Chancery*, or any of the Officers of that Court; but in consequence, when it mentions other Courts in a *Proviso*, must more strongly be intended to include them in the Act.

The *first Proviso* extends to Offices of a private Nature, and to Offices of Inheritance, and can't relate to any *judicial Office*, nor to either of these Officers, who hold only for Life; altho' where the Nature of the Office has allow'd it to become inheritable, it makes it alienable; but no such Instance is to be met with in the Case of *judicial Offices*.

The *second Proviso* is to prevent any Person's being surpriz'd into the Penalty unwittingly, before Notice of the Act, or by a Retrospect. And altho' the Statute takes Notice that divers Persons did make such corrupt Bargains, it is only by Way and with an Intent of preventing, and not of legitimating them; and it leaves them all as they stood at Common Law, until that Day appointed by the Act was past.

And the *last Proviso* does nothing more, and leaves the Justices to act upon their own Knowledge and Discretion in the Law, according to the Nature of the Office, without casting any Imputation upon them unnecessarily.

But so exceeding cautious was the Legislature, that there is not any Expression in any Part of the Act to declare or enact such Bargains in the Cases excepted to be good.

But the Statute leaves them entirely to the Regulation and Direction of the Common Law and former Acts of Parliament.

So that altho' the Earl of *Macclesfield*, by his being dismiss'd from the Office of *Lord Chancellor*, is not liable to suffer the additional Punishment contain'd in this Act of Loss of his Office: Yet he will still be liable to the Punishment at Common Law, and upon the several other Statutes, and accordingly remains open and subject to your Lordship's just Sentence.

For where a Statute does give or impose a new Penalty, for a Matter which was an Offence at the Common Law, the Prosecutor may pursue

either of the Remedies; altho' where a Statute makes or creates the Offence, that Remedy must be taken which the Statute gives.

*Regin' cont. Wigg' Pas' 4. Anne Banco, Regin' Salk. 460. Com' Leicest. & Mandy 2. Sid. 32. Dr. Hufsey's Case, 9. Co. 74. Cranbank's Case, 2. Rolls Rep. 49. Burgen's Case, 1. Ven. 13. 1. Sid. 409.*

Thus I have gone into this long Debate; to shew that the *Commons* have founded their *Articles* upon the general Rules of the Common Law, supported and enforced by divers Acts of Parliament.

As to the Proofs.

I shall now take notice of the Evidence upon the particular *Articles* assign'd to me, and shall observe not only upon the Proofs given by the *Commons* in Maintenance of those *Articles*, but likewise upon the Examination made on behalf of the Earl impeach'd, and in his Defence.

As to the *Money Articles*, I shall make this general Observation upon the Evidence, that it has been agreed by all the Witnesses examin'd thereto, as well by Mr. *Cottingham*, the Earl's *Secretary*, and on these Contracts his Lordship's Broker, as by the *Masters* themselves, and their Agents, that the whole Transaction was done and finish'd, and the Money actually paid and deliver'd into the *Lord Chancellor's* own Hands (except Mr. *Thurston's Five Thousand Guineas*, which were deliver'd to another for his Lordship's Service) before the Resignation of the former Officer was accepted, and before the Admission and Swearing of the Successor.

So that the principal Point and main Stress of the *Articles* are thus in fact agreed upon by both Parties.

But as to these *Articles*, and more particularly with respect to the *One Hundred and Five Pounds* receiv'd from Mr. *Thomas Bennet*, and the *Fifteen Hundred Guineas* each receiv'd from Mr. *Kinaston* and Mr. *Bennet*, the Earl and his Council have suggested a Deficiency in the Proof, arising from a Contrariety in the Evidence given by Mr. *Cottingham* the Earl's *Secretary*, to what has been sworn by Mr. *Bennet*, Mr. *Kinaston*, and Mr. *Charles Baily*; and, upon the Credit of the *Secretary's* Testimony, would suppose that each of these Sums proceeded first from the free and voluntary Offer of the *Masters*, and was not insisted upon by the Earl or his *Secretary* before hand, as charged in the *Articles*, and prov'd by the *Masters*, but only accepted and receiv'd by *Cottingham* and the *Lord Chancellor*.

But the Nature of the Transaction, and the Circumstances of the Persons, do very strongly support the Credit of the *Witnesses* produced by the *Commons*, and the Probability of their Testimony, who have prov'd every Part of those *Articles*, in the very Words of them; and Mr. *Cottingham* himself has confess'd enough to maintain the *Articles* in Substance, altho' he should be credited in any Circumstance wherein he varies from the other *Witnesses*.

As to the *ninth Article*, it will be very difficult to believe that Mr. *Bennet*, who had lately paid the *Lord Chancellor* so large a Sum for his Admission to the Office of a *Master*, which he had borrowed of his Brother, and who had paid no Admittance Money for this Place of *Clerk of the Custodies* to the former *Chancellor*, the Earl *Cowper*; and who had likewise been informed by his Brother Mr. *John Bennet*, that nothing was paid by him to Earl *Cowper* upon his being admitted to the same Office, and that *Lord Cowper* himself had declared

declared to Mr. John Bennet that there was nothing due upon his Admission; that Mr. Thomas Bennet under these Circumstances should of his own Accord first propose a *Present* (as it is called) when he could not well imagine that there was any Pretence to it; that is hardly credible.

And Cottingham himself has own'd, that he told Mr. Thomas Bennet that something was expected, and that he carried the *Proposal* of One hundred and five Pounds to the Earl, who accepted it, and thereupon he receiv'd the Money from Mr. Bennet, and paid it over to the Earl; after which the Earl then took the whole Care upon himself of expediting the *Sign Manual* and the *Patent*.

Now, Cottingham being the Factor employ'd by the Earl in all these Bargains, who has been avow'd by the Earl to be his Agent, and has been produc'd as his *Witness*, and supported by him; every thing that Cottingham declares and acts in compleating these Contracts, will be consider'd as the Act of the Earl himself, and his own bartering; especially, when Cottingham (as he deposed before your Lordships) did not conclude the Bargain, until he had receiv'd the Earl's Approbation thereof; and when the Earl at the End confirms the whole by his Receipt of the Money.

And a Lord Chancellor's expecting something, or a Sum of Money, be it more or less, and this his Expectation declared and notified by his Secretary to the Person applying to be admitted into the Office, is a peremptory Demand, and an insisting, when the Lord Chancellor alone, and no other, has the Power of taking the Resignation, or making it effectual by passing the new Patent, and of admitting the new Officer.

But this Matter has been explain'd and confirm'd by the Evidence of Dupper the Under Secretary, the Earl's own *Witness*, upon whose Authority the Earl relied, who acquainted your Lordships, that upon Cottingham's telling him of the intended Surrender of Mr. Thomas Bennet, Dupper said, there ought to be an Acknowledgment to the *Great Seal*, and he had heard that Money had been given, which Cottingham himself at first doubted of; but Dupper soon satisfied both the Earl and his Secretary that Money might be ask'd.

This confirms the Evidence of Mr. Thomas Bennet, that nothing was said about Money to be given, or an Expectation of something at his first meeting with Cottingham, but it was introduced by Cottingham at their second Meeting; which must be after this Advice and Information of Dupper, and that then the Resolution was taken of expecting a Sum of Money.

This argues the Diffidence of the Earl impeach'd in setting up this Pretence, and his Suspicion of the Illegality of it; yet the Opinion of the Person advising, and the Earl's own Inclination to Gain, were too powerful to be resisted.

But to remove the Foundation of this *Objection*:

The Point or *Charge* of these *Articles* lies in the taking these Sums by the Earl, *colore officii sui*, as Lord Chancellor, and without Right, which is *Extortion* and *Corruption*.

And if he did receive these Payments by Colour of his Authority, and without Right, (and he has made out no Pretence of Right) he will be guilty of the Crimes charg'd upon him, in how artificial a manner soever he transacted these Matters.

It will amount to the same, whether they proposed the Sum to him, or he made the Demand upon them; yet if something was expected

by him, and he declin'd doing the Duty of his Office, until that something was offered and paid to him, it is an *Exaction* and an *Imposition*, which is *criminal*, and maintains the *Articles*.

And it is remarkable, that the Earl would never give Credit for his *Present*, but always had it safe in his own Hand, before he admitted the Officer.

It has been attempted, on behalf of the Earl of Macclesfield, to prove that former Chancellors have used to claim and receive Money upon the taking Surrenders, and making new Grants of this Office; but herein the Earl has fail'd, and has not been able to give legal Proof of any one Instance of that kind, upon the change of this Office of *Clerk of the Custodies*.

For Dupper did not see any Money paid on that Occasion, nor knows any thing of it of his own Knowledge, but only copied an *Account* which he came by very odly, wherein (as he says) there was an *Item* to that effect; and his Evidence depended meerly upon Hear-say, and ought to have no Regard.

The Evidence of Mr. Oker turns against the Earl; for altho' there were Surrenders in both the Times, when Earl Comper held the *Great Seal*, yet nothing was paid or taken by him; and upon the Surrender of Thompson to Edwards in the late Queen's Time, it was said that nothing was given; and upon the Surrender of Mr. John Bennet to Mr. Thomas Bennet, whilst Earl Comper enjoyed the Seal under his Majesty, nothing was paid or claimed.

And the supposed Intimation or Opinion of Lord Comper, which Oker mentions, was between these two Surrenders, which makes it very unlikely that Earl Comper should make such a Declaration; yet if such Discourse there was, it is plain, that upon better Consideration, the Lord Comper departed from such Pretension, and discover'd no Expectation of any thing, upon the last Surrender and Grant of this Office.

And as nothing was taken by Lord Comper, upon the Surrender of Mr. John Bennet to Mr. Thomas Bennet, it will be prov'd, that on the Surrender of Mr. Edwards to Mr. John Bennet, Lord Comper refused to hear of a *Present*, when it was hinted at, and declared that nothing was due to the *Great Seal*.

But this *Defence*, which is founded upon a supposed Usage to receive a *Fee* for permitting such Surrenders, and from thence would infer a Right, or an Excuse to the Earl impeach'd, in doing the like, is a Proof and Confirmation of the *Article*, as charg'd by the *Commons*; That the Earl did insist upon the Money, as his *Right* and *Due*.

ART. V. As to the Bargain with Mr. Kinaston, it appears from his Testimony, and the Evidence of Mr. Charles Baily, who paid the Money, that Mr. Kinaston endeavour'd to obtain the Admission at a lower Rate. At first he offer'd but one thousand Guineas; and at the End Mr. Baily understood it to have been agreed for at fifteen hundred Pounds; and when Mr. Cottingham said fifteen hundred Guineas were expected, Baily did not proceed till he had informed Mr. Kinaston therewith, who answer'd, that since Mr. Cottingham had mentioned that Sum, he must submit, and do accordingly.

And this Dispute, upon the Difference between Pounds and Guineas only, explains the manner of these Dealings; That they were formal Contracts and Bargains between the Secretary and the Masters, at the best Price that could be got; and tho' there was no hagling with the Earl himself

(as

(as *Cottingham* express'd it at one of these Dealings) yet he had a faithful *Steward*, who could and did haggle very well for him; and when the *Secretary* had done his utmost, the *Earl* accepted the Price which had been agreed upon.

ART. VI. As to the *fifteen hundred Guineas*, paid by Mr. *Thomas Bennet* for his Admission, and the manner of making that Bargain, Mr. *Bennet's* Evidence of his first offering *one thousand Guineas*, and *Cottingham's* Refusal of it, saying, He hoped Mr. *Bennet* would not lower the Price, and the Hazard of his being refus'd, and that there was no haggling with my Lord, and at last agreeing for *fifteen hundred Guineas*, is supported from the usual Behaviour of *Cottingham*, as well as from the Probability of the thing it self; that a Man may reasonably be presumed to endeavour to save what he can, and when he is purchasing, to get it at the cheapest; altho' (as it has appear'd upon the Examination) Mr. *Bennet* had little Reason to expect that a succeeding *Chancellor* would be satisfied with his Circumstances, and admit him.

Upon the *Earl's* Defence against the Charge contained in these two *Articles*, it was prov'd by Mr. *Goldsbrough* the *Register*, that the *Earl* about the 23d of *February* last had paid those two Sums into the *Court of Chancery*, to be apply'd for the Benefit of the *Suitors*; and this is offer'd either in his Discharge, or as a Merit. But this was done several Days after the *Impeachment*, and after publick Complaint had been made against the *Earl* upon these two *Instances*, and is a very proper example of the *Earl's* own Construction of a *voluntary Present*; for after the *House of Commons* had taken this Affair into their Consideration, and had demanded Justice and Satisfaction from the *Earl* by a *Parliamentary Prosecution*, the *Earl* then did *freely and voluntarily*, and of his own Accord, make a *Present* to the *Suitors* of the *Court* of these two Sums, which he had, in the like free and voluntary Manner, receiv'd as a *Present* from Mr. *Kinaston* and Mr. *Bennet*.

\* But this Action contradicts his whole Defence; and shews that he was convinc'd that he had no Right to receive or detain the *Money*, and was afraid to keep it any longer.

ART. VII. and VIII. As to the two *five thousand Guineas* receiv'd by the *Earl* of Mr. *Elde* and Mr. *Thurston*, it is prov'd that the Price was settled between them and Mr. *Cottingham*; and when Mr. *Elde* (of whom the *Earl* express'd so good an Opinion) offered *five thousand Pounds*, *Cottingham* said *Guineas* were handsomer; and the particular Method of Payment shews the inward Rebukes of his Conscience, and his Fear of a Discovery.

And these two *Facts* shew the Prevalency of his Avarice, above any other Passion. For in Mr. *Elde's* Case, he broke thro' the Obligation of Gratitude and Friendship to him, to receive his *Money* in a cover'd Manner, in a *Basket*. And in Mr. *Thurston's*, he tried to beguile his Fear of a Discovery, by suffering the *Money* to come to him thro' a private and unsuspected Hand.

And these two *Instances* were of so nice a Nature, that his faithful *Secretary* own'd, that he was not admitted into the Secret. For it appears that the *Earl* either knew or suspected there would be a *Loss* in *Borret's* Office by his Insolvency, tho' it was not reduc'd to any Certainty; and it now appears, at the least, to amount unto *twelve thousand Pounds*.

But the *Earl* left the *Suitors* of the *Court* to bear that *Loss*, and never took Care to procure a just Satisfaction to them. Which the *Commons* urge both as an Evidence and an Aggravation of his Guilt; since he therein preferr'd his own private Gain, to that

Security, which his high Trust required him to have provided for the *Creditors* of the *Court*.

And the returning great Part of these two Sums after the Confusion and Disorders of the *Court* became publick, and Part of Mr. *Elde's* Money, after the *Masters* had been call'd upon to bring in their *Cash*, and which upon Mr. *Elde's* Evidence may be reasonably presum'd to have been made use of by him to make a false Shew before the *Commissioners*, are rather Decrees against himself, than any Extenuation of his Guilt.

And as to the *Earl's* great Merit, which he so largely dwelt upon, and so often repeated, that he might have had *six thousand Pounds* from Mr. *Lucas*, which he relinquish'd to accept of *five thousand Guineas* from Mr. *Elde*. The *Managers* will call Mr. *Lucas*, who (in answer to Mr. *Eld's* Testimony) will prove, that when he offer'd the *six thousand Pounds*, it was upon this express Condition; that if the *Money* of the *Suitors*, or the *Cash*, was taken out of the *Masters* Hands on a *Parliamentary Inquiry*, he should have a Return of some Part; and that the *Earl* should indemnify him against all Deficiencies.

So that the *Earl* did not refuse Mr. *Lucas's* *six thousand Pounds*, from a Dis-inclination to the Sum, if he could have kept the whole securely; but because *five thousand Guineas* paid absolutely, was better than *six thousand Pounds* subject to a Condition of refunding, and incumber'd with an Engagement of Indemnification.

But the *Earl's* chief Defence is rais'd from the Practice of his Predecessors, who (as he pretends) led him into these Mistakes; and he has prov'd *seven hundred Pounds* to have been paid by Mr. *Lovibond*, about *twelve Years* since, and *eight hundred Pounds* by Mr. *Holjord*, and *five hundred Pounds* by Mr. *John Bennet* in the Year 1716. upon their respective Admissions into the Offices of *Masters*; and from thence insists, that altho' he can't claim the exact Sum of *fifteen hundred Pounds* receiv'd by himself upon Admissions, as a certain and establish'd Fee or Perquisite, because he has taken twice as much as his Predecessor did: Yet this Practice gives him a Right to a *Present*, and it was in his own Discretion to declare the Sum, as he should think reasonable, according to the late Increase of the Business of the *Court*.

But, a *Present* altogether uncertain in the Quantum, and depending in this Manner upon the Pleasure of the Person who is to receive it, seems to differ very little, if at all, from a *Price*.

The *Earl* insists likewise, that the Denial or Refusal of some other of the *Witnesses* to answer his Questions, is a farther Proof that they paid *Money*.

This shews that the *Earl* thinks he wants the Proof very much, when he makes use of such an Argument to raise Evidence.

The *Witness* refuses to answer such Questions, which he is not oblig'd by the Rules of Law to resolve, concerning the Manner of his Admission, and the *Commons* cannot call *Witnesses* to contradict or explain that which has never been deliver'd in Evidence.

Yet the *Earl* desires your Lordships to believe this as Evidence, tho' you never did hear it, and to act and vote, upon your Honour, as if you had heard and admitted it.

But howsoever the *Earl* may have directed himself, he can never think that such an unjust Insinuation will ever prevail upon your Judgment; or that he can thereby move your Lordships to give up your Honour, in the highest Exercise of your judicial Power.

And these two or three late Instances, which he has produced, cannot change the *Common Law*, or repeal the several Acts of Parliament, whereby they

are declar'd illegal ; and if he makes use of them as *Precedents*, he ought to take them with all their Circumstances, which upon the whole Matter rather turn against him. For Mr. *Holford* and Mr. *Lovibond* were at that time, and still continue Men of Substance ; and Mr. *John Bennet* was of Ability at the Time of his Admission, altho' in the Year 1720. he sustain'd several Losses, which impair'd his Estate. And they all paid the Sums of Money mention'd out of their own Estates, and no Part of it out of the *Suitors's Cash* or *Effects*. And the whole of the *Suitors's Effects* was deliver'd over to them by an *Account* with which they stood charg'd.

So that altho' these few Instances were not animadverted upon, either because they were not publicly known, or that no Inconvenience did ensue therefrom : Yet they will afford no Excuse to the *Earl* impeach'd for taking double and treble the Value of those Sums upon his Admission of *Masters*, who were Persons of small or incumber'd Estates, and who were necessitated to employ the *Cash* and *Effects* of the *Suitors* in the Payment for their Offices, and for their Admissions ; and thro' whose Insolvency so great a Loss and Damage has come upon the *Suitors*.

But an Officer of publick Trust and Service ought to look well to his *Precedents* before he follows them ; and if he will pursue an illegal or unjustifiable *Precedent*, he does it at his Peril, and must answer for the Consequences ; especially in the Situation of the highest Officer in the Kingdom, who was intrusted with the Administration of publick Justice, in the supreme Court of Law and Equity ; and whose Duty it was as well to declare and expound the Law to others, and to regulate and reform the Exactions and Abuses, which at any Time may have crept into the inferior Courts of Justice, to the Injury and Oppression of the *Suitors* of other Courts, as to prevent or suppress Corruption and Extortion in the Court, where he more immediately presided.

ART. XI. As to this Article, the particular Circumstances of Mr. *Kinaston* and Mr. *Thomas Bennet* have been prov'd, and the Deficiencies in their Offices, and how unequal they were to the Trust of the great Sums and Effects deposited in their Hands.

By the Orders of the Court, which have been read, it appears that Mr. *Kinaston's* Deficiency amounts to 26,908 l. 11 s. 3 d. 1 q. and Mr. *Bennet's* to 16,075 l. Mr. *Kinaston* had about 50,000 l. in Money and Effects of the *Suitors* in his Custody, and Mr. *Thomas Bennet* near 100,000.

This is likewise a high Breach of Trust in the *Earl*, and is an Offence against the Statute of 12 Rich. II. cap. 2.

12 Rich. II. cap. 2. — But that they make all such Officers and Ministers of the best and most lawful Men.

Which Words in the Law import Sufficiency of Substance, as well as Capacity.

And the Statute 2 Hen. VI. cap. 10. takes it for granted, that the superior Officers were before that Time under the Obligation of the Common Law, or some former Statute to that Effect ; when by the said Act, 2 Hen. VI. cap. 10. Co. 4. Inst. 114. intituled, *What manner of inferior Officers shall be appointed in the King's Courts*, it is enacted, *To the Intent that better and more sure Government be had within the Courts of our Lord the King, for his Profit, and Ease of his People, which have to pursue and to do in the same* ; it is ordained and established, *That all the Officers made by the King's Letters Patents Royal within the said Courts, which have Power and Authority by virtue of their Offices of old Times accustomed, to appoint Clerks and Mi-*

*nisters within the same Courts, shall be charged and sworn to appoint such Clerks and Ministers for whom they will answer at their Peril, which be sufficient, faithful, and attending to that which pertaineth to them in Performance of the Business, as well of the King as of his People.*

This Act would have been extended farther, if it had been esteemed necessary.

The Frame of both these Statutes does shew the Bent of the English Constitution, to provide for the Ease and Benefit of the Subject.

But the old Rule, *respondeat superior*, will hold against the *Earl* in this Case, especially when it appears by the Evidence of Mr. *Goldesbrough* the Register, a Witness produc'd by the *Earl*, that this Practice of paying Money generally into the Hands of the Masters, was not in use at his first coming into the Register's Office, about the Time of the Revolution. So that the *Earl* impeach'd took upon himself the Disposition of the *Suitors* Money, without a proper Ground and Justification.

And the Offence contained in this Article does not depend upon his Knowledge, that the Persons admitted were insufficient and unable ; but that the *Earl* did not require and take full Satisfaction and Evidence in a proper Manner, to make it manifest that they were able and sufficient, as had been done by his Predecessors ; particularly when Mr. *Holford* was admitted a Master, his Father was obliged to settle a real Estate upon him of good Value.

The *Earl* ought either to have advanc'd Persons equal to the great Trust and Charge, or to have reduced the Trust and Deposit to the Condition and Circumstances of the Person, as his Predecessors had done.

So that it is evident the *Earl* had only in view the Price and Profit of the Sale of the Office, which would rise highest, upon the Inability and Unfitness of the Officer.

And it was therefore very properly said by one of the *Earl's* Council, that he weigh'd the Masters before he admitted them.

But he weigh'd them only for the Sake of the Price they were to pay to himself ; and when he had done with them, he left them of very little Weight for the Security of the *Suitors*.

His false, tho' memorable Declaration in open Court, upon the 21st of Jan. 1723. explains his whole Scheme, when he publish'd from the Bench, *That the present Masters were Men of as great Fortunes as any Set of Masters had ever been.*

The Words were prov'd by Mr. *Waller*, and have not been contradicted by any Witness.

At that time Master *Dormer's* Deficiency had taken Air ; and Mr. *Waller* upon his Examination said, The Suspicion of several of the Masters was then so strong, that this Publication rais'd Astonishment in the Hearers. But there was then a Vacancy, and an Office to be sold. Master *Fellowes* died 19 Jan. 1723. and it became necessary to give the Office a Reputation.

And altho' the Insufficiency of some of the Masters had been decently intimated to the *Earl* by Mr. *Lightboun*, upon his several Proposals, and the *Earl* may be presum'd to know the general Apprehension of the World. Yet in this solemn Manner the *Earl* became an Officer to himself, to proclaim his own Market.

ART. XII. The Practice and Injury to the *Suitors* can hardly be more aggravated than is express'd in the Article it self.

And it has been prov'd in every Particular necessary to support the Article ; and no Proof has been offer'd

offer'd on the Part of the *Earl* to contradict or extenuate the *Charge*, by making appear his Vigilance, or any Care or Regard to prevent the fatal Consequences of the *Practice*.

The particular *Methods* of preventing this Fraud specified in the *Article*, are only to shew the Practicability of some sort of Measures proper to have been put in Execution, in order at least to render the corrupt *Practice* and Abuse difficult, altho' they had not prov'd compleat in all respects to redress and prevent them.

And by the *Witnesses* call'd on the Part of the *Earl* himself, it was expressly prov'd, that some of these *Methods* had been practis'd with Effect in the time of his *Predecessors*, and that no *Loss* had happen'd to the *Suitors* during that Regulation.

An *Account* of the *Suitors* Cash and Effects was brought to the then *Lord Chancellor Harcourt* by Mr. *Holford*, as the *Account* of his *Predecessor*, before he was admitted; and he was thereupon ask'd if he would be bound by that *Account*, and stand charged accordingly? to which he agreed, and his Substance was sufficient to answer it.

The *Cash Money* was for some Years lock'd up in the Hands of the two junior *Masters* in *Lord Chancellor Comper's* time.

And it has been prov'd, that the total *Accounts* of all the *Masters* have been taken three several times within a few Years; that is, twice by *Lord Comper*, and once by *Lord Harcourt*.

And altho' the *Earl* seems either to doubt of his Authority, or of the Possibility of doing this in his own time; it can be prov'd, that he requested to see the *Accounts*, and to be inform'd of this Method, and accordingly had a Sight of the *Books*, and made an Appearance of putting it in Execution.

Besides, the late *Accounts* deliver'd in by the several *Masters* before the *Commissioners* named for that Purpose, shew, that such an Attempt was practicable, and might have been compleated in a reasonable Time.

But the *Earl* of *Macclesfield*, by his own Confession, is guilty of a total Neglect of all Measures; and never prosecuted one honest and real Step towards the suppressing this Abuse.

He might have given Directions, and made Orders for the securing the *Suitors* Effects, in the same manner before the late *Inquiry*, as he has done since.

His *Secretaries* and *Agents* might have supervised the Observation of these Orders; and have attended to inspect the compleat Transfer of the *Suitors* Effects, as well as to receive his *Lordship's* extorted *Premium*.

And if after the *Earl* had taken these, or any other probable Measures, and the *Masters* had broken their *Trust*, the Fault would have lain upon the Dishonesty of the *Masters*, and not upon the Connivance or Negligence of the *Lord Chancellor*.

But upon this *Article* the Answer of the *Earl* impeach'd is directly falsified. For he declares upon his *Honour*, upon that *Honour* which is communicated to him from the Privilege of the whole *Order of Peers* (but of which he himself has only made a Shew or Appearance) that he was totally ignorant of this *Practice*; although it appears in *Proof* to have been a matter publickly known during his *Administration*. It was one Inducement to Mr. *Kinaston*, and the single Temptation to Mr. *Thomas Bennet*.

This *Notoriety* is a reasonable Evidence to charge the *Earl* with the Knowledge of a fraudulent Transaction propagated under himself; especially when the Presence of his Ignorance must arise from the wilful Neglect of his *Duty*.

But express Notice is prov'd out of his own Mouth by Mr. *Thomas Bennet*; and farther, that the *Earl* had been used to prostitute his *Honour* by a Course of Denial of this Fact upon former Occasions.

For Mr. *Bennet* in his *Account*, which he had deliver'd in to the *Judges*, had insert'd this remarkable Item, viz. Item 9075 l. in the Hands of Persons of Ability; which included the 7500 l. paid to Mr. *Hiccocks*, and the 1575 l. paid the *Chancellor* for his Admission.

Mr. *Kinaston* also in his *Account* had insert'd an Item to the same Effect for a like Sum.

Mr. *Thomas Bennet* went soon afterwards to the *Chancellor*, who enter'd into Discourse with him thereupon, and said: I am sorry you have given in your *Account* in this manner; it was the worst way in the World: For all the World will now judge, that you paid for your Office out of the *Suitors* Money; and what hath been so much suspected will now be discover'd, which I have always taken so much Pains to deny, whenever I was ask'd the Question. And wish'd he had been acquainted with Mr. *Bennet's* Necessities before Mr. *Bennet* had given in that Item; or to this very Effect.

The Probability of the Truth of this Evidence stands confirm'd from the Nature of the Thing, and the State of the *Account* itself, which has not been contradicted by the *Earl*; and seems farther strengthened by an Opinion which the *Earl* had entertain'd, and which he dropt in his Defence on Wednesday, viz. That the *Sutor* was not the worse by this Method; for by this Detention the former *Master* remain'd still responsible, and (as he observ'd) by Mr. *Meller's* retaining some Part of the *Suitors* Effects, the Deficiency in Mr. *Borret's* Office was not so large.

This seems a strong Symptom of the *Earl's* Knowledge of the *Practice*, when it had obtained his *Approbation*.

But the *Money* retain'd by Mr. *Meller* was no part of the *Price* of the Office, but were other Sums and Effects which he retained in his Hands, and never paid over to Mr. *Borret*, upon the repeated Application and Request of the *Suitors*, who doubted Mr. *Borret's* Sufficiency.

But suppose the former *Master* had died, or fail'd with these Effects in his Hands; how should the *Sutor* have come to a full and legal *Proof* of this Transaction? and how many Persons was he to prosecute, to discover and receive his own *Money*?

The Importance of this Part of Mr. *Thomas Bennet's* Testimony has given Occasion to the *Earl* and his Council to object to his *Credit*; and an Endeavour has been used to make out, that Mr. *Bennet* has contradicted himself, and has deny'd here at your *Lordships* Bar upon his *Oath*, what he had formerly declared to other Persons.

For that Mr. *Bennet* being ask'd (with an Intent to prove his Ability to pay the rest of his Deficiency) Whether he had not said, that if Mr. *Hiccocks* would pay him back two thousand Pounds, he would pay the rest himself, Mr. *Bennet* denied he had so declared; and yet, as they urge, the contrary is sworn by Mr. *Holford*, Mr. *Thurston*, and Mr. *Elde*.

In Answer to this Mr. *Holford* gave in Evidence, that Mr. *Bennet* said, that if Mr. *Hiccocks* would pay him back two thousand Pounds, he would take Care that the rest of the *Money* should be raised. But Mr. *Bennet* did not say, he had the *Money*, tho' Mr. *Holford* believed he had by his Manner of speaking.

Mr. *Thurston* depofed, that Mr. *Bennet* declared he would make up the rest himself: but afterwards told him, that all he had in the World would not pay it.

And Mr. *Elde* swears to the same Effect.

And this Testimony does not contradict, but rather confirms Mr. Bennet's Evidence. For he made no direct Declaration of his Ability to pay the rest, but, being liable to the Suitors, he seem'd to be willing to get what he could from Mr. Hiccocks.

Besides, his Discourse at these times cannot stand in Competition with his Oath, according to the common Rules of Evidence; and a Witness's Credit is not to be taken away upon an uncertain Expression, proved by each of the Earl's own Witnesses in different Words, when from the Ambiguity of it there cannot possibly be any voluntary Contradiction.

But the Commons will confirm the Truth and Fairness of this Testimony of Mr. Bennet, by proving that the Earl had express'd the same Concern and Dislike of the Manner of these Accounts in respect of these Items to others, before any Parliamentary Inquiry.

There is likewise another Matter of Fact, which assists the Proof of this Article, which is, That the Price of the Office, and of the Admission, are comprehended in the Accounts of the Masters Deficiencies, and make the greatest Part of Mr. Bennet's Deficiency, and near a Moiety of Mr. Kinaston's.

Which manifests the Danger and Injury of this unjust Practice to the Suitor, whose Estate is thereby put upon the Hazard of the Master's good or bad Success, and his Property lost with a deficient Master.

And here the Corruption and Misbehaviour of the Earl appear with the highest Aggravations.

The extorted Profit made by the Earl is raised out of those Effects, which are deposited in the Court upon the Faith and Honour of the King's Administration under the Care of the Chancellor, as chief Trustee, by whose Connivance (if not Consent) they are thus imbezzled; and the miserable Suitor must either sit down with the Loss, or be forced to expend his little remaining Substance in a tedious Process to recover back his own Estate thus wasted and converted by the Masters.

Unnecessary Delays and Protractions of Causes are the unavoidable Consequences of this Practice; and in this manner the Business of the Court, and the Profits of the Masters Offices have been encreased by the Pursuit of the Parties after their own Effects, which in the Conclusion terminates in so heavy a Loss.

The late Orders made upon the Petitions of Mr. Hiccocks and Mr. Rogers since the Impeachment, and some since the Tryal commenced, tho' not proved to have been as yet comply'd with, and at best are but Deposits to attend the Event of the Contest between the former and the present Masters, have been made use of by the Earl in his Defence; which is a new Attempt in him to make a false Shew and Appearance of Restitution and Satisfaction.

Altho' if it was a real and a compleat Return of the Principal Money, it would be a very small Excuse and Extenuation for the vast Prejudice done to all the Suitors of the Court, by the locking up their Money, Effects and Securities, and stopping the Payments thereon for so many Months, besides the Loss of Interest on the Cash, and their being hinder'd from the Employment of their Money.

The Earl has not adventur'd to enter into a particular Discharge of the total Deficiency assign'd by the Commons, upon the Evidence of Mr. Thompson, and collected from the Accounts stated upon the late Inquiry, amounting to more than one hundred thousand Pounds. Nor has he given any Answer to the great Loss which the innocent Suitors sustain by the Insolvency of the two deceased Masters, Dormer and Borret.

This great Confusion and Damage brought upon a Court, where the Estates of the most wealthy Subjects, as well as of lesser People, do sooner or later come, became a National Concern, not merely from the Extensiveness of the Loss to the particular Suitors, but likewise from the apparent Danger thereby arising to the Publick.

This general Ruin awaken'd the Care and Zeal of the Commons in Parliament for Justice to their Fellow-Subjects.

This introduced the Charge against the Earl in the Twelfth Article, which has been proved as it is alledged, viz. That by this unjust and fraudulent Practice, the corrupt Profit made by the Earl upon the Sale of the Offices of Masters in Chancery, has in Consequence been raised and received by him out of the Effects of the Suitors of the Court, for whom he was intrusted; in Breach of the Trust reposed in him for the Preservation of the Estates and Effects of the Suitors, to the Dishonour and Discredit of the Court, and to the great Injury and Defrauding of the Suitors, in a Court of Equity establish'd for their Relief and Protection.

#### My LORDS,

If the Misdemeanours of which the Earl impeach'd stands accused were not Crimes by the ordinary Rules of Law in Inferior Courts, as they have been made out to be; yet they would be Offences of a publick Nature, against the Welfare of the Subject, and the Common Good of the Kingdom, committed by the Highest Officer of Justice, and attended with so great and immediate Loss to a Multitude of Sufferers; and as such, they would demand the Exercise of the Extraordinary Jurisdiction vested in your Judicature for the Publick Safety, by virtue whereof your Lordships can inflict that Degree and Kind of Punishment which no other Court can impose.

When these Offences have been proved upon the Earl impeach'd, of what Consideration in Judgment can the Earl's mistaken and misplaced Charities be? Can they alter the Facts charged upon him? or turn Extortion and Fraud into Liberality and Piety? Can the Merit of a few private Good Works atone for the Plunder of the whole Body of the Suitors of the Court of Chancery, upon whom this Earl, by his Misbehaviour, has brought a Deficiency of one hundred and eight thousand Pounds?

He depends upon the Prayers and Wishes of those few, who have been the Partakers of his Bounty, without being Sufferers by his Crimes. But the Voice of the Commons for Justice against this Great Offender, not only includes the Complaints of the particular Sufferers, but the Accusation of an injured Nation, whom the Earl had endeavour'd to cut off from the Protection, which ought to be deriv'd to them from the Father of his People.

The Commons having now maintain'd the Truth and Justice of their Charge against the Earl impeach'd upon these Articles, leave him to your Lordships just Determination.

#### Mr. LUTWICHE.

#### My LORDS,

I am commanded to assist in the Reply; and since I was obliged to bear my Share in this Prosecution, I was willing it should be such as would give me an Opportunity of hearing what would be said and proved in the impeach'd Lord's Defence, before I spoke freely upon the Matters in Judgment before your Lordships.

And I may now venture to say, as he was unfortunate to bring so heavy a Charge upon himself, he has still been more unfortunate in his Defence; I submit it to Your Lordships Observation, whether any Part of the Evidence offered by the Managers has not been confirmed, nay enforced upon him, by his own Evidence; and some of the Charges upon him he has endeavoured to evade by such Excuses and Arguments, as have made even his Defence criminal.

My Lords, Upon the Examination of the first Witness produced on the Part of the Commons, his Lordship was pleased to make it a Question whether he took the Oath directed by the Statute of 12 Richard II. The Objection seemed to be, that tho' the Statute was read, and his Lordship kissed the Bible, yet he was sworn to nothing. This was so surprizing to all that heard it, and the Report of it raised such Indignation, that it might have been expected his Lordship would have drawn a Veil over this Part of the Case, and have taken Care that it should not be mentioned again; but instead of that, his Counsel, nay he himself, have thought fit to bring this Point into Dispute in his Defence, and his Lordship does not even yet fully own that he took the Oath.

The Statute has been represented as obsolete, read in Old French, and not regarded, and the Oath not duly administred; that the Officer said nothing to his Lordship, nor he to the Officer.

The Witnesses told Your Lordships, that at a Meeting of the Great Officers every Year in the Exchequer, this Statute was read, and they immediately kissed the Book; and that this was the usual Method of taking the Oath prescribed by that Statute.

My Lords, I would observe, that if there had been any thing in the taking of the Oath that his Lordship thought not regular, it was his Duty, who was the Chief of that Assembly, to put them in a right Method agreeable to the Statute: And therefore this Objection is very extraordinary to come from him.

It is a dangerous Practice for any one to make a Shew of taking an Oath, and yet by some nice Distinctions endeavour to persuade himself or others that he is not sworn.

I do not know but most of the Old Oaths that are taken, may by the like Arguments be evaded, as well as this; the very Oath of Office set forth in this Lord's Answer is, *You shall swear, &c.* and in that Case a nice Distinguisher may as well say, that he repeated nothing, and that there are not Words *de presenti*, whereby he is sworn. But where is the Defect in administering this Oath? The Officer reads out of the Statute, That the Chancellor, Treasurer, &c. shall be sworn, and then they kiss the Book.

I do not see there is much Difference between saying, The Chancellor, Treasurer, &c. shall be sworn (they being at the same Time present) and saying, *You the Chancellor, Treasurer, &c. shall swear.*

I shall therefore have the Charity for the Noble Lord to think and take it for granted, that he was sworn as the Statute required, and that he understood the Statute, tho' it was read in Old French, and that he did not prevaricate, when he did this solemn Act.

Supposing therefore that the Statute 12 R. II. is

in Force, and that the Oath was really taken; the next Consideration is, what the Law is upon the several Facts and Circumstances proved against the impeached Lord in Relation to his selling the Offices of Masters in Chancery.

The Answer put in to the Charge of the Commons says, The Masters freely and voluntarily sent a Present without admitting any particular Sum; we say that particular Sums (and those very exorbitant) were insisted on, and a Bargain driven for the Offices, as much as could be in any Case by way of Brokage; nay the very Benefit of having the Suitors Money comes into the Consideration of the Price.

The Words of the Statute of R. II. are general, and in Point of Reason it should extend to this Case above others; because the Offices of Masters in Chancery do not only concern the Administration of Justice, but are in some Measure judicial; they transact a great Part of the Business of the Court, and have usually been in Commission together with the Master of the Rolls, and the Judges, for hearing of Causes.

Lord Chief Justice Coke in his *Third Institutes*, p. 145. places this Offence of selling Offices under his Chapter of Bribery, where he states the Definition of Bribery to be, *When any Man in a judicial Place takes any Fee or Pension, Robe or Liverry, Gift, Reward, or Brokage of any Person that hath to do before him any way, for doing his Office, &c.* He comments upon the Words of this Definition and more particularly upon those Words, *of any Person that hath to do before him any way*, and he takes Notice that it is not confined to taking Money, where a Suit is depending; but also where any in a judicial Place doth any thing for Gift or Reward by Virtue or Colour of his Office, tho' there be no Suit at all depending.

For Example, (says he) *If the Lord Treasurer for any Gift or Brokage shall make any Customer, Controller, or any Officer or Minister of the King; this is Bribery: For he ought to take nothing in that Case by the Statute of 12 R. II.* This Example also proves, that the Statute is not confined to the Construction that has been endeavoured to be put upon it, that it relates only to Cases, where the Chancellor, Treasurer, &c. meet together, as they do, when they nominate Persons for Sheriffs; for the Example is of the Lord Treasurer alone.

But, My Lords, we insist upon it that this as well as other Statutes (that have been mentioned) are but Declarations, and further Remedies for what was the Common Law. The Case that was cited out of Moor's Reports, 781. takes it to be so, of a Sheriff selling the Office of Gaoler, and his Bailiwick; but there was an Objection made to the Report of that Case, that it says the Statute, 4 H. IV. c. 5. gives a Penalty certain and pecuniary; whereas that Statute gives no certain Penalty, and therefore it might be a right Resolution upon that Statute. But the Declaration of the Court, upon which the Party was fined, was because the Offence was *malum in se*; and tho' that Statute of 4 H. IV. gives no Penalty, yet I think the Statute 23 H. VI. c. 10. does give a Penalty of 40 l. in the same Case of a Sheriff, and yet the Party was fined at the Discretion of the Court. That same Case is also reported in Noy, 102. where he takes no Notice of any Penalty, and the Report is in these Words: "N. was Sheriff of Nottingham,"  
 "43 Eliz.

“ 43 *Eliz.* and took Money for the Offices of Gaoler and Bailiwick, and he first gave them to his Servants, who sold them, but he himself had the Money.” And he was fined for that, for it is contrary to 4 *H. IV. cap. 5.* And also by the Court, That that is a Corruption, and a great Cause of Oppression in the Officers, and such Sale of Offices is *malum in se*, and fineable.

My Lords, I think the impeached Lord has advanced a very dangerous Position upon this Point. He is pleased to say, The Publick has nothing to do to enquire about any thing, but whether the Officer be a good Officer; that if he be so, the Publick is not hurt, though he gives the Chancellor Money for his Place. Here I presume he was sensible that it might be objected, that the same Argument would hold for taking Money in a Cause before him, provided it was a good Judgment: And therefore was pleased to say, that the Difference between this Case and taking a Bribe for Judgment in a Cause is, That in the one Case the Party has a Right to have Judgment, but in the other Case no Man has a Right to his Favour or Recommendation, unless upon Terms. This is very extraordinary, and the same Argument would prove, that it is lawful for him to take Money from every Judge that comes into *Westminster-Hall*. It is well known, that the Chancellor generally recommends in that Case, and yet it might there be said, What is the Publick the worse, provided he is a good Judge? Surely this is such a Doctrine, as is not fit to be proclaimed to the World, and would tend to Universal Corruption.

My Lords, There was a very extraordinary Precedent cited out of *Madox's History of the Exchequer*, p. 43. where he says, in the Reign of King *Stephen*, *Geoffery* the Chancellor fined in 3006 *l. 13 s. 4 d.* for the King's Seal. This the Author understands to be a Fine then lately made with the King for the Office of Chancellor, or to have the keeping of the King's Seal. The Author himself observes, that this Precedent may justly seem strange to us at this Day. And truly so it may, for in the Instance before Your Lordships, instead of paying Money to the Crown for the Office, here are very great Sums of Money paid by the Crown for an Acceptance of it.

But what does this Precedent tend to? Is it to prove the Office of Chancellor likewise saleable? This is so entirely new, that it wants a better Authority than this Precedent. It is a great while ago, if it were as the Author takes it to be. But the same Author, p. 42. says, That the Ancient Historians say little concerning the Duty of Chancellor, or the Nature of his Office; and it does not appear what the Business of his Office was at that Time, and nothing pertinent to the Matter before Your Lordships is to be collected from it. It is very strange to suppose the Common Law, that is founded upon Reason, should admit the highest Place of Judicature to be filled by those that come in by such corrupt Methods. And therefore we must beg leave to insist, that it was an Offence at Common Law, as well as by the Statutes.

But suppose this Matter rested only upon the Statute of *Edward VI.* I do not see but it is an Offence and Misdemeanour in his Office of Chancellor to sell these Places of Masters in

Chancery, and that he is answerable for it before Your Lordships as a Crime.

This Statute is made against buying and selling of Offices (for that is the Title of the Statute) And shall it not be an Offence cognizable before Your Lordships, for a Chancellor to put in Officers in a Manner that is condemned by Act of Parliament? When he by Virtue of the Office is to appoint, it is a Breach of his Oath of Office to appoint contrary to the Laws and Statutes of the Kingdom; but more especially when he does it for corrupt Gain.

As to this Point, there is a great deal of Difference between one Officer selling to another, and a Judge that presides in the Court, whose Duty it is to see that proper Persons be appointed according to Law; instead of that, by this Method he shews them a bad Example on their very Admission into the Office, and introduces them by Corruption in the first Instance, even by the very Act of Administring the Oath to them.

If this Great Officer should be liable to no other Punishment, than an Incapacity of Nominating again to the same Office, the Act would have little Effect, and that Penalty would signify very little; since his own Office is during Pleasure.

My Lords, I shall now proceed to reply to the Defence that has been made on the Thirteenth and all the subsequent Articles, which is the Province more particularly assigned to me.

The Charge in the Thirteenth Article is, That upon the Failure of *Dormer*, instead of taking proper Steps for obtaining a Satisfaction by regular and justifiable Methods, the Earl of *Macclesfield* neglected and declined those Methods, and by many indirect Practices endeavoured to conceal the true State and Condition of the Office; lest a publick Discovery of the Deficiency should lessen the unjust Gains he proposed to make by the Sale of the Offices of Masters in Chancery.

Upon this Article the impeached Lord has said, he thinks it hard that these Miscarriages should be charged upon him, that this Affair about *Dormer* was a Misfortune that might have happened in any other Chancellor's Time, and not his Fault.

My Lords, If this Unfortunate Lord had done what became him in his high Station upon the Failure of this Master, God forbid that the Misfortune upon the Office should any ways have been laid to his Charge; if he had been desirous to have proceeded in a regular Method, he might very easily have done it; the Paths of Virtue and Justice would have been easy, he need not have found himself at the End of Four Years surrounded with such insuperable Difficulties.

If a fair, plain, and open Method had been taken for enquiring into and stating the Debt due to the Suitors, and the Account of *Dormer's* Effects to satisfy it, there could have been no Danger to the Chancellor, whatever the Deficiency had been; but the Truth was, he could not part with those vast and exorbitant Prices, to which he had at that Time raised the Places of Masters; he found the sweet of that Gain, and was willing to run some Hazard for it.

Tho' it was known that *Dormer* was gone, yet the *quantum* of the Deficiency was not known; and if it had been publick, the Money might



might probably have been taken out of the Master's Hands; a Parliamentary Enquiry might have ensued, and he might have lost those exorbitant Profits, which he afterwards actually made of those Places; and these were the true Reasons of the Concealment, and of the clandestine Proceedings that followed; nothing else hindered him from proceeding with Safety to himself by regular Orders of the Court. When Orders of Court are regularly made, there is a quick Way of putting them in Execution: It has been observed by the Council in this Case, that it is more expeditious against an Officer of the Court, than another; and it is certainly so. There might have been a Sequestration against *Dormer* in a very little Time, and that would have intituled the Court to the Possession of his Effects for the Benefit of the Suitors; which in a great Measure answers what was objected of the Necessity of *Dormer's* coming over, and having his Liberty in Order to transfer his Stock. It was likewise said, that it was necessary for the Discovery of his Effects; and yet when he did come over, he was never examined on Interrogatories. Surely if a Chancellor will take upon him to grant a Man his Liberty, when he is to make Satisfaction to the Suitors, he ought to take care that the Consideration for the granting him his Liberty should be performed.

But it is said, What Harm has happened by not taking those Methods?

My Lords, Here are two remarkable Instances of the Consequences of this Neglect, by which it appears neither the Debt to the Suitors was known, nor the *quantum* of the Effects that there were to pay it.

Mr. *Edwards* told your Lordships, That the Deficiency of *Dormer* was at first about 25000 *l.* but that about a Month ago he discovered a farther Debt of about 1500 *l.* here there is a very great Deficiency concealed: On the other side the Effects of Mr. *Dormer*, that should have gone towards paying this Debt, have been concealed and lessened by the want of such an Examination. Your Lordships heard the Evidence about the Parcels of Hops belonging to *Dormer*, that were worth Seven or Eight Hundred Pounds, that lay concealed Four Years, and were not discovered till lately. The Council, indeed, said, They were only a Parcel of musty Hops that have been found. But if he had been examined on Interrogatories, in all Probability, he would have discovered them at first, and they had been worth 5 or 600 *l.* more than now, and the Suitors would have had the Benefit of them; 5, or 600 *l.* is a considerable Sum in Mr. *Dormer's* Effects; and no one can tell but there might be other Instances of the like Kind.

What is the Answer his Lordship gives to this gross and wilful Neglect? He tells Your Lordships, That he gave Directions to the two Senior Masters to make Enquiry into *Dormer's* Affairs and Accounts; *He left it to them*, and that they did not think it requisite to examine him upon Interrogatories, or to use him with Hardship.

It is very extraordinary, that in a Matter of that great Concern, he should content himself with a parol Direction; Orders from a Lord Chancellor, that are in Earnest, are always in Writing; nor can they be enforced unless they are so; and therefore there must be some private Reasons for these extraordinary Proceedings.

Another Thing that was insisted on, was, That the Earl (as he expresses it in his Answer) was made to believe that the Masters would make good the Deficiency. What Reason had he to believe it? They never told him so; in a Matter of that Moment he had no reason to depend on an hear-say Evidence. He knew this was to be an Undertaking for the Debt of another; which could not by Law be Obligatory, unless reduced into Writing.

My Lords, I cannot account for these Things either in the Chancellor, or those Masters that had the Management of this Affair, unless it be (as the Article charges) to conceal the Deficiency of the Office, I mean, the *quantum* of that Deficiency; and that both the Chancellor and the two Senior Masters thought it their Interest to do so, that all of them might share in the Sale of the Places; the Two Senior Masters were desirous (as was mentioned by the Evidence) to sell out, and the Chancellor was ready to receive his Share of the Money.

The Fourteenth Article is the Article about the Composition with *Wilson*; and I must beg Leave to say, notwithstanding what has been insisted upon, That it is a clandestine, unusual, and unwarrantable Proceeding. We did take the Liberty on our Evidence to this Article to observe to Your Lordships, That the Petition of Mr. *Edwards* (on which this Composition is founded) takes notice that *Dormer* was indebted to the Suitors of the Court in several considerable Sums of Money; which should have been a Caution to the Chancellor to have taken a more than ordinary Care in this Matter; but instead of that, there is not any one Order, Affidavit, Report, or any one Proceeding, that appears upon Record throughout this whole Affair.

The Report produced appeared to be the Original under Mr. *Hiccocks's* Hand, which was a Demonstration that it was not filed at the Time when the Order was made for establishing this Composition, nor has been since.

My Lords, If there be but an Affidavit annexed to a Petition, care is usually taken to order that it shall be filed; but it was not thought convenient in this Case to have any thing publick.

My Lords, The Earl of *Macclesfield* in his Defence to this Article begun with a Copy of a Judgment obtained by *Wilson* against *Poulter*, that was signed 22 December 1721, and is for 18,774 *l.* whereas the Debt pretended to be assigned by *Wilson*, is 22,060 *l.* So that tho' the Judgment was for all that *Wilson* could pretend to (for ought appears) yet the Debt pretended to be assigned, is mentioned to be above 3000 *l.* more than what the Judgment is for; which is a farther Objection to this Composition, that did not appear before.

The next Point the Earl examined to, was the Sufficiency of *Poulter*, in order to prove the Assignment of *Poulter's* Debt to be valuable; and there were two or three Brokers produced on this Account.

They were very unlucky Witnesses to prove the Man's Ability, for they happened to be the very Persons to whom he had declared his Insolvency; one of them (*Scott*) was employed to go to Mr. *Wilson* to Compound with him.

But then a very notable Distinction was taken by the Earl himself, That tho' *Poulter* disclosed

to these Witnesses that he was Insolvent, and that they were let into the Secret; yet all other People took him to be a good Man. The Evidence produced to prove this, were only those that knew he was Insolvent, and not One of all those others that it is said took him to be Solvent.

But we hope we have made it plain (and if it were necessary, we could make it clear beyond Dispute) that *Poulter* was a broken Man at that time.

Another Objection was, How does it appear that a better Composition could have been made?

My Lords, Those that presume to take upon them, without a lawful Authority, to make a Composition to bind the Parties concerned, ought to make it appear to be a very good one; but on the contrary it appeared in this Case on the Examination of *Mr. Edwards*, that *Wilson* (when he was afterwards charged with it) owned he had paid several others their full Debts; and 'tis notorious that he kept his Shop open till lately.

My Lords, The Answer to our Objection, That no notice was given to the Suitors, of this Reference about the Composition, carried in it (I thought) something extraordinary. It was said both by the Earl of *Macclesfield* and his Council, That whatever the Lord Chancellor did, could not bind the Suitors, they not having notice, and therefore the Suitors might recover the whole from *Wilson*, and no body was hurt.

My Lords, There is something very shocking in this Excuse, it strikes some Horror to think, that this poor ignorant Man (*Wilson*) should be made to believe upon the Faith of a Court of Justice, that his Composition was in full Discharge of his Debt, if there was at the same time a Reserve, that it might be set aside for want of notice to the Suitors; the Excuse seems to carry in it a greater Guilt than the Crime charged. This unfortunate Man (*Wilson*) was living at the Beginning of this Tryal, but has since laid violent Hands on himself, and he is dead: I make no Reflection what might be the Occasion of it.

My Lords, I did mention that upon the Absolute Order made for *Mr. Edwards* accepting this Composition, it was ordered to be accepted with this Addition to the Order, *viz. Of which give Notice forthwith.* I mentioned it, that the Earl might have explained what he meant by directing Notice after the Composition was ordered to be accepted, or to whom Notice was intended to be given; I have heard no Answer to that, but what the Earl was pleased to say about the Articles, that on reading them he thought he had been charged with compelling *Mr. Edwards* to accept of a Composition without Notice to him; whereas it was done on the Petition of *Edwards*. My Lords, the Notice should have been given to the Suitors, and that before the Composition was ordered to be accepted; that is what the Article charges, and what the Managers insist on, and no Answer is given to that Objection.

It was said, That if it had been set down to be heard in the ordinary Course (it being the Third of *August*) in Vacation-Time, it could not have come on till the next Term.

I believe that Lord knows it has very often happened, that particular Petitions have been heard in Vacation-Time, if Necessity required it; and I don't understand why there needed to be such a Fondness for having this done so much in

hast, unless it were for the Purposes charged in the Articles. There was likewise something said by the Earl of the striking out of the Prayer of Indemnification, that if it were justifiable, it needed no Order to indemnify, and if it were not justifiable, it ought not to be in; but what we say is, that it looks like a Diffidence whether it was justifiable or not, and since it was put into the Prayer of the Petition that *Mr. Edwards* might be indemnified, if the Chancellor thought it not justifiable, he ought to have let *Mr. Edwards* know it, as much as he ought to have let *Mr. Wilson* have known that the Composition would not be good without the Suitors being Parties. As there is no tolerable Account given for such an extraordinary Proceeding, we submit to Your Lordships, whether it is not rightly charged to be for the unlawful Purposes mentioned in the Articles. If a Commission of Bankruptcy had been taken out against *Wilson*, the quantum of the Debt to *Dormer*, and consequently of the Loss of the Suitors must have been known, and other Suitors might have been alarmed, and a thorough Reformation might have happened; which might have ended in the taking away the Money from the Masters, and the Price of the Places would have been lowered, which was always most carefully avoided.

My Lords, I now proceed to reply to the Defence made on the Fifteenth, Sixteenth, and Seventeenth Articles.

The Fifteenth Article is, That after the Failure of *Dormer*, the Earl of *Macclesfield*, in order to carry on his corrupt and unjust Purposes, and to conceal the Deficiency, did call for the Accounts of the Masters, not with any Intent of Examining them, or to secure their Effects, but to terrify the Masters and oblige them to contribute 500 *l.* apiece; and after that Purpose was served, did not oblige them to bring in their Accounts.

The Sixteenth is, That he persuaded the Masters to pay the 1000 *l.* ordered to *Mrs. Chitty* for the like Purposes.

And the Seventeenth is, For letting all the Money belonging to *Dormer* be paid away to some of the Suitors, without observing a Proportion, to which all were equally intitled.

To the Fifteenth the Earl of *Macclesfield* says in his Answer, That he did really call for the Accompts with an Intent to examine them, and that he might regulate Matters, and that after the 500 *l.* was paid, still he called for the Accompts; for that there was a Letter sent in *November 1721*, to the Masters insisting upon having them; but as to this second Letter, as *Mr. Cottingham* did not speak at all positively to it, but that he believed, but could not be positive, that it was sent, and that he had taken no Memorandum of it, &c. we must beg leave to acquaint Your Lordships, that this second Letter was never sent; and every One of the Masters will give Your Lordships that Account: But supposing it had been sent, can any one imagine that the Chancellor would not have pursued that Direction, and have had those Accompts, if he had really intended it? What is the Excuse at last? He had required so many Particulars in the Accompts, that it was almost impracticable to do it. My Lords, if the Charge in the Articles be true, it answered the Design the better, that it should be difficult; we say it was done to get from the Masters 500 *l.* apiece to quiet Matters for the present,

sent, and when that was done, there was no more Use made of that Order. But what is most wonderful of all is, that tho' in Four Years Time it was so difficult a Work that it could not be done; yet when the Committee of Council had called for the Accompts, the Earl of *Macclesfield* used such Diligence, that he procured them to be ready in a Week's Time; and tho' all the Directions and Particulars which he had required, were not observed, yet it seems they were all that were necessary and sufficient, and it was hoped such as would prevent a Parliamentary Enquiry.

The Earl in his Answer values himself much upon this Expedition, not considering how inconsistent it was with the Difficulties which were made an Excuse for not having it done Four Years before.

It was insisted on upon this Head, that Mr. *Lightbourn* did not pay, and yet he brought in no Account; but however Nine of the Masters did pay, and the Chancellor well knew it would have looked very partial to have proceeded against one single Master, and not the rest; that would have been too barefaced, and so Mr. *Lightbourn* escaped too; besides there was not a Total Despair even of him, for he was several Times afterwards spoke to about making good his 500 *l.*

It was said likewise, the Business of the Court must have been at a Stand, if these Accompts had been pursued.

My Lords, If it had been so, it had been more for the Reputation of the Court, and for the Benefit of the Suitors in general, to have had some Time employed about this necessary Work; and if there had been a willing Mind, one long Vacation would have been sufficient without any Interruption to the Business of the Court.

After all these Excuses the Earl is pleased to say, if he had taken the Accompts, it would have signified nothing unless he went farther.

My Lords, If he never begun, he could never bring any Thing to Perfection; and in his Answer he confesses, it was necessary to have the Accompts in Order to make Regulations. But after all he is forced to come to this Conclusion (as he says in his Answer) *to go on in the same Road his Predecessors had done*; tho', by the way, it has appeared to Your Lordships that it is not the same Road; for his two immediate Predecessors did call for the Accompts, and had them.

The Sixteenth Article is grounded on the Persuasions to pay 1000 *l.* (ordered to Mrs. *Chitty*) to prevent a Parliamentary or publick Enquiry, and that the Earl afterwards paid the same himself to Mr. *Lockman*, &c.

My Lords, We called Six or Seven Witnesses to this Article, and did observe at that Time the Earl in his Answer said, He believed he did not persuade the Masters to pay this 1000 *l.* And his Lordship was pleased to say, when he spoke in his Defence, That he still believed, that he did not persuade them to pay it.

My Lords, It is very strange that there should be any Doubt made of it; the Occasion of the Meeting, and the Nature of the Thing plainly shews it. First Mr. *Cottingham* went to Mr. *Lightbourn*, and told him, that there was a present Occasion for this 1000 *l.* that it was proposed he should pay the 500 *l.* (which he should have paid before) and the other Masters 50 *l.* apiece, which would make up the 1000 *l.* When the Masters

were going to the Lord Chancellor's, they discoursed among themselves, that their going was upon Occasion of another Call for Money.

When the Chancellor came to them, he mentioned the pressing Necessity there was for paying this 1000 *l.*

Mr. *Edwards* particularly says, that he represented to them this Matter of 1000 *l.* as a Thing of Consequence, a very pressing Occasion of a Sum of Money immediately to be paid; he said, I do not know what the Consequence may be; Clamours begin to grow strong. I do not know but it may come to a Parliamentary Enquiry. Mr. *Lowibond* says, that my Lord told them, This was a Matter that required great Expedition, for one that belonged to the Prince's Court, and all of them understood there was a Proposal to pay the 1000 *l.* and that was the Occasion of the Meeting. All the Masters that have been examined on this Head confirm it.

What is it that is to evade all this Evidence? It is only this poor Shift, I did not (says the Noble Lord) persuade them to pay the 1000 *l.* but I persuaded them to pay all *Dormer's* Deficiency.

My Lords, There is no Evidence to support this Distinction, but on the contrary, there were Arguments used for the advancing of this Money. And if he was not able to persuade them to pay this 1000 *l.* there was no Likelyhood of prevailing on them to pay the whole.

My Lords, Another Matter insisted on in Relation to this Article was, that the Money, which was paid to *Lockman*, was paid out of Compassion; *Lockman* says he took it as his Due, and I think he was in the right; he gave an Assignment of the Order, when it was paid; and certainly this can in no Sort be added to the List of this Noble Lord's Charities that he has been pleased to publish; but the Discourse with the Masters before shews plainly what were his Inducements for paying it; he feared the Consequence if it were not paid, and chose rather to do it, than venture those Enquiries that the not paying it might occasion.

I think the Earl seems to agree in Substance to the Declaration at the End of the Articles, That was made the Fifth of December last, viz. that he had heard of *Dormer's* Deficiency, but knew nothing of it but as Publick News, &c. A strange Declaration to come from the Bench at the End of Four Years, during which Time were all these Transactions about *Dormer's* Deficiency! Then it was that he was pleased to refer it to Mr. *Edwards*, to enquire whether there was likely to be a Loss of any Money, when at that Time he knew very well that all *Dormer's* Money was gone, and Mr. *Edwards* had none in his Hands.

The Seventeenth Article is for ordering and permitting *Dormer's* Money to be paid out without Regard to Proportion; this was a manifest Injustice, and so discoursed of between this Lord himself and Mr. *Edwards*; and the Answer that is given to it is, That we have produced but Four Orders made by the impeached Lord for such Payments.

My Lords, I think it not material whether the Orders were made by himself, or the Court; he was warned several Times of the Consequence; he took the Management of these Matters to himself, and let Things run on, hoping the Money would last his Time; and now all

is gone, and paid away, and many distressed People are left without any thing. In the Cause of *Jett* and *Jones*, the Orders that were read, appeared to be made by this Lord himself; and the Parties have been so lucky as to have got their whole Money, whilst others are in the utmost Necessity without any Sub-  
sistance.

The Consequence is, that the rest of the Suitors, who were intitled to an equal Proportion, have no Remedy for it. What may be done for them in Charity and Compassion is of another Consideration; but their legal Right is taken away by him that should have protected them.

An Objection was made by the Council, That there was no fixed Fund of *Dormer's* Effects, from which to have settled a Rule of Proportion. This is excusing one Fault by another: First, Care is taken not to have an Accompt settled; and then that is made an Excuse for not settling a Proportion.

The Eighteenth Article relates to the Masters trafficking with the Money; which was as notorious, as that there was such a Place as *Exchange-Alley*.

The Year 1720 has been mentioned both by the Earl and his Council, and it was so fatal a Year, that surely, if a Reformation were ever to be made, it should have been upon that Occasion. I think there is but little Difference, whether they traded with the Money themselves, or put it into another's Hands at high Interest, and permitted them to trade with it. Could any one imagine that *Dormer* let 24,000 *l.* lie in *Wilson's* Hands for nothing? Mr. *Cottingham* upon the Examination of my Lord's own Council gave Evidence, that *Wilson* insisted he allowed high Interest for it. And it was well known it was in the Power of all the Masters to traffick with the Money, and this after express Warning by one of the Masters to the Chancellor not only by Word of Mouth, but by Letter written (as I take it) in 1722. But every Thing of a Regulation of that Kind was liable to Objection; one Thing that was proposed was so easy to be done, that there is no Excuse it was not complied with, which is in Relation to the Securities, by placing them in two or three Names, which would have prevented the Masters from disposing of the Securities.

This might very easily have been done. The only Answer that was given, was, that it would not answer all the Securities.

This was made a Reason for doing of nothing, and there was such a Backwardness to do any Thing of this Kind, that the meanest and most trilling Excuse was sufficient to satisfy his Lordship, not to take any Step towards it.

My Lords, Upon this Article the impeached Lord was pleased to mention some of his Predecessors, and also his Successors; as to his two immediate Predecessors, he doubts the taking the Accompts by him in the manner they did, would have been thought of no Use.

My Lords, I am apt to believe a good Use might have been made of it; it would have put a Check and Restraint upon the Masters, they would have acted with more Caution, when they knew the Balance was a Charge

upon them, and that it might be called for any Time; and if his Lordship had those Accompts, I dare say he would have seen that there was ten Times as much Cash in the Masters Disposal, as there was in one of those Predecessor's Time. And it might have been of Use to him to have seen what prodigious Sums of Money were in their Hands, and how great the Danger was.

As to the present Commissioners, the Noble Lord was pleased to say, the Difficulties of making the Masters Accompt have appeared by their Proceedings.

My Lords, They have been sufficiently taken up with endeavouring to compel the Masters to give Security for the Deficiencies incurred in this Lord's Time. The Difficulty was not so much in taking an Accompt, as in making good the Deficiency.

They have been forced to take what Security they could get from the Masters from Time to Time, and I wish the Deficiency do not still come out worse than is expected; no one can yet say what it will be.

My Lords, The Nineteenth Article was founded on the Endeavours of the Lord impeached, to deceive His Majesty in Council, by persuading the Masters to make false Representations of their Circumstances to His Majesty, by a Subscription to their Accompts, and by assisting one another to make an Appearance of Ability.

This, My Lords, was the sad Conclusion of this long Scene of Iniquity; when it was become necessary, and it was no longer to be avoided; that there should be Accompts delivered in. There is an Attendance on the Chancellor; and one of the Masters having concluded his Accompt with a Representation of his Ability and Readiness to pay the Money, the rest are persuaded to do it in the like manner, without so much as asking them concerning the Truth of it; and there is one Instance that was very remarkable, which was in the Case of Mr. *Lovibond*, that where he of his own Accord could go no farther, than to say he was able to pay or give Security to pay that was not thought sufficient by this Lord because it would imply a Dissidence that the Money was not then forth coming; and therefore those Words about Security were not to be mentioned. Others of them that were no ways capable of producing the Money, were induced to make the like Subscription.

When it was expected the Money should be produced, then Mr. *Dixon* and Mr. *Cottingham* have a Meeting with the Masters to consult what was to be done; then it was that Proposals were made for the Masters to assist each other, and to get Goldsmiths Notes and other Effects to shew to the Judges.

It has been objected, that the Managers did not think fit to call Mr. *Cottingham* and Mr. *Dixon*.

My Lords, We called the Masters that were present at that Meeting, who gave Your Lordships an Account of that Transaction, and it turns the Objection upon the impeached Lord, that he did not think fit to call Mr. *Cottingham* and Mr. *Dixon* (that were his Servants and Agents) to contradict that Evidence; if this Lord had no Concern in that Matter, he would certainly have called them to that Purpose, and his  
not

not examining them to it greatly confirms our Evidence.

Your Lordships may remember the many Inconsistencies, Evasions, Equivocations, and Insufficiencies in his Lordship's Answer to the Articles of Impeachment, which have been observed and plainly made out by the Managers for the Commons.

My Lords, He was pleased to make a Distinction between an Answer to Articles of Impeachment, and an Answer to a Bill in Chancery; that the Plaintiff in a Cause had a Right to a full and plain Discovery, but that the Case before Your Lordships differs. My Lords, I would beg leave to mention, that there was an Instance of an Impeachment before Your Lordships, in which the Lord now impeached had a great Share in the Reply, wherein he laid very great Stress upon the Insufficiency and Evasions in the Answer. The Person then impeached had very hard Names given to him on that Account, and *even his Silence was insisted on as a Confession of his Crimes.*

As to the Noble Lord's Charities I beg leave to say, that as it is a great Addition to the Merit of Charity, to have it kept private, it was the more extraordinary these Charities should be now published; because I do not see they are any ways material to the Matters before Your Lordships. Here are plain Facts charged and proved, and if in a Case of this Kind these Charities are to wipe off the Charge, it is a Kind of Commutation that has not been before heard of. My Lords, he that would be the most meritoriously charitable, should first be just. The Lord should have first considered those Suitors that he had injured, he should first have made Satisfaction to them, and then have offered his Gifts.

Thus we have endeavoured to lay before Your Lordships the whole Circumstances of this Case; there needs no Eloquence to aggravate the Crimes; I pretend to none; but the Cries of Widows and Orphans will have the most persuasive Eloquence, and when they have Justice on their Side, they will have Weight with Your Lordships.

My Lords, The Case before Your Lordships is founded on Corruption, and a Series of Fraud to support that Corruption. The People had long murmured at it, but the Grievance increased at last to such an intolerable Degree, that it became a National Concern, and there was an unavoidable Necessity of a Parliamentary Prosecution.

My Lords, The Commons hope they have done their Duty in bringing it here, and we hope Your Lordships will give such Judgment, as will be consistent with Your Lordships Honour and Justice.

Mr. Serj. Pengelly. My Lords, We shall beg Leave to call a Witness or two, the first to the Imputation endeavoured to be thrown upon Mr. Thomas Bennet's Character, in Relation to the Discourse that passed between him and the Earl. We shall shew that he declared it at that very Time, or soon after, the Lord had spoke it to him. We desire also to examine Mr. Lucas, who applied for the Master's Place. It was insisted, That the Earl was offered 6000 *l.* and actually refused to take it; but took 5000 *l.*

from Mr. Elde and Mr. Thurston for the Master's Office: We shall shew how that happen'd.

Mr. Richard Lucas Sworn.

Mr. Serj. Pengelly. We desire that you would inform my Lords, whether you made any Application to the Earl of Macclesfield, or to Mr. Cottingham, about coming into the Master's Office at the Time when Mr. Elde or Mr. Thurston were admitted, and what passed.

Mr. Richard Lucas. My Lords, Upon the Death of Mr. Fellowes, being persuaded by some Friends to make an Application for the Office vacant by his Death, I did go immediately to Mr. Cottingham; my Lord Macclesfield being then out of Town, I thought it proper to go to his Secretary.

Lord Ch. Justice King. Please to speak up.

Mr. Richard Lucas. I say, upon the Death of Mr. Fellowes, I was persuaded by some Friends to make Application for the Master's Place; and upon that, I went to Mr. Cottingham, and told him the Affair I came about. He told me, Mr. Lucas, you know you have formerly had some talk with me about an Affair of this Nature; it is to no Purpose for me to recommend you to my Lord, unless you bid more than formerly you have done. Upon that I immediately told him, I was ready to give 6000 *l.* There was some Talk passed between us besides, but it being so long ago, and not expecting to be called to give an account of it, I cannot now recollect it. One Thing I can recollect, that he intimated to me, That my Lord Macclesfield had some Intentions of making some Orders, or doing somewhat that should be for the Ease or Advantage of the Masters; but his Lordship would not do it at that Time, because it would look as if he had an Intention of making Advantage of that Vacancy. A Day or two afterwards I met Mr. Cottingham in the Hall, and asked him, If he had spoke to my Lord about me? He told me, he had; but that my Lord was pleased to enquire into my Circumstances, and did think it proper that some Security should be given by the Masters; and I being immediately to be put in by his Lordship, it was the more incumbent upon him, to see what Security I was able to give. Upon that I waited upon him to know what Security was expected: He mentioned to me 10,000 *l.* Security. I told him, That after such time as I had parted with 6000 *l.* I could not take upon me to say, I could myself make up a Security to the Value of 10,000 *l.* but what with the Assistance of Friends, and mine own Estate, I might possibly do it. Upon talking of the Matter with my Mother, she was very willing to joyn in the Security. Upon that I wrote a Letter, I cannot remember whether it was directed to my Lord Macclesfield, or to his Secretary; but to one or the other it was. I sent it by my Servant, and I was informed by Mr. Cottingham, That his Lordship had a Sight of it. But afterwards being uneasy at giving so large a Sum of Money, and considering, from the Talk that then was, that these Matters might come into Parliament, I was advised, and I thought it proper, to have some better Hold upon his Lordship, to make some Return, in Case any thing should happen to lessen the Value of the Place: Upon that, I

did write a Letter, I cannot remember the whole Contents; but I pretty well remember the Substance, which was, That I would undertake to give the Security required to the amount of 10,000 *l.* I believe, I did also mention my real Estate, which was near 300 *l.* a Year, to be a Part of the Security, and I did add, That notwithstanding the present Disputes between the Master of the *Rolls* and the other Masters, and the Talk there was of bringing it into Parliament, I was not at all uneasy; because I could securely depend upon his Lordship's Generosity, that he would take it into his Consideration, in Case any thing happened amiss in the next Session of Parliament; I can't remember exactly the Words, but my Lord *Macclesfield* has the Letter, if I am mistaken, his Lordship will set me right.

Mr. *Serj. Pengelly*. Upon this Letter of your Expectation of being repaired, if any thing happened, had you any Answer?

Mr. *R. Lucas*. The next thing I heard, was, That Mr. *Elde* was in the Place, and Mr. *Cottingham* was pleased to say, he was a particular Acquaintance of my Lords, and therefore had it.

Mr. *Serj. Pengelly*. When Mr. *Cottingham* told you this, what Answer did he return as to my Lord's Approbation of the Proposal?

Mr. *R. Lucas*. He said, to the best of my Remembrance, That my Lord was pleased that I offered 6000 *l.* at once, provided I would give Security, if that should be thought proper.

Mr. *Serj. Pengelly*. Since you was disappointed when Mr. *Elde* came in, what passed when Mr. *Thurston* came in? whether did you renew your Application then?

Mr. *R. Lucas*. I was, with abundance of Regret and Fear, prevailed upon to renew my Application.

Mr. *Serj. Pengelly*. What were your Fears?

Mr. *R. Lucas*. My Fear was about the bringing this Matter into Parliament, and that I did not know what Effect that might have upon the Profits of the Place. Upon that, my Brother told me, he was acquainted with Mr. *Ellis*, his Lordship's Chaplain, and if I pleased, he would go to him, and get him to speak to my Lord about it.

Mr. *Serj. Pengelly*. What Directions did you give to your Brother as to offering any thing, and upon what Terms?

Mr. *Ric. Lucas*. I cannot say whether my Brother had a direct Commission from me to mention that I was then ready to give 6000 *l.* but it was my Apprehension, and the Apprehension of all those that knew this Affair, that I should not come in under so much; I am not very positive that such a Direction was given. I did mention another thing to my Brother, to acquaint Mr. *Ellis*, that I had heard more of the Deficiencies in the several Offices of the Masters, and that I was not without Apprehension, that if I should give 6000 *l.* to come into this Place, I might from time to time be called upon for several Sums of Money in order to make good past Deficiencies; and I thought that it would be unreasonable for me to be brought into any Contribution for making good those Deficiencies, when I had no Concern in them. I then desired it might be mentioned. As for the Answer, I never saw Mr. *Ellis*.

Mr. *Serj. Pengelly*. What Orders did you give to your Brother? Did you give him any Order to pay the Money without Consideration of being liable to the Deficiencies?

Mr. *R. Lucas*. I gave him no Order at all, I thought it was not come to bear yet.

Mr. *Serj. Pengelly*. Was there any Thing passed after that?

Mr. *R. Lucas*. I conceive, my Lords, you won't think it proper for me to give an Account of what passed between Mr. *Ellis* and my Brother.

Mr. *Serj. Pengelly*. I desire to know, whether your Brother had any Orders or Directions from you to go on?

Mr. *R. Lucas*. I have told you every Thing I can recollect; I only told him, I desired him to speak to Mr. *Ellis* to recommend me to his Lordship upon the Foot, I have mentioned, *viz.* on the Foot of the former Proposals.

Mr. *Serj. Pengelly*. Had your Brother any Authority from you to give 6000 *l.* without being secured from the Deficiencies?

Mr. *R. Lucas*. Six thousand Pounds was the Sum to be given, and I desired my Brother to mention the Deficiencies, and that I should not be understood to be subject to any of them.

Mr. *Serj. Pengelly*. Was it to be given absolutely without Reserve, or with Regard to be secured from the Deficiencies?

Mr. *R. Lucas*. I did desire that the Business of the Deficiency might be explained, and that it might be understood that I would not be answerable for any of them.

Mr. *Edward Lucas* sworn.

Mr. *Serj. Pengelly*. I desire you would inform my Lords, whether you received any, and what Directions from your Brother, upon the last Vacancy, when Mr. *Thurston* came in, of the making Proposals for your Brother's coming into that Office?

Mr. *E. Lucas*. Soon after Mr. *Borret's* Death, my Brother expressed an Inclination to me of succeeding in that Office: I told him, I had an Acquaintance with Mr. *Ellis*, my Lord *Macclesfield's* Chaplain. And if he would give me any Commission I would communicate it to Mr. *Ellis*, I believing that a proper Way of Communicating it to my Lord. My Brother did desire me to go to Mr. *Ellis*, and to inform him myself, that he had so just a Sense of my Lord's Honour and Generosity, that he believed he might leave the Terms to be fixed by my Lord himself. I went to Mr. *Ellis*, and did tell him as my Brother had desired me. Mr. *Ellis* said, He did not much care to concern himself in the Affair; if it had been to recommend to a Living, it might be proper for him; but this was out of his Province. I acquainted him with what Steps my Brother had formerly taken, in order to obtain one of these Offices, and explained to him the Nature of the Thing, and persuaded him to lay this Matter before his Lordship. Upon which he was then pleased to say, He would go to my Lord (who was at *Kensington*) the next Day, and bring me an Answer.

Mr. *Serj. Pengelly*. Had he any Directions either as to the Price, or the Terms?

Mr. *E. Lucas*. I don't know of any Directions the had, either as to the Price, or the Terms.

Mr. Serj. Pengelly. What did you say about the Security, and the Deficiencies in the several Offices?

Mr. E. Lucas. This was another Conversation, about a Week, or Ten Days after; after Mr. Ellis had brought me an Answer, then I remember my Brother gave me Directions to consult with Mr. Ellis, whether it was not proper to make my Lord a direct Offer of 6000 l. but then it would be reasonable, that he should be indemnified or secured from any Damage, or Deficiency by any of the Precedent Masters; and that he should not be called upon to make good any such Deficiency. I told Mr. Ellis this, and he said, there was no Room for this, there might be Deficiencies in some other of the Offices, but he had heard, there was no Deficiency in Mr. Borret's Office. I had likewise heard so, but whether there was a Deficiency or not, I could not tell; my Brother was willing to enter into a Treaty with my Lord upon these Terms.

Mr. Serj. Pengelly. Did you hear any Thing more about it?

Mr. E. Lucas. About a Week after Mr. Ellis writ to me, That my Lord Macclesfield had approved of Mr. Thurston.

Mr. Serj. Pengelly. Please to recollect, whether your Direction was about Borret's Deficiency only, or about all the Deficiencies in general?

Mr. E. Lucas. My Directions from my Brother were about all the Deficiencies; Dormer's Deficiency ran in his Head, and he thought it unreasonable, that he should be obliged to contribute to any Deficiency precedent to his coming in Master.

Mr. Serj. Pengelly. Did you communicate this to Mr. Ellis?

Mr. E. Lucas. I did communicate it to Mr. Ellis; if not in such express Terms, yet to that Effect, that it was unreasonable, that my Brother should be obliged to contribute to make up those Deficiencies that were preceding to his being Master; I am sure, I added those Words, That he should not be obliged to contribute to make up those Deficiencies that were precedent to his being Master.

Earl of Macclesfield. My Lords, I submit, whether it be not proper, that Mr. Ellis be called before this Mr. Lucas goes away.

Mr. Ellis called, but not examined again immediately.

Earl of Macclesfield. Mr. Lucas, I desire that you would declare to my Lords over again, what you have given in Evidence.

Mr. E. Lucas. The first Time I saw Mr. Ellis was at my Mother's House, immediately after Mr. Borret's Death, I then told him of my Brother's Intention to purchase a Master's Place, and that my Brother had so thorough a Sense of my Lord's Honour and Generosity, that he would leave the Terms to my Lord himself. Mr. Ellis was not at first inclinable to concern himself in it, but upon telling him what Steps my Brother had taken in Regard to it; he said out of Friendship to me he would engage in it, and go to my Lord, and bring me an Answer. This was the first Conversation. Mr. Ellis did the next Day bring me an Answer from my Lord.

Mr. Serj. Pengelly. What was the Answer my Lord sent?

Mr. E. Lucas. The Answer that Mr. Ellis brought was, That my Lord had no Objection to my Brother, he did remember that he had been formerly recommended to him, but that there was some other Person proposed by some of the Masters, of whom he expected a farther Recommendation, and could not now give any other Answer to it: He also told me, That he apprehended, if that Person did not succeed, my Brother might have the Refusal. I said it was indifferent whether my Brother then succeeded, or not; because my Lord told him, That one or two Masters were inclinable to sell, and if they did, he might have an Opportunity of buying of those Masters. This passed on the Second Conversation.

Mr. Serj. Pengelly. Go on.

Mr. E. Lucas. The Third Conversation was sometime afterwards at my Lord Macclesfield's own House in Lincoln's-Inn-Fields. I went by my Brother's Directions meaning to consult with Mr. Ellis in a friendly Manner, whether he did think it adviseable to make his Lordship a direct Offer of 6000 l. I said if he gave it, it was reasonable, that he should be indemnified from any Damage that should happen by Reason of the Deficiency in any of the Offices, and not be obliged to contribute towards making them up; he said my Lord had not spoken to him about that, that he could not have every Opportunity he desired to speak with him; that as to the Deficiencies, he had heard there was none. I said, I had likewise heard so; but whether there was or no, my Brother was willing to enter into a Treaty with my Lord upon those Terms. This to the best of my Remembrance is the whole I know of the Matter.

Mr. Serj. Probyn. I only would beg leave to ask this Question, When the first Proposal was made to Mr. Ellis, whether he did propose a certain Sum?

Mr. E. Lucas. I don't remember I did; but I think I told Mr. Ellis my Brother had formerly offered 6000 l. and I told Mr. Ellis this, and did lay before him all the Circumstances of that Affair, to make him the more inclinable to engage in it.

Mr. Com. Serjeant. I desire he may be asked, whether any Terms besides were mentioned than what Mr. Lucas has mentioned before?

Mr. E. Lucas. I don't remember there were any other Directions then given, I can't be positive, but that he was willing to leave it to my Lord's Honour and Generosity. And my Lords I can swear positively, that till the first Day of these Proceedings, when I met Mr. Ellis in the Court of Requests, I never knew that he had offered my Lord Macclesfield's 6000 l.

Earl of Macclesfield. My Lords, we beg leave that Mr. Ellis may give an Account of what Proposal he made to me from Mr. Lucas.

Mr. Ellis. My Lords, the Account Mr. Lucas has given Your Lordships is true in all the Particulars, as far as I can remember at this Distance of Time, though there are a good many that I could not have recollected of myself, only as to this one, his not empower-

ing me to offer this 6000 *l.* I should not have gone to my Lord, unless I had had some particular Offer to mention. I particularly remember I made him that Offer, and I am as certain, that Mr. *Lucas* did speak to me to make the Offer of 6000 *l.* for this Reason, that I never knew that Mr. *Lucas* had offered 6000 *l.* before by Mr. *Cottingham*, till this Impeachment begun, when Mr. *Lucas* being here, acquainted me that he had made that Offer to my Lord.

Mr. *E. Lucas*. I desire Mr. *Ellis* may be asked, whether ever he told me, that he offered Lord *Macclesfield* 6000 *l.*?

Mr. *Ellis*. I believe I only did tell him in general, that I had made his Lordship the Offer which he had desired me to make, and in general likewise, that my Lord was well satisfied with it.

Mr. *Com. Serjeant*. I desire he may inform Your Lordships, whether, when he told Mr. *Lucas*, that he had made that Offer which he had desired him, he did enquire what that Offer was?

Mr. *Ellis*. No, my Lords, he did not.

Mr. *Serj. Pengelly*. My Lords, they have called Mr. *Ellis* to confront Mr. *Lucas*; but they agree together in all the material Circumstances. Mr. *Ellis* says, what Mr. *Lucas* swears is true in every Particular, unless in Relation to the Offer of 6000 *l.* In all the rest Mr. *Ellis* confirms Mr. *Lucas*'s Evidence.

Mr. *E. Lucas*. I don't positively swear that I did not give him that Commission, but to the best of my Remembrance, I did not give him that Commission.

Earl of *Macclesfield*. I desire Mr. *Ellis* may be asked, when he made the Proposal to me, whether he mentioned any Condition whatsoever?

Mr. *Ellis*. No, my Lords, I did not mention any Condition.

Mr. *E. Lucas*. Till after the first Conversation with Mr. *Ellis*, I had no Direction from my Brother to mention any Price or Condition; I gave an Account to Your Lordships of two different Conversations.

Earl of *Macclesfield*. When the Answer was brought, that I was satisfied with the Proposal, what did he do farther upon it?

Mr. *E. Lucas*. My Lords, Mr. *Ellis* did not tell me, that my Lord *Macclesfield* was satisfied with the Proposal, but that my Lord *Macclesfield* had no Objection to my Brother, and he had formerly received a Recommendation of him; but at present another Person was recommended by some of the Masters, whom he expected to be farther recommended.

Mr. *Plummer*. My Lords, I desire Mr. *Ellis* may be asked, how long, before Mr. *Thurston* was admitted, was the Conversation about giving Security, that Mr. *Lucas* might be indemnified from the Deficiencies?

Mr. *Ellis*. My Lords, in one of the last Conversations, which was after I had spoken to my Lord *Macclesfield*, Mr. *Lucas* might say something about having Security. But I don't recollect it with any Certainty; if he did, it was some Days before Mr. *Thurston* was admitted.

Mr. *Serj. Probyn*. I desire he may inform Your Lordships, Whether he ever told my Lord

*Macclesfield* any thing of this Discourse about Security?

Mr. *Ellis*. No.

Sir *Geo. Ovenden*. He says, He never told my Lord *Macclesfield* of that Conversation: I desire to know, if he told my Lord *Parker*?

Mr. *Ellis*. No, my Lords, I told no body at all.

Mr. *Strange*. My Lords, I beg Leave to make one Observation; a Learned Manager was pleased to observe upon the Appearance of these Two Witnesses together, That now the Evidence of Mr. *Lucas* is confirmed by Mr. *Ellis*: Your Lordships are pleased to remember, that Mr. *Ellis* was our Witness, and was first examined; and therefore I should apprehend the Observation may be turned much properer the other way: That the Evidence of Mr. *Ellis*, who was our Witness, and was first examined, is now confirmed by Mr. *Lucas*.

Earl of *Macclesfield*. My Lords, I desire he may inform Your Lordships with relation to the Discourse that passed betwixt them about the Deficiencies; Whether the Objection did not relate singly to them?

Mr. *Ellis*. I don't well remember what passed upon the Subject of the Deficiencies; what I have said to Your Lordships before, I remember full well, because a particular Circumstance made me recollect, that Mr. *Lucas* did say, he had heard there was no Deficiency in Mr. *Borret*'s Office; which I had heard too; but at what time that Discourse was, I can't recollect; it might be as he represented it.

Earl of *Macclesfield*. Mr. *Lucas* said to you, That he was willing to treat upon those Terms?

Mr. *Edw. Lucas*. Upon those Terms, or to that Effect, I did say.

Mr. *Plummer*. I only would make this Observation; Both these Evidences confirm this, that Mr. *Lucas* was an Inquisitive Man, and would not part with his 6000 *l.* so easily as to ask no Questions.

Mr. *Serj. Pengelly*. We beg Leave now to call a Witness as to the Second Letter or Order, supposed to be sent in *November 1721.* to all the Masters. Mr. *Cottingham* could not take upon himself to say, that it was delivered; he had kept a *Memorandum* of the first, but none of that, and he believed he might say, it was delivered; we deny any such Letter was delivered, and beg Leave to ask as to that particular Point.

Mr. *John Bennet* called.

Mr. *Serj. Pengelly*. I desire he may be asked, whether in *November 1721.* any Second Letter, or Order, of the Purport of the first Order, was sent, or delivered, in Relation to the Masters bringing in their Accompts?

Mr. *J. Bennet*. My Lords, I never saw any such Letter.

Mr. *Serj. Pengelly*. Did you ever hear of it?

Mr. *J. Bennet*. I never heard of it before, till I heard Mr. *Cottingham* read it at the Bar.

Mr. *Serj. Pengelly*. Did you receive any Account from the other Masters, that they had received any such Letter?

Mr. *J. Bennet*. No, my Lords, never.

Mr. *Serj. Pengelly*. Do you recollect any Discourse between my Lord *Macclesfield* and your Brother, relating to your Brother's Account?

Mr.



Mr. *J. Bennet*. I don't recollect the whole.

Mr. *Serj. Pengelly*. What do you recollect?

Mr. *J. Bennet*. My Lord hath declared to me, That he wondered Mr. *Kinaston* and my Brother should put such an *Item* in their Accounts, which would make a Discovery, that the Masters had bought their Places with the Money of the Court, which might be of mischievous Consequence; that whenever it was objected to him, he had always taken great Pains to deny it.

Mr. *Serj. Pengelly*. When was this? About what Time?

Mr. *J. Bennet*. About *Christmas* last.

Mr. *Serj. Probyn*. We beg leave to take Notice of the Nature of this Evidence, that it is very improper now, being new Evidence; not to the same Purpose to support what was given before, but new Matter, and therefore not proper.

Mr. *Lutwyche*. We apprehend it is very proper, because Mr. *Thomas Bennet's* was objected to, and this confirms his Evidence.

Mr. *Holford* called.

Mr. *Serj. Pengelly*. My Lords, we desire he may be asked, whether this Letter, or Order, of *November 1721*. was ever communicated to him by Mr. *Cottingham*?

Mr. *Holford*. No, my Lords, I never heard of it till now lately.

Mr. *Com. Serjeant*. I desire Mr. *Holford* would inform Your Lordships, whether there were not then several Masters senior to him? and whether it is not usual to leave those Letters, or Orders, with the Senior Masters?

Mr. *Holford*. I don't know that such Order, or Letter, was left at that Time. Mr. *Hiccocks* and Mr. *Fellowes* were Seniors to me.

Mr. *Com. Serjeant*. I desire he may be asked the other Part of the Question, Whether it is not usual to leave Orders, wherein the Masters are generally concerned, with the Senior Masters?

Mr. *Holford*. It is not; but the Usage generally is to be left at the Publick Office. It might be left with the Senior Master, for ought I know.

Mr. *Lovibond* called.

Mr. *Serj. Pengelly*. Did you ever hear or know of this Letter or Order of *Nov. 1721*?

Mr. *Lovibond*. I never heard of any such Letter or Order, till I heard it read at this Bar.

Mr. *Kinaston* called.

Mr. *Serj. Pengelly*. Mr. *Kinaston*, will you give my Lords an Account, whether you heard of this Letter or Order of *Nov. 1721*?

Mr. *Kinaston*. I suppose you mean the Letter which Mr. *Cottingham* read.

Mr. *Serj. Pengelly*. The same.

Mr. *Kinaston*. I never heard of it, till I heard it read at this Bar.

Mr. *Serj. Pengelly*. I hope this will explain Mr. *Cottingham's* Want of Memory, when he said that he could not remember it.

Mr. *Lightboun* called.

Mr. *Serj. Pengelly*. I desire to ask you, whether you know any Thing of this Letter of *Nov. 1721*?

Mr. *Lightboun*. I never heard of it, till I heard it at Your Lordships Bar from Mr. *Cottingham*.

Mr. *Edwards* called.

Mr. *Serj. Pengelly*. I desire he may be asked, whether he ever heard of this Letter of *Nov. 1721*?

Mr. *Edwards*. I never heard of such a Letter, till I heard it mentioned at this Bar.

Mr. *Serj. Pengelly*. So that, my Lords, we apprehend this Letter, when written by Mr. *Cottingham*, was a Pocket-Letter to be made use of on any proper Occasion. The Managers have done with their Evidence and the Witnesses, they shall call no more. We humbly apprehend, that we have cleared up the Reason, why the Lord took 5000 *l.* rather than 6000 *l.* it was from Hopes of greater Gain in having 5000 *l.* absolutely, without being liable to refund, than 6000 *l.* liable to such a Contingency. Upon the Evidence we submit the whole Matter to Your Lordships Determination.

Mr. *Serj. Probyn*. My Lords, we will be short in our Reflections upon this new Evidence. We apprehend their Evidence proves, what was insisted upon by us, that there was Care taken in disposing of these Offices, and that my Lord *Macclesfield* having personal Knowledge of one Gentleman did prefer him before another, whom he did not know, tho' he had less Money from him, than he could have had of the other. It is agreed by Mr. *Lucas* and his Brother, that there was a proposal of 6000 *l.* made upon this Occasion: Mr. *Ellis* tells you, Mr. *Lucas* gave him Orders to propose it to my Lord *Macclesfield* without any Terms whatsoever: He never mentioned any Terms, or intimated any Condition or Restriction to my Lord *Macclesfield*. Upon that his Lordship was pleased to direct a proper Enquiry to be made, what Security he was able to give for the Discharge of his Offices; here there was 6000 *l.* proposed without any Terms by one whom he did not know; but he preferred another whom he did know to be well qualified, for 5000 *l.* This doth not shew any Neglect in the noble Earl; but all the Care and Caution that ever could be taken; and this shews that the Earl could not do this out of an immoderate Desire of Gain, when 6000 *l.* was proposed to be given; but he preferred another whom he knew to be well qualified for less Money; so that we apprehend this is an Evidence which is much in favour of the Earl. As to the other Matter, the Masters not knowing of this Letter, your Lordships observe what Evidence, was given by Mr. *Cottingham*. This is a Transaction sometime ago, he says that he writ this Letter by the noble Lord's Order, that he cannot now say to which of the Masters he delivered it, or whether it was personally delivered by him, or by one of his Clerks. Your Lordships will observe, that there were two Masters Senior to Mr. *Holford*, viz. Mr. *Hiccocks* and Mr. *Fellowes*; and it might probably be delivered to one of them; one of them is since dead, the other is yet living; but we were not aware of the Objection, and so have not him here. This doth not impeach Mr. *Cottingham's* Credit or his Evidence, so far as it concerns the Earl.

Mr. *Com. Serj.* My Lords, I will not enter into a strict Comparing of the Evidence, we apprehend that what Mr. *Ellis* swore stands confirmed in every thing by Mr. *Lucas*, and we have

Reason.

Reason to thank the Gentlemen of the House of Commons for this Evidence. There was one material Part of our Evidence, that the Earl had a thorough Intention of entering into the Regulation of those Matters; but by Disputes arising in relation to the Jurisdiction of the Master of the Rolls, he was hindered.

Now the Evidence of Mr. *Lucas* Corroborates our Proof on this Head, he saith that Mr. *Cottingham* told him, tho' Security had not been taken, yet at present the noble Lord had a Reformation in View, and Security would be expected; and therefore he enquired what Security he could give, there was not only an Enquiry into his present Circumstances, but likewise an Intimation that Security would be expected. This shews the Earl's Intention; and if the Thirst of Gain had swayed him, Mr. *Lucas* would never have had those Bugbears to fright him from giving so much Money. Upon the whole it appears that no part of our Evidence is any way impeached by the new Evidence they have given.

Earl of *Macclesfield*. My Lords, I beg leave to say a very few Words upon what hath been newly offered, as to the Evidence to take off my having preferred 5000 Guineas with a Person I thought a better Man, to 6000*l.* with another, whom I thought a good Man. I apprehend it is not taken off at all by any Thing that has yet been offered. Mr. *Lucas* owns that at the first Time there was an Expectation of Security, and he has given your Lordships an Account that he asked what Security was expected; and was answered I think to the Value of 10,000*l.* and that what he spoke of the Deficiency, was only that he should not be liable to farther Orders to be made upon him for Contribution to the former Deficiencies of other Masters; and in the latter Time, when the Clamour was greater, Mr. *Ellis* offered me 6000*l.* absolutely without any Condition, and I said I approved of the Person and of the Offer, but I had another Gentleman then under Consideration. Their Evidence indeed varies as to the Particulars of the Conversations they had upon this Subject: But whatever Discourse passed between them, unless it came to my Knowledge, it ought not to affect me. I never heard, nor is it so much as pretended, that I ever did hear, there were any manner of Terms or Conditions whatsoever annexed to the Proposal made by Mr. *Lucas*.

Mr. *Ellis* has been asked this Question, and has sworn positively he mentioned none at all to me; so that there is not the least Pretence that the Restriction, supposing Mr. *Lucas* annexed any to the Proposal (which I must observe is flatly contradicted by Mr. *Ellis*'s Evidence) ever came to my Knowledge.

As to what Evidence is given in relation to the Letter of *November* 1721. your Lordships will remember, that when I spoke of that, I entered upon it as a Thing not at all necessary for me; because they had not proved the Article, that the Letter writ in *February* was with an Intention to terrify the Masters into a Contribution; but all the Proof they produced was, that the Masters had paid a voluntary Contribution, and upon that they made some Observation; but not one of the Masters ever gave your Lordships an Account that they did it by Reason of, or under the Terror of this Letter,

they have called every one of them, and not one hath said so, but agreed that they had paid it as a voluntary Contribution; so that there is no manner of Occasion for what hath been said about this Letter. Mr. *Cottingham* did say before your Lordships, that he thought the Letter was sent, and he had no Reason to believe the contrary; but indeed he had no Memorandum of its being sent. It is very extraordinary to suggest, that this should be a pocket Letter. Can any Person imagine that that Letter was calculated for an Occasion like this? Was there any Apprehension of this Prosecution in 1721? My Lords, it is not worth while to trouble your Lordships with any more Remarks about so groundless a Pretence. In the Reply there hath been something new offered to your Lordships to make out my receiving Money from the Masters to be an Offence at common Law; and there have likewise been mentioned several Acts of Parliament, to neither of which I have had any Opportunity of giving an Answer before; I therefore apprehend I have a Right to take Notice of them now. And first I beg Leave to observe to your Lordships, that every one of these Acts of Parliament relate plainly to Judges who take Bribes, or take Money for doing their Duty, or for doing those Things they were bound to do; they lie upon your Lordships Table, and if your Lordships will but look upon them you will find all to be so.

That of *Magna Charta* is plainly so, that Justice shall be administered to the Party, without paying for it.

So the Statute of 12. R. II. that they shall. —

Mr. *Serj. Pengelly*. My Lord can not be regular to reply to us on that Statute.

Earl of *Macclesfield*. The Statute is, that they shall not make any Officer for Brokage.

Sir G. *Oxenden*. We must submit it to your Lordships whether this can be regular; the noble Earl hath had his Defence, we have replied; it is not regular for him to enter into a Debate now.

The Statute is upon your Lordships Table; and your Lordships will consider it.

Earl of *Macclesfield*. I will not take up your Lordships Time any farther in insisting upon it; but I hope at least those Gentlemen will not oppose my taking Notice of one Thing that is new; though not any part of the Articles, which is what the Gentlemen have said with relation to *Wilson*'s Composition not being binding upon the Suitors of the Court; that it is matter of Horror that *Wilson* should trust to the Faith of a Court of Justice, and upon that enter into a Composition, which at last should not be effectual and binding. To that give me Leave to answer, that if *Wilson* had acted honestly, and given a fair Account of his Estate and Effects in this Case, and it appeared upon the whole, that he could not pay more than according to this Composition; and at the same time that it must be a real advantage to the Suitors to have received their Proportion of what he was able to pay, without the Expences of a Statute of Bankruptcy; in that Case he would have the Benefit of it: But in Case he could have paid more, and this appeared only to be a fraudulent or unfair Composition, it would be no ways conclusive upon the Suitors; and as he ought not to reap any

Benefit

Benefit, so neither would they suffer any Prejudice by it upon that Supposition.

Mr. Serj. Pengelly, The Managers are entitled to the Reply and Conclusion.

As to our Evidence newly given, it proves in the strongest manner, that if there was a Reason for distinguishing between 5000 l. and 6000 l. it was because the 6000 l. was attended with an Incumbrance; and if it be said that the Earl had no Notice of it, it is prov'd that his Agent, or the Person whom he employ'd, had this Account deliver'd to him, and knew it; and we appeal to the Letter which is in their Hands. And therefore this is so far a Confirmation of the other part of the Charge of Neglect when Security was offered. Why was not the Person accepted? Why Mr. Elde preferr'd?

Mr. Lucas's Directions to his Brother, and his Transactions are confirmed by Mr. Ellis, my Lord's own Chaplain; and the only Reason why the Bargain was not concluded, was, because of the Privilege insisted upon by the Person to be indemnified from all Contributions and Charges.

E. of Mac. I beg your Pardon, if I trouble Your Lordships once more, in Relation to a Piece of new Evidence, which I did not before reflect upon; I am under a very great Disadvantage from these Gentlemen, who are for tying me down to very great Hardships, so that if any thing slips my Memory, at what they call the proper Time, it must at this rate be lost for ever. I would take Notice of one Thing, with relation to what Mr. Thomas Bennet said of what I spoke, of denying that the Masters paid for their Offices out of the Suitors Money; they are attempting to prove that I knew of their doing so, and they prove it by shewing, that I said I had always denyed it. But, my Lords, is there any of the Masters that came in in my Time, that says I knew any such thing? No, my Lords, not one of all those Masters that came in in my Time, and appear to have transacted in this manner; there are only two, Mr. Kinaston, and Mr. Thomas Bennet; but is there any of them, or any other, that pretend that I knew they did so? Here are two Persons that paid for their Offices out of the Suitors Money; and because I told one of them afterwards, admitting what he said to be true, that I had heard it said it was so, and deny'd it; Is it from thence to be concluded that I knew it was really so? My Lords, I beg leave to observe as to the Matter of the difference of the Prices; I gave Evidence of the difference of Prices in other Offices, and their Rise from 50 l. to 500 l. in one Instance, and from 200 l. to 800 l. in another.

Mr. Serj. Peng. We are unwilling to interrupt the Lord; but now for him to go back again into the whole, is a greater Right than his Lordship is entitled to; therefore from the Duty we owe to your Lordships, we hope every Thing that is regular shall be observ'd.

E. of Mac. I submit if your Lordships think I am irregular, in the Confusion my Papers were in when I made my Defence from them. The same is true of this and some other Matters. As to the Reply, I must beg your Lordships's general Observation, That the same might the Arguments used by either such as they could have needed no Answer, since I was not to answer any of them; and I must leave to Your Lord-

Mr. Onslow, My Lords, in the Course of our Reply, we made use of the Statute of Henry the 4th. We have it not Printed, but we have an attested Copy in Writing, and the Original Roll; if your Lordships please, this attested Copy may be brought up to your Lordships Table.

Mr. Nicholas Paxton Sworn.

Mr. N. Paxton. My Lords, I examined this Copy with the Deputy-keeper of the Rolls in the Tower, and it is a true Copy.

E. of Mac. Whether that Parliament Roll be in the Nature of a Journal or a Statute Roll, wherein the Act of Parliament is enter'd?

Mr. Paxton, My Lords, the Officer is here; he will give Your Lordships an Account.

Mr. Lutwyche, It is quoted by my Lord Coke to be of the same Nature as a Parliament Roll.

Mr. Holmes called.

Mr. Serj. Peng. Mr. Holmes, Where is this Roll kept?

Mr. Holmes. My Lords, I am Deputy-keeper of the Records.

Mr. Serj. Peng. Where?

Mr. Holmes. In the Tower.

Mr. Serj. Peng. What Roll is that?

Mr. Holmes. It is the Parliament Roll of the 11th of Henry the 4th.

E. of Mac. I desire he may inform Your Lordships whether there be any difference or distinction between the Parliament Roll and the Statute Roll?

Mr. Holmes, There are a great many private Acts enter'd upon the Parliament Rolls; that are not in the Statute Rolls; what is in the Statute Roll was sent down by Writ into the several Counties to be proclaim'd in the several County Courts.

Mr. Serj. Peng. Whether that is not the Original Roll?

Mr. Holmes. This is the Original Roll.

E. of Mac. I apprehend the Parliament Roll contains the Petitions, and the King's Answer.

Mr. Holmes, It doth.

E. of Mac. Before it comes to be published as a Law, is it not drawn up in Form, and enter'd upon the Statute Roll?

Mr. Holmes. The Petition is a piece of Parchment; after it hath passed King, Lords and Commons, then it is entred on this Roll.

Mr. Onslow, Whether the King's Assent is not entred upon this Roll?

Mr. Holmes. There is *le Roy le Veut*.

Lord Lechmere, I desire for Your Lordships Satisfaction, that he may read what is upon the Parchment Roll.

Mr. Holmes, Reads it, &c.

Parl. Rot. N<sup>o</sup>. 28. 11 H. 4.

Respectuatur } Item, QUE nul' Chauceller, Tre-  
per Dominum } soyer Gardain de Privie  
Principem & } Seal, Counseiller du Roy, Serementz  
Concilium. } a Counseill du Roy ne nul' autre Offi-  
cer Juge ne Ministre du Roy parnant  
fees ou gages de Roy pur lour ditz  
Offices ou Services, preigne en nulle  
manere en temps avenir ascun ma-  
nere de doun ou brocage de nully  
pur lour ditz Offices & Services  
affaire sur peyne de respondre a Roy  
de la treble de ceo que issi preignent,  
& de satisfyer la Partie & punys al  
volunte de Roy, & sont dischargetz de  
son Office, service & Counseill pur  
toutz jours, & que chescun qi vorra  
pur suer en la dite Matier eit la suit  
B b b b fibien

*sbien pur le Roy come pur luy Mesmes  
& eit la tierce partie de some de qi  
le parties soit duement convict.*

Le Roy le Voet.

E. of Mac. What is there in the Margin?

Mr. Holmes, *Respectuatur per Dominum Principem  
& Concilium.*

E. of Mac. That I may not be misunderstood in this Matter, and accused of going to quibble away an Act of Parliament; Your Lordships will give me leave to observe in the first Place, That supposing this to be an Act of Parliament, it relates to Cases where Judgments are given, or where the Parties have a Right, and not any way to me or to my Case; and having premis'd this, Your Lordships will see how this Matter stands. Here are two Rolls, the one is in the Nature of a Journal, wherein an Entry is made of the several Proceedings, and there are in it great Numbers of Petitions to the King by the Commons; whereby they pray, That Acts may be made, and the King's Answers upon them: The Answer it may be is agreeing to some part of what they pray, or sometimes to no part, but a Provision made quite different from what they pray. At that Time the Judges drew up the Acts afterwards in Form, and thence then those Acts were entred upon the Statute Roll; and they were promulgated at that Time by Proclamation on Writs issued to the Sheriffs of the several Counties. Now this hath in the Margin of the Parliament Roll, *Respectuatur per Dominum Principem & Concilium.* When the Judges came afterwards to draw up the Statutes of this Parliament, in order to publish them, there being a *Respectuatur* set upon this in the Parliament Roll; they forbore to draw it up amongst the rest, and it is not entred upon the Statute Roll at all, nor ever printed in any Statute Book since, nor was it ever publish'd by the Sheriffs, nor consequently sent to the several Courts of Justice, nor ever taken Notice of by them as a Law; for the Reason of that Maxim, That the Courts of Justice are bound to take Notice, *ex officio*, of publick Laws, and not of private Laws, was because the publick Laws were transmitted to them under the Great Seal. The Fact then in this Case doth appear to be, that when the Acts of this Parliament of 11 Hen. 4. came to be drawn up and promulgated, this having a *Respectuatur* enter'd upon it, was not entred upon the Statute Roll, and so not published; this is the Fact. However it doth not concern me, nor doth it relate to the present Case at all, as I observed to Your Lordships before; If I had made a Decree for Money; if I had refused a Writ or *Subpœna*, unless the Party had paid me Money, then I had been within the Statute, but not in this Case.

Mr. Lutwyche, We say this Statute doth concern him: But as to what he saith, that there is an Entry in the Margin, *Respectuatur per Dominum Principem*; this is taken Notice of in the 3d Institutes, where my Lord Coke particularly affirms, that this is an Act of Parliament in force, and is upon the Parliament Roll, and takes notice of *Respectuatur*, &c. that it was in Fact done by the Prince, the Son of King Henry the 4th, but without Authority; and that notwithstanding such Respite, this Act of Parliament is in full force.

Mr. West, Supposing it to be an Act of Parliament it extends to the Earl's Case; but whether it be an Act of Parliament or no, is a Question

that the Noble Earl now makes. I thought had been the common Learning, that all the Laws were Petitions from the Commons, and King's Answer to them; and that they entred upon the Parliament Roll; and that Parliament Roll was only a Voucher to the true Roll. I could give many Instances where a Voucher was not pursued, and the Statute drawn up different from the Parliament Roll, that was the very Reason of altering the Method of passing Laws into the Method that is now used. This is my Lord Chief Justice Hales's Account one of the Modern Reports.

Mr. Plummer. The Earl Impeach'd hath principally insisted on two Things, the one is taking a less Sum of Money for a Master's when Vacant, when he had a greater Sum of him; and that therefore it follows that he hath made corrupt Advantages in order to raise his own Fortune, and that he is Innocent. He called the Negotiator in this Affair to prove, when he was offer'd 6000 *l.* he took 5000 *l.* Commons have by their Witnesses explain'd it; this Matter is now fully clear'd, and Your Lordships have the whole before you; and I will make no further Observation upon it.

The second Thing that he lays great Weight upon is, that he called for the Accounts of the Masters, notwithstanding the 500 *l.* apiece paid in. Upon examining the Witnesses, it doth not appear that any of the now Masters knew anything of it. I leave it to Your Lordships Consideration, whether, if the Earl of Macclesfield had been in earnest, he would not have had a Record of that Order. It doth not appear there was any Account given in; therefore when these Points are made plainer against him now than were on our first making good the Charge, he seems to say the Sting of the Impeachment is taken out, yet it is plain the Sting is not taken out of it, but it still remains; and Your Lordships will give such Judgment as is just and legal.

Then the Managers for the House of Commons and the Council withdrew, and then the House adjourned.

Tuesday, 25 May, 1725. The 11th Day, the Earl being seated in their House, and the Managers come, and seated as before, the usual Proclamation was made for Silence.

L. Ch. Just. King, **M**Y Lords, Your Lordships having heard the Evidence in this Case, have agreed upon a Question which is severally to be put to Your Lordships in the usual Order. The Question is this, Is Thomas Earl of Macclesfield guilty of high Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or not Guilty upon your Honour?

L. Ch. Just. King, Robert Lord Walpole, asks your Lordship? Is Thomas Earl of Macclesfield guilty of High Crimes and Misdemeanors charged upon him by the Impeachment of the House of Commons, or not Guilty?

Lord Walpole, Gr

The same Question was severally put to the Names and Voices

Nicholas Lord Lechmere

Matthew Lord Ducie,

Thomas Lord Onslow,